

The Chief Executive  
Camden London Borough Council  
Camden Town Hall  
Judd Street  
London  
WC1H 9JE

8 September 2006

Dear Sirs,

**Resolutions Of The Council's General Purposes (Development Control) Sub-Committee To Grant:**

1. **Planning Permission, Application No. 2004/2307/P** (Outline Application for redevelopment of railway lands within Kings Cross Opportunity Area)
2. **Listed Building Consent, Application No. 2004/2313/L** (Demolition of the Stanley Building North)
3. **Listed Building Consent, Application No. 2004/2314/L** (Great Northern Hotel)
4. **Listed Building Consent, Application No. 2004/2315/L** (Gas Holder Number 8)
5. **Listed Building Consent, Application No. 2004/2316/L** (The Handyside Canopies)
6. **Conservation Area Consent, Application No. 2004/2317/C** (Culross Buildings)
7. **Conservation Area Consent, Application No. 2004/2318/C** (Plimsoll Viaduct)
8. **Conservation Area Consent, Application No. 2004/2320/C** (Various unlisted buildings and structures within King's Cross Central)
9. **Conservation Area Consent, Application No. 2004/2321/C** (Western Goods Shed)
10. **Planning Permission, Application Number 2004/2311/P (Triangle Site)**

We act for The King's Cross Railway Lands Group and write in connection with Camden Council's resolutions to grant the above listed planning permissions, listed building consents and conservation area consents on 09 March 2006 for redevelopment of King's Cross by Argent Limited.

We have concerns about the legality of the above resolutions. In particular we have a number of concerns about whether issues of fundamental importance were adequately considered by your Officers in their advice to members. We have therefore sought counsel's advice in relation to these concerns and, following receipt of that advice, we are of the view that there are grounds for judicial review of the emerging Council's decisions and we set out a number of our concerns to you. In so far as is practical at this time, this letter complies with and invokes the Judicial Review Pre-Action Protocol.

### **Our Clients (the prospective claimants)**

The King' s Cros Railway Lands Group is an umbrella organisation comprising individuals and groups active in and around King' s Cross in the London Boroughs of Camden and Islington. Its purpose since its foundation almost 20 years ago has been to campaign for the regeneration of the Railway Lands and to ensure that such regeneration benefits local residents and businesses. It is strongly in support of regeneration in the interests of local, London-wide and larger communities of beneficiaries and has made representations on this basis on every scheme proposed for Kings Cross. It is a Company Limited by Guarantee (reg.05170241). Its registered address is 5 Caledonian Road London N1 9DX.

### **The Resolutions**

It is understood that the resolutions set out above are at this point awaiting the final approval of members to various matters and the final issue of decision notices.

A resolution to grant planning permission subject e.g. to the conclusion of a satisfactory section 106 agreement can be described as a provisional decision. It creates no rights or obligations. It is to be distinguished from the actual grant of planning permission; and the resolution can be revoked or varied at any time prior to the grant (see *R v Burkett* [2002] 1 W.L.R. 1593 at 1604 and *R (The Garden and Leisure Group Ltd v North Somerset District Council)* [2003] EWHC 1605). We have therefore felt that it is appropriate to seek to raise our concerns prior to the final grants of planning permission, listed building and conservation area consents; prior to the discharge of the section 106 agreements; and prior to the issue of the decision notices to enable a full reconsideration of the applications.

In view of the fact that works are not scheduled to begin until late 2007 at the earliest, we hope that there will be ample time to amend the proposals without any undue impact on the timescale for development.

While it may be premature at this stage to issue a claim for judicial review, there being as yet no binding decision, this letter provides the information required by the Judicial Review Pre-Action Protocol so far as it is practical to do so at this stage and we make clear that should planning permission be granted without further consideration of the issues raised in this letter, our clients intend to challenge that decision in the courts.

We respectfully refer you to the following from the judgment in **R. (Kides) v South Cambridgeshire DC** [2002] EWCA Civ 1370 where it was held at paragraph 126 that:

*In practical terms, therefore, where since the passing of the resolution [to grant planning permission] some new factor has arisen of which the delegated officer is aware, and which might rationally be regarded as a "material consideration" for the purposes of section 70(2), it must be a counsel of prudence for the delegated officer to err on the side of caution and refer the application back to the authority for specific reconsideration in the light of that new factor. In such circumstances the delegated officer can only safely proceed to issue the decision notice if he is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority would reach (not might reach) the same decision.*

It is submitted that that approach obtains in the current circumstances and that the Council should not proceed to issue the full grants of planning permission, listed building consents and conservation area consents without taking the matters raised in this letter into account as part of a reconsideration. We contend that a failure to reconsider in the light of the matters raised here would itself be a judicially reviewable decision.

It is noted that the resolutions in any event need to be revisited in light of the adoption of the Revised Unitary Development Plan ("the RUDP") in June 2006, after the resolutions were made. As such, the RUDP now forms part of the development plan and as such development proposals will need to be assessed in accordance with it. As the newer of the two plans comprising the development plan it must take precedence over the London Plan in the event of a conflict in policy (see section 38(5) Planning and Compulsory Purchase Act 2004). Its position in the hierarchy is therefore significantly elevated above the status of a "material consideration" which it enjoyed at the time of the resolution. Its new status has a considerable impact on the balancing exercise to be undertaken by the Council. One example of this can be seen in the approach to affordable housing set out below.

## **The Issues**

### (1) Affordable Housing

The failure of the proposals to meet policy targets on affordable housing has been one of the most notorious elements of the scheme and the source of considerable disquiet among members and the public. The adoption in June of the RUDP, reaffirming targets on affordable housing for Kings Cross in excess of what is proposed is a significant factor leaning in favour of reconsideration.

The Mayor's target for affordable housing across the site (both in Camden and Islington) is 50% with 70% of that 50% sought as social housing (see London Plan, policy 3A.7).

Policy KC4 of the RUDP seeks to ensure that a level of 50% affordable housing is provided on the site. Policy H2 of the RUDP commits the council to seeking to negotiate 50% affordable housing with a guideline of 70% as the proportion of affordable housing sought as social housing for rent. At the time of the decision the policy was not part of the development plan, but rather a “material consideration” (the commitments in the development plan then in place were to a far lower proportion of affordable housing).

The Officer’s Report (“OR”) states at paragraph 7.6.26 that the proposals do not meet the overall target of 50% affordability. However, it goes on to state that despite that failure to accord with policy, because the proposal meets other regeneration objectives, the amount of affordable housing must be seen in that wider context.

Policy KC4 was adopted in June 2006, in full knowledge of the previous resolution to grant planning permission. The 50% affordable housing level was nevertheless retained. By section 38(6) of the Planning and Compulsory Purchase Act 2004 a development proposal must be determined in accordance with the development plan unless material considerations indicate otherwise. It is incumbent on the Council to now reconsider the proposals in the light of the promotion of the 50% level from a “material consideration” to a mandatory part of the development plan. The weight afforded to that target must now be greater than in the previous decision.

Further, the fact that the Council reaffirmed the 50% level, in spite of the previous resolution to grant permission, places all the more significance upon the need to reach that target for affordable housing provision in the development of Kings Cross.

We would also draw your attention to a number of serious concerns over the presentation of figures relating to affordable housing and certain misleading statements in the OR which we contend vitiate the resolutions:

At paragraph 2.1.6 of the OR it is stated that:

*“Council Officers have not identified any material departure from policy.”*

The level of affordable housing provision was of central importance to the development and it is quite clear that the proposals do not meet the 50% affordable housing levels in the RUDP and in the London Plan and that as such permitting the proposals would constitute a material departure from policy. Even if material considerations relating to wider regeneration benefits do indicate the low level of affordable housing should be permitted, such an approach would nevertheless constitute a departure from policy. The advice given is therefore fundamentally misleading.

In written questions to the Officers, Councillor Sumner asked by query 19:

*“why is the social housing element so low and small size owner occupier so numerous?”*

The answer provided was that

*“The social housing element is over 29% of housing provision with Stanley and Culross replacement and over 30% if the replacement housing is taken out of the equation. This provision is concerned to meet the policy target of 30% social housing and is high by comparison with similar schemes across London...”*

This advice was wrong in three respects.

- (i) The figures given are inaccurate. The maximum social rented units that will be provided, if all 1700 units are provided is 500. However, 74 of those 500 are to be replacement units for the 74 already in place in Culross and Stanley Buildings. If those are excluded, then of 1626 new units, 426 will be social housing, representing 26.2%. If those units in Culross and Stanley Buildings are included in the calculation, then 500 units will be provided as a proportion of the total of 1700 units, representing 29.4%.
- (ii) Policy is misrepresented. As set out above, both policy H2 of the RUDP and the London Plan seek a policy target of 70% of affordable housing to be social housing. The RUDP and the London Plan seek 50% affordable housing. The policy target for social housing as a proportion of the total housing provision is therefore 35% not 30%. Accordingly, a social housing element of 26.2% or 29.4% falls well short of the target.
- (iii) Correspondingly, the advice given as to the conformity, or near conformity of the proposals with policy is misleading. The advice gives the impression that the proposals meet policy targets when in fact they fall significantly short of meeting the targets.

We contend that this advice, provided to members on the night of the decision, and in response to specific queries raised by a member of the subcommittee would have been uppermost in their minds when making their decisions. In the light of this misleading advice from officers to members, we urge that the development proposals should be reconsidered. There is in any event no reason why the affordable housing provision should fall below targets, particularly in view of the extraordinary increase in office floor space that has been permitted in the later stages of the evolution of the proposals.

## (2) Heritage and Conservation Issues

We are particularly concerned by the apparent lack of connection between the permissions on the main site and the triangle site and the listed building and Conservation Area permissions. The demolition of the buildings within the Conservation Area and the demolition of the listed buildings can only be justified by

virtue of the potential social and economic benefits of the development. It appears on the face of the OR that there is the potential to put into effect the listed building and Conservation Area consents, without any mechanism for ensuring that the redevelopment by which such demolition is considered to be justifiable coming forward. The developer can apparently demolish the listed/Conservation Area buildings, and then seek an amended permission, free of the listed buildings standing in its way. That would defeat the objective of listed building protection. It is essential that it should be made clear what the regeneration benefits of the development are and that those should be linked to the listed building and Conservation Area consents.

We regard the root cause of this failure to secure satisfactory linkages to be the attempt to retain an impermissible flexibility in the proposals. This issue is discussed further below.

A further issue arises out of the reservation of certain matters. At paragraph 1.6 of the Development Specification it is stated that the detailed design and external appearance are to be reserved. We fail to see how it is possible to assess the effects of the proposals on the character and appearance of the area without detailed design information. We consider that the Council failed to discharge its duties relating to listed buildings and Conservation Areas. We also contend that the Environmental Statement contained inadequate information on the likely effects of the proposals on the Conservation Area and listed buildings.

### (3) Environmental Impact Assessment

We contend, first, that the proposals themselves are too flexible to allow an EIA process in compliance with the objective of the EIA Directive. Even if the proposals in their current form are capable of satisfactory EIA (which is not accepted), we contend that the EIA process undertaken is inadequate.

This development will have significant effects on the Conservation Area and the listed buildings. Our clients have reiterated throughout the consultation process that the impact of the development on the Conservation Area and heritage buildings could not be properly assessed in the context of an outline planning permission with so much flexibility. We remain of the view that the Environmental Impact Assessment in this case provides inadequate information by which to assess the likely main effects of the proposal on the listed buildings and conservation areas. We refer you to paragraph 80 of the decision of Elias J in *British Telecommunications Plc, Bloomsbury Land Investments v Gloucester City Council* [2001] EWHC Admin 1001:

***“80. ...In a situation where the development relates to a conservation area which is a sensitive site of high archaeological, historical and architectural interest, I find it difficult to see how the likely potential effects can be confidently determined without information about the style and design and, although to a lesser extent, the external appearance of the buildings and landscaping. The proposed development would plainly be capable of affecting the cultural heritage. It seems to me unlikely that information about siting and access alone give***

*sufficient details to enable those effects to be determined. It is true that there was an illustrative design, but that cannot as a matter of law be relied upon when determining the potential effects since the ultimate design may depart significantly from it. Indeed, in this case the report to the members stated in terms that the members were not to be influenced by the illustrative drawings submitted with the application insofar as they related to style and architectural design. Furthermore, this was not a case where conditions were attached to the planning consent which tied the ultimate style or design in any way to the illustrative drawings.”*

In the case of *R v Rochdale Metropolitan Borough Council ex parte Tew and others* [2000] J.P.L.54, in response to the contention that there had been an illustrative model supplied, Sullivan J. said:

*"I can understand the advantages of an illustrative master plan in an ordinary outline application for a business park, but once it is decided that such a project falls within Schedule 2, Schedule 3 requires the environmental statement to assess the likely impact of the development which is proposed to be carried out, not the impact of a development which might or might not be carried out depending upon whether subsequent submissions for approval of reserved matters are or are not in accordance with an illustrative master plan."*

Having considered that passage, Elias J in *BT v Gloucester* stated

*85. It is true, as Mr. Roots points out, that the Tew was a case of a bare outline application, whereas in this case matters of siting and access are not reserved. Furthermore, in that case it had been accepted that a statement should be given; and any such statement must contain information about the "design, and size or scale of the development" (para. 2 of Schedule 3) and where all those matters are reserved, that cannot be done. But in my judgment even although there were fewer reserved matters in this case, the lack of any information about design and external appearance makes it very difficult to see how a proper assessment could be made of the likely impact of the development. No full description can be given of the development as required by para.2(a). I would not wish to suggest that it can never be possible to make a judgment whenever design is a reserved matter. It may sometimes be possible to say that whatever the design there will be no significant environmental effects. **But I am very doubtful whether this can confidently be stated in a conservation area of considerable sensitivity.***

We respectfully suggest that that approach is applicable to the present case. The Kings Cross Conservation Area is one of considerable sensitivity, protecting the setting of the two Grade I listed stations. The lack of specificity about the details of the redevelopment of the conservation area and the effect of the development on listed buildings has impeded the possibility of a proper assessment in accordance with the Council's obligations concerning listed building and conservation area consents. Further, the shortcomings of the Environmental Statement render the decision to resolve to grant planning permission unlawful.

## *Methodology*

We further contend that the methodology in the Environmental Statement was flawed and failed to assess the likely significant effects of the development. We draw your attention to the following paragraphs of the Environmental Statement:

### *“Worst Case*

*1.3.27 Since the phasing and the final form of the development cannot be fully defined at this stage, the EIA assesses the so-called ‘worst case’. This may be different for each topic considered in the EIA. Therefore, each topic identifies its own ‘worst case’ for assessment. This is based on the worst case development scenario i.e. the scenario permitted within the defined parameters of the proposals, that would lead to the worst levels of adverse environmental effects for that topic.”*

The approach taken in the environmental statement is inherently contrary to the intentions of the EIA Directive and the implementing regulations. It is well established law that the purpose of an environmental statement is to establish not the likely adverse effects, but the likely significant effects, both adverse and beneficial, see *British Telecommunications Plc, Bloomsbury Land Investments v Gloucester City Council* [2001] EWHC Admin 1001. The intention is that the likely significant effects of a development be assessed. The worst case is not always likely. It appears that the “worst case” methodology has been used because the proposals themselves are so flexible, that it was impossible to assess the likely significant effects.

### *Wind Tunnel Testing*

One example of the failure of the Environmental Statement to adequately assess the likely effects can be seen in the approach to wind tunnel testing.

The Mayor’s SPG on sustainability requires wind tunnel testing for all buildings over 30m high. The Officer’s Report states that wind tunnel testing is to be required by condition. It is acknowledged in the Officer’s Report (paragraph 10.6.27) that “it is hard to model actual designs at this stage”. It is also stated that “Locations have been identified as susceptible to potentially significant wind effects for different reasons”. It is implicitly acknowledged that because of the lack of specificity in the proposals it has not been possible to assess the likely significant effects of the proposals in the ES. The Council Officers have suggested in the OR that these shortcomings can be overcome by the imposition of conditions (a) requiring wind tunnel testing (b) a condition to secure appropriate testing in the light of known detailed design.

It is well established law that the likely significant effects of a development must be assessed through the EIA process at the outset and before the decision to grant consent. The approach of the Officers in seeking to postpone assessment of the effects of the development to the detailed stage is misconceived.

We would refer you, first to *R v Cornwall County Council, ex parte Hardy* [2001] Env LR 473, where the Local Authority had granted a planning permission subject to a condition that a survey on the habitat of bats be completed prior to implementation of the permission. In so doing, they were held to have failed to have regard to the results of that survey in granting the permission. The Environmental Statement is designed to ensure that all the environmental information is considered prior to the decision on planning permission. As such it is irrational to consider the environmental information after the grant of planning permission. This decision is referred to in a new paragraph (numbered 113) of the draft amended circular on EIA.

A related point arose in *Hereford Waste Watchers Ltd v Herefordshire Council* [2005] J.P.L. 1469. It was held that the decision maker ought to have all the relevant information available prior to granting consent. In this case the planning Officer had expressed concern over the proposed system for controlling emissions. A condition was imposed requiring that no development should take place until a report specifying levels of pollutants and predicted emission levels had been prepared. Elias J held that the additional information should have been available prior to granting planning permission. He held that by adopting the course it did, the Council effectively deprived consultees of a proper opportunity for consultation.

The Secretary of State in his decision dated 21 July 2004 in relation to an appeal in relation to the Croydon Gateway Development (App No. 01/03069/P) refused an appeal on the basis that he regarded it as fundamental to the acceptance of the principle of the development that he was satisfied that the likely effects of the development had been adequately assessed. In that case he decided that the effects had not been adequately assessed because there had been inadequate assessment of the effects of wind. This decision was brought to officers' attention during the consultation process

#### *The Barker Judgment*

Insofar as inadequacies in the Environmental Statement relating, *inter alia* to the assessment of wind impacts might be said to be due to the inadequacy of the ES *per se* (and not, as we contend, the inherent vagueness in the proposals) we draw your attention to the judgment of the European Court of Justice in *R (On the Application of Diana Barker) v Bromley LBC*, (the First Secretary of State intervening) Case C-290/03:

*48. If the national court therefore concludes that the procedure laid down by the rules at issue in the main proceedings is a consent procedure comprising more than one stage, one involving a principal decision and the other involving an implementing decision which cannot extend beyond the parameters set by the principal decision, it follows that the competent authority is, in some circumstances, obliged to carry out an environmental impact assessment in respect of a project even after the grant of outline planning permission, when the reserved matters are subsequently approved (see, in this regard, Commission v United Kingdom, paragraphs 103 to 106). This*

*assessment must be of a comprehensive nature, so as to relate to all the aspects of the project which have not yet been assessed or which require a fresh assessment.*

*49. In the light of all of the foregoing, the answer to the second and third questions must be that Articles 2(1) and 4(2) of Directive 85/337 are to be interpreted as requiring an environmental impact assessment to be carried out if, in the case of grant of consent comprising more than one stage, it becomes apparent, in the course of the second stage, that the project is likely to have significant effects on the environment by virtue inter alia of its nature, size or location.*

Compliance with the Directive demands that where outline consent has been granted, but has not undergone adequate Environmental Impact Assessment, that process be carried out prior to the grant of reserved matters. We submit that that logic must apply with all the more force prior to the full grant of outline planning permission. Accordingly a satisfactory EIA must now be undertaken before the final grant of consent can be made.

#### (4) Strategic Environmental Assessment

Throughout the Officer's Report and the application documents there are references to the need to retain flexibility in view of the lengthy timescale for development and the need to respond to changing economic and social circumstances (see for example paragraph 1.8.5). Indeed, The RUDP itself states at paragraph 9.24:

*The Council recognises the magnitude of the potential development of the Opportunity Area. As such, it expects to see a comprehensive approach taken to the **planning and programming** of all development. The Council will wish to approve an overall **masterplan strategy** for the mixed use development of the Opportunity Area before individual proposals for specific parts of that mixed use development are brought forward. This masterplan strategy will be expected to relate satisfactorily to the comprehensive approach to all development in the Opportunity Area, as the Council's objectives would be compromised by piecemeal development of the Opportunity Area. The realities involved in achieving a viable commercial development are recognised and will be taken into account.*

Our understanding is that the "masterplan strategy" referred to is the outline permission. We would appreciate clarification as to what the masterplan strategy referred to for the Kings Cross Opportunity Area is.

Without prejudice to our position on the EIA process, it is our contention that the program of development proposed by the developer falls within the meaning of a "plan or programme" for the purposes of article 2(a) of the European Directive 2001/42/EC in that it sets out a framework, or programme of development. It is within this framework that several hundred further consents are envisaged to be granted. As such, the programme of development should have been subject to Strategic Environmental Assessment ("SEA") pursuant to article 3 of the Directive.

Accordingly, we contend that for the programme of development to proceed without SEA would breach the requirements of Directive 2001/42/EC.

#### (5) Air Quality

We have strong concerns over the failure of this proposal to accord with Camden's, the Mayor's or European objectives on air quality. As the Air Quality Action Plan 2002 states in section C of Chapter 2:

*Air quality in Camden is some of the poorest in Europe, especially towards the south of the borough where traffic congestion is severe.*

Paragraph 7.5.41 of the Officer's report correctly paraphrases paragraph 5.10.42 of the Environmental Statement where it is said that

*Results show that the changes in traffic flow in the study area would result in a very small change in pollutant concentrations, even at the worst-case locations. However, due to the changes being in an area where concentrations are expected to be above the air quality objectives, the significance is assessed as **minor adverse**.*

However, the Officer's report fails to draw attention to the next paragraph in the ES which states:

*Concentrations of nitrogen dioxide at all of these locations would be above the statutory air quality objectives in 2007, either with or without the development. The objectives for PM10 that apply from 2004 are expected to be achieved but the provisional objectives that apply from 2010 are unlikely to be met either with or without the development.*

In other words, it is clear from the Officer's Report that without the development, the targets on air quality are not going to be met. The Officer's Report wholly fails to spell out that in that context, permitting a development which is likely to further damage air quality cannot be regarded as in accordance with Borough policy. Notably, the Officer's report states at paragraph 7.5.43 that it is considered the development is in accordance with policy SD8 of the (now) adopted UDP, but fails to make any assessment of the conformity of the proposals with policy SD9. Policy SD9 states:

*SD9 - Resources and energy*

*A - Air quality*

*The Council will not grant planning permission for development that would significantly harm air quality, unless mitigation measures are adopted to reduce the impact to acceptable levels.*

Air pollution in this part of Camden already exceeds legally-permissible levels set across the EU. The ES for this proposal predicts that the construction and operation of the development as presently specified will add to the problem (including in relation to PM10 emission limits to which road traffic contributes).

The ES and OR proceed on the basis that those impacts can somehow permitted or be offset in the “planning balance”, by the benefits of the development. That suggestion is plainly wrong as a matter of law.

The EU limits in question were set by EU Directives in 1996 and 1999. The limits specifically took into account all relevant matters such as the health impacts of the pollution involved and the economic and technical feasibility of reducing emissions. The limits were set to apply across the EU. “Margins of tolerance” specified the amount by which EU Member States could allow the limits to be exceeded on a temporary basis before the actual limits took effect in 2005 and then (still lower limits) in 2010.

The Directives required Member States to identify those large urban areas where pollution levels are below the limits. Member States are allowed to balance development needs against pollution levels within those areas provided they keep within the limits. However, in areas – such as this part of Camden – where pollution levels exceed the specified limit (allowing for the tolerance level) Member States “shall take the necessary measures to ensure compliance with the limit values”. That obligation is absolute and unqualified and of application to all organs of the Member State, including therefore local authorities.

It follows that the Council is under a clear and absolute legal obligation to take the necessary measures to prevent activities which would increase pollution levels still further above the permitted limits.

Moreover, by virtue of the legal framework set out by the Directives, there is no legal scope for taking the view that an increase is small and so can be considered acceptable: the “margin for tolerance” set an outer boundary on the extent to which limits could be exceeded. By 1 January 2005, the margin of tolerance had been reduced to zero.

There is also no legal scope for deciding that the effect of the increase (or the extent to which the limit would be exceeded) can be balanced against (or justified by) the benefits of the development: that might be permissible in urban areas where pollution is below the limits, but not where limits are exceeded.

Overall, the Council is under an obligation is to reduce pollution levels and not allow them to increase (by however little) regardless of when other benefits might flow from doing so.

Accordingly, the Council would be acting in breach of its legal obligations if it allowed the development to proceed in a form which would add to the local pollution levels in question. Alternatively, the Council must ensure that such modifications to the development as are necessary to ensure that pollution levels are reduced or, at worst, maintained as a result of the development, are made.

To allow the development to proceed in its present form would not only be unlawful, it would also send out the clearest signal across the EU of Camden's contempt for pollution limits set at the highest level and of the widest application.

We strongly urge you to reconsider this proposal and to require comprehensive measures to be incorporated within it, whether through on-site measures or by section 106 agreements off site, or otherwise, to ensure that a net beneficial effect on air quality is secured in the locality.

#### (6) Blue Ribbon Network

We are of the view that the Officer's Report fails to have adequate regard to the cross-cutting policies of the London Plan contained within Part 4C, the Blue Ribbon Network (BRN). In our view the assessment of the proposals against the BRN policies falls short of the central importance afforded to those policies in the London Plan.

In particular we consider that the proposals fail to comply with policy 4C.12 of the London Plan which provides that

*"The uses of the Blue Ribbon Network and land alongside it should be **prioritised** in favour of those uses that specifically require a waterside location. These include water transport, recreation, wharves and flood defences".*

The single reference to the Blue Ribbon Network policies in paragraph 10.5.57 states that the proposals "respond" to the "GLA's Blue Ribbon Network policies".

The advice in the OR fails to mention that the policies form part of the development plan and that the decision must be made in accordance with those policies, not merely "respond" to them. The OR fails to address the question whether the proposals prioritise uses that specifically require a waterside location. Had that question been asked, the advice could only have been that such uses are not prioritised by the proposals and that the proposals are not in conformity with policy 4C.12.

#### (7) Critical Mass and floorspace limits

We have great difficulty in understanding paragraph 5.5.14 of the Officer's Report which states:

*The DS refers to the applicant's judgment that at least 400,000 sq m. of business and employment space should be developed, in order to establish as an enterprise 'cluster' with the requisite critical mass to be successful...Officers accept the principle that a critical mass is needed and, taking the key issues above into account, consider that the maximum amount of B1 space applied for is acceptable.*

It would appear that unevidenced assumptions about critical mass were being applied. No reason is given as to why the maximum amounts of office floorspace applied for is "acceptable", but more confusingly, it

would seem to us that the relevant test for the purported “critical mass” would be the *minimum* amount of office space applied for. If the implication is, as it appears to be, that *only* the maximum B1 floorspace will meet the threshold for supplying the critical mass, then that will have serious implications for the ability of the development to deliver on its other elements, including the housing provision (which has also been assessed largely on the assumption that the maximum provision will be made). The implications of the Officer’s views on floorspace have been inadequately reasoned.

These difficulties in understanding the scheme also, of course, relate back to the problem of the retention of too much flexibility.

#### (8) Ambiguity over Resolutions

There appear to be three different versions of the terms of the resolutions insofar as they affect matters surrounding the further consideration of the applications. Two versions are recorded in the transcript of the webcast of the meeting of 9th March. The transcript has been checked against the webcast itself and added matter is shown between angle brackets (<>). The first version is during the vote on the main site application as follows:

*CLLR JOHNSON: So let's come to recommendation number one. We resolve to grant outline planning permission subject to the referral of the application to the Secretary of State under the terms of the Town and Country, Shopping Direction 1993 and any direction arising. The referral of the application to the Mayor of London, under the terms of the Town and Country Planning Mayor of London Order 2000 and any direction arising. The completion of legal agreement under section 106 of the Town and Country Planning Act 1990 as amended ... <[Prompting intervention by a member]> ... which is coming back to us for further consideration, and other powers considering obligations the heads of which are set out in the report and the conditions set out in the report. Can I see all those in favour of that recommendation.*

*X<ELIZABETH DOWUOMA>: Nine.*

*CLLR JOHNSON: All those against that recommendation.*

*X<ELIZABETH DOWUOMA>: Six.*

The second version of the resolution occurred after the votes on the applications when officers give the Chair a resolution to read out. In the transcript of the meeting it records the following:

*CLLR JOHNSON: Okay thank you for that then. <[Messrs Brookes and Cronin direct the Chair to a further resolution]> Then there's a final recommendation which is the Director of Culture and Environment be granted ~~by a~~ delegated authority to finalize the terms of the section 106 agreement to secure the obligations set out in the heads of terms and to make minor amendments and that this would be brought back to this subcommittee ...*

*<Member (CLLR STEWART: subject to it coming back?*

*CLLR JOHNSON: Yes,> subject to it coming back to this subcommittee. Is that agreed? Agreed. Thank you very much for that.*

The third appears in the minutes to the meeting:

*RESOLVED – THAT the Director of Culture and Environment be granted delegated authority to finalise the terms of the Section 106 Agreement to secure the obligations set out in the heads of terms and to make minor amendments or formulate the precise wording of the draft conditions in the above resolutions, subject to the Section 106 Agreement being referred back to the Sub-Committee for final consideration.*

Please clarify:

- (i) Whether the section 106 agreements are to come back to the sub-committee for “further reconsideration” and, if so, what is meant by that phrase.
- (ii) Whether the Director of Culture and Environment has authority to “finalise” the section 106 agreements. Whether, following finalisation, the section 106 agreements are to be brought back to the sub-committee. If, so what is the scope of the authority apparently delegated to the Director of Culture and the Environment.
- (iii) Whether the Officers are empowered to make minor amendments or formulate the precise wording of the draft conditions in the resolutions.
- (iv) Which version of the resolution actually records what was decided by members.
- (v) Whether these ambiguities will need to be referred back to the sub-committee for clarification.

#### **Orders to be Sought:**

At present it would be envisaged that unless the resolution to grant planning permission is properly reconsidered the following Orders will be sought from the Court:

- (1) An Order quashing the resolutions in respect of the applications outlined at the head of this letter;
- (2) A Declaration that the decisions are unlawful;
- (3) Further or other relief as is appropriate in the light of events;
- (4) An Order for costs

#### **The Council is requested to take the following actions**

- (1) The Council is requested to respond to the issues raised in this letter.
- (2) The Council is asked to revoke the resolutions set out above.
- (3) The Council is asked to reconsider whether to resolve to grant planning permissions, listed building consents and conservation area consents in the light of the issues raised in this letter and all other material considerations.
- (4) The Council is asked to confirm the anticipated procedure and timescale for the final grant of planning permission in respect of all the applications set out at the head of the letter
- (5) The Council is asked to clarify the matters requested in the body of the letter.

## **The Prospective Claimants' Legal Advisers and Address for Reply and Service of Court Documents**

The details of the prospective claimants' legal advisers and the address for reply and service of court documents are:

EarthRights Solicitors  
The CAB Building  
Barnards Yard  
Saffron Walden  
Essex CB11 4EB  
Tel/fax: 01799 526502  
Attn: John Dunkley

### **Interested Parties**

We have identified the following as potential interested parties, to whom we have sent a copy of this letter. If you are aware of any other potential interested parties, please let us know.

- (1) Islington London Borough Council  
Islington Town Hall  
Upper Street  
London N1 2UD
  
- (2) Mayor of London  
Greater London Authority  
City Hall  
The Queen' s Walk  
More London  
London SE1 2AA
  
- (3) First Secretary of State/ Minister for Communities and Local Government  
Eland House  
Bressenden Place  
London SW1E 5DU  
*alternatively*  
Treasury Solicitor  
One Kemble Street  
London WC2B 4TS

- (4) Argent Limited  
2 Wellesley Parade  
Godstone Road  
Whyteleafe  
Surrey CR3 0BL
  
- (5) London and Continental Railways  
3<sup>rd</sup> Floor  
183 Eversholt Street  
London NW1 1AY
  
- (6) Exel PLC  
Ocean House  
The Ring  
Bracknell  
Berkshire RG12 1AN
  
- (7) Transport for London  
55 Broadway  
London SW1H OBD

**Period for Reply**

Please reply within 14 days (2 weeks) of the date of this letter, although a more prompt response would be appreciated.

Yours faithfully,

**John Dunkley**  
**EARTHRIGHTS SOLICITORS**

cc: Each of the interested parties (see above)