



Department for  
Communities and  
Local Government

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Director  
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Our Ref: APP/E5900/A/12/2186269  
Your Ref: 09139/VW/sh

16<sup>th</sup> September 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY AGGREGATE INDUSTRIES UK LTD AND LONDON  
CONCRETE LTD  
ORCHARD WHARF, ORCHARD PLACE, LONDON E14 0JU  
APPLICATION: REF PA/11/03824**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David Nicholson RIBA IHBC, who held a public local inquiry between 23 April and 5 September 2013 into your clients' appeal against a decision of the London Borough of Tower Hamlets (the Council) to refuse planning permission for planning application number PA/11/03824, dated 22 December 2011. This was a cross boundary hybrid planning application made to London Thames Gateway Development Corporation and the London Borough of Tower Hamlets with the extent of each Authority's administrative boundary marked on each application drawing. The development proposed is a concrete batching plant, cement storage terminal and aggregate storage facilities, together with associated structures and facilities, walkway and landscaping, jetty and ship to shore conveyor.
  - 1) Outline application: all matters reserved (except for layout)  
Jetty and ship to shore conveyor.
  - 2) Full details:  
Demolition of all existing buildings; concrete batching plant; cement storage terminal; aggregate storage facilities; associated structures and facilities; associated highway works; walkway; and landscaping.
2. On 28 November 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the appeal involves proposals against which another Government department has raised major objections or has a major interest.

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## **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with this recommendation and has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers are to that report.

## **Procedural matters**

4. At the inquiry referred to at paragraph 1 above, the Inspector also considered objections to the Compulsory Purchase Order (CPO) which was made under the Port of London Act 1968 and the acquisition of Land Act 1982 by the Port of London Authority on 25 May 2012. The Secretary of State for Transport's decision on the CPO is being issued today.
5. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations. The Secretary of State has also had regard to the Inspector's comments at IR1.7 – 1.8 and to the further information submitted voluntarily. He is satisfied that the ES complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.
6. The Secretary of State wrote to the main inquiry parties on 27 March 2014 inviting comments on the Planning Guidance published on 6 March 2014 and on the Court of Appeal decision in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and others* [2014] EWCA Civ 137. The responses received were circulated to the main parties for further comment on 14 April 2014. The Secretary of State has given careful consideration to all the responses received. Copies of the responses are not attached to this letter but will be made available on written request to the address at the foot of the first page of this letter. A list of the representations received is set out in the Annex to this letter.

## **Policy considerations**

7. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan comprises the London Plan (2011) and its Revised Early Minor Alterations (2013), the Tower Hamlets Core Strategy 2025 Development Plan Document (CS) (2010), and Tower Hamlets' Managing Development Document (DPD) (2013). The Secretary of State agrees with the Inspector that development plan policies of particular relevance are those summarised at IR5.3 – 5.18.
9. Other material considerations which the Secretary of State has taken into account include: The National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); and the Community Infrastructure Levy (CIL) Regulations. He has also taken account of Thames Strategy East (2008), the Mayor of London's Lower Lee Valley Opportunity Area Planning Framework (2007), the Lee Valley Regional Park Plan (2000) and the Lee River Park Design Framework 2008.

10. With regard to policy for safeguarded wharves, the Secretary of State has taken account of the Direction in June 2000 (IR5.22). He has had regard to the London Plan Implementation Report: Safeguarded Wharves on the River Thames (Safeguarded Wharves Implementation Report – SWIR) (2005) (IR5.23). The Secretary of State observes that, at the time of this decision, the SWIR remains extant. Whilst he has had regard to the Greater London Authority’s Safeguarded Wharves Review 2013 and the Inspector’s comments on it (IR5.24 – 5.29 and IR1.14 – 1.15), he observes that this document remains a draft and he attaches little weight to it.
11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has paid special regard to the desirability of preserving those listed structures potentially affected by the scheme or their settings or any features of special architectural or historic interest which they may possess.

## **Main issues**

12. The Secretary of State considers that the single main consideration in this case is that identified by the Inspector at IR12.1.

### *Context*

13. Having given careful consideration to the Inspector’s remarks about the appeal site’s constraints arising both from policy and from a number of environmental factors (IR12.2 – 12.8), the Secretary of State shares his view that Orchard Wharf is at a special location which is probably more sensitive to its context than most of the other wharves at the eastern end of the Thames (IR12.9).

### *Proposals*

14. The Secretary of State sees no reason to disagree with the Inspector’s comments on the proposals (IR12.10 – 12.15).

### *Effect*

15. Turning to the effect of the proposals, the Secretary of State agrees with the Inspector, that the enormity and extent of the proposed buildings would be evident in important public views (IR12.16). Having also taken account of the Inspector’s reasoning at IR12.17 – 12.18, the Secretary of State endorses his conclusions that: the scheme would harm the character and appearance of the area, including existing and proposed routes around the area of the site; the mass and bulk of the buildings would not relate well to their context; and the elevational treatment would do little to mitigate the impact of these views (IR12.19).

### *Historic Environment*

16. Having had regard to the Inspector’s comments (IR12.20-12.21) and to the parties comments following his letter of 27 March 2014, the Secretary of State agrees with the Inspector that, to the extent that the proposal would harm the character of the East India Dock Basin, the setting of the listed structures would also be affected, albeit that any harm would be less than substantial as defined in the Framework (IR12.20). The Secretary of State gives this matter considerable importance and he weighs it against the appeal proposal.

### *Safeguarding*

17. The Secretary of State attaches considerable weight to the fact that the appeal site is a safeguarded wharf under LP policy 7.26 and he agrees with the Inspector that, in principle, the benefits of reactivating the wharf could outweigh the harm to the character and appearance of the area (IR12.22). Having given careful consideration to the Inspector's analysis at IR12.22 – 12.27, he also concludes that the planning policy context does support the use of wharves for concrete batching, that the proposals would be supported by Policy 7.26 and that, in principle, this should be given considerable weight in the planning appeal (IR12.26).

### *Surrounding allocations*

18. The Secretary of State agrees with the Inspector's analysis at IR12.28 – 12.30 and he too concludes that the aspirations of adjacent land-owners for future residential development should be given limited weight in deciding this appeal (IR12.30).

### *The need for a balancing exercise*

19. In common with the Inspector, the Secretary of State takes the view that a balance needs to be struck between the benefits of reactivation and of modal shift to maximise the use of the Blue Ribbon Network (BRN) in accordance with the development plan, and the harm to environment as a result of the proposed development (IR12.31). He further agrees that the harm that would arise as a result of the proposals may not necessarily be an inevitable consequence of reactivation (IR12.31).

### *Scale and appearance*

20. Having had regard to the Inspector's analysis at IR12.32 – 12.33, the Secretary of State agrees with him that, unlike the safeguarding for reactivation, there is no presumption that maximising the use of the BRN should be paramount (IR12.32). He further agrees with the Inspector (IR12.53) that the benefits of maximising the use of the wharf and the BRN, rather than just reactivating it, should be weighed in the balance.

### *Design*

21. For the reasons given by the Inspector in his detailed analysis of the design of the appeal proposals (IR12.34 – 12.46), the Secretary of State agrees with him that the balance to be struck in this case is not between a very harmful wharf activity and no wharf at all, but between a very harmful or a less harmful one (IR12.47). On that basis, he shares the Inspector's view (IR12.47) that, while the weight to be given in principle to the benefits of reactivation are considerable, the weight to be given to this particular scheme should be greatly reduced. In common with the Inspector, the Secretary of State concludes that the evidence does not support the view that the proposals amount to good design which would accommodate both the parameters for the plant and the site's context (IR12.47).

### *Other Matters*

22. The Secretary of State concurs with the Inspector's comments on other matters (IR12.48 – 12.52). Like the Inspector, he considers that, as designed, the extension to the Thames Path would not be attractive and so would be unlikely to persuade more pedestrians away from Orchard Place, where they would be in conflict with the increased number of HGVs, and this weighs against the scheme (IR12.51).

### *Conclusions with regard to the development plan*

23. The Secretary of State has given very careful consideration to the Inspector's analysis at IR12.53 – 12.61. He agrees that Orchard Wharf remains safeguarded under the Direction unless and until this is superceded and the Direction is lifted (IR12.55). He further agrees that reactivation would accord with the development plan (IR12.55) and that, in principle, support from LP policy 7.26, CS Policy SP08 and DPD Policy DM21 could outweigh conflict with the environmental protection policies set out by the Inspector at IR12.57, albeit that conflict with such policies would go against the Framework's principles of sustainability. Like the Inspector, the Secretary of State attributes substantial weight to the extent to which the proposals would contribute to meeting the aim in LP Policy 5.20 to maximise the use of the Thames (IR12.58). However, for the reasons given by the Inspector at IR12.59, he too concludes that the appellants' approach is inconsistent with national and local design and heritage policy which requires that design take opportunities to improve the environment in general and the waterfront in particular. Like the Inspector, he concludes that a significant amount of the harm that the scheme would cause is likely to be unnecessary on account of the poor design and disposition of the buildings (IR12.59). The Secretary of State agrees with the Inspector's remarks at IR12.60 and he too considers that dismissing the appeal would not prevent reactivation, it would only prevent the harm arising from this particular scheme (IR12.60).
24. The Secretary of State concludes that, in principle, reactivating the wharf would conform to the development plan as a whole, despite some unavoidable harm to the environment. Like the Inspector (IR12.61), he considers that there is no reason to believe that it would not be possible to devise a viable scheme that would overcome much of the environmental harm but that, due to poor design and layout, the specific appeal proposals would not accord with the development plan. Like the Inspector (IR12.61), he concludes that there are insufficient material considerations to outweigh this conflict and that, on balance, the proposal would be contrary to the development plan.

### *Conditions and obligations*

25. The Secretary of State has considered the schedule of conditions included within the IR, the Inspector's remarks at IR11.1 – 11.8, paragraphs 203 and 206 of the Framework and the Guidance. He is satisfied that the conditions proposed by the Inspector meet the tests set out in the Framework. However, he does not consider that they would overcome his reasons for dismissing the appeal and refusing planning permission.
26. The Secretary of State has also considered the documentation on the s106 Agreement, the Inspector's comments on these at IR11.9 – 11.12, paragraphs 203-205 of the Framework and the Guidance. He shares the Inspector's view that the provisions offered by the Agreement would accord with the tests set out at paragraph 204 of the Framework (IR11.11) and that they are acceptable ways of reducing the scheme's harmful impacts (IR11.12). However, he does not consider that the mitigation offered would be sufficient to overcome his reasons for refusing planning permission in this case.

## **Overall Conclusions**

27. The Secretary of State has concluded that, overall, the scheme would conflict with the development plan. He has considered whether there are material considerations which outweigh this conflict but he has not identified such considerations.

## **Formal Decision**

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your clients' appeal and refuses planning permission for the erection of a concrete batching plant, cement storage terminal and aggregate storage facilities, together with associated structures and facilities, walkway and landscaping, jetty and ship to shore conveyor in accordance with application number PA/11/03824, dated 22 December 2011:

1) Outline application: all matters reserved (except for layout)

Jetty and ship to shore conveyor.

2) Full details:

Demolition of all existing buildings; concrete batching plant; cement storage terminal; aggregate storage facilities; associated structures and facilities; associated highway works; walkway; and landscaping.

The development proposed is a cross boundary hybrid planning application to London Thames Gateway Development Corporation and London Borough of Tower Hamlets. (The extent of each Authority's administrative boundary is marked on each application drawing.)

## **Right to challenge the decision**

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

30. A copy of this letter has been sent to the London Borough of Tower Hamlets, the Port of London Authority, the Grafton Group (UK) plc and British Dredging (Services) Limited. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Christine Symes**

Authorised by Secretary of State to sign in that behalf

## Annex

Representations received in response to reference back to parties

Correspondent	Date
Paul Buckenham – London Borough of Tower Hamlets	10 April 2014
Tim Sharp – Lawrence Graham LLP	10 & 22 April 2014
Sam Harper – Firstplan (including representations from Tavernor Consultancy)	10 & 22 April 2014
Chris Miele – Montagu Evans	22 April 2014



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# Joint Report and CPO Report to the Secretaries of State for Communities and Local Government, and for Transport

by David Nicholson RIBA IHBC

an Inspector appointed by the Secretaries of State for Communities and Local Government and for Transport

Date: 20 December 2013

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TOWN AND COUNTRY PLANNING ACT 1990 as amended

APPEAL BY AGGREGATE INDUSTRIES UK LTD AND LONDON CONCRETE LTD

LONDON BOROUGH OF TOWER HAMLETS

THE ACQUISITION OF LAND ACT 1981

PORT OF LONDON ACT 1968

APPLICATION FOR CONFIRMATION OF THE PORT OF LONDON AUTHORITY  
(ORCHARD WHARF) COMPULSORY PURCHASE ORDER 2012

Inquiry held on 23-26 and 30 April, 1-3 May, 4-6, 11-13, 18-20 June and 5 September 2013

Orchard Wharf, Orchard Place, London E14 0JU

File Refs: APP/E5900/A/12/2186269 & CPO PCT5/1/24

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## Abbreviations

1968 Act	- the Port of London Act 1968
AI/LC	Aggregate Industries UK Ltd and London Concrete Ltd
CD	- Inquiry Core Document [+ number]
Circular	- ODPM Circular 06/2004: <i>Compulsory Purchase &amp; the Cricchel Down Rules</i>
CAGR	- Compound Annual Growth Rate
Council	- The Council of the London Borough of Tower Hamlets
CPO	- Port of London Authority (Orchard Wharf) Compulsory Purchase Order 2012
DAS	- Design and Access Statement
DfT	- Department for Transport
ECHR	- European Convention on Human Rights
EH	- English Heritage
EIDB	- East India Dock Basin
ES	- Environmental Statement
GG	- the Grafton Group
GLA	- Greater London Authority (The Office of the Mayor of London)
ha	- hectares
IC	- Evidence-in-chief
INQ	- Inquiry document [+ number]
IQ	- Inspector's questions
Lands Tribunal	- Upper Tribunal (Lands Chamber)
LBTH	- London Borough of Tower Hamlets
LVRP	- Lea Valley Regional Park
MOL	- Metropolitan Open Land
mTpa	- million Tonnes per annum
OAPF	- Lower Lee Valley Opportunity Area Planning Framework
Objectors	- the Grafton Group and British Dredging (Services) Limited
Order lands	- The properties included within the CPO
OSC	- Outline Statement of Case
PV	- Photovoltaic
REMA	- Revised Early Minor Alterations
ReX	- Re-examination
s106	- Section 106 of the Town and Country Planning Act 1990
Scheme	- The Scheme for the redevelopment of the site (including the Order lands)
SIL	- Strategic Industrial Land
SoR	- Statement of Reasons
SoSCLG	- Secretary of State for Communities and Local Government
SPG	- Supplementary Planning Guidance
SWIR	- Safeguarded Wharves Implementation Report
SWR	- Safeguarded Wharves Review
TBW	- Trinity Buoy Wharf
T&CP Act	- Town and Country Planning Act 1990
TTT	- Thames Tideway Tunnel
UDP	- Unitary Development Plan
XX	- Cross-examination

**File Ref: APP/E5900/A/12/2186269**

**Orchard Wharf, Orchard Place, London E14 OJU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (T&CP Act) against a refusal to grant planning permission (part full, part outline).
- The appeal is made by Aggregate Industries UK Ltd and London Concrete Ltd (AI/LC) against the decision of the Council of the London Borough of Tower Hamlets (the Council).
- The application Ref. PA/11/03824, dated 22 December 2011, was refused by notice dated 2 October 2012.
- The development proposed is a cross boundary hybrid planning application to London Thames Gateway Development Corporation and London Borough of Tower Hamlets for erection of a concrete batching plant, cement storage terminal and aggregate storage facilities, together with associated structures and facilities, walkway and landscaping, jetty and ship to shore conveyor.
  - 1) Outline application: all matters reserved (except for layout)  
Jetty and ship to shore conveyor.
  - 2) Full details: demolition of all existing buildings; concrete batching plant; cement storage terminal; aggregate storage facilities; associated structures and facilities; associated highway works; walkway; and landscaping. (Extent of each Authority's administrative boundary marked on each application drawing).

**Summary of Recommendation: that the appeal should be dismissed**

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**File Ref: PCT5/1/24**

**Orchard Wharf, Orchard Place, London E14 OJU**

- The Compulsory Purchase Order was made under the Port of London Act 1968 (the 1968 Act) and the Acquisition of Land Act 1981<sup>1</sup> by the Port of London Authority (the Acquiring Authority) on 25 May 2012.
- The Order is for the purpose of securing the provision of port and harbour services and facilities at the said land pursuant to its undertaking and functions under section 5(1A)<sup>2</sup> and (2) of the 1968 Act.
- The main grounds of objection<sup>3</sup> are:
  - prematurity in land use policy terms
  - changes in the character of the Leemouth Peninsular
  - refusal of planning permission for the scheme subject of the Order
  - capacity and demand for wharves
  - opportunity for consolidation of wharf facilities
  - the viability of the scheme
  - Human Rights
- When the inquiry opened there were remaining objections from the Grafton Group and British Dredging (Services) Limited (who were represented together). Two objections were withdrawn. Non-qualifying and late objections are dealt with in s9-10 below.

**Summary of Recommendation: that the CPO should be confirmed**

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**1. Procedural Matters**

- 1.1 I held a pre-Inquiry meeting (PIM) on Thursday 31 January 2013. The joint Inquiry sat for 18 days on 23-26 and 30 April; 1-3 May; 4-6, 11-13, 18-20 June and 5 September 2013. Accompanied site visits were held on 20 June

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<sup>1</sup> As applied to section 11(2) of the 1968 Act by virtue of s2 of that Act and s1(1)(a) of the Acquisition of Land Act

<sup>2</sup> As treated as amended by paragraph 5 of Schedule 4 to the Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992 (SI 1992/284)

<sup>3</sup> CDC27 – letter dated 20 June 2012. See also CPO Statements of Case in green folders

and I made unaccompanied visits on 17 April and 22 May 2013. I walked around the site before a number of the sitting days.

- 1.2 In policy, evidence and elsewhere, the River Lee, Leaside and Leemouth are variously spelt with and without an 'a'. In this report, I have adopted the former spelling throughout but for consistency rather than with any great authority. For similar reasons I have referred to the Fatwalk as a single word although it appears in various forms.

### Planning appeal

- 1.3 The application for the jetty and ship to shore conveyor in or above the River Thames was made in outline form with all matters (access, appearance, landscaping and scale) reserved, except for layout. The full application covers all the proposals which would be on land. It is common ground<sup>4</sup> as to which documents comprise the application, including the Design and Access Statement (DAS)<sup>5</sup> identifying the amount and scale of development proposed.
- 1.4 The former London Thames Gateway Development Corporation (LTGDC) granted a planning permission, subject to conditions, on 28 September 2012<sup>6</sup> for the scheme as part of a cross boundary application. The permission is extant but a *Grampian* condition prevents its implementation until the part within the London Borough of Tower Hamlets (LBTH), the jetty, is approved<sup>7</sup>. Given the stance of its owners (see below), nor could it be implemented without the CPO. On 1 October 2012 the LTGDC's powers were transferred to the LBTH which is now the local planning authority for the whole of the appeal site.
- 1.5 On the same day as it granted permission, LTGDC entered into an Agreement<sup>8</sup> under s106 of the T&CP Act (s106 Agreement) with the Port of London Authority (PLA). LBTH was satisfied with the terms in this Agreement but required a Supplemental Deed<sup>9</sup> to tie the two together<sup>10</sup>. The original Agreement contains a series of obligations which I deal with more fully in ch11 of this report. The Supplemental Deed applies the previous Agreement to any permission as a result of this appeal and adds a requirement for a travel plan.
- 1.6 The single Reason for Refusal<sup>11</sup> was that: *the proposal, in terms of its design, bulk, elevational treatment and impact upon views represents an inappropriate form of development and fails to preserve or enhance the character, appearance and townscape setting of this prominent riverfront location. The scheme would also fail to enhance the quality and usability of the Fatwalk as it terminates at the East India Dock Basin. As such, the proposal fails to accord with policies DEV1 and DEV8 of the Unitary Development Plan 1998, policies SO20, SO21, SO22, SO23, SP04 and SP10 of the Core Strategy 2010, policies*

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<sup>4</sup> Addendum statement of common ground (SoCG) agreed between AI/LC and the Council on 9 April 2013, para 2.2 – INQ7

<sup>5</sup> Within application documents – CDC05

<sup>6</sup> Core Document (CD)C12a

<sup>7</sup> Ibid condition 34 and CDC09 para 33

<sup>8</sup> CDC12b dated 28 September 2012

<sup>9</sup> INQ6c, dated 19 April 2013

<sup>10</sup> See briefing note INQ6a

<sup>11</sup> CDC13

*CON5 and DEV2 of the Interim Planning Guidance 2007 and policies DM10 and DM24 of the Managing Development DPD (Submission Version 2012).*

- 1.7 An application was first submitted in December 2010 to the London Thames Gateway Development Corporation (LTGDC) together with an Environmental Statement (ES). In May 2011 LBTH wrote<sup>12</sup> to the appellants, under Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, which were in force at the time, to advise that it and the LTGDC required further information in order for the ES to constitute an ES under these regulations. The information sought concerned the value of Brownfield habitat, clarity of presentation and mitigation, further discussion of noise and air pollution on ecological receptors (interpreted as sites, species and habitats<sup>13</sup>) and a BS4142 (noise) assessment relative to 42-44 Orchard Place. In August 2011 LTGDC advised the applicants<sup>14</sup> that the application boundary did not fall wholly within the jurisdiction of LTGDC as the proposed jetty falls within LBTH. A further ES was submitted by URS Scott Wilson on behalf of the appellants and this was incorporated into the final application in December 2011.
- 1.8 Prior to the opening of the Inquiry, I was asked to rule on the adequacy of the ES, with regard to the planning appeal, and to make a request under Regulation 22 of the current Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (EIA Regs). I advised that it was not evident to me that a further request was needed but that I would reserve my position<sup>15</sup>. The appellants answered the concerns and submitted further information voluntarily, particularly with regard to the jetty and dredging<sup>16</sup>, and I was asked to require that this should be publicised. I was given no reason as to why the AI/LC were resisting consultation but, nevertheless, on the basis of the information at that time, and given that the information was submitted for the purpose of the Inquiry so that all parties have had the opportunity to consider it, I ruled that this was not necessary<sup>17</sup>. The Council found the ES acceptable<sup>18</sup>. Having heard all the evidence<sup>19</sup>, I remain of this opinion. Nevertheless, it is open for the Secretary of State for Communities and Local Government (SoSCLG) to make a Regulation 22 request if he feels that this is necessary. The environmental information was taken into account by the Mayor<sup>20</sup>.
- 1.9 A Statement of Common Ground (SoCG)<sup>21</sup> between the appellants and the Council describes the appeal site and surrounding area, relevant planning history, the status and policy context for safeguarded wharves, the proposed

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<sup>12</sup> ES appendix 1.2

<sup>13</sup> ES para 6.2.1

<sup>14</sup> See ES non-technical summary para 1.1.3

<sup>15</sup> Email dated 10 April 2013

<sup>16</sup> Email dated 2 April 2013, main file, and INQ15

<sup>17</sup> The PLA/AI/LC's arguments are summarised at para 224 of INQ39, those of the GG at INQ37 para 228

<sup>18</sup> SoCG 3.8-3.13

<sup>19</sup> Denton in cross-examination (XX) in particular

<sup>20</sup> CDC09 para 6

<sup>21</sup> Between the appellant and the Council agreed and signed on 24 and 29 January 2013 – see green folders

development, reasons for refusal, relevant planning policy, areas of agreement, agreed conditions and the s106 Agreement. An appendix confirms the application documents and contains the agreed conditions at that time. The Objectors have made their own comments on these. I summarise all these matters briefly below.

### **Compulsory Purchase Order (CPO)**

- 1.10 The CPO was made on 25 May 2012<sup>22</sup>. The Order lands comprise 6 plots of which 5 are owned by British Dredging (Services) Limited and Grafton Group (UK) plc<sup>23</sup> (collectively: the GG) and one plot (plot 6) known as 'The Causeway' whose owners are unknown.
- 1.11 The Port of London Authority (PLA), as Acquiring Authority, confirmed that it had complied with the statutory requirements<sup>24</sup>. A Statement of Reasons (SoR), Outline Statement (OSC) and Statement of Case (SC)<sup>25</sup> were all submitted by the PLA for the CPO. The Objectors SC was submitted in March 2013<sup>26</sup>.
- 1.12 Two plots have been leased to London Power Networks plc. Their initial objections have been withdrawn<sup>27</sup>.
- 1.13 The Objectors asked me to issue a summons for any lease agreement between the PLA and AI/LC to be produced. I ruled that I did not think that this was necessary but that if it was not produced, even in redacted form, I could draw my own conclusions. Copies of an Agreement for Lease, signed by each party, were submitted, after the Inquiry closed and after the opportunity for cross-examination had passed, under cover of a letter to the SoSDfT<sup>28</sup>. At the Inquiry there was disagreement as to whether such a lease existed or only Heads of Terms<sup>29</sup>. The date of the lease and what appears to be financial information have been redacted. The Objectors have commented on this to the effect that they consider the redactions make it of no value in demonstrating viability. They also objected to the lateness of this evidence and reserve the right to apply for costs.
- 1.14 During the Inquiry the Objectors made allegations of conflict of interest, bias or an appearance of bias amongst some of those advising the Mayor of London (Greater London Authority – GLA)<sup>30</sup>. These allegations of have been forwarded to the SoSCLG<sup>31</sup>, who is responsible for approving the final version of the Safeguarded Wharves Review (SWR – see s5 below), and urged him not to make any decision on it until he receives this report. These allegations have been firmly rebutted by the GLA which confirmed that it had considered the

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<sup>22</sup> CDA13

<sup>23</sup> CDC03

<sup>24</sup> Inquiry documents (INQ)1 & INQ2 – objections listed in INQ1 para 3.1

<sup>25</sup> CDC49-51

<sup>26</sup> CDC39

<sup>27</sup> By email dated 22 April 2013 from Nick Zentner of UK Power Networks to Ellen Duffy, Head of Ports Governance, Maritime Commerce & Infrastructure, Department for Transport

<sup>28</sup> Dated 8 November 2013, on Main file

<sup>29</sup> Trimmer in XX

<sup>30</sup> INQ38: GG closing Annex A

<sup>31</sup> By letters to the Secretary of State dated 10 April 2013, 1 and 29 May 2013 (INQ23)

GG's representations on the SWR, following both rounds of public consultation, and that it had found nothing to substantiate its assertions in the evidence submitted to the Inquiry up to that date<sup>32</sup>. No representative of the GLA appeared at the Inquiry. I summarise the GG's allegations in ch8 and give conclusions in ch11 insofar as they are relevant to this Inquiry.

- 1.15 The Objectors have argued<sup>33</sup> that the SWR 2013 should have been subject to a strategic environmental assessment (SEA) under EU Directive 2001/42/EC (the SEA Directive) which, in contrast with the EIA Directive, is aimed at environmental assessment at the strategic level. Whether or not an SEA is required is a matter of judgement, based on fact and degree, for the SoSCLG. He has the representations of the Objectors and the GLA on this matter and will no doubt take them into account when reviewing the SWR.

## **2. The Order Lands/the site and surroundings**

- 2.1 The SoCG describes the appeal site and surrounding area. Further matters are covered in an agreed addendum<sup>34</sup>, a response by the Grafton Group (GG) and an appendix to that response. I summarise the most relevant sites briefly below. Further information can be found in the ES<sup>35</sup>.
- 2.2 Orchard Place is the name given to a road which runs the length of the peninsular created by a final bend in the River Lee before it joins the Thames. This road is now divided by the A1020 and the Lower Lee Crossing, a dual carriageway with a major vehicular bridge across the River Lee. The north side of Orchard Place was occupied by the former Pura Foods Ltd. but is now owned by part of the Ballymore group of companies and has consent for up to 1,706 new dwellings<sup>36</sup>.
- 2.3 The southern part of Orchard Place is the only road link from the junction with the A1020 to the remaining part of the peninsular which is otherwise cut off by the Lee and Thames. The road slopes down away from the junction towards the Thames. It is initially relatively narrow, widens out at the entrance to OW and then continues in a straight line with narrow pavements between buildings. Nearby public transport includes the East India DLR station and bus services some 550m to the west. Canning Town station, on both the DLR and the Jubilee underground line, is on the east side of the River Lee. The Ballymore proposals include a new bridge and access to the station.
- 2.4 Orchard Wharf (OW) lies on the north bank of the River Thames (the Thames). The Order lands comprise 1.36 hectares (ha) of the wharf and some 260m<sup>2</sup> along the eastern side known as The Causeway which connects Orchard Place to the Thames. The appeal site includes the whole of OW and The Causeway together with about 0.35ha of the Thames for the proposed jetty which is in the ownership of the Port of London Authority (PLA). The Order lands were previously covered in a series of buildings. Very few of these now remain and the land is mostly vacant, derelict and not in use. The surviving, empty brick

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<sup>32</sup> INQ18

<sup>33</sup> INQ38: GG closing Annex B.

<sup>34</sup> INQ7 dated 17 April 2013

<sup>35</sup> Non-technical summary s3

<sup>36</sup> CDC14

buildings, rising to around 11.9m, 10.7m and 5.4m<sup>37</sup>, are not particularly attractive. OW was used as an aggregates wharf until about 1993.

- 2.5 Adjoining the west of OW lies the East India Dock Basin (EIDB). This was converted in the 1990s by the London Docklands Development Corporation from a disused dock into an area of parkland and natural habitat. It is now designated as Metropolitan Open Land (MOL)<sup>38</sup>. It is also publicly accessible open space, part of the Green Grid, within the Lee Valley Regional Park (LVRP) and has been assessed as 'Grade 1 – Borough importance' as a Site of Interest for Nature Conservation<sup>39</sup>.
- 2.6 The riverside to the EIDB forms part of the Thames Path, currently ending at new gates onto Orchard Place<sup>40</sup>. There is public access to the footpaths throughout the EIDB which links the eastern gates with the Thames Path, adjoining Virginia Quay, and the gates next to the roundabout on the A1020. The EIDB is important for wildlife, particularly Teal. Much of the basin has silted up and this has had an impact on the potential use by birds.
- 2.7 Beyond the EIDB, to the west, stands the Virginia Quay residential development. This is characterised by residential buildings from around the 1990s ranging from terraced housing to flatted developments of between 4 and 12 storeys in height<sup>41</sup>. Of these, the lower developments front the Thames and the EIDB.
- 2.8 The LVRP Authority is a statutory body, created under the Lee Valley Park Act 1966, which has a duty, directly or with others, to provide facilities throughout the Park (see representations in ch9 below). This stretches from the Thames at the EIDB, which it owns, north as far as Ware in Hertfordshire. The LVRPA opposes the CPO. Since 2008 the LVRPA has promoted a linked series of open spaces known as the 'Fatwalk', probably so called because it aims to be rather wide. This links the EIDB with the Olympic Park and is a part-implemented proposal for a recreational connection between the Olympic site and the Thames.
- 2.9 I walked much of the Fatwalk on my unaccompanied visit and saw proposed stretches from various vantage points<sup>42</sup> and from the River Lee during the first of the boat trips. It runs through very varied and rapidly changing character areas. The annotation for the Fatwalk is not agreed. The Lee River Park Design Framework 2008<sup>43</sup> shows it running down the east side of the EIDB to the Thames while the LVRPA describes it as commencing at the eastern entrance to EIDB adjacent to OW<sup>44</sup>. The appellants' evidence<sup>45</sup> is that it terminates at the entrance to the EIDB, while the Objectors argue that the

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<sup>37</sup> SoCG para 2.5

<sup>38</sup> SoCG para 2.9

<sup>39</sup> see GG response to SoCG para 2.2

<sup>40</sup> Called the Salome Gates and designed by the late Sir Antony Caro

<sup>41</sup> SoCG para 2.10

<sup>42</sup> INQ30

<sup>43</sup> CDB25 p16 and 81

<sup>44</sup> CDC32 para 11

<sup>45</sup> DAS p26 para 3



Fatwalk continues along the western boundary through to the Thames<sup>46</sup>. Evidence on the character of the Fatwalk is set out by the parties (below).

- 2.10 To the north of the site, and to the east of the road, stand 42-44 Orchard Place. These buildings were granted planning permission for conversion to use as live/work units<sup>47</sup> but are now understood by the Council to be in full residential occupation as 20 residential units<sup>48</sup>. These are part 4-storey and part 5-storey and rise to between 11.4m and 13.2m.
- 2.11 Immediately to the east of the site stands Union Wharf, a steel framed industrial shed rising to some 10m. On the north side of the road from OW and Union Wharf, and to the east of 42-44 Orchard Place, lies land known as Hercules Wharf and then Castle Wharf<sup>49</sup>. The uses at TBW are described more fully in their representations below. These were confirmed during a comprehensive but efficient site visit.
- 2.12 At the east of the peninsular, at the meeting point of the Thames with the River Lee, is Trinity Buoy Wharf (TBW)<sup>50</sup>. This opened in 1996 as a centre for the arts and creative industries and has a jetty. There are excellent views of the peninsular, and of OW in particular, from the top of the O2 especially when descending over the north side<sup>51</sup>. There are further but more distant views from the Emirates 'airline' (the cable car).
- 2.13 The Lower Lee Bridge<sup>52</sup> will be a new pedestrian and cycle bridge over the River Lee, being promoted on behalf of TBW and others<sup>53</sup>. This has secured planning permission and footings have been laid. Via Orchard Place, this will link the Thames Path between Newham and Tower Hamlets, the EIDB, and TBW to the east of the River Lee, avoiding the junction with the main road<sup>54</sup>. The GLA is interested in the bridge as a way of improving east-west river front connections for pedestrians and cyclists<sup>55</sup>. It would also connect these paths with the Canning Town interchange. The planned entry to the Lower Lee Bridge will be directly opposite the more northern of the two proposed entry points to the batching plant on Orchard Place.

#### *Historic context*<sup>56</sup>

- 2.14 The history of the use of the site dates back to the late 16<sup>th</sup> century<sup>57</sup>. The brick and ashlar faced Blackwall pier and entrance lock structures to the former EIDB, complete with their bollards and capstans, date from around 1803 and are listed at Grade II. At TBW, the Orchard Dry Dock is ashlar lined,

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<sup>46</sup> GG response to the SoCG para 2.2, see also INQ16B

<sup>47</sup> CDC15, Ref. PA/09/00170 dated 7 October 1999

<sup>48</sup> SoCG para 2.12

<sup>49</sup> More precise details, and alternative names are in the SoCG para 2.13

<sup>50</sup> TBW, OW and surrounding are well illustrated in the aerial photographs at the start of the statement of objections from J Burton of Urban Space Management (TBW) Ltd

<sup>51</sup> See Tavernor Fig.1 p23

<sup>52</sup> Burton in CDC38 p14-15

<sup>53</sup> TBW statement of objections p14

<sup>54</sup> West para 2.5.3

<sup>55</sup> Ibid

<sup>56</sup> See plan of listed structures at SoCG Doc 2, green folder

<sup>57</sup> Summary of history at West s2.1

Trinity House Buoy Wharf Quay has fine ashlar dressings and river stairs set into the wall, Trinity House Chain Locker and Lighthouse Block comprise a double gabled range with an octagonal lighthouse which served as a chain locker shop for servicing the lights and ships and are associated with Faraday; all these date from around 1860 and are listed at Grade II<sup>58</sup>. The height of the lighthouse makes it a more conspicuous structure than the dock structures. Historic maps show earlier development on and around the site<sup>59</sup>.

- 2.15 English Heritage (EH) commented on the application and had no objection<sup>60</sup>. However, its comments are essentially with regard to archaeology and it is not clear whether these relate to the listed structures, or their settings, or otherwise.

#### *Other sites*

- 2.16 My unaccompanied visits took in the 'Emirates Airline' (the cable car), 'Up at The O2'<sup>61</sup>, and the Fatwalk. I walked along the Riverside Walk past Virginia Quays, the footways around the EIDB, the Blackwall Pier and dock structures, and Orchard Place, past Union, Castle and Hercules Wharves, down to TBW.
- 2.17 On my accompanied visits<sup>62</sup> I saw the appeal site, TBW, including the Faraday School, Princes Drawings School Exhibition, the lighthouse, and the theatre basement, and London Concrete's plants at Bow and Hornsey.
- 2.18 I also saw many of the wharves referred to in evidence<sup>63</sup>. Of particular relevance are those on the north bank of the Thames to the east of OW<sup>64</sup>. OW is the most westerly of these, with Thames Wharf (beneath the Cable Car) and Alexandra Wharf just east of the River Lee. These are shortly followed by Peruvian Wharf (PW), John Knight, Manhattan, Mowhawk and Sunshine wharves on Thameside West. Tay Wharf lies the other side of Silvertown while the London Teleport (Arquiva site) is just beyond at North Woolwich. Further downstream past Barking Creek are Docklands Wharf, Victoria Stone and DePass Wharf, where there may be an extension to the DLR<sup>65</sup>.
- 2.19 Finally, I saw Angerstein and Murphy's Wharves<sup>66</sup> on the south bank, which have jetties and conveyors, handle construction materials and accommodate a concrete batching plant. I was told that this combination is not unusual on the Thames<sup>67</sup>. New housing is being built near to these wharves and throughout the Greenwich Millennium Village.

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<sup>58</sup> All listings can be found at Miele appendix 1

<sup>59</sup> Ibid p15 onwards and INQ27

<sup>60</sup> See Questionnaire (not paginated) and as reported at CDC10 – 31 May 2012 para 6.31 p136 and 27 September 2012 para 6.9 p222

<sup>61</sup> I walked over the top of the dome from south to north on a clear day which allowed good views of the site when descending

<sup>62</sup> See suggested itinerary for Thursday 20 June 2013 on main file

<sup>63</sup> Whitfield, especially para 10.17-10.32, and Trimmer para 6.16-6.28 and rebuttal proof paras 2.4-2.15

<sup>64</sup> See Whitfield appendix 8 p12 for overview and Whitfield appendix 14 for further details

<sup>65</sup> CDB83 p165

<sup>66</sup> Photographs at Woolner appendix 3

<sup>67</sup> Trimmer

- 2.20 London Concrete has several plants across London. I saw a long-standing plant at Bow<sup>68</sup> and a more recent plant at Ferme Park in Hornsey, close to residential areas. At the latter, the delivery area, the conveyor and the batching plant are enclosed to achieve considerable reductions in the amount of noise and dust that would otherwise emanate from the plant. I saw that the ingredients (aggregates, cement, water and any additives) are mixed together just before being poured into concrete mixer trucks and that this process is computer controlled. Both plants have, or are close to, railway connections.
- 2.21 The first boat trip on 23 May 2013 proceeded up Bow Creek to the tidal limits at Three Mills<sup>69</sup>. On this trip I could see Leemouth Peninsula North (the former Pura Foods site) and progress on the Fatwalk on both sides of the River Lee. The second trip, up and down the Thames, allowed me to see the various wharves from the river.
- 2.22 Bardon Hill Quarry is in Leicestershire<sup>70</sup>; Glensanda is a coastal quarry in Scotland<sup>71</sup>.

### 3. The proposals/scheme details

- 3.1 The proposals are set out in the planning application and drawings, the DAS<sup>72</sup> and chapter 2 of the ES. Section 5 of the agreed SoCG and the evidence<sup>73</sup> give further information. The main elements would comprise: a fully enclosed proprietary concrete batching plant<sup>74</sup> with adjacent overhead storage bins (on the western side), an aggregate storage facility (set back from the river front), a fully enclosed cement storage facility with 6 purpose made 17m high silos<sup>75</sup> and loading stations (on the eastern side), a jetty with a ship to shore conveyor and cement pipeline, underground feed hoppers, wash out pits, and office accommodation (to the north west corner). The site would be largely surrounded by a 3m fence.
- 3.2 The Thames Path would be extended from the boundary with the EIDB along the front edge of the site, at a width of 5m, and then cut back onto Orchard Place along The Causeway on the eastern boundary of the site. The Causeway would run between the 10m high steel framed building on Union Wharf and a 3m high fence to the site in front of the cement store. The Thames Path would be separated from the plant by a 5m wide area of ecological habitat and there would be a landscape zone of varying width along the western boundary of the site<sup>76</sup>.

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<sup>68</sup> See plan at INQ34

<sup>69</sup> The converted Grade I listed buildings

<sup>70</sup> INQ11

<sup>71</sup> Casey para 2.12

<sup>72</sup> DAS p8 sets out the amount and scale of the proposed development

<sup>73</sup> Woolner s5 and Tavernor s5

<sup>74</sup> See the 'Steelfields' annotation on the Martin O'Brien and Associates drawing no. 2565/01

<sup>75</sup> Casey rebuttal para 3.4

<sup>76</sup> Introduced between August and September 2010 – see Martin O'Brien drawings at Tavernor appendix RT2

- 3.3 The aggregates store would be 117m long<sup>77</sup> by up to 14m high at the ridge and run continuously for most of the length of the Thames frontage. The cement storage would rise to just over 19m at the ridge and stand close to Orchard Place and The Causeway. The batching plant enclosure would be roughly 17.5m high at the ridge and, together with its 18m high storage bins, would stand near the boundary with the EIDB with a narrow planting zone in between. The small scale elevations in the early drawings<sup>78</sup> have been worked up following consultations over a period of 22 months<sup>79</sup>.
- 3.4 Proposed timber cladding, including reclaimed timber, would encase the buildings with the intention of providing a visual effect of instant aging so that the development would look part of the industrial landscape characteristic of this part of the Thames frontage<sup>80</sup>. The cladding would be on a number of vertical planes to provide applied articulation and be intended to serve an ecological purpose by attracting flora and fauna to its surface. There would be photovoltaic (PV) panels on south-facing pitched roofs, with brown roofs on flat areas.
- 3.5 The ES Non-technical summary<sup>81</sup> states that: *the buildings on the site have been designed using timber and steel, creating structures that are appropriate to the location and similar in style to buildings on adjacent wharves. A contemporary interpretation of characteristic features applied to industrial use will add interest to the river corridor.*
- 3.6 The analysis of the site context and evaluation of constraints is found in s2 and s3 of the DAS. This recognises the EIDB, LVRP, Virginia Quays, 42-44 Orchard Place and TBW. It assesses nearby land uses as predominantly employment and industrial uses with access along Orchard Place.
- 3.7 The DAS explains the design evolution<sup>82</sup> from the need to use the space as efficiently as possible, originally proposing an asphalt plant but then a cement terminal. It recognises the importance of the EIDB and sets out the alterations in response to the consultation process as including moving the plant away from the western boundary and increasing the landscaping there. Later on<sup>83</sup> it acknowledges planning policy to promote high quality design, stating that good design is firmly rooted in an understanding and appreciation of the development site's social and physical context as well as its history and heritage. It continues by outlining the palette of facing materials to be used, the landscaping, and the brown roofs, and their ecological benefits.
- 3.8 Some of the viewpoints in the ES have been used to create photomontages<sup>84</sup>. Following my request at the PIM, a methodology statement was submitted for

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<sup>77</sup> Application drawing Figure 2.3 rev D

<sup>78</sup> By Cameron Design/Concept Design Team, following the massing drawings by Martin O'Brien – see Tavernor para 5.20

<sup>79</sup> Tavernor para 5.1 and appendix RT2

<sup>80</sup> Tavernor para 5.9. See also drawing at INQ34

<sup>81</sup> Para 7.1.2

<sup>82</sup> DAS p6

<sup>83</sup> Ibid p9

<sup>84</sup> Figures 5.9-5.14 in the ES and DAS - agreed in the SoCG para 8.68

viewpoints, photographs and montages<sup>85</sup>. Six of the original viewpoints, and four new ones, have become photomontages in Views 01-10<sup>86</sup>. The focal length of the camera lens in the views varied but was most often wide-angled in order to capture as much of the proposal and its surroundings as possible<sup>87</sup>. The views map<sup>88</sup> identifies the positions where the photographs on which they are based were taken. Views 01-03 are from around the entrance to the EIDB and so close to the end of the proposed aggregate store. The closest of these, View 03, was produced specifically for the Inquiry<sup>89</sup>. Views 04, 05 and 10 are of the batching plant but from rather further away, either across the EIDB or near the junction with the A1020. There are other views are from across the River Thames or the River Lee. The Objectors have criticised the methodologies, particularly the rendering and lack of record of the photographic shift (the setting of the lens used to avoid perspective distortion)<sup>90</sup>.

- 3.9 The drawings of the jetty are for illustrative purposes only but, subject to reserved matters, it was confirmed at the Inquiry<sup>91</sup> that it would extend up to 74m into the Thames, be some 80m long and be capable of handling a 90m long aggregates barge<sup>92</sup>. The jetty is the only part of the proposals which does not already have the benefit of planning permission. The GG has queried the extent of the capital dredge, that is to say the one-off dredge that would be required initially for barges to unload at the jetty. There would then be regular maintenance dredging after that.
- 3.10 The appellants are proposing to install 420 m<sup>2</sup> of solar PV panels on the roof of the buildings to generate 42MWh of electricity per year. It is estimated that the plant would employ 33 people. The existing buildings, rising to a little under 12m in height, would all be demolished<sup>93</sup>.

#### *Transport*

- 3.11 The SoCG summarises agreement on traffic generation and impact, and many other matters, between the Council and the appellants.
- 3.12 A transport assessment (TA)<sup>94</sup> accompanied the planning application. This undertook traffic counts and modelled the effect on the roundabout with the A1020. It noted that the access details, including a second access and new visibility splays, had been agreed with Council officers and concluded that these would be safe. It also recorded that there have been no injury accidents in Orchard Place or on either of the slip roads. Highway details show that two lorries can pass along Orchard Place between the junction and OW, albeit only just. It acknowledges that there would be major effects on

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<sup>85</sup> Green folder – URS, February 2013, (see also Tavernor appendix RT1 p29-43)

<sup>86</sup> Tavernor appendix RT1

<sup>87</sup> Tavernor appendix RT1 para 1.2 and URS, February 2013, p1 para 2.1

<sup>88</sup> Tavernor appendix RT1 Figure 1 p7

<sup>89</sup> Ibid, p12 and 30

<sup>90</sup> Appendix to GG response to SoCG

<sup>91</sup> Harris, Tues 4 June, by reference to INQ15 para 2.1.1 but correcting para 2.2.2

<sup>92</sup> Application drawing Figure 2.3 rev D

<sup>93</sup> SoCG para 2.5 and shown in Tavernor proof p26 and elsewhere

<sup>94</sup> Entitled Transport Statement at ES appendix 9.1

pedestrian amenity in the short section of Orchard Place between the site and the A1020 slip roads due to perceived intimidation from HGVs passing close by<sup>95</sup>.

- 3.13 The TA anticipates around 200 HGV movements per day with up to 20 HGV movements per hour. It also notes the proposals to: resurface Orchard Place South to reduce HGV noise, widen the footpath, and incorporate a riverside walk (extend the Thames Path). With regard to the proposed Lower Lee Bridge, it notes the wide triangle of surplus carriageway, that the ramps could be turned eastwards to emerge opposite The Causeway, and that a further improvement could be made by acquiring land to the rear of 42-44 Orchard Place.
- 3.14 The TA points out that the site is a safeguarded wharf, identified as suitable for the transfer of aggregates, and so significant volumes of HGV traffic must be envisaged. The TA was not challenged in terms of its accuracy but criticised for its relevance to the impact on Orchard Place (see ch9 below). The appellants have claimed that there would be a very substantial modal shift in aggregates and cement handling from road to the BRN.
- 3.15 The s106 Agreement proposes mitigation for birds in the EIDB which might be affected by noise and traffic, especially Teal. Mitigation would include partially dredging the EIDB dock basin to encourage birds. I heard largely unchallenged evidence that the proposed mitigation would at least offset any likely harm<sup>96</sup>.

#### *Design process*

- 3.16 The DAS outlines the design process<sup>97</sup> as having taken account of: the client's brief, identified constraints and opportunities, views of the local community, officers' advice, planning policy and comments from consultees to the original application. It describes the design evolution of the proposals as stemming from the need to utilise the available space in the most efficient way possible. It outlines the consideration and rejection of an asphalt plant and, in considering the layout, alterations in response to the consultation process including moving the plant away from the western boundary and increasing the landscaping in between<sup>98</sup>. The amount and scale of the main structures was derived from 6 aggregate storage bays, 6 cement silos, and a proprietary batching plant fed by a below ground hopper<sup>99</sup>. The first massing drawings for the scheme were prepared by engineers<sup>100</sup> and then elevations were provided by an architectural design firm<sup>101</sup>. The elevations were subject to several iterations following lengthy consultation with Council officers<sup>102</sup>.
- 3.17 In considering appearance, the DAS acknowledges that good design is firmly rooted in an understanding and appreciation of the development site's social

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<sup>95</sup> Ibid para 8.5

<sup>96</sup> Hill evidence

<sup>97</sup> DAS s4 p5

<sup>98</sup> Ibid s4 p6&7

<sup>99</sup> Ibid s4 p8 - 'Steelfield'

<sup>100</sup> Martin O'Brian and Associates – see Tavernor paras 5.6 and 5.20 and drawings at RT2

<sup>101</sup> Cameron Design (now Concept Design Team)

<sup>102</sup> Ibid paras 5.21-5.22 and documented in appendix RT2

and physical context, as well as its history and heritage. It refers to a high quality palette of materials to be used to blend in with the industrial heritage of the peninsular. Wherever possible, this would enhance the ecological value to improve the on-site habitat provision through timber cladding to attract invertebrates, and birds which feed on them, and would include bird and bat boxes<sup>103</sup>.

### *Noise*

- 3.18 The SoCG summarises the extensive agreement on noise between the appellants and both Councils, after lengthy discussions and requests for further information, partly related to noise (above)<sup>104</sup>. Noise is dealt with at length in the ES<sup>105</sup>. The ES notes that at night time the noise levels at the façades of Nos.42-44 Orchard Place from cement lorries would range from 69-81dB resulting in internal levels of 36.1-48.3dB, which is over the WHO guideline of 45dB<sup>106</sup>. However, ambient noise levels in the area start to rise at around 06.00, due to commuter traffic, and the new traffic between 06.00 and 07.00 would be limited to 8 HGVs whereas the guideline relates to 10-15 movements a night<sup>107</sup>. I asked a substantial number of questions with regard to noise, particularly that from HGVs passing Nos.42-44 in the morning. I received a Briefing Note with detailed responses<sup>108</sup>. Amongst other matters, this confirms that the lower the frequency of noise the lower the ability of a material to reduce sound passing through it, and that resurfacing the road would not materially affect engine and gearbox noise propagation.
- 3.19 It is common ground between the appellants and the Council that, subject to conditions and provisions in the s106, the proposal would be acceptable in air quality terms<sup>109</sup>. The details and implications of suggested conditions and the s106 Agreement are dealt with in ch11 of this report.

## **4. Background/Planning History**

- 4.1 The planning history for the site<sup>110</sup> mostly relates to its redundant buildings which would be demolished. Its last main use was for aggregate handling and storage and for concrete batching until 1993 when the site was vacated. History of the immediate surroundings includes the live/work units and the Pura Foods site. Ballymore's plans for mixed-use residential-led redevelopment of Hercules Wharf, Castle Wharf and Union Wharf, situated on the Orchard Place peninsula<sup>111</sup> were withdrawn in 2007.
- 4.2 Peruvian Wharf (PW) has been granted planning permission for cement and aggregates handling and for a concrete batching plant<sup>112</sup> and this has been

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<sup>103</sup> Ibid s4 p9

<sup>104</sup> SoCG Section 8d) p22-24

<sup>105</sup> ES Chapter 10

<sup>106</sup> ES para 10.6.75-77

<sup>107</sup> Ibid paras 10.6.73-74 and 10.6.78

<sup>108</sup> INQ26, Sharps Acoustics Note dated 13th June 2013

<sup>109</sup> SoCG – green folder - section 8e) p25-26

<sup>110</sup> SoCG para 3.3 and Edmonds 3.14-3.34 and appendix 1.0

<sup>111</sup> West para 2.5.4

<sup>112</sup> INQ9B

implemented<sup>113</sup>. This followed the failure of a planning application for mixed use. Although assessed against an earlier version of the London Plan, the criteria in the current version are essentially the same except that the final reference to timescale<sup>114</sup> has been dropped.

- 4.3 Of particular relevance in that report, the Inspector looked at Criterion 5 (see chapter 5 below) and found that: *To demonstrate lack of viability under this heading, it would be necessary to show either that the prospects of future trading are so poor that the wharf could not possibly be needed for cargo-handling, or, that there is over-provision in existing wharves such that the use of Peruvian Wharf for cargo handling would be redundant. Neither of these positions exists in this case*<sup>115</sup>.
- 4.4 The PLA's case on this point at PW was: *If the ability of an identified operator (with a demand for use of a safeguarded wharf) to be located elsewhere was relevant to the test of viability, it would provide a means of deflecting demand by cargo handlers away from a safeguarded wharf proposed for redevelopment. If the approach was to prevail it could be used by any owner of a safeguarded wharf and would render the safeguarding direction, and the policy which effects its protection, largely redundant*<sup>116</sup>. The Inspector at PW concluded that: *On none of the [viability] criteria listed ... have I found that the wharf would not be viable in its entirety for cargo-handling*<sup>117</sup>.
- 4.5 With regard to concrete, the appellants argued that its 'shelf life' of is especially limited life once it has been poured into a lorry. This is relevant to evidence with regard to sub-regional analysis and traffic congestion such as that at the Blackwall tunnel. Largely on account of the high temperatures required to produce cement, concrete has a very high 'embodied energy', that is the amount of energy required to produce it<sup>118</sup>.

## 5. Planning Policy

- 5.1 Relevant policies are listed in the SoCG between AI/LC and the Council. These were not agreed with the Objectors<sup>119</sup> who criticised the omission of London Plan (LP) Policy 2.13, which promotes opportunity areas including the Lower Lee Valley, and the Thames Strategy East (2008). I summarise those of particular relevance.

### *The National Planning Policy Framework (the Framework)*

- 5.2 As well as the overall thrust towards sustainable development, ch4 on sustainable transport, ch7 on design and ch12 on the historic environment are particularly relevant. Of the latter, paragraph 133 sets out the test for substantial harm and paragraph 134 deals with less than substantial harm. Of especial relevance to this Inquiry is ch13 on *Facilitating the sustainable use of minerals*. Paragraph 143 refers to safeguarding and concrete batching.

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<sup>113</sup> Casey para 3.26

<sup>114</sup> Bullet point 6 in the February 2004 version of the LP

<sup>115</sup> CDC16, Inspector's Report para 12.53

<sup>116</sup> Ibid IR paras 6.61 and 6.62

<sup>117</sup> Ibid IR para 12.146

<sup>118</sup> Acknowledged by Casey in answer to IQs

<sup>119</sup> GG response to SoCG para 7.1



### *London Plan*

- 5.3 The latest full version of the London Plan (LP) was published in July 2011. Revised Early Minor Alterations (REMA) to the LP were published on 11 October 2013. Of particular relevance, slight changes have been made to the first sentence of paragraph 7.75, in support of Policy 7.26, to update the references to national policy and which now reads: *Using water based transport for freight is fully in line with the NPPF, in particular paragraphs 29, 30 and 41, promoting sustainable modes of transport and paragraph 143 specifically referring to the safeguarding of wharfrage to facilitate minerals handling.* On 19 November 2013, eight London Boroughs, including Tower Hamlets, applied to the High Court under s113(3) of the Planning and Compulsory Purchase Act 2004 (against the Mayor of London) to quash paragraphs 3.63 and 3.68 of the REMA. I note that these paragraphs are of limited relevance to this report and that unless and until any part of the LP, including the REMA, is quashed by the courts, it continues to have full force.
- 5.4 Policy 2.18 of the LP aims to protect, promote, expand and manage the extent and quality of, and access to, London's network of green infrastructure and makes specific reference to the Lee Valley Regional Park Authority. The Strategic aim of LP Policy 5.20 is to ensure an adequate supply of construction aggregates for London using sustainable modes. It sets high targets for the recycling/re-use of construction waste. Through its expectations for local plans, it aims to reduce the environmental impact of aggregates through safeguarding wharves and/or railheads, and to minimise the movement of aggregates by road and maximise the use of the BRN. Supporting paragraph 5.90 explains that London needs a reliable supply of construction materials to support continued growth.
- 5.5 Policy 7.26 is particularly relevant to this Inquiry. At the strategic level (section A) it seeks to increase the use of the Blue Ribbon Network (BRN) to transport freight. For planning decisions (section B) development proposals:
- a) should protect existing facilities for waterborne freight traffic, in particular safeguarded wharves should only be used for waterborne freight handling use. The redevelopment of safeguarded wharves for other land uses should only be accepted if the wharf is no longer viable or capable of being made viable for waterborne freight handling (criteria for assessing the viability of wharves are set out in paragraph 7.77). The Mayor will review the designation of safeguarded wharves prior to 2012
  - b) which increase the use of safeguarded wharves for waterborne freight transport, especially on wharves which are currently not handling freight by water, will be supported
  - c) adjacent or opposite safeguarded wharves should be designed to minimise the potential for conflicts of use and disturbance.
- 5.6 Paragraph 7.77 confirms that the redevelopment of safeguarded wharves should only be accepted if the wharf is no longer viable or capable of being made viable for waterborne freight handling uses. It then sets out the criteria on which this definition depends, including environmental impact and surrounding land use context (criterion 1). Criterion 5 is: *the location and availability of capacity at comparable alternative wharves, having regard to*

*current and projected Port of London and wharf capacity and market demands.* The meaning of these has essentially been clarified by the Decision at PW (see s4 above).

- 5.7 LP paragraph 7.79 highlights that the challenge is to minimise conflict between the new and the old land uses. This must be met through modifications and safeguards built into new and established developments. It expects that wharf operators should use appropriate available means to mitigate the environmental impacts of freight handling. New development next to or opposite wharves should utilise the layout, use and environmental credentials of buildings to design away these potential conflicts. Policy 7.27 provides support for jetties as they enhance the use of the BRN.
- 5.8 LP Policy 7.1 expects that development should be designed so that the layout, tenure, and mix of uses interface with surrounding land, and that the design of new buildings and the spaces they create should help reinforce or enhance the character, legibility, permeability and accessibility of the neighbourhood. The strategic aim of Policy 7.4 is for development to have regard to the form, function, and structure of an area, place or street and, in areas of poor or ill-defined character, to build on the positive elements that can contribute to establishing an enhanced character for its future function. It expects that buildings, streets and open spaces should provide a high quality design response that has regard to the pattern and grain of the existing spaces and streets in orientation, scale, proportion and mass.
- 5.9 Policy 7.5 looks to Boroughs to have local objectives and programmes for enhancing the public realm; Policy 7.6 expects that architecture should make a positive contribution to a coherent public realm, streetscape and wider cityscape.

#### *Core strategy (CS)*

- 5.10 The Tower Hamlets Core Strategy 2025 Development Plan Document (CS) was adopted in September 2010<sup>120</sup>. Policy SP08 seeks to promote the sustainable transportation of freight by maximising the movement of freight by water and rail to take the load off the strategic road network and safeguarding Orchard Wharf.
- 5.11 CS Policy SP04 aims for a network of open spaces by protecting and safeguarding all existing open space, maximising opportunities for new publicly accessible open space, including MOL at the EIDB, the LVRP, and the Fatwalk, improving their quality, usability and accessibility, promoting them as multi-functional spaces, and creating new green corridors and enhancing existing ones to connect publicly accessible open spaces to main destination points including water-spaces.
- 5.12 Policy SP10 aims to protect and enhance heritage assets, and their settings; to preserve or enhance the wider built heritage and historic environment, enabling the creation of locally distinctive neighbourhoods, through promoting and implementing placemaking to ensure that the locally distinctive character and context of each place is acknowledged and enhanced; and to ensure that

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<sup>120</sup> CDB37

buildings and neighbourhoods promote good design principles to create buildings, spaces and places that are high-quality, sustainable, accessible, attractive, durable and well-integrated with their surroundings.

- 5.13 CS Policy SO20 aspires to: *Deliver a safe, attractive, accessible and well designed network of streets and spaces that make it easy and enjoyable for people to move around on foot and bicycle.* Policy SO21 aims to: *Create streets, spaces and places which promote social interaction and inclusion, and where people value, enjoy and feel safe and comfortable.* Policy SO22 seeks to: Protect, celebrate and improve access to historical and heritage assets to enhance local distinctiveness, character and townscape views. Policy SO23 promotes well designed, high quality, sustainable and robust buildings that enrich the local environment and contribute to quality of life.
- 5.14 CS Policy LAP7&8 and its Vision Diagram<sup>121</sup> refer specifically to Leemouth. It aims for a modern waterside place where the Lee and Thames meet. The buildings should positively address the water to invite people to spend time by the river edges. The first priority is to support a mix of uses across Leemouth with Orchard Place North being primarily residential mixed-use, and Orchard Place South as being employment-led mixed-use. Orchard Place North and South are not defined. Priority No.4 is to continue to protect Orchard Wharf for cargo-handling uses. Principle 2 to LAP7&8 requires that the design of new development ensures a joined-up street network and connects to surrounding routes; Principle 3 is for effective buffers between residential amenity and the future operation of OW.

#### *Development Plan Document (DPD)*

- 5.15 The most up-to-date part of the development plan is the Tower Hamlets' Development Plan Document (DPD) called the Managing Development Document<sup>122</sup>. This was adopted on 17 April 2013 with some revisions to the September 2012 version<sup>123</sup>. In doing so, the DPD superseded the saved policies in the Tower Hamlets Unitary Development Plan 1998 and the Interim Planning Guidance 2007.
- 5.16 DPD Policy DM10 requires development to provide or contribute to the delivery of an improved network of open spaces; it should not adversely impact on the public enjoyment of the LVRP, its openness, ecological and heritage value. Policy DM21 aims for the sustainable transportation of freight and requires that development adjacent to protected wharfs and rail depots will need to ensure it does not prejudice their operation and supports the provision of new wharfs or other facilities for freight transfer, or passenger interchange, between road, rail or water, where these minimise impacts on the environment and neighbouring amenity.
- 5.17 DPD policy DM24 requires development to be designed to the highest quality standards, incorporating principles of good design which is sensitive to and enhances the local character and setting of the development. DPD policy

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<sup>121</sup> Ibid p120

<sup>122</sup> CDB51: version headed Adopted April 2013 – confirmed by email from Humphreys dated 19 April 2013 – main file

<sup>123</sup> Policy DM10 now expressly mentions the LVRP and heritage value at para 10.3

DM27 requires the borough's heritage assets, their setting and their significance to be protected and enhanced. Site allocation 13 confirms that development should not impact on the operations of the nearby safeguarded Orchard Wharf, in accordance with Core Strategy Policy SP08 and policy DM21.

- 5.18 OW is within the Thames Policy Area<sup>124</sup>. Paragraph 12.6 of the DPD notes that development here will be required to take account of the importance of this area and should also address the most up to date guidance on development within the Thames Policy Area which was the Thames Strategy East (2008).

#### *Other policy*

- 5.19 The Vision for Thames Strategy East 2008<sup>125</sup> is to achieve a world class river through: creating a high quality, multi-functional, well connected network of river-related spaces and places that are accessible to all, and are managed and maintained to the highest standards for people and wildlife.
- 5.20 The Mayor of London's Lower Lee Valley Opportunity Area Planning Framework 2007 (OAPF)<sup>126</sup> identifies the area as *the most important single strategic regeneration initiative for London and an urban renewal challenge of global significance*<sup>127</sup>. It requires that imaginative design solutions are provided to assimilate the wharf and mixed use proposals for the sub-area of Blackwall and Leamouth<sup>128</sup>. The OAPF identifies that the potential for change in the sub-area is focused on a number of sites along the waterside frontages that are suitable for change to other uses, but also identifies OW as a safeguarded wharf that should continue to be protected for cargo-handling uses<sup>129</sup>. Other than the safeguarding to OW, OAPF figure 4.14 annotates the whole of Orchard Place South of the A1020 as for *other industrial areas*.
- 5.21 The Leaside Area Action Plan, Interim Planning Guidance, was *adopted for the purpose of development control* in October 2007 but has now been superseded. Policy NC2.1 of the LVRP Plan (2000) aims to safeguard the long term future of habitats and species. The Lee River Park Design Framework 2008 maps out a manifesto for the creation of a major new park for London in the Lower Lee Valley<sup>130</sup>

#### *Policy for Safeguarded Wharves*

- 5.22 Wharf safeguarding on the Thames started with the Thames Strategy 1995; OW was first safeguarded by direction in 1997<sup>131</sup>. This was renewed by the Direction in June 2000<sup>132</sup> with a requirement that any planning application for the site should be treated as a strategic referral to the Mayor.

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<sup>124</sup> On the April 2013 Adopted Policies Map

<sup>125</sup> CDB78 para 1.2

<sup>126</sup> CDB19 – the weight to be given to it is set out in paras A5-A8 of Appendix A

<sup>127</sup> CDB19 para 2.13

<sup>128</sup> Ibid para 4.236

<sup>129</sup> Ibid para 4.234

<sup>130</sup> CDB25 p6. Ritchie advised in ReX that it is not part of policy so its status is unclear

<sup>131</sup> SoCG paras 4.2-4.3

<sup>132</sup> CDB03 by the Secretary of State for the Environment, Transport and the Regions, as was, under Articles 10 and 27 of the Town and Country Planning (General Development Procedure) Order 1995

- 5.23 The London Plan Implementation Report Safeguarded Wharves on the River Thames (Safeguarded Wharves Implementation Report – SWIR), to support LP Policy 4C.9 (at that time), was published by the Mayor in January 2005. The SWIR recommended that OW's safeguarded status remain in place. As a supporting document it amounts to Supplementary Planning Guidance (SPG)<sup>133</sup>.
- 5.24 The planning framework relevant to safeguarded wharves is based on LP policy 7.26 and supporting paragraphs 7.75-7.79. The Direction confirms the safeguarding. The SWIR is under review<sup>134</sup> and will shortly be replaced by the SWR<sup>135</sup> with draft versions of the Safeguarded Wharves Review (SWR) published in 2011, 2012 and 2013<sup>136</sup>. The recommendations in the SWR 2013 draft are that OW should continue to be safeguarded. LP supporting paragraph 7.76 positively supports the use of CPO powers where necessary to bring inactive sites into use.
- 5.25 Although based on a report prepared by consultants URS<sup>137</sup>, the SWR is the responsibility of the GLA. The methodology for demand forecasting combines a top-down and bottom-up approach<sup>138</sup>. The SWR 2013 notes that the SWIR was inaccurate particularly as a result of possible optimism bias by wharf operators<sup>139</sup> and acknowledges the limitations of forecasting<sup>140</sup>. The SWR looks at 3 different scenarios – high, medium and low. It explains the need for the Mayor to take an appropriately precautionary approach as once lost, wharves are unlikely to be reactivated<sup>141</sup>.
- 5.26 Of particular relevance, the forecasts in the SWR 2013 (medium scenario) conclude that for construction materials for the NE sub-region by 2031 there will be a demand for 3.2 million Tonnes per annum (mTpa), and a capacity of 2.4mTpa, and so a deficit of some 0.8mTpa<sup>142</sup>. It recommends that this should be addressed by the reactivation of OW and PW<sup>143</sup> and that nine safeguarded wharves should be released, including DePass Wharf, on the basis that conditions at these are less favourable, and that one new wharf should be safeguarded. It notes that some vacant capacity will remain<sup>144</sup>. For OW, it recommends that safeguarding is retained as the wharf is viable and well located<sup>145</sup>.
- 5.27 The report looks at the spatial distribution of demand in 3 sub-regions: West, North East (NE), and South East (SE)<sup>146</sup>. It adjusts the demand forecasts for

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<sup>133</sup> Unchallenged evidence of GG

<sup>134</sup> URS was commissioned with the PLA, TfL and the Canal and River Trust (formerly British Waterways) – CDB83 para 2.1.1

<sup>135</sup> LP Policy 7.26 was that this should be prior to 2012

<sup>136</sup> CDB62, CDB49 and CDB83

<sup>137</sup> CDB63 URS Scott Wilson Report August 2011 - see SWR 2013, CDB83 para 2.1.1

<sup>138</sup> SWR 2013 fig 2.1 using information from the London Aggregates Working Party (LAWP)

<sup>139</sup> CDB83 paras 2.2.16-17

<sup>140</sup> CDB83 para 2.2.24

<sup>141</sup> Ibid para 2.2.23

<sup>142</sup> Ibid Table 6.3: NE Sub-Region 2031 (and 2021)

<sup>143</sup> Ibid para 7.2.7 p80: North East

<sup>144</sup> Ibid para 0.10-0.11

<sup>145</sup> Ibid p106

<sup>146</sup> Ibid s6 p69 onwards

the West and NE to take account of Crossrail and the Thames Tideway Tunnel (TTT), noting that its demand will be in the West but will lead to a deficit of capacity if vacant wharves are not reactivated<sup>147</sup>. It transpired during the Inquiry<sup>148</sup> that the forecasts include moving some 0.4mTpa from the SE to the NE and that future capacity at PW<sup>149</sup> had not been included in the forecasts.

- 5.28 Following cross-examination<sup>150</sup>, a note was produced<sup>151</sup> revising the figures for the transshipment of secondary construction materials.
- 5.29 The SWR 2013 recognises that the *Framework* promotes sustainable transport modes and notes that: *As road freight is a major contributor of CO<sub>2</sub> and other emissions and to congestion, waterways should be considered as part of a solution to reduce dependency on road haulage*<sup>152</sup>.

#### *Compulsory purchase policy*

- 5.30 Relevant law and policy include the Planning & Compulsory Purchase Act 2004, s226 of the T&CP Act<sup>153</sup>, and ODPM Circular 06/04: *Compulsory Purchase and the Crichel Down Rules* (the Circular)<sup>154</sup>. There must be a compelling case in the public interest, the purpose should sufficiently justify interfering with human rights, and acquisition should be by negotiation wherever practicable. The 4 factors to consider are, in short: the adopted planning framework; the economic, social or environmental well-being of the area (s226(1A) of the T&CP Act); viability and funding – whether there is a reasonable prospect that the scheme will proceed; and whether the purpose could be achieved by other means. Some weight can be given to non-statutory planning documents<sup>155</sup>. The well-being test is not limited to the Order lands. There is no particular degree of justification required and each case must be determined on its own merits. The Acquiring Authority's case must justify the interference with Human Rights<sup>156</sup>.
- 5.31 The Port of London Act 1968<sup>157</sup> (1968 Act) is especially relevant to the CPO. This gives the PLA wide ranging duties and powers with regard to the Thames.

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<sup>147</sup> Ibid paras 6.1.2 and 6.3.2

<sup>148</sup> Brooke in XX

<sup>149</sup> Ibid

<sup>150</sup> Of Brooke

<sup>151</sup> INQ20B

<sup>152</sup> CDB83, SWR para 1.2.1

<sup>153</sup> Under s226(1): ... *power to acquire compulsorily any land in their area - (a): if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land ... Under s(1A): But a local authority must not exercise [this] power ... unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects- (a) the promotion or improvement of the economic ... (b) ... social ... (c) ... environmental well-being of their area.*

<sup>154</sup> CDB11, Circular 06/2004. Paragraphs 17 - 19, 21, 24 - 25, 35 and sections 6 and 16 of Appendix A (s16) are particularly relevant.

<sup>155</sup> Ibid Appendix A, paragraphs 13 and 14

<sup>156</sup> Article 1 of the First Protocol to the European Convention on Human Rights (ECHR), and Article 8 of the Convention, and the Human Rights Act 1998. The Objectors refer in particular to Article 1 of the First Protocol which provides for the protection of property and the peaceful enjoyment of possessions.

<sup>157</sup> CDA02

In particular, s5(1A): *The Port Authority shall have power to provide, maintain, operate and improve such port and harbour services and facilities in, or in the vicinity of, the Thames as they consider necessary or desirable and to take such action as they consider incidental to the provision of such services and facilities; and s11(2) The Minister [of Transport] may authorise the Port Authority to purchase compulsorily any land which they require for the purposes of the undertaking and the Acquisition of Land (Authorisation Procedure) Act, 1946, shall apply as if the Port Authority were a local authority within the meaning of that Act and as if this Act had been in force immediately before that Act.*

- 5.32 Section 232 of the Localism Act deals with compensation for compulsory acquisition and is particularly relevant to actual or prospective planning permission, and certificates of appropriate alternative development, and what may or may not be disregarded.

## **6. The Case for the Port of London Authority (the Acquiring Authority)/ Aggregate Industries UK Ltd and London Concrete Ltd.**

The gist of the case is:

- 6.1 The planning proposal would provide a viable wharf on a site specifically safeguarded for wharf use. It is currently vacant because the owners wish to ignore policy and re-develop the site for non-wharf uses. But OW is protected by policy and a wharf use is viable. The policy is clear that redevelopment for non-water-borne freight handling uses will not be permitted. The owners will not accept this and consider that they are entitled to do nothing with the vacant site against a hope that one day policy will change. This should not be the fate of this strategically important wharf.
- 6.2 OW is one of the best placed wharves to meet the real world market interest, and the forecast need, for construction materials capacity. The PLA has successfully reactivated PW<sup>158</sup> and a commercial operator is promoting this scheme. There is a much more than realistic prospect that it will proceed. The Mayor of London, the former LTGDC and the officers of LBTH all found the design acceptable. There is a compelling case for the reactivation of OW by CPO and for allowing the planning appeal.

*The parties*

- 6.3 The Mayor is the strategic planning authority and has a policy to protect existing wharves. The LTGDC granted planning permission<sup>159</sup>, which is still extant, for all but the jetty element. LBTH is now the LPA for the area. Its development plan identifies OW as a safeguarded wharf. On three occasions, officers recommended that permission should be granted. Elected members only set these aside on the grounds of visual impacts and accepted the principle of wharf use in accordance with LP policy 7.26. The GG has aspirations for residential development and does not accept wharf use for the

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<sup>158</sup> Pursuant to CPO proceedings, see CDC16 and s4 of this report

<sup>159</sup> CDC12, dated 28 September 2012

site. AI/LC is an aggregates business which has been looking for such a facility for many years.

### *Scope*

- 6.4 Determining the planning appeal will require an assessment of whether the proposed wharf use complies with relevant policies and, if so, whether material considerations indicate other than granting permission. The CPO decision will turn on whether the planning status and viability amount to a compelling case in the public interest.
- 6.5 While elements of the SWR have some relevance to the Inquiry, the latter has no jurisdiction to reconsider or alter the existing safeguarding, which is subject to a separate regime, or to review the GLA's recommendations. The Inquiry cannot act as an examination in public or rule on whether the SWR 2013 should be accompanied by a SEA.

### *Safeguarding*

- 6.6 OW has always been safeguarded since safeguarding began. LP policy 7.26 applies. The safeguarding Direction does not identify any public scheme or restrict any use; it simply requires any application to be referred to the Mayor who has the power to direct refusal. The proposition that the safeguarding is draft, because it is the subject of review is plainly wrong. The directions and the policy have full force until and unless they are removed.
- 6.7 Arguing that little weight should be given to the safeguarding, as the forecasts are flawed, is to ignore qualitative and geographical matters and the need to maximise the use of the River for aggregates. It is not appropriate to go behind the safeguarding at every review. It should be given full force unless and until wharves are released. Once a wharf is lost to higher value uses it is lost forever.
- 6.8 In this case, it is likely that the decision on safeguarding will be made, based on the final report, before these cases are determined. Even if some of the Objectors' criticisms are accepted, the safeguarding will not be removed, the review process would simply be reactivated. Safeguarding can only work if it remains in force until it is removed. That is the position here.

### *Policy*

- 6.9 The LP contains the main operative policy but it also reflects the *Framework* which, if anything, is even more protective. The latter tells LPAs not only to safeguard wharfage but also potential sites for concrete batching<sup>160</sup>. Planning permission should only be refused if the proposal would cause clear and substantial harm. Of the numerous LP policies which promote the use of wharves, LP Policies 5.20 and 7.26 are particularly relevant.
- 6.10 LP Policy 5.20 is not subject to limit or ceiling, it is a requirement to maximise the use of the River, where possible, consistent with the other policies of the Plan. The contribution which the site can make to the meeting of this aim is

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<sup>160</sup> *Framework* paragraph 143



clearly relevant to the issue of the grant of planning permission and to whether there is a compelling case in the public interest.

- 6.11 Under Policy 7.26, if a wharf is viable or capable of being made viable, no other non-wharf redevelopment of the wharf or any part of it should be accepted. As indicated at PW, this is a deliberately high hurdle. If a safeguarded wharf is capable in principle of being used as a wharf then it should not be lost to a non-wharf use or it would render the safeguarding direction largely redundant<sup>161</sup>. Moreover, the second half of the policy actively supports the scheme.
- 6.12 In short, planning policy from the *Framework* down to the local development plan all supports wharf uses and their protection. The GG's interpretation is at odds with the findings at PW.
- 6.13 Several objectors suggest that safeguarding policy is inconsistent with other, more recent, policies. On the contrary, all up-to-date policy recognises cargo handling at OW as part of the policy context. None of this is diluted by the LLV OAPF or the Thames Strategy. In any event these pre-date the continued policy support for safeguarding of OW in the LP (2011) the CS (2012) and the DPD (2013). There is nothing to suggest that SIL locations should be preferred.

#### *Viability*

- 6.14 Given the proper meaning of the policy, there can be little doubt that OW is a viable wharf as accepted by the Council, the LTGDC, and the Mayor of London. The Objectors argue that *viable* means appropriate or suitable, that non-wharf use would be preferable here and that other sites would be better for wharf uses. That is not how the policy works. In navigational terms, the wharf is viable<sup>162</sup>.
- 6.15 The Objectors argued that it is not viable due to the surrounding land use context, but this is entirely compatible as shown in the up-to-date development plan. Even elected members were only concerned with design. With regard to criterion 5 of paragraph 7.77 of the LP, the Inspector at PW found that, to demonstrate lack of viability, it would be necessary to show either that the wharf could not possibly be needed for cargo handling, or that there is over provision such that it would be redundant. The evidence at OW does not come close to establishing either of these positions. The PW Decision also made clear that the mere fact that owners are unwilling to allow their site to be used for water-borne cargo does not make it unviable<sup>163</sup>.
- 6.16 Moreover, there is a fully worked up application before the Inquiry and there are two safeguarded wharf reports which identify OW as viable. The scheme remains viable in terms of Policy 7.26 Ba. It would also comply with Policy 7.26 Bb through increasing the use of OW which does not currently handle freight. By any view, the proposal is given especial support by Policy 7.26, a

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<sup>161</sup> CDC16, paras 6.61-6.62

<sup>162</sup> Denton in XX

<sup>163</sup> CDC16 para 15, IR 12.146

factor of very great significance in determining whether or not there is a compelling case in the public interest.

- 6.17 The argument<sup>164</sup> that concrete batching is outside the definition of *handling of water borne freight* is contrary to the acceptance by the Mayor, and in the SoCG, that all the uses on the site would be consistent with policy. There are already many concrete batching plants on safeguarded wharves in London. To separate the two would be to require further handling at another location with another shift of materials by road. It would conflict with the aim of the *Framework* which includes safeguarding concrete batching<sup>165</sup>. Reference to the Use Classes Order does not alter the handling of water borne materials into anything else just because a process is also involved.

#### *Policy conclusion*

- 6.18 The inevitable consequence of the fact that OW is a viable wharf, or capable of being one in the future, is that no alternative non-wharf redevelopment of it, or any part of it, is permissible under Policy 7.26 Ba. A non-freight handling use would be unacceptable. All of the Objectors' evidence on alternatives disregarded the safeguarding<sup>166</sup>. This encapsulates the whole of the Objectors' case which is that the safeguarding should be removed. However, the site is safeguarded and there is no hint that it will be removed.

#### *Negotiations*

- 6.19 The site has been vacant for many years because of the owners' aspirations for residential value for the land, which could run into many millions of pounds, despite this being a non-compliant use. There is no prospect of them selling for a policy compliant use<sup>167</sup>. Once it is established that OW would be viable, it follows that no other land use than for water-borne freight is acceptable in terms of policy. Given the owners' aspirations, there is no prospect of successful negotiations. If OW is ever to be put to a policy compliant use it will require compulsory purchase.

#### *Compelling case*

- 6.20 To meet the aim of maximising the transport of aggregates by River, there is a compelling case in the public interest for the CPO. Moreover, notwithstanding the Objectors' evidence<sup>168</sup>, OW is amongst the best wharves at which to maximise the use of the BRN. Identification as such persists into the latest review. This is because of its location near the City and other growth hubs, its excellent navigational characteristics, and its ability to meet the shortfall in aggregates supply in this sub-region of London.

#### *Location*

- 6.21 The Lower Lee Valley Opportunity Area is described as the single most important strategic regeneration initiative for London and an urban renewal

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<sup>164</sup> Humphreys in oral evidence

<sup>165</sup> Paragraph 143, second part of fourth bullet point

<sup>166</sup> West in XX

<sup>167</sup> CDC04

<sup>168</sup> Whitfield

challenge of global significance<sup>169</sup>. The scale of building works to be undertaken there is massive and the need for aggregates and concrete will be very substantial. OW is located where there will be the greatest demand for aggregates.

- 6.22 Analysis for the planning appeal shows<sup>170</sup> that there would be significant vehicle mileage and CO<sub>2</sub> savings. LC has about 25% of the London cement market. All its concrete deliveries are by HGV from Chatham. With OW, all cement would go by barge for onward distribution saving around ½m road miles compared with Chatham<sup>171</sup>. This would be a significant benefit.
- 6.23 Without OW, aggregates for the LLV OA would most likely come by road from Bardon or further afield. OW would allow aggregates to come by sea from Glensanda in Scotland via the Isle of Grain. This could save nearly 1.2m road miles for aggregates use at OW and a further 1.6m miles from open market aggregates sales<sup>172</sup>. While the detailed figures can be challenged, and would vary in the future, the Objectors' analysis<sup>173</sup> does not alter the principle of significant savings.

#### *Navigational characteristics*

- 6.24 The navigational benefits identified in evidence by the PLA<sup>174</sup> have been accepted by the GLA and previous reviews. Nevertheless, the Objectors suggested<sup>175</sup> that these were deficient. However, it was accepted that none of the points raised were sufficient by themselves to result in the refusal of planning permission or to render the wharf unviable<sup>176</sup>.
- 6.25 First, concerns about safe manoeuvring were made by reference to a generic port design book used in Odessa but not in London. The Harbour-master had no such concerns. A suggestion that the jetty would be too far into the River was not supported by any evidence. Finally, concerns that there would be operational constraints were illusory and it was accepted<sup>177</sup> that a cement loader could use the jetty at all states of the tide and that the dredge box would be subject to a separate licence.

#### *Further environmental information*

- 6.26 The main concern raised by the Objectors was in relation to the capital dredge. The adequacy of environmental information is for the decision maker. The Council is content<sup>178</sup> and no Regulation 22 request has been made. Nevertheless, the appellant submitted further information and the Inspector

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<sup>169</sup> INQ40, PLA closing para 172

<sup>170</sup> Casey and Bellamy rebuttals and INQ28a and b

<sup>171</sup> Bellamy rebuttal paragraph 2.6, Woolner appendix 7

<sup>172</sup> Table 2 Transport Statement MW appendices – see also CO<sub>2</sub> savings

<sup>173</sup> Axon's evidence which could only be dealt with in rebuttal statements by Casey and Bellamy

<sup>174</sup> Trimmer

<sup>175</sup> Denton

<sup>176</sup> Denton in XX

<sup>177</sup> Ibid

<sup>178</sup> See SoCG

ruled against such a request or the need for further consultation and with good reasons<sup>179</sup>.

### *Aggregates forecast shortfall*

- 6.27 The forecast for transporting aggregates on the River is a matter for the GLA in the SWR. It was produced in good faith and is not policy neutral, that is to say it assumes that the LP policy to maximise water-borne freight is capable of working. It was the work of the GLA and not URS<sup>180</sup>. There will always be room for disagreements over forecasts. However, to set aside the GLA's forecast would need clear evidence: there is no such evidence.
- 6.28 A precautionary approach should be taken to trade forecasts with regard to the release of wharves which are only one of many factors to consider when reviewing the safeguarding. The location, quality and ability to meet the aims and objectives of the policy are all at least as important. The forecast to 2031 inevitably involves a high order judgement which should be used in this light.

#### APPROACH

- 6.29 The Objectors argued<sup>181</sup> that it would be wrong to assume that more freight could be transferred to the River, thereby ignoring recent and emerging planning policy to alter the patterns of aggregate delivery and to increase the use of the River for freight by 50% during the lifetime of the LP<sup>182</sup>. Instead, the Objectors claimed<sup>183</sup> that the GLA forecasts were no more than a deliberate concoction to help the PLA's CPO for OW. These are serious allegations. The GLA has produced a measured response to these allegations<sup>184</sup>.
- 6.30 The evidence shows that OW would meet the GLA's forecast need. In broad terms, it shows a shortfall of capacity for aggregates handling in the north east sub-region of 0.8mTpa. If broadly correct, this adds weight to the compelling case in favour of reactivation of OW.

#### DEMAND

- 6.31 The forecast analysis is clearly set out in the SWR 2013 and is based on the URS medium demand scenario. The low growth scenario<sup>185</sup> was not chosen because it would not reflect policy or recognise the precautionary principle (that once wharves are lost they do not revert). The planning judgement is unimpeachable and sensible rather than the disproportionately detailed approach of the Objectors.
- 6.32 There are three components to the forecasts to 2031. First, given the policy encouragement for shipping by river, the assumption on primary aggregates of

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<sup>179</sup> Listed in paragraph 224 of INQ40. The reference in 224c. is to *Candlish* 2005 EWHC 1539 Admin ELP 2006 No.13 PNCR 2006 Vol.1 p18

<sup>180</sup> INQ18

<sup>181</sup> Hunt

<sup>182</sup> INQ40 para 235

<sup>183</sup> Including during its XX of Trimmer

<sup>184</sup> Letter from the GLA to CLG dated 18 April 2013 – main file

<sup>185</sup> Preferred by Hunt

1.4% compound annual growth rate (CAGR)<sup>186</sup>, followed by no growth, the equivalent of just 0.6% CAGR to 2031, cannot be unreasonable. It is further supported by recent figures from the London Aggregates Working Party (LAWP) 27/4<sup>187</sup> which overall show a good recovery following the recession.

- 6.33 Second, as explained in the SWR text<sup>188</sup>, a global figure is assumed for secondary aggregates (or alternative materials) of 0.8mTpa. Again, this is based on central government figures and consultation with LAWP. The third figure, for transshipment, is a conservative estimate given the CAGR between 2001 and 2010<sup>189</sup>.
- 6.34 Finally, it has been subjected to a useful cross check by the LAWP<sup>190</sup>. For the Objectors to state that LAWP has been wrong in the past does not mean that its findings should be ignored. All three main sources are genuine, reasonable and acceptable long term forecasts which seek to ensure that policy can be applied successfully and sustainably.
- 6.35 The claim that the sub-regional division was an attempt to create a case for OW is ludicrous. Rather, the aim of the SWR is to safeguard the best-placed wharves. The demand in London has a spatial element to it and, while a broad brush approach, using sub-regional categories is a sensible approach for reasons of proper planning judgement<sup>191</sup>. Overall, this is a realistic, sensible and proportionate approach to forecast demand on the River by the GLA.

#### ALLOCATION BETWEEN REGIONS

- 6.36 Having identified sub regions, it would be sensible to estimate future demand within them<sup>192</sup>. There is no transfer of demand, just a planning judgement that future demand in the NE will be greater to 2021 than if previous patterns had continued. The allocation of demand is not unreasonable.
- 6.37 Again, in the context of the GLA's precautionary approach and having regard to the potential for unforeseen future water freight demand, the allocation between sub-regions is not unreasonable and no basis for the GLA's position to be set aside.

#### CAPACITY AT NON-SAFEGUARDED WHARVES<sup>193</sup>

- 6.38 This is irrelevant. The aim of the SWR is to provide a minimum number of wharves, together with spatial and qualitative issues. Non-safeguarded wharves are, by definition, not securely available into the future, and the better located ones even less so. The figures on need include all wharves but for the future should only include safeguarded ones. That is the proper judgement. If appropriate, a non-safeguarded wharf could be added to the

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<sup>186</sup> SWR, CDB83 p74 table 3.21

<sup>187</sup> INQ13

<sup>188</sup> CDB83, leading up to table 3.20

<sup>189</sup> Ibid table 3.15, 6.4mTpa by 2021

<sup>190</sup> Ibid, summarised at para 3.4.11, p47

<sup>191</sup> CDB83, SWR para 6.1.3 *et seq*

<sup>192</sup> CDB83, SWR para 6.2.4 and Brooke 6.1.5

<sup>193</sup> Hunt in oral evidence

list, as is recommended for Alexander Wharf<sup>194</sup>. In any event, the trade involved at non-safeguarded wharves is very small<sup>195</sup>.

#### *Conclusion on demand*

6.39 The broad figure of 3.2mTpa for the North West region is not unreasonable or inappropriate.

#### *Capacity*

6.40 The methodology<sup>196</sup> identifies a capacity of 2.4mTpa. Again, it is broad brush and precautionary. It would be wrong to look at any wharf in detail and extrapolate any errors into the exercise as a whole without revisiting each and every wharf in the same level of detail. The overall judgement is that of a deficit of 0.8mTpa in the NE sub-region. The GLA has found that this should be met by PW and OW.

6.41 The Objectors say that this can be met by PW alone. However, not only is the figure for PW in some doubt<sup>197</sup>, but the GLA is looking to operate with a clear margin above the identified gap.

#### *Alternatives*

6.42 The Objectors' analysis<sup>198</sup> refers to paragraph 7.77 of the London Plan. However, this is a development control tool for viability. In any event, the Objectors have then added other criteria such as favouring sites within SIL<sup>199</sup>. There is no policy basis for this. Similarly, the requirement for a CPO is not a relevant criterion. Proximity to development and to 'emerging residential' are not criteria from paragraph 7.77 either. Without these rogue criteria, OW performs best. The suggestion that there is no prospect of planning permission at OW is clearly an error as this already exists. The Council does not oppose a wharf, only the detailed design. The Objectors' analysis should be given little weight.

6.43 De Pass Wharf is put forward as a better alternative. It lies far to the east and is not comparable with OW in terms of proximity to inner and central London needs<sup>200</sup>. Others include PW, already taken into account, and non-safeguarded wharves, but these are likely to be much more expensive<sup>201</sup>, putting viability in doubt. With PW, OW is suitable and appropriate above all others to meet the forecast need.

#### *Reasonable prospect*

6.44 The test in the Circular is whether there is a reasonable prospect. The evidence shows that OW already has one planning permission, the support of the GLA, an operator with a market need, and no evidence that a grant of

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<sup>194</sup> CDB83, SWR p89

<sup>195</sup> Brooke

<sup>196</sup> SWR s2.4

<sup>197</sup> INQ14 - Bretts plan to use ½mTpa not ¾mTpa

<sup>198</sup> Whitfield para 10.9

<sup>199</sup> Ibid para 10.19 Criterion 2

<sup>200</sup> The key locational benefit identified by the GLA – see SWR appendix 5

<sup>201</sup> Trimmer paras 6.26-6.27

planning permission would not be implemented. There is no requirement to precisely identify funding but the PLA is satisfied, from expert valuation<sup>202</sup>, that it can afford the CPO site.

### *Compensation*

- 6.45 Compensation is not a matter for this Inquiry. Nevertheless, for the Objectors to succeed in their argument that the PLA could not afford the compensation payable they would need to show that there is no reasonable prospect. Providing the PLA has a reasonable valuation, which it does, then the test is met.
- 6.46 The Objectors claimed that, notwithstanding the safeguarding, there was a potential for the site to include hope value for mixed use development<sup>203</sup>. The argument<sup>204</sup> supposed that a proposal might be allowed on the basis of other material considerations or that the safeguarding might be lifted following a review. However, the alternative proposals<sup>205</sup> assumed that the safeguarding had been removed entirely, and that the compensation rules require it to be assessed at the valuation date on the basis of an unconditional sale. This will have to be after the CPO. It is inconceivable<sup>206</sup> that any notional purchaser would pay significant hope value for a site for which the safeguarding had recently been confirmed. Rather, the value would reflect industrial land values in the vicinity, and be similar to PW, which would not place the PLA in any difficulty<sup>207</sup>.
- 6.47 Compensation values would be subject to the new statutory regime<sup>208</sup>. This explains what is and what is not to be disregarded. It is the scheme of development not the policy provision covering the site. It does not mean that the policy which prohibits residential uses can be disregarded. To do so would render any wharf unviable and prevent any wharf reactivation. Finally, this argument does not need to be shown to be undoubtedly correct, but that it might reasonably be correct, to pass the test in the Circular.

### *Harm to views, heritage assets, or other interests*

- 6.48 The site is safeguarded for cargo handling. Aggregates handling is such a use and specifically identified in the recently superseded LAAP<sup>209</sup>. There can be no objection in principle to this use. The policy seeks to maximise the use and encourages intensification. There is also policy support for jetties<sup>210</sup> as they enhance the use of the BRN. The use will inevitably bring a structure or structures which reflect this use. Development proposals near to safeguarded wharves should minimise the potential for conflicts, not the other way around.

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<sup>202</sup> Cottage

<sup>203</sup> Whitfield

<sup>204</sup> Edmonds

<sup>205</sup> West's evidence

<sup>206</sup> Cottage proof paragraph 8.16

<sup>207</sup> Confirmed by Trimmer

<sup>208</sup> Section 232 of the Localism Act – see PLA's closing paras 380-398

<sup>209</sup> CDB21

<sup>210</sup> LP Policy 7.27

Although it is for wharf developers to mitigate impacts<sup>211</sup>, in requiring this, policy recognises that there will be impacts.

- 6.49 The visual and physical impact of the proposal, and its impact on heritage assets, should be considered against the safeguarded status of the site. Of course, generic policies dealing with design and sense of place should not be overridden, but they must have been borne in mind when the site was allocated, and were taken into account when the Council's officers found the scheme acceptable.
- 6.50 Objections to the scheme seemed to be based on a misapprehension that the site is within an emerging residential mixed use location<sup>212</sup>. It is not. It is within part of Leemouth identified as for employment-led mixed use and it is right that the proposal should reflect that. Further guidance on the employment character, including that it must give consideration to enhancing the historic environment, is provided by the OAPF<sup>213</sup>. The fact that OW is safeguarded means that the use is acceptable and appropriate. It would be perverse to argue that the proposals should fail because it would look like a wharf.

### *Design*

- 6.51 Following early engagement with the relevant authorities, the design's aim was not only to reflect its use but also its place both now and in the future. The SoCG confirms that the character assessment supporting the application was acceptable and appropriate<sup>214</sup>. Council officers would have been aware of the proper planning future of the site and on three occasions they formally indicated their acceptance, as did the GLA. The height and scale of the scheme results from the functional requirements of its use and there are limited opportunities to manipulate these parameters<sup>215</sup>. The proposals would have to deal with bulk aggregates and so would be appropriately utilitarian and functional in appearance. It would be for a high volume, low profit use which would not produce the profits necessary to fund a high cost building.
- 6.52 The elevational treatment seeks to reflect and respect the historic and industrial character of the wharf and its position in historic south Leemouth. It mediates in terms of scale between the large development to the west of Virginia Quays and the residential and commercial units to the east adjacent to the listed Trinity Chain House Locker and Lighthouse block at TBW. There is support for jetties through Policy 7.27 as they enhance the use of the BRN.
- 6.53 In evidence<sup>216</sup>, the scheme was described as functional but adapted to its context, and it was argued that the aggregate conveyors would bring vitality to the Thames Path, and that working buildings would enhance the settings of the listed buildings<sup>217</sup>. It was also argued that the Objectors<sup>218</sup> were setting the

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<sup>211</sup> Ibid paragraph 7.79

<sup>212</sup> Ritchie paragraphs 6.27, 6.29-6.30; Miele 4.59

<sup>213</sup> CDB19 p79

<sup>214</sup> SoCG para 2.1 and section 2

<sup>215</sup> Tavernor: a development of this nature is *unlikely to be larger or smaller than technical considerations demand*

<sup>216</sup> Tavernor para 1.12, engaged in 21 September 2012

<sup>217</sup> Tavernor in examination in chief (IC)



design bar too high for a working cargo handling plant on this particular safeguarded wharf, and that it would be unreasonable to consider high architecture (attracting national or even international reputations) appropriate to a working building of this type in this particular urban context.

#### *Impact on views*

- 6.54 The site is currently derelict and unkempt with vacant buildings and a bleak outlook which detracts from the setting of the listed structures. The proposals would be well designed and improve these views. It would cause no harm at all to the view from the O2 as reflected in the absence of objection from Greenwich or the GLA. The new river walk would significantly enhance views of the riverside and the O2 compared with the Objectors' contention that it is their right to do nothing with the site.
- 6.55 The significance of the listed pier and lock gates lies in their scale and the skill of the engineering works involved; their settings would not be harmed. Views of them would be enhanced by the River path and by seeing them in conjunction with a river cargo use. Given the separating distances involved, the TBW complex would be unaffected. The impact on the Fatwalk, which currently has a largely industrial and commercial character<sup>219</sup>, would be positive. Rather than terminate at a non-descript and vacant site, it would have the benefit of the EIDB and the new river walk. There is no reason for the SoS to take a different view on these matters to that of the LTGDC, the GLA or the officers of the LBTH.

#### *Other matters*

- 6.56 Impact by way of noise and disturbance has been agreed to be acceptable by the main parties and a planning permission has already been granted. The Inspector should take considerable comfort from this absence of complaint as well as from the LBTH environmental team, which asked for further noise evidence, and the responses<sup>220</sup>.
- 6.57 With regard to HGV noise on the highway adjacent to 42-44 Orchard Wharf, the daytime internal levels without special glazing would meet the reasonable design parameters of BS8233. This is agreed to be an acceptable level of impact when one takes account the proximity to the flight path to London City airport and a busy flyover to the A1020. There would be some 8 vehicles leaving the site before 07.00 which would have been loaded the afternoon before. Although 48.3dB is above the WHO guideline value of 45dB, this is based on movements of between 10 and 15 per hour, rather than the 8 proposed here.
- 6.58 Finally, the s106 offers acoustic glazing in perpetuity but, if necessary, a limiting condition would meet the tests in the conditions Circular. At other times, the noise and disturbance from lorries would not be significant for the period of operation.

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<sup>218</sup> Miele paras 8.37-8.38

<sup>219</sup> Woolner s7

<sup>220</sup> INQ26, Sharps acoustic note to the Inspector, dated 13 June 2013

6.59 Contrary to suggestions, there is space (6.1m) within the carriageway for two HGVs to pass as has been demonstrated to the satisfaction of the Council's highway officers<sup>221</sup>. In any event, the whole area is identified for employment led redevelopment.

*Effect of noise on Teal*

6.60 Although expert evidence from objectors was promised none was forthcoming. The evidence<sup>222</sup> that there would be no significant harm was therefore largely unchallenged.

*Conclusions on planning appeal*

6.61 The use would accord with the development plan which provides especial support for the wharf use. The design would cause no harm to any interest of acknowledged importance and so planning permission should be granted.

*Conclusions on CPO*

6.62 This should be confirmed if there is a compelling case (not need) in the public interest. Despite the Objectors' mischaracterisation of the case as relying on the forecast gap analysis, the case for reactivation is wide ranging and holistic. The evidence shows that the public interest significantly outweighs the private consequences. The PLA has the power to maintain and improve port and harbour facilities, including wharves, and can compulsorily purchase land if it can show a compelling case in the public interest.

6.63 In this case, the proposal will help to maximise the use of the BRN and so minimise road movements of aggregates. It will reactivate a viable and well located inner urban wharf rather than leave it to lie vacant. It would meet an immediate and real world market need and an identified shortfall<sup>223</sup>. Individually, these points justify the CPO. Taken together, the case is even more compelling.

6.64 Planning permission should be granted and the CPO confirmed.

## **7. The Case for the London Borough of Tower Hamlets**

The case addresses the appeal against refusal of planning permission only. The main points are:

7.1 The Council accepts that LP policy 7.26<sup>224</sup> applies to the appeal site, as a safeguarded wharf, and that this will bring redevelopment. However, this does not justify this particular development. The appellants' reliance on this policy is misplaced because it does not justify: a batching plant, the proposed scale and appearance, or the jetty. It does not override other policies.

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<sup>221</sup> SoCG para 8.52

<sup>222</sup> Hill

<sup>223</sup> In the final review of safeguarded wharves before the SoS

<sup>224</sup> CDB41 p243

- 7.2 LP policy 7.26 only applies to the handling of water-borne freight not its processing. Concrete batching is a process<sup>225</sup>. Using other materials to make concrete produces a different material to that which is being transported. The *Framework* differentiates<sup>226</sup> between processes and handling which are quite different things. To view this otherwise would mean that any industrial process involving water borne material would fall under LP policy 7.26. That would be absurd. The Use Classes Order 1987 distinguishes between processes and aggregates. There is no policy support for an industrial use on a wharf.
- 7.3 The SWR identifies the site for aggregates and the OAPF<sup>227</sup> refers to *cargo handling uses* including aggregates. It provides no basis for a batching plant. The Appellants have argued that it is unlikely that any aggregates handling business on the wharf would then transport the materials to a different site for processing and so batching must be within the policy. However, that's not what it says, and it could have made specific reference. There is no evidence that it is not possible to have a batching plant elsewhere. Many, such as Ferme Park, are not by the river. There is no reason for the policy to protect such uses<sup>228</sup>.
- 7.4 This is important as the site coverage and scale of the proposals, including that for the tallest building on the site, would be as a result of the proposals for concrete batching. The proposed extent of the plant would constrain the site for aggregate storage and so increase the overall scale of development.

#### *Safeguarding*

- 7.5 The purpose of safeguarding is to prevent non-water-borne freight handling uses coming forward. This does not justify the scale of the proposals unless these would be inevitable. This has not been established<sup>229</sup>. Rather, it was assumed<sup>230</sup> that a designer would not produce a scheme that was bigger than necessary. It was put in defence of this<sup>231</sup> that LP policy 7.26 seeks to maximise water borne freight. However, that cannot be a justification for any level of development. Rather, the safeguarding seeks to ensure the continuation of the use for handling water borne freight the scale of which can, and should, be curtailed by reference to the environmental policies which apply. Policy which seeks to maximise the use of the BRN is also subject to these policies<sup>232</sup>.

#### *The jetty*

- 7.6 Similarly, the safeguarding does not support the creation of a jetty. This is not within the safeguarded element of the policy<sup>233</sup> and is not inevitable. Even in

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<sup>225</sup> Accepted by Woolner in XX by PV, as it was by Trimmer in RX

<sup>226</sup> Para 143

<sup>227</sup> CDB19 p79, para 4.234

<sup>228</sup> See Humphreys paras 6.67 and 6.96

<sup>229</sup> Casey accepted that he had no evidence to that effect

<sup>230</sup> Tavernor acknowledged that he had not checked with the designer – INQ38 para 7

<sup>231</sup> Humphreys in XX

<sup>232</sup> Accepted by Woolner in XX by MR

<sup>233</sup> Ibid

the current proposal, the jetty is only required to increase the extent of docking. Historically, the wharf was used without a jetty<sup>234</sup>.

#### *Safeguarding with regard to other policies*

- 7.7 The appellants are wrong to say that development in the area must give way to safeguarding. LP paragraph 7.79 highlights the need for mitigation. This includes, in part, appearance<sup>235</sup> and the safeguarded use must pay proper regard to its surroundings. The OAPF requires<sup>236</sup> that imaginative design solutions are required to assimilate the wharf and mixed use proposals. While CS policy LAP7&8 aims to protect the operation of the wharf, they do not discount or override the need for proper design<sup>237</sup>. The safeguarding policies do not override the gamut of policies, which require high quality design and protection of the surrounding area, and these must be read as a whole. In particular, LP policies 7.1, 7.4, 7.5 and 7.6 are relevant as are CS policies SP10, SO20 and SO23, and DPD policies DM10 and DM24.
- 7.8 The *Framework* takes a similar approach. The scheme also assumes that safeguarding will continue. If it does not, in the light of the Objectors' evidence or otherwise, then the weight to policy 7.26 would not apply.

#### *Design*

- 7.9 It is notable that evidence on the genesis of the design<sup>238</sup> made no reference to the protective policies. This discloses a failure to take account of and assess the environmental consequences of the development. While the protective policies were included in evidence for the appeal<sup>239</sup>, it is not apparent that they were considered at an early stage. In short, the design was developed solely on the basis that the wharf was safeguarded. This failure has led to a scheme which does not consider the sensitivities of the area or the harm that it would cause.
- 7.10 Other than references to cumulative effects<sup>240</sup> it was acknowledged that the analysis and subsequent approach only deals with the present and not the future<sup>241</sup>. The appellants' design witness<sup>242</sup> did not know whether it was possible to achieve a working wharf with less development.

#### *Harm to townscape*

- 7.11 There has also been little regard to the future of the area<sup>243</sup>. This is not vague or uncertain. For the Leemouth peninsular, the CS clearly envisages replacing the old heavy industry of the past with high quality residential development<sup>244</sup>.

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<sup>234</sup> As confirmed by Trimmer

<sup>235</sup> As accepted by Trimmer and Tavernor

<sup>236</sup> CDB19 para 4.236

<sup>237</sup> CDB37 p120 Principle 2

<sup>238</sup> Trimmer

<sup>239</sup> Woolner

<sup>240</sup> Tavernor appendix RT1

<sup>241</sup> Tavernor in XX by Reed

<sup>242</sup> Ibid

<sup>243</sup> Accepted that it should by Woolner and Tavernor

<sup>244</sup> CDB37 p.120

The Ballymore representations also indicate this. The immediately adjacent sites – Union and Hercules wharves – have a similar future. The area is scheduled for mixed use development and the OAPF<sup>245</sup> states that a number of waterside frontages are suitable for other uses.

- 7.12 Priority 1 of LAP7&8 refer to Orchard Place south. Whether this includes both sides of the road or not<sup>246</sup> is almost irrelevant as OW and TBW would be sufficient for the employment led element, freeing up the remainder for residential use.
- 7.13 The entrance to the proposed batching plant would be at a particularly sensitive location immediately opposite the landing point of the proposed Lower Lee Bridge. This will span the River Lee from Orchard Place and in due course to be the main route for pedestrians along the strategic long distance Thames Path. There will be a dramatic change in this area and the proposals would not stand comfortably in this context. There is no indication that the design has taken this into account and the appellants' design witness<sup>247</sup> was not engaged in the initial process, and so did not analyse in any detail the character of the area prior to the fundamental decisions on layout and design, and nor did the DAS.

#### *Effect of development*

- 7.14 The scale of the proposals cannot be underestimated. From many views, the development would be the largest building in sight<sup>248</sup>. The wide angled views diminish the impact of the proposals<sup>249</sup>. Larger buildings planned for the future would be of a much finer grain and much more articulated. From across the Thames<sup>250</sup>, the scheme would be largely unrelieved with a significant jetty in front and so greater in scale than any of the surrounding buildings.
- 7.15 The massing would be much more substantial than anything at TBW with little of visual interest in the scheme. In landscape character terms, it would be: bulky and obtrusive, of greater mass than its neighbours at TBW, lacking in detail, inappropriate next to the EIDB, incompatible with other jetty structures (with its ship-to-shore conveyor), and dominating from the north west entrance to the EIDB.

#### *Alternatives*

- 7.16 There is no evidence that other wharf uses would have this effect. Nor is there evidence that an alternative design could not be achieved for the proposed use<sup>251</sup>. The appellants cannot suggest that any alternative would cause the same level of harm.

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<sup>245</sup> CDB19 para 4.234

<sup>246</sup> Woolner described this as unclear

<sup>247</sup> Tavernor

<sup>248</sup> e.g. Tavernor appendix RT1, View 4

<sup>249</sup> Ritchie IC

<sup>250</sup> Ibid View 7

<sup>251</sup> Humphreys IC

### *Heritage issues*

- 7.17 These are closely bound up with the townscape issues. The evidence<sup>252</sup> is clear that the dominance of the scheme would have a detrimental effect on the significance of the Blackwall Pier and conflict with DPD Policy DM27. While a working wharf would accord with the historic nature of the pier structure, so would a smaller scheme than that proposed<sup>253</sup>. It would be the over-dominance of the development which would cause the harm not the use itself. None of the historical information, which was not used<sup>254</sup> in the assessment of the final design, supports a case for the scale proposed. There is no historical basis for the jetty. The effect on the lock gate would be a view that would be prolonged and dominant on account of the bulk of the jetty when the lock gate is a structure which needs to be seen with space around it. It would be wrong to conclude that EH supported the scheme when it only commented with regard to archaeology.
- 7.18 The EIDB is highly sensitive due to: its accessibility by the public, the deficiency of open space in the area, the attractiveness of the Basin, and the Thames Path and Fatwalk. This sensitivity is enhanced by the listed lock gates and the proximity to the Thames. This is the context. The EIDB is protected as MOL, Publicly Accessible Open Space, part of the Green Grid and the LVRP, and by LP Policy 2.18 and CS Policy SP04. The combination of the EIDB and the river will be huge attractions<sup>255</sup>.
- 7.19 The historical photograph in the Lee River Park Design Framework 2008<sup>256</sup> may show structures or buildings on the appeal site and the EIDB but this was looking at options for the park rather than being a framework for development. In any event, the Council is not opposed to development on the appeal site. Rather, it is concerned with the form and scale which are not justified by this study. The EIDB has a surprisingly tranquil character<sup>257</sup>. The bulk of the proposals would harm this character contrary to the policy matrix.

### *Fatwalk*

- 7.20 Again, the appellants have underestimated the quality of the Fatwalk. This was described as a lot of mess<sup>258</sup> and by unflattering photographs<sup>259</sup>. It was not appreciated that the Fatwalk extends into the EIDB<sup>260</sup>, a fundamental error which has led to an under-estimation of its significance and quality. Critically, there was no recognition of the future appearance of the Fatwalk. This future is not vague or uncertain and the appellants' factual assessment should be tempered by the changing nature of the lands bordering the River Lee and the commercial pressures for more housing. The changes are palpable and

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<sup>252</sup> Ritchie paras 2.3, 6.49 and 6.51-6.52

<sup>253</sup> Accepted by Tavernor

<sup>254</sup> By Tavernor

<sup>255</sup> Humphreys IC

<sup>256</sup> CDB25, by 5<sup>th</sup> Studio, p105

<sup>257</sup> Accepted by Tavernor in XX

<sup>258</sup> By Tavernor

<sup>259</sup> Woolner's

<sup>260</sup> By Woolner

ongoing as can be seen at Three Mills. The scheme would undermine and harm the Fatwalk, especially where it ends within the EIDB.

#### *Other material considerations*

- 7.21 The scheme would be contrary to the development plan policies, identified in the reason for refusal, due to the harm it would cause. It is therefore necessary to look at any factors which might justify this.
- 7.22 There is no needs case. It is now clear from examining the evidence<sup>261</sup> that no more than 0.3mTpa capacity would be needed and this could reduce the scale of the development<sup>262</sup>. In any event, this evidence was based on GLA's analysis, without any assessment of the land use factors, and should be given no weight.
- 7.23 The wharf could be reactivated through other uses<sup>263</sup> and so the benefits from reactivation should be given limited weight. A lesser scale of development could also achieve economic benefits<sup>264</sup> and other advantages such as the Thames Path extension. Little weight should be given to the benefits purely accruing to LC. Benefits to wider regeneration are only valid if development would not occur otherwise. This is not the case. The needs of London would be met in other ways. Benefits from a more sustainable source of concrete can only be properly assessed if the total requirement is known, but there are no figures for this.

#### *Conclusion*

- 7.24 The very significant harm that would be caused by the scheme would not be outweighed by any of the matters relied on by the appellants and so the appeal should be dismissed.

### **8. The Case for the Grafton Group and British Dredging (Services) Limited (the Objectors)**

The gist of their case is:

#### *Compulsory acquisition*

- 8.1 The law sets a very high hurdle for acquiring authorities in compulsory purchase proceedings<sup>265</sup>. The PLA's evidence does not reach this. The Circular requires a *compelling case in the public interest*<sup>266</sup> and *clear evidence that the public benefit will outweigh the private loss*<sup>267</sup>.
- 8.2 Seven propositions underpin the Objectors' case:
- there must be a compelling case,

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<sup>261</sup> of Brooke

<sup>262</sup> Accepted by Casey

<sup>263</sup> Acknowledged by Trimmer

<sup>264</sup> Accepted by Woolner

<sup>265</sup> *Prest v. Secretary of State for Wales* (1983) and *Attorney-General v. De Keyser's Royal Hotel Ltd.* (1920) A.C. 508

<sup>266</sup> CDB11, para.16

<sup>267</sup> *Ibid*, para.19

- the case must lie within the four corners of the PLA's powers,
- their case must be set out in its Statement of Reasons (SoR)<sup>268</sup>,
- the SoR founds its case on four propositions, including unmet need for wharfage construction materials,
- there must be no planning, financial or other impediment,
- without a compelling case the CPO will not be confirmed,
- if planning permission is refused, the CPO cannot be confirmed<sup>269</sup>.

### *The promoter*

- 8.3 There is some confusion as to who is acting for whom. The advocate for the PLA<sup>270</sup> also represents AI/LC, as he did at Ferme Park, and their planning witness<sup>271</sup> was unable to say which he acted for. The CPO has never been promoted on the basis of a need for a batching plant<sup>272</sup> and there is confusion between need and demand<sup>273</sup>.
- 8.4 With regard to the 1968 Act, the enabling power<sup>274</sup> has never been used before on a safeguarded wharf<sup>275</sup>. The SoR<sup>276</sup> presents s11(2) of the 1968 Act, the authority to make a CPO, in the context of s5(1A), the power to improve facilities. Note that s11(2) does not give the PLA the power to acquire land simply because it would be lawful<sup>277</sup> or desirable to do so. Rather the land must be *required* for the PLA's undertaking.
- 8.5 It is common ground that: *required* is a matter of objective assessment<sup>278</sup>, and that the Circular applies, including Appendix A. Considerations should therefore include<sup>279</sup> *whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means ... the appropriateness of any alternative proposals ... [and] examining the suitability of any alternative locations for the purpose for which the land is being acquired*. The PLA has made no real attempt to explore alternative locations, consolidation, or land-swap.

### *Statement of Reasons*

- 8.6 The SoR advances four reasons<sup>280</sup> for the CPO: (a) policy support to bring inactive safeguarded sites back into use, (b) a need to provide further wharf

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<sup>268</sup> Ibid, para 35, and CDC49

<sup>269</sup> Accepted by the PLA

<sup>270</sup> RHQC

<sup>271</sup> Woolner in XX

<sup>272</sup> Notwithstanding Casey's evidence

<sup>273</sup> Casey's evidence

<sup>274</sup> CDA2, s.11(2) of the Port of London Act 1968, as amended (1968 Act)

<sup>275</sup> According to Trimmer

<sup>276</sup> CDC49 paras 3.1-3.7

<sup>277</sup> s.5(1A) 1968 Act

<sup>278</sup> Trimmer agreed that the PLA did not inhabit the world of Humpty-Dumpty. Lord Reed found in *Tesco Stores Limited v Dundee Council* [2012] UKSC 13, para 19: "... planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean." The same test should be applied to a CPO.

<sup>279</sup> Circular Appendix A para 16

<sup>280</sup> CDC49, summarised at para 3.7



capacity for aggregates, (c) the current owners have no wish to reactivate the wharf, and (d) there is a prospect of a genuine scheme.

- 8.7 In a subtle change, the Outline Statement of Case<sup>281</sup> introduced the concept of policy support to *facilitate modal shift from roads through use of the Thames for the carriage of freight* and a *forecast shortfall in wharf capacity ... in ... the NE sub-region for importation of aggregates*.
- 8.8 Of the SoR reasons, (a), (c) and (d) are all prerequisites of a successful CPO, but would not by themselves justify its confirmation<sup>282</sup>. Policy support does not prove that acquisition is necessary. That is not enough. The lack of (c) or (d) may be ways a CPO may be defended, but do not justify one. Hence *need* must be shown. In this case, both policy support and proof of a quantitative shortfall are necessary. For a compelling case, the PLA must show that: the Order land is required to meet a proven forecast shortfall, any shortfall cannot be met by other means including other locations, and the proposals would be consistent with policy support for modal shift<sup>283</sup>.
- 8.9 The AA/PLA relies on a concept of *real world need*. This is not found in the SoR, Outline Statement of Case (OSC) or Statement of Case (SC). The reference to Policy 5.20 is misleading. This divides into two sections: Strategic and LDF preparation. The Strategic section identifies a seven year land bank requirement. Only under LDF preparation<sup>284</sup> is advice given to maximise use of the BRN and to minimise road movement of aggregates. However, these desirables should not be equated to *need*. A policy aim within an LDF is not the same as a need justifying a CPO. Moreover, the policy aim can only apply to the need for additional wharfage if that need exists. If the need does not exist, the policy adds nothing.
- 8.10 The alleged *real world need* should be compared with the *forecast shortfall* within the NE sub region. There is no definition of *real world need* beyond the commercial purposes of AI/LC and this attempt at a further justification, not in the SoR, adds nothing. When seeking to demonstrate forecast need, the AA/PLA suggested<sup>285</sup> that the figures should not be relied upon. However, need is at the heart of the case put forward for the CPO.

#### *Alleged need*

- 8.11 The PLA contends that there is a forecast shortfall in wharfage for aggregates by 2021 (and continuing to 2031) of 0.8 mTpa. It is said to be based on an appropriately precautionary approach<sup>286</sup> and to err on the side of higher demand and lower capacity<sup>287</sup>. In fact, there is no deficit, nor will there be.

<sup>281</sup> CDC50, dated 23 January 2013, para 3.11(a) and (b), and paras 4 and 5

<sup>282</sup> Acknowledged by Trimmer in XX

<sup>283</sup> Away from roads through the use of the Thames for the carriage of freight

<sup>284</sup> LP Policy 5.20 para F(c)

<sup>285</sup> Brooke in XX by MR said that the SWR 2013 was *broad brush* and that *specific numbers should not be relied upon in such a categorical way*.

<sup>286</sup> SWR 2013, para 2.2.23

<sup>287</sup> Brooke in XX

- 8.12 To understand why this is, it is necessary to understand the context<sup>288</sup> and to look at the detailed work which underpinned the SWR 2013<sup>289</sup>.
- 8.13 All parties have accepted that the SWIR is flawed. It significantly over-stated the demand for wharfage. It was to decide which wharves (including OW) should continue to be safeguarded<sup>290</sup>. It was the evidence base for the PW Inquiry in 2006 when the shortfall was put at 2.1mTpa. It was endorsed by the LAWP whose views should consequently be given little weight now.

#### *URS Report*

- 8.14 The URS Scott Wilson Report August 2011 (URS Report) was commissioned to produce an evidence base<sup>291</sup> for a revised report, including a forecast of future freight demand. Scott Wilson was also involved in the Order land<sup>292</sup> and, despite suggestions to the contrary, was aware of the planning application. Recently disclosed emails<sup>293</sup> show that the relevant staff at URS<sup>294</sup> were aware of their involvement in both the ES and the URS Report. The lack of candour and reluctance to release information<sup>295</sup> leads to an issue of apparent bias<sup>296</sup> and conflict of interest exemplified by the PLA's obstructive behaviour<sup>297</sup>.
- 8.15 Moreover, conclusions in the URS Report, that there was a decline in construction material, together with amendments to the SWR, sought to play down similar conclusions in the earlier draft (SWR 2011)<sup>298</sup>. This had noted a *relatively significant decline* in trade on the River. During the consultation period, the PLA was involved with URS in the SWR process<sup>299</sup> and sought the GLA's help<sup>300</sup>.
- 8.16 Evidence of this flawed methodology is found in the exchange of emails<sup>301</sup> between the GLA and PLA seeking, and trying to provide, justification to include in the final report. These are significant as they acknowledge over-capacity, as OW was removed from the list before the so-called sequential or sieving test and some viable ones would be released<sup>302</sup>. The concern was not to safeguard too much over-supply.

#### *SWR 2013*

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<sup>288</sup> GG closing para 32 *et seq.*

<sup>289</sup> By Brooke and his colleagues at URS Scott Wilson (including Whalley).

<sup>290</sup> Brooke in XX

<sup>291</sup> CDB83, para 0.3

<sup>292</sup> Brooke was URS Report project director– see CDB63 p1 and Executive Summary para 1

<sup>293</sup> INQ36, sent to Lawrence Graham under cover of a letter dated 21 August 2013 from the GLA, produced under an Freedom of Information Act request

<sup>294</sup> Brooke and Whalley of URS

<sup>295</sup> GG closing paras 39-40

<sup>296</sup> Brooke XX by PV acknowledged that there could be such a perception but added that he was not a lawyer

<sup>297</sup> *Ibid* para 42

<sup>298</sup> CDB62, October 2011

<sup>299</sup> Contact between Trimmer and Whalley in June 2011 – INQ36 last page

<sup>300</sup> INQ8, p144 – Trimmer email 30 May 2012

<sup>301</sup> *Ibid* p84-85

<sup>302</sup> GG closing paras 49-50

- 8.17 This contains the evidence base for the PLA's need case. It was only put into the public domain two days before the exchange of evidence for this Inquiry. While the PLA/AI/LC witnesses<sup>303</sup> had time to use it in preparation of their evidence, the Objectors did not. It is infected with bias, the appearance of bias and/or conflict of interest<sup>304</sup>. It has not been tested as part of any development plan process or subject to SEA<sup>305</sup>.
- 8.18 The GLA considers that it would be outside the Inspector's remit to comment on the SWR as it is outside his jurisdiction. However, that affects the weight that should be given to the SWR. Without any assessment of how robust, sound or accurate the SWR or its methodology are, it should be given little weight. Indeed, it is only through this Inquiry that the reality of the lack of need for wharfage has come to light.
- 8.19 The SWR relies heavily on 'top-down' forecasting<sup>306</sup> with its optimism from 'bottom-up' discussions with operators<sup>307</sup>. However, none of these discussions has been disclosed<sup>308</sup>, even with redacted names. The only 'bottom-up' information disclosed<sup>309</sup> was wrongly used to support a need in the NE sub-region. This casts doubt on any other 'bottom-up' information and is precisely the error that caused the SWR to be so inaccurate. Moreover, estimates are still optimistic<sup>310</sup>.
- 8.20 It was said that the 'top-down' analysis was the most significant, and that the policies have not sufficiently taken effect<sup>311</sup>, but in reality they have been in existence since 1997 through RPG3B<sup>312</sup>. Consequently, these figures already take account of the development plan<sup>313</sup>. Looking at the detailed text from the SWR 2013 provides the clearest indication that this was prepared as an exercise in advocacy for this Inquiry. Note how the language has been changed from the URS Report<sup>314</sup> to the SWR<sup>315</sup>.
- 8.21 Turning to the alleged capacity gap in the NE sub-region, the figures which show capacity exclude non-safeguarded wharves while, in terms of throughput, the figures include the construction materials which go through

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<sup>303</sup> It was available for use and reference by Brooke when preparing his evidence

<sup>304</sup> As aired in the letter from LG to the SoSCLG 29 May 2013. The case for this is set out in Annex A.

<sup>305</sup> See response to GLA letter of 3 July 2013 in INQ38 Annex B

<sup>306</sup> URS Report para 4.3.3

<sup>307</sup> Ibid para 4.3.4

<sup>308</sup> The PLA refused to disclose them and they cannot be interrogated

<sup>309</sup> From Crossrail and the TTT - GG closing para 58

<sup>310</sup> See URS Report Table 4.23 p 77 and Brooke Table 2.1: estimate for 2012 was 5.8mTpa; actual was 4.6mTpa

<sup>311</sup> Brooke rebuttal 2.4.1 and 2.3.7

<sup>312</sup> CDB04, para 3.53

<sup>313</sup> Confirmed by Brooke in XX

<sup>314</sup> CDB63 p7

<sup>315</sup> Tracked changes version at CDB49, such as: *a considerable decline in construction material becomes a limited decline in construction material; is likely to be due to structural reasons was reversed to it is debatable whether this is entirely due to structural reasons; and, necessary for a structural change to occur became necessary for a degree of structural change to occur.*

non-safeguarded wharves. It was acknowledged<sup>316</sup> that it would be fairer if the capacity of non-safeguarded wharves was taken into account.

- 8.22 The artificial division into sub-regions is a self-serving construct without which there would be no capacity gap at all<sup>317</sup>. The lines are theoretical and the market will not respect them. They bear no relationship with the working market for wharfage, which AI/LC would like to include both the SE and West sub-regions<sup>318</sup>. Moreover, it was revealed<sup>319</sup> that 0.4mTpa of the demand for the NE sub-region had been reallocated from the SE sub-region without being referred to in the SWR 2011, the SWR 2013, the URS Report or in evidence<sup>320</sup>. By contrast, none of Objectors' evidence on need<sup>321</sup> was challenged.
- 8.23 The assertion that there is significantly more demand than capacity may or may not be right, but it cannot explain this arbitrary re-allocation. Moreover, the SWR thereby acknowledges that wharves in the SE serve the NE<sup>322</sup>. There is no basis for intervening in the market or seeking some optimised position<sup>323</sup>. The inference should be that this secret manipulation of the figures was simply to bolster the PLA's case that there is a capacity deficit. The justification<sup>324</sup> for the 0.4mTpa transfer by reason of the limited crossing points of the Thames is neither here nor there as there was no hard evidence and Transport for London (TfL) say that unplanned disruption is limited to 5% of the time.

#### *Need*

- 8.24 It was on the basis of a deficit of 0.8mTpa<sup>325</sup> that the Mayor was told<sup>326</sup> that OW should be acquired by CPO. It is now agreed that this figure is wrong given that PW is being reactivated and the figure should take account of this. There is a dispute over the appropriate figure for PW; the owners<sup>327</sup> say 0.5mTpa is achievable once the economy recovers. However, this is the figure for demand<sup>328</sup>. Capacity remains as the planning permission<sup>329</sup> and as the GLA report<sup>330</sup>, which assumes 0.75mT, with the only constraint being market

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<sup>316</sup> Brooke in XX

<sup>317</sup> Brooke in XX and SWR Table 6.3

<sup>318</sup> Casey, paras 4.14 and 4.19, including Nine Elms and Vauxhall

<sup>319</sup> Brooke in XX

<sup>320</sup> Either in Brooke's proof or rebuttal. In answer to IQ, he was unable to say why it was 0.4mTpa rather than another figure

<sup>321</sup> Hunt

<sup>322</sup> SWR Para 1.3.6 notes that for the Lee Tunnel (part of the TTT) a condition requires concreting aggregates to be transported by water to safeguarded wharves and that this has already increased volumes at a number of wharves

<sup>323</sup> Hunt IC

<sup>324</sup> By Brooke

<sup>325</sup> SWR 2013, CDB83 p80 and para 6.2.4: North East sub-region

<sup>326</sup> Confirmed by Brooke

<sup>327</sup> INQ14, email from Peter Tallon at Brett

<sup>328</sup> Acknowledged by Trimmer in XX

<sup>329</sup> INQ9B, dated 3 December 2008. The only limiting factor is the number of daily lorry movements (150 in, 150 out) – condition 36. Based on a 5½ day week for 51 weeks, 150 movements of 20 tonne lorries assumes a throughput of 841,500 tonnes pa

<sup>330</sup> INQ9A

demand. Indeed, when AI bid for PW in 2004<sup>331</sup> it proposed to import 1.0mTpa. In fact, PW was not taken into account at all<sup>332</sup>.

- 8.25 Moreover, even the 0.8mTpa is misleading as it relates to Crossrail and the TTT<sup>333</sup>. These are said to be the two projects that have the greatest likelihood of creating additional demand<sup>334</sup>. However, neither should have been included<sup>335</sup> as Crossrail is using a wharf safeguarded for waste and the TTT is in the West sub-region. The attempt to introduce new evidence during cross-examination<sup>336</sup> was not followed up by a further statement of common ground, or explanation following a solicitors' letter, but only by a note<sup>337</sup>.
- 8.26 Overall, AI/LC/PLA used a different definition of transshipment in evidence to that in the SWR 2013, projected future demand for transshipment on past trends which were in fact an invention<sup>338</sup>, applied a 'trendline' which did not follow the data and probably suffers from the same errors as Crossrail and the TTT. By contrast, the Objectors did present reliable figures<sup>339</sup>.
- 8.27 In short, there is substantial surplus of wharfage and no capacity gap, the CPO case is based on a gap of 0.8mTpa in the NE sub-region, the sub-regions bear no relationship to the market itself, this calculation depends on 0.4mTpa being transferred from the SE sub-region, the calculation includes non-safeguarded wharves for demand but not capacity, PW was omitted, and the calculation should exclude Crossrail and the TTT. Overall, there will be over-capacity in the NE sub-region and so no compelling need for a CPO.

#### *Capacity and sites to be released*

- 8.28 The capacity analysis ignores the availability of additional wharfage while the assessment of need should consider the SWR 2013's conclusions on the availability and proposed release of unused wharves. There is currently a massive surplus and an over-capacity of around 5.9mTpa<sup>340</sup>. Even allowing for climate change and modal shift, this would still be 2.0mTpa<sup>341</sup>, advice that was excluded from the SWR 2013. Nevertheless, the latter demonstrates a massive over-capacity in vacant wharves<sup>342</sup> as well as in waste and 'other cargo' wharves. This is reflected in the recommendation to release no fewer than six safeguarded wharves in view of surplus capacity in NE London<sup>343</sup>.

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<sup>331</sup> INQ12(B)

<sup>332</sup> Brooke IC advised that this 0.75mTpa (or even 0.5mTpa) had not been taken into account in the assumed 0.8mTpa shortfall

<sup>333</sup> Acknowledged by Brooke in XX

<sup>334</sup> Brooke 3.2.18-3.2.21. assumed to be 0.2mT for Crossrail and 0.15mT for the TTT

<sup>335</sup> Acknowledged by Brooke in XX

<sup>336</sup> Of Brooke

<sup>337</sup> INQ20A and INQ20B

<sup>338</sup> Brooke in XX, Day 7. There are no reliable figures that predate 2004, as the SWR 2013 itself acknowledges CDB63, p.25, para.3.1.6

<sup>339</sup> Hunt, rebuttal proof, Table 1

<sup>340</sup> CDB63, URS Report, p112, para 7.4.1

<sup>341</sup> Ibid

<sup>342</sup> CDB83, SWR 2013, Table 6.3 p72, capacity within vacant wharves in 2031 at 3.6mT (0.5+2.4+0.7) with 2.4mT in the North East sub-region

<sup>343</sup> CDB83, SWR 2013, Table 7.1 p82 onwards – including DePass wharf

8.29 It is perverse to prosecute a CPO where there is a widespread acceptance<sup>344</sup> that there is an over-capacity of wharfage within the NE sub-region such that the recommendation is that many of them should be released. This is in the full knowledge that they would be viable<sup>345</sup>. No attempt has been made to purchase any of these wharves<sup>346</sup>. There is no capacity gap, and therefore no need, and the case for the CPO should fail.

*'Real world' need*

8.30 The PLA's concept of 'real world' or 'market need' appears to be little more than AI/LC's desire to acquire OW. This was not in the SoR and the PLA cannot alter its case in this way. In any event, what is in AI/LC's interests is not necessarily in the public interest. The claimed transportation benefits do not stack up either, as AI/LC already supply their aggregates by rail<sup>347</sup>, and cement comes via the high speed road network, or from others' cement by rail or water<sup>348</sup>. By contrast, use of OW would see cement transported to OW by water taken to AI/LC's other plants by cement-tanker driven through central London. Consequently, OW could well make things worse, not better, in terms of sustainability. As well as increased carbon emissions, there would be environmental harm to the Leemouth Peninsula. The threat of a purely hypothetical, non-rail fed concrete batching plant somewhere near OW instead<sup>349</sup> is not supported by any evidence.

8.31 In any event, the claimed 'real world' need for OW would be illusory as there are numerous alternative and potential wharves to the east of OW<sup>350</sup>. AI/LC already has a substantial facility at Bow which could cover the time-sensitive ready-mixed concrete market and has space for all the facility planned at OW.

8.32 The claimed target market has shifted. It was originally explained as deriving from increased demand in East London and the Thames Gateway, a market to the east of Canary Wharf and not including the City of London<sup>351</sup>. This remained the case in the OSC/SC<sup>352</sup> and in the Transport Statement<sup>353</sup> which states that the City of London market is to be served from Bow<sup>354</sup>. At the Inquiry<sup>355</sup>, AI/LC/PLA attempted to shift the target market to include other areas<sup>356</sup>. In fact, the so called 'real world' need is no more than the commercial interests of AI/LC. If it was otherwise, AI/LC would have tried to

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<sup>344</sup> See emails produced under FOIA

<sup>345</sup> Within the meaning of London Plan Policy 7.26 and para 7.77, as confirmed by the GLA - INQ8, p.84-85

<sup>346</sup> Casey

<sup>347</sup> Casey in XX and in answer to IQ

<sup>348</sup> Rail via King's Cross (Hanson), Willesden or West Thurrock (LaFarge) - see Vectos Transport Rebuttal, paras 1.29-1.31; water via Royal Victoria deep-water (Hanson) terminal

<sup>349</sup> Referred to as 'the Silvertown world' in the Vectos Rebuttal (para 1.12 and elsewhere).

<sup>350</sup> Whitfield appendix 1.1

<sup>351</sup> Within CDC5: December 2011 Planning Statement to AI/LC's application, p.14 para 2.45 and following.

<sup>352</sup> SC para 7.11

<sup>353</sup> By Bellamy Roberts, March 2013 Woolner's Appendix 7, para 3.1.1 p6

<sup>354</sup> Ibid p.6 para 3.1.1

<sup>355</sup> Trimmer and Casey in XX

<sup>356</sup> Listed in GG's closing paras 119-120

acquire another wharf. It has not. There is no compelling need in the public interest to acquire the Order Land.

*Non-compliance with Blue Ribbon Network policy*

- 8.33 The SoR<sup>357</sup> makes much of the policy support for the AI/LC Scheme. It claims to comply with the LP for wharves on the BRN in Policy 7.26. However, the SWIR 2005 (and in due course the SWR 2013) informs this policy. Without these, there is nothing for Policy 7.26 to apply to. It is wrong<sup>358</sup> to refer to the SWIR, and if approved the SWR 2013, as part of the development plan, when it is in fact SPG but it is right to say that safeguarding is 'part of' the LP.
- 8.34 Given this interdependence, and as the SWIR was agreed to be flawed, the weight to be given to Policy 7.26 should be diminished. If no material weight can be given to the SWR 2013 either, as Policy 7.26 depends on the SWR, then the policy should not be accorded any material weight either. For the above reasons, the SWR 2013 should be accorded no material weight as it is procedurally flawed, both on account of its lack of independent scrutiny and a clear conflict of interest leading to bias or the appearance of bias, and due to its assumptions which are either flawed or confected, i.e. made up.
- 8.35 Under LP paragraph 7.77, unless a safeguarded wharf is not 'viable' or capable of being made 'viable', Policy 7.26 only permits it to be used for waterborne freight handling. The evidence for AI/LC/PLA was that this applies to the entirety of the land<sup>359</sup>. However, the scheme is not just for waterborne freight handling but for a concrete batching plant, which is a manufacturing facility. The mixing would take place before discharging into truck mixers<sup>360</sup>.
- 8.36 In any case, determination of the planning appeal requires consideration of all relevant development plan policy and other material considerations. Compliance with Policy 7.26 does not mean that *any* safeguarded wharf use is acceptable, irrespective of its environmental effects.

*Viability*

- 8.37 The meaning of 'viable' in London Plan paragraph 7.77 depends on its context throughout that paragraph<sup>361</sup>. The land uses surrounding OW are different to many if not all of the other wharves to the east. Excess of capacity for wharfage, or alternative wharves, are relevant to 'viability'. The SWR 2013 found excess capacity for wharfage and earmarked some for release. There has been no suggestion that these are not viable<sup>362</sup>. Any number of alternative wharves could be utilised to release OW from safeguarding<sup>363</sup>.
- 8.38 LP Policy 7.26 is not a complete answer to why the CPO should be confirmed. For the above reasons, the industrial use would conflict with policy, which itself relies on the SWR 2013 which should not be given substantial weight. OW

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<sup>357</sup> Para 3.7(a)

<sup>358</sup> Woolner in XX

<sup>359</sup> Woolner para 6.14

<sup>360</sup> Planning statement para 5.18

<sup>361</sup> Trimmer IC and XX

<sup>362</sup> INQ8

<sup>363</sup> SWR 2013 para 8.2.3

could still be released from the provisions of Policy 7.26, having regard to paragraph 8.2.3 of the SWR 2013 which allows for changes to individual safeguardings, and in any event there still needs to be a compelling case to acquire the land when there is no deficit. With no deficit, and no need to retain the site as a safeguarded wharf, there is no reason that OW should be kept free of other development.

#### *Other means*

- 8.39 Given paragraph 16(iv) of Appendix A to the Circular, the PLA ought to have considered whether the AI/LC scheme could be delivered by other means. The Objectors have found that there are safeguarded and unsafeguarded wharves, and potential wharves, lining the north bank of the Thames to the east of OW, throughout the NE sub-region that sit in SIL, are surrounded by compatible industrial uses, and which would serve AI/LC's purpose equally well. There is also AI/LC's own rail-fed facility at Bow.
- 8.40 The only alternative wharf assessment has been carried out by the Objectors<sup>364</sup>. This identified site after site that outperformed OW across a range of relevant factors and that many of these are within SIL. Despite the efforts of AI/LC/PLA, there are many better sites than OW in the NE sub-region and better alternatives in the context of the CPO.
- 8.41 Alternative wharves include DePass Wharf<sup>365</sup>, being actively marketed and well placed to serve east of Canary Wharf out to Barking, and Manhattan/Mohawk/Sunshine, that are crying out for sensible rationalisation. OW is *not* the best placed of the alternatives from a navigational perspective either<sup>366</sup>. Any other wharf could equally receive recycled aggregates from Cornwall.
- 8.42 AI/LC's existing rail-served facility at Bow has considerable spare capacity<sup>367</sup> not just for additional concrete batching but for aggregates and even cement, and regarding the time-critical concrete market, OW and Bow cover essentially the same area. If there is a need for more concrete batching provision in the area, although the CPO has never been promoted on this basis, it can be provided on land already owned by AI/LC's. Indeed, Bow is better placed to serve the Lower Lee Valley<sup>368</sup>.
- 8.43 The Bow site plan and visit show that it is rail fed for aggregates<sup>369</sup>. It previously received cement by rail and could do again<sup>370</sup>. It has ample spare capacity for additional storage and concrete batching and other areas there are available. Moreover, there is no practical difference between the area served from Bow and the area that might be served from OW so far as time-critical concrete is concerned<sup>371</sup>.

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<sup>364</sup> Whitfield s10 and Edmonds paras 5.7-5.16

<sup>365</sup> Full arguments at GG's closing paragraph 143

<sup>366</sup> Denton's unchallenged evidence, contrary to the PLA's SC para 5.8 and Trimmer 6.22

<sup>367</sup> Site plan at INQ32, disclosed on Inquiry Day 16

<sup>368</sup> Referred to in evidence but not in the SoR or SC

<sup>369</sup> Casey in XX asserted that "I'm not rail linked" because "the site that supplies me, it's 50 metres away".

<sup>370</sup> Contrary to Casey's claim it would be uneconomic: it already uses double the quoted claim of 2,000T pcm

<sup>371</sup> the isochrones produced by Vectos



*Claimed public benefit through carbon savings*

- 8.44 The PLA claim carbon savings from a reduction in vehicle CO<sub>2</sub> emissions from in excess of 3.5m HGV miles per annum including 10 miles of each journey within Central London, with its endemic traffic congestion and adverse environmental impacts, and 100 HGV movements per day traffic using the key bottlenecks at the Blackwall Tunnel and Dartford Crossing. The claim<sup>372</sup> was not made as a justification for the CPO. There was no such claim in the SoR, which refers to lack of material impact on the local highway network, yet the SC states<sup>373</sup> that the reduction in HGV movements is one element of the justification for the confirmation of the Order in the public interest. The PLA cannot alter its reasons for the CPO in this way, but in any event the claimed benefit is vastly if not entirely overstated.
- 8.45 The claim assumes that aggregates and cement will now be brought into London by barge and that otherwise AI/LC would establish a new facility at Silvertown that would be entirely road-fed. There are many flaws in this analysis<sup>374</sup> including that: much of AI/LC aggregates are currently supplied by rail, and this is unlikely to change; only cement is currently not rail fed; cement would be transported by road to other works from OW<sup>375</sup>; competitors already bring cement to London by rail; the Silvertown assertion is an unsupported threat, contrary to its own philosophy, ignores the use of Bow, and no steps have been taken towards it. In fact, for cement, the use of OW could lead to more HGV journeys through London, and more CO<sub>2</sub> emissions, than at present.
- 8.46 No account has been taken of the carbon costs of additional use of the River, including those against the tide as a result of the dredge box<sup>376</sup>, or of the displacement of materials already brought in by River. Such carbon savings as might be derived from the AI/LC scheme at OW are no justification for the CPO, given that the same or better could be achieved at any number of alternative sites.

*Financial impediments*

- 8.47 The Circular requires a 'reasonable prospect' that the acquisition would proceed if the CPO is confirmed. It is not for the Inquiry to decide the quantum of any valuation, but it must decide whether or not there is a 'reasonable prospect' of acquisition. The statutory framework<sup>377</sup> for compensation requires that the value of the land shall be taken as that which a willing seller might be expected to realise if the land was sold on the open market with no depreciation attributable to the fact that an indication had been given that the relevant land is, or is likely, to be acquired by compulsory purchase powers. Valuation can take account of planning permission, of the

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<sup>372</sup> CDC51 para 7.12

<sup>373</sup> Para 10.9

<sup>374</sup> See Vectos Transport Rebuttal, INQ21

<sup>375</sup> Ibid p8 paras 2.44-2.45 – Ignored in the Bellamy Roberts analysis, Woolner appendix 7

<sup>376</sup> Denton's evidence summarised at GG closing para 238

<sup>377</sup> The Land Compensation Act 1961 (the LCA 1961) as amended by the Localism Act 2011, sections 5, 9, 14 and 17

prospect of such, and of any Certificate of Appropriate Alternative Development (CAAD).

- 8.48 The effect of this framework is that if the CPO is confirmed the PLA will have to pay compensation at a value that reflects the market value of the Order Land without the legislative and policy justification for the CPO. This principle was established by the House of Lords in *Grampian*<sup>378</sup>. There is no material distinction here as in both cases: the lands had been earmarked for a public purpose, any CAAD would have to ignore the lands' earmarking, the Localism Act 2011 doesn't alter anything and the underlying public purpose for which the land is being acquired must still be disregarded, as must any other purpose involving public acquisition.
- 8.49 The safeguarding designation and LP policy applicable to safeguarded wharves, which have depressed land values, must be disregarded for the purposes of a CAAD. By contrast, the PLA has valued OW as SIL, with no other prospect, an error which runs into many millions. If the Objectors' contention is correct, then the acquisition cannot viably proceed<sup>379</sup>. Furthermore, AI/LC has under-budgeted for dredging costs which will be contaminated and extend to the Blackwall Pier<sup>380</sup>.
- 8.50 Finally on this point, at the close of the Inquiry there was no development agreement between the PLA and AI/LC. Its absence is a clear indication that AI/LC has got cold feet, contrary to earlier assertions<sup>381</sup>.

#### *Missed opportunity*

- 8.51 Evidence from all sides<sup>382</sup> shows that OW is a placemaking opportunity that includes scope for a boatyard, water-fed energy from waste plant or something else. If the CPO is not confirmed then OW will be released for development that is not purely for freight-handling and allowing heavy industrial activities to take place where they ought, away from this area.
- 8.52 For a safeguarded wharf to be found 'unviable' it need fail only one of the criteria in paragraph 7.77, as shown at PW<sup>383</sup>, and 'viability' does not simply mean financial viability, but is more akin to appropriateness and suitability<sup>384</sup>. There was no suggestion that the other wharves recommended for release did not satisfy the viability criteria in paragraph 7.77 and OW should not be treated any differently. There is nothing to stop alternative schemes coming forward<sup>385</sup>, and being weighed in the balance with all the relevant development plan policies and other material considerations, and being considered with regard to whether there is a compelling case.

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<sup>378</sup> *Grampian Regional Council v Secretary of State for Scotland* [1983] 1 WLR 1340 pp1345-1346 and confirmed by the House of Lords in the English case of *Fletcher Estates (Harlescott) Ltd v Secretary of State for the Environment* [2000] 2 AC 307

<sup>379</sup> Trimmer and Casey in XX

<sup>380</sup> Denton's evidence summarised at GG closing para 241

<sup>381</sup> By Casey: in fact there are only Heads of Terms at INQ10A&B

<sup>382</sup> Tavernor in XX by Burton, evidence from Miele, West and Trinity Buoy Wharf

<sup>383</sup> CDC16: PW IR, pp156-165 esp. para 12.58

<sup>384</sup> Summarised by Edmonds IC, Day 13.

<sup>385</sup> West's evidence of alternative schemes

### *Impediments to the CPO*

8.53 For the following reasons, the planning appeal should be dismissed. Having regard to the Circular<sup>386</sup>, the CPO should fail unless there should be no obvious reason why planning permission might be withheld. Where permission is refused, and no other scheme has been put forward, then there is no basis to confirm the CPO. Furthermore, the recommendations of the SWR 2013 have yet to be accepted.

### *Planning appeal*

- 8.54 The AI/LC scheme would result in an ugly and incompatible intrusion into the Leemouth Peninsula. For the above reasons, it does not comply with LP Policy 7.26. However, even if the AI/LC scheme were compliant with BRN policy and Policy 7.26<sup>387</sup>, s38(6) of the T&CP Act requires consideration of all relevant development plan policies and other material considerations. When judged against environmental policies in the LP alone<sup>388</sup>, the harm caused by the scheme would more than offset any potential BRN gain.
- 8.55 These disbenefits<sup>389</sup> include negative impacts on regeneration objectives. OW is and will be surrounded not by SIL but by homes and non-industrial employment. The scheme would undermine the progress that has been made on the Peninsula.
- 8.56 Cross-examination of AI/LC's design witness confirmed that the appeal site is one of great significance and great opportunity, by reason of the many distinctive and positive features that surround it, and that there had been significant omissions in the design process, including any reference to s7 of the *Framework*<sup>390</sup>. With regard to the historic environment, it should positively enhance the significance of heritage assets, which requires a proper understanding of their settings which goes beyond the fabric or visual matters to historical and intangible associations as well as experience of the asset.
- 8.57 The omissions in the design process explain why the scheme would fail to take the opportunities available at this site. These include: the EIDB immediately adjacent to the west; the MOL, the TBW complex to the east, a large heritage asset and cultural resource; the shared setting of the EIDB and TBW<sup>391</sup>; the LVRP as a whole, with its start/end point by the appeal site; the Fatwalk, not mentioned in the DAS or ES; the Thames and the Thames Path; the meeting of the River Thames with the River Lee and their growth corridors; and the view from the O2 over the Thames.
- 8.58 Many of these features are highly sensitive<sup>392</sup>. The design process had entirely missed the fact that the Fatwalk would terminate/start at the EIDB<sup>393</sup>. Of the overlooked shared setting, it should be noted that: they are both industrial

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<sup>386</sup> Para 23

<sup>387</sup> As Edmonds explained

<sup>388</sup> 7.4: local character, 7.5: public realm 7.8: heritage assets and so on

<sup>389</sup> Summarised by Edmonds IC

<sup>390</sup> Tavernor in XX by Burton, Day 4. See also GG closing para 204

<sup>391</sup> Acknowledged for the first time by Tavernor in XX

<sup>392</sup> Tavernor in XX

<sup>393</sup> A misunderstanding set out in the Planning Statement paras 12.34-12.35, CDC5 p95

heritage assets; they are both associated with engineering innovation; they are proximate; they are both on the Leemouth Peninsula and front the Thames; they are visually linked; they are joined by shared historical associations; and they create an historical townscape<sup>394</sup>.

- 8.59 Turning to the drawings, the articulations in the visualisations are not shown on the drawings, and would not alter the fact that appellants consider: *that a cargo handling plant inevitably needs to be a functional and utilitarian building and to be assimilated well into its specific context. To expect more than this from this building type would be unwarranted*<sup>395</sup>. This is not consistent with national and local design and heritage policy which requires that design take opportunities to accentuate positives and does not set the bar high enough. The cladding would be a superficial application. For example, the projecting features, which are nowhere on the application drawings, or the gable in Views 02 and 03 with nothing behind it<sup>396</sup>.
- 8.60 No other safeguarded wharf is in such a visually sensitive location or subject to comparable heritage constraints. An industrial use should not prevent good design<sup>397</sup> and there could be a great variety of schemes on this site consistent with a safeguarded use. Here, the scheme would be a bulky overdevelopment, with poor proportions which would harm the significance of the heritage assets and enclose the Thames Path which any other development would bring forward.
- 8.61 Orchard Place leads past OW to TBW, in a quiet, pedestrian-friendly environment. While physically possible, the HGV movements would have a substantial harmful effect on the pedestrian environment<sup>398</sup>. This would become more acute when the bridges to the Peninsular are in place. While birdwatchers might tolerate disturbance, the plant would not enhance their experience. The proposed mitigation would be a one-off benefit with no continued mitigation. Noise is dealt with by others, but the frequency with which background noise levels would be exceeded would dramatically increase while the prospect of early morning cement tankers is unattractive.

#### *Environmental Impact Assessment (EIA)*

- 8.62 An ES is required where there would be significant environmental effects<sup>399</sup>. In this case, there is more than a functional link between the jetty and the rest. Nor is the jetty in any way *inchoate* for the purposes of an EIA; its essential characteristics are known and so must be fully assessed. Yet AI/LC has not done so. This is impermissible 'salami-slicing' of the project, a practice the Courts have consistently condemned. In practice, the scheme would

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<sup>394</sup> Miele in evidence

<sup>395</sup> Tavernor rebuttal para 1.7

<sup>396</sup> Miele IC

<sup>397</sup> Miele's evidence

<sup>398</sup> Guidelines for the Environmental Assessment of Road Traffic (Institute of Environmental Assessment) (GEART), p.24 and Edmonds IC

<sup>399</sup> See *R v. Rochdale MBC Exp. Tew (and ors)* [2000] Env, L.R. 1 or *R v. Bromley LBC Ex p. Barker* [2006] UKHL 52; [2007] 1 AC 470, along with *R (Brown) v Carlisle City Council* [2011] EWCA Civ 523; [2011] Env. L.R. 55. *Milne, Barker and Brown* are also relevant, see GG closing paras 229-233

involve a significant dredge up to the listed walls of Blackwall Pier and involve contaminated material<sup>400</sup>.

### *Conclusions*

- 8.63 The CPO was ill-considered because it relies on the SWR 2013<sup>401</sup> which has not been confirmed, should not be confirmed and, for the reasons set out, can be given no material weight. The SWR 2013 is self-serving, produced as it was in the shadow of this public inquiry. The basis for the need case – a forecast shortfall of 0.8mTpa for construction materials' wharfage – simply does not exist. The attempt to substitute *real world need* for *demand* rather than forecast need was misplaced and based on inconsistencies. A CPO can only be prosecuted *in the public interest*, not for a private business.
- 8.64 The alleged compliance with BRN policy was not a free-standing basis for a compelling need, as agreed. The alleged savings in CO<sub>2</sub> emissions were based on flawed or unproven assumptions.
- 8.65 In any event, the scheme would not comply with LP Policy 7.26, and the environmental harm it would cause, to townscape, heritage assets, community assets, residential amenity and the unique neighbourhood would far outweigh any benefit. Planning permission should be refused and the CPO should not be confirmed.

## **9. The Cases for Interested Parties**

### *Trinity Buoy Wharf (TBW)*

- 9.1 In addition to its written submissions<sup>402</sup>, John Burton for TBW made the following points<sup>403</sup>. TBW has been run by Urban Space Holdings since April 1998 following its successful competition entry to run the site as a centre for arts, creative and cultural activity. So far it has regenerated a completely vacant site and created a unique part of London. It has introduced a wide range of activity and architecture on site, including the Container City developments, and is a major centre for employment and education involving roughly 800 people and around 35-40,000 visitors every year<sup>404</sup>. The extent of uses on the site is illustrated in photographs in its submissions. It is a sustainable development on account of its balance of employment, leisure, education and creative uses. It operates on a long lease with over 8,360m<sup>2</sup> of buildings and is open to the general public every day of the year to satisfy the covenants in its lease.

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<sup>400</sup> Denton's unchallenged evidence including 2<sup>nd</sup> Rebuttal para 4.4: it is highly probable (but not proven) that contamination exists within the dredge area at elevations that will be excavated.

<sup>401</sup> It is common ground that no one relies on the SWIR 2005 as the basis for the retention of OW as a safeguarded wharf because the SWIR was based on a flawed methodology and understanding of forecast need.

<sup>402</sup> CDC34 and CDC38

<sup>403</sup> John Burton, senior manager of the team that developed and runs TBW

<sup>404</sup> CDC38 p5. Tenants include the dance department of the University of East London, the Faraday School, the art school run by The Princes Drawing School, the Thames Clippers head office, the Thames Clippers head office, and the English National Opera props and costumes.

- 9.2 The nature of the proposed use at OW will take this part of the Orchard Place peninsular back to the industrial feel of over 20 years ago. The batching plant would have a very negative impact on the very positive regeneration so far. It would put off potential tenants and many existing ones and so reduce employment. To maintain the balanced sustainable community that is developing on the peninsular the site should be put to a genuine employment use rather than the claimed 33 new jobs at the plant.
- 9.3 All land access to TBW has to pass OW. The impact would be largely as a result of the numbers of truck movements that will be generated onto what is a very narrow local road and the only means of accessing TBW. The plant would be a difficult neighbour for any other mixed use regeneration in the area. Rather, the safeguarding should allow a wider range of maritime uses.
- 9.4 Noise from the plant, trucks and vessels on the Thames is likely to be sudden, concentrated and powerful and, while this can be averaged out across the day, this will not be how local people will experience it. This will also impact negatively on birds and wildlife as well as the residents of Nos.42-44 Orchard Place in particular.
- 9.5 The success at TBW is acknowledged in the CS, and by Ballymore's inclusion of the arts and cultural industries in their plans for the former Pura Foods site (Orchard Place North). These successful approaches could be seriously hampered by the plant. The potential for positive mixed use regeneration in the other Orchard Place development sites is strong but would be severely reduced if they neighboured a batching plant.

*Dr Hilton and Dr Moussaid-Hilton*

- 9.6 Written representations and an Outline Statement<sup>405</sup> were submitted by Dr Julian Hilton and Dr Malika Moussaid-Hilton. They were summarised at the Inquiry by Dr J Hilton who gave evidence on their behalf. Together they are the occupiers of Unit 16 at No.44 Orchard Place.
- 9.7 The imposition of a concrete facility on a vibrant, regenerating community would have serious economic, social and environmental consequences that would far outweigh the supposed gain. While some 30 jobs would be created, far more, probably around 100, would be put at risk from what would be at odds with the grass-roots regeneration already happening in Leemouth. Confirming the CPO would blight, and probably reverse, the innovative and diverse community emerging at TBW and result in a significant loss of social capital.
- 9.8 The closure of Pura Foods Ltd. in 2007 marked the end of heavy industrial activity on Leemouth. The context to OW is now residential (live-work units) education (the Montessori school) plastic and performing arts, small businesses and a new mixed use community at Leemouth North.
- 9.9 The objections lodged with LBTH on 24 February 2012 still stand. LBTH has ignored traffic noise which could, and should, avoid school hours. There would be 200 HGV per day in contrast with the current 17 movements per day, a 12

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<sup>405</sup> CDC25

fold increase. The scheme would be a messy business leading to noise, vibration and dust.

- 9.10 Counsel's opinion of 10 June 2011 is that the site could be put back to an industrial/wharfage use without further permission. The reality is that there has been no such use since the site became derelict 20 years ago. Rather, the opposite has happened with the closure of Pura Foods.
- 9.11 Use of the Thames is not necessarily inherently more sustainable than alternatives.

*Lee Valley Regional Park Authority*<sup>406</sup>

- 9.12 The LVRP Authority owns the EIDB which is a nature reserve, MOL and Site of Interest for Nature Conservation. Following statutory consultation<sup>407</sup> the Authority objected to the planning proposal<sup>408</sup> on the grounds that there would be an adverse impact on the biodiversity of the EIDB and the amenity it offers to visitors. It considers that the CPO should be resisted for the reasons set out in full in its objections<sup>409</sup>, including unacceptable noise, impact from HGV movements on the access to the EIDB, insufficient ecological mitigation measures, and a landscaping buffer which would not be wide enough.
- 9.13 Details of its objections to the adverse impact it would be likely to have on the EIDB include impact on its aspirations for a visitor centre, on the eastern side of the EIDB, and the end of the Fatwalk close to the vehicular entrance to OW. While acknowledging the improvements in the revised proposals, the LVRP Authority still considers that there would be insufficient space for boundary planting to include semi-mature trees. To soften the visual impact, and reduce excessive noise, this should be 10m wide. The LVRPA is also concerned about the effects on habitat for birds and the effect on Teal in particular.
- 9.14 If the scheme is allowed, conditions or obligations should be added to provide a 10m buffer strip, funding for enhancement works in the region of £250,000, mitigation in relation to air quality, noise and vibration, highway improvements including a new riverside park and 2m wide footway with see-through railings, and funding for a new pedestrian crossing on Orchard Place to provide a useable link to the Fatwalk and to the new Lower Lee Bridge crossing.

## **10. Written Representations**<sup>410</sup>

I summarise the written representations as follows.

- 10.1 The Mayor of London submitted two written representations<sup>411</sup> which updated his earlier reports partly in response to a letter on behalf of the Objectors<sup>412</sup> and to other objections made directly to the GLA and to CLG. It addresses all

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<sup>406</sup> Represented by Stephen Wilkinson

<sup>407</sup> Required by section 14 of the LVRP Act

<sup>408</sup> CDC32 - statement of case

<sup>409</sup> Appendix A to CDC32

<sup>410</sup> In red folder and at CDC28-31, 33 and 35-37

<sup>411</sup> Red folder of correspondence from interested parties

<sup>412</sup> Attached as Appendix 1 to its representations

the objections made. The representation continues to offer support to the appeal and CPO. It adds that OW is particularly well-located to serve areas of central and inner London identified in the LP including: the City Fringe, the Isle of Dogs, the Lower Lee, Holborn, Farringdon/Smithfield and strategic infrastructure projects such as the Silvertown Crossing and Crossrail 2.

- 10.2 The Ballymore Group is a major landowner and developer with substantial property interests in Tower Hamlets. In November 2011 it secured planning permission for 1,700 dwellings and 185,000m<sup>2</sup> of commercial floorspace on the former Pura Foods site to the north of OW. It owns land adjacent to the appeal site, at Hercules, Castle and Union wharves where it has aspirations<sup>413</sup> for a mixed use development with around 1,000-1,200 dwellings.
- 10.3 It objected to the proposed batching plant as this would be a considerable constraint on any development of these sites. Noise and disturbance from an industrial processing plant would discourage potential buyers. The proposals would have a detrimental impact on birds and invertebrates in the EIDB and on its amenity value for local people. The impact of vehicular movements on existing and future residents has not been properly considered. Despite controls, air quality would be a concern. The plant would mean that new development would require higher than normal building specifications with potential impact on viability. Although OW is a safeguarded wharf, the changing character is a strong material consideration which should be taken into account in the planning appeal.
- 10.4 Cliff Prior of Virginia Quays wrote to the PLA to object to a heavy industrial use close to 1,000 homes bordering the wharf. He submitted detailed objections to noise, dust, traffic and visual amenity and air quality, impact on the Council's aspirations for regenerating the area, on the wetland bird reserve and on the Thames Clipper fleet at TBW.
- 10.5 Sabine and Leonard Sebastian, local residents, objected to the CPO as the character of the area has changed significantly since the original safeguarding in 1997 and as they were concerned that the proposal would be detrimental to the community. Their reasons were impact on residential amenity, from noise, dust, traffic and visual amenity and air quality, and impact on the Council's aspirations for regenerating the area.
- 10.6 Kamlavatheer Iyer of Virginia Quays, a committee member of the local residents association and a member of the community board for the nature reserve, submitted objections on the grounds of impact on residential amenity, regeneration, the natural environment and on TBW as the home of the Thames Clipper fleet.
- 10.7 Dr Geeta Kasanga wrote as acting secretary of the Elektron Development and Switch House Resident and Tenants Association to object to the impact on residential amenity and regeneration, citing the great heritage and ecological value of the area, traffic and noise concerns, impact on wildlife, and views from the Fatwalk, the O2 and the new Thames Cable Car.

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<sup>413</sup> Shown in attached planning application dated July 2006



- 10.8 John Gordon of Virginia Quays has been protesting against the proposed plant since 2009 and spoke against the application at the LTGDC planning committee meeting. He highlighted that OW is a pivotal site and was impressed by a presentation by the GG. He objected to the very few jobs that would be created, the impact on the bird reserve, and the road safety implications.
- 10.9 Local residents Mr & Mrs Silas Thebith, and Delia Webb, separately objected to the Order on the grounds of impact on residential amenity and regeneration.
- 10.10 Theo Thomas objected on the grounds that the proposals would jeopardise the Fatwalk, conflict with many of the policies in the CS, and threaten the proposed riverside link. He was concerned about the effect on undetected species of bird, Pipistrelle bats, and a rare bee, and that it would be a waste of public money.
- 10.11 Ms Nina Pantzaris, Mr and Mrs Russell and Helen Wylie were concerned about the highway safety impact on children at the Faraday School. Jonathan Vyse questioned the CO<sub>2</sub> benefits compared with using a wharf a little further out of London. Mr Michael Chan objected on the grounds of environmental problems.
- 10.12 London Power Networks plc ("UK Power Networks") withdrew its letter of objection and outline statement by email dated 22 April 2013. Katarzyna Jaskowska-Usein withdrew her objection by email dated 25 March 2013.

## 11. Conditions and Obligations

- 11.1 Discussions were held as to the suitable wording of, and reasons for, any conditions, and the provisions and justification for the s106, on Wednesday 5 June and Wednesday 19 June 2013<sup>414</sup> with reference to Circular 11/95: *Use of Conditions in Planning Permission*. Following agreement during these discussions, with a few exceptions which I set out below, in the event that the appeal is allowed, the amended conditions in the attached Schedule should be imposed, for the reasons set out there, and I do not repeat them here. The reasons originally referred to specific policies in each case but it is not necessary to set these out in full and I have not done so. In some places I have corrected the word maintained to retained, where that is what was intended, and rephrased pre-conditions for consistency. The suggested conditions include consideration of comments by EH, the LVRPA and other interested parties.
- 11.2 The LTGDC permission allowed four years for reserved matters to be submitted. No sound reason for departing from the usual three years was given and this should be included. To ensure that the use does not commence until it is all completed, condition 2 should be amended to add this requirement. To ensure the south elevation is completed as the amended drawings, this drawing should be added to condition 3.
- 11.3 Noise should take account of the background levels including proximity to the A1020 flyover and the flight path from London City airport. The background

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<sup>414</sup> Initial discussions were based on the LTGDC permission and INQ7. These were typed up as INQ29 and formed the basis for the second session of discussions.

noise level starts to rise at 06.00. Subject to suggested conditions and the s106 provisions for most operational activity within the buildings on the site, the suggested starting time would be 07.00. Given the high background noise levels, on account of the flyover and London City Airport, this would not be unacceptable. However, the appellants have suggested a starting time of 06.00 for cement vehicles to get these to other sites. Not only is this particularly early, but I heard evidence<sup>415</sup> that they would probably aim to leave promptly at 06.00 whereas the noise evidence is based on an even distribution of 8 HGVs between 06.00 and 07.00. The WHO considers 06.00 hours as night time. Re-surfacing of Orchard Place, would certainly help reduce road noise, but would not deal with engine or gearbox noise from heavily loaded HGVs.

- 11.4 For some façades, the estimated noise level of 48.3dB is above the WHO guideline value of 45dB. As this is a logarithmic scale, this would be a significant margin. Although the WHO guideline is based on movements of between 10 and 15 per hour, rather than the 8 proposed here, as the cement lorries might well all leave promptly after 06.00 the combined effect could be substantial and should be allowed for. Common sense also suggests that 8 heavily laden HGVs accelerating uphill towards the A1020 on a narrow road between a tall building and a wall at soon after 06.00 are likely cause unacceptable disruption to residents of that building.
- 11.5 The appellants acknowledged that, if necessary, a time limiting condition on HGV traffic would satisfy the tests in the conditions circular. Condition 12 controlling the cement terminal should therefore be adjusted to 07.00 and a reference added to include all HGV traffic entering or leaving the site. The later start time for construction rather than operations, condition 29, was queried but this is reasonable as the operations would be after the buildings are complete, including required noise insulation, whereas the construction would not. Later unloading of barges would be reasonable given the separating distances involved and this has not been queried. While desirable, a condition to avoid school hours would be too restrictive and so unreasonable. I have no information on the likely permitted hours of use in the event that OW resumed its last use as an aggregates wharf. However, after lying vacant for several years, it is unlikely that its former use would be resumed, indeed the owners have stated otherwise.
- 11.6 It was suggested that The Causeway should be made a public right of way and retained as such. Pre-condition 4 would tie the owners of the land to the s106 as set out below. In the event that the CPO is confirmed, this requirement would fall away.
- 11.7 With regard to condition 6, the phrase in c) to detail: *a dense screen of native trees and shrubs sufficiently dense to act as a visual screen* would be unnecessary as all the details would need to be submitted and approved. Condition 18 has been clarified for precision. It was agreed that condition 20 should be prior to the submission of reserved matters. To prevent unnecessary disturbance to birds<sup>416</sup>, the Construction Environmental

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<sup>415</sup> Casey in answer to IQ

<sup>416</sup> As suggested by Hill

Management Plan (condition 29) should be amended to exclude piling between November and January.

- 11.8 Notwithstanding the suggestions for Travel Plans incorporated into the s106, the aims and objectives of which were agreed, there would be some difficulties with its implementation. In any event, where a choice arises, Circular 11/95 prefers the use of conditions. The parties agreed that securing the Travel Plan could be done achieved by an enforceable and proportionate condition<sup>417</sup> and, with minor agreed amendments, this has been added as condition 34.

### *S106 Agreement*

- 11.9 The documentation on the s106 Agreement<sup>418</sup> comes in three parts: (a) Briefing note, (b) Original Deed, and (c) Supplementary Deed. As part (a) explains, the Original Deed was made with the LTGDC and includes obligations on the developer to: augment the live/work units at 42-44 Orchard Place with acoustic secondary glazing to some of the windows and add sound attenuation vents, submit construction and occupier's travel plans, provide employment and training opportunities including a contribution towards these purposes, pay the Council a biodiversity contribution of £250,000 for off-site measures including the desilting of the EIDB, retain and maintain the new section of the Thames Path for pedestrian and bicycle access, resurface Orchard Place and widen part of its footway, and to keep Orchard Place clean and swept.
- 11.10 The Supplemental Deed enables the LBTH to inherit the terms of the LTGDC Agreement. As above, LBTH has provided a justification for the obligations and contributions<sup>419</sup>, which was discussed at the Inquiry including reference to the Tower Hamlets Planning Obligations SPD, adopted in January 2012 and the tests in paragraphs 203-206 of the *Framework*. The Supplemental Deed also requires compliance with the further occupier's travel plan attached to that Agreement but, as above, this has weaknesses and would be better controlled by condition 34.
- 11.11 The development would have a direct impact on noise levels within the units at 42-44 Orchard Place and this could be ameliorated by acoustic glazing and resurfacing works. Desilting would help to offset any likely harm from the potential noise and disturbance to birds. LBTH has above average unemployment, encourages modal shift away from the private car, and promotes use of the Thames Path. Accordingly, the provisions of the Agreements would accord with the tests in paragraph 204 of the *Framework*.
- 11.12 While the Objectors are right to point out that these provisions do no more than necessary to offset harm, and so should not be given significant weight as benefits. Indeed, to go beyond mitigation would be outside the tests for s106 undertakings in the *Framework*, nonetheless, they are acceptable ways of reducing these impacts.

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<sup>417</sup> INQ31

<sup>418</sup> INQ6

<sup>419</sup> INQ19 and Humphreys appendix 3

## 12. Inspector's Conclusions

I have reached the following conclusions based on all of the above considerations, the evidence given at the Inquiry, and my inspection of the Order Lands/appeal site, their surroundings and other sites. The references in square brackets [] are to earlier paragraphs in this report.

### Planning appeal

12.1 The single main consideration in the planning appeal is the effect of the proposals on the character and appearance of the area, including the townscape, the riverfront and the Fatwalk, with particular regard to design, bulk, elevational treatment and impact upon views, and whether there are sufficient benefits to outweigh any harm which might be caused. [1.6]

#### *Context*

12.2 The appeal site at OW is constrained both by policy and by a number of environmental factors. First and foremost, it is subject to a Direction requiring that any planning application for OW must be referred to the Mayor. Regardless of the ongoing review of the SWR, there is no hint that OW will be released from the Direction. As a safeguarded wharf, the presumption under LP Policy 7.26 is that redevelopment for land uses other than waterborne freight traffic should only be acceptable if the wharf is no longer viable or capable of being made viable. Using the tests in LP paragraph 7.77 as interpreted by the PW Decision (see below) OW is or could be viable. [5.5-5.6]

12.3 Second, it is flanked by the Thames, the natural and historic environment of the EIDB, its access along Orchard Place, and by Union Wharf. Further afield are residential areas, both existing and planned, while to the east there is mixed use around the historic structures at TBW. Both the Thames Path and the Fatwalk connect with the EIDB, and so with each other and the Lower Lee Bridge, and therefore make the existing public access even more significant. A raft of development plan policies, and advice in the *Framework*, underscore the importance of context. [2.4-2.15]

12.4 The Thames is already a busy and active thoroughfare; policy encourages even greater use for a range of commercial and leisure activities. The developing natural environment at the EIDB supports a range of wildlife, particularly Teal. The combination of elements that make up the historic environment render it very special but, given their construction and former use, much of this is also very robust. The dock structures have usually been surrounded by buildings and have seen many changes. The listed structures at the EIDB and at TBW can be seen together from some angles, so that their settings overlap, and are part of the wider industrial heritage along the Thames. [2.14-2.15][6.48-6.49][7.17][8.58]

12.5 High buildings are not unusual in the area. The live/work units at 42-44 Orchard Place are part 4 storey and part 5 storey, rising to around 11-13m, while the Union Wharf shed rises to some 10m. Virginia Quays includes flats of between 4 and 12 storeys in height but, significantly, the Thames and the EIDB in particular are fronted by the lower parts of the development which step up further away from the dock basin. [2.6][2.10]

- 12.6 TBW is a very special place. On the other hand, after 15 years of well-supported development its continuing success is probably not quite as fragile as is suggested by those who have been involved in its success. It is, in part at least, a noisy development and that is part of its vitality. It demonstrates how a hive of activity need not be at odds with conserving the historic environment. [2.16][9.1-9.5]
- 12.7 There was disagreement as to the final route of the Fatwalk as it approaches the Thames. The sensible interpretation is that, as the Fatwalk connects with the EIDB, whether to the east or the west or both, it continues through to the Thames. In any event, other than with regard to specific policy references, whether or not a route through the EIDB is defined as part of the Fatwalk, or the Thames Path, or otherwise, is largely academic as the EIDB, which has therefore been described as at a pivotal location, is publicly accessible and connects with both. The designation is of little consequence to its growing use and the importance of the public views of the site from the EIDB. [2.9][6.49][7.20][8.58][9.13]
- 12.8 The context is one of fairly rapid change and there are some clear indicators of its emerging character. The extent to which the Fatwalk has been completed is increasing all the time and, via the EIDB, this will link to the Thames Path. Completion of the Lower Lee Bridge would in turn connect these paths with the east of the River Lee and the Canning Town interchange. As the Bridge has an implemented permission, it is likely to be completed at some stage, and so should be regarded as part of the existing context for planning policy purposes. Ballymore's former Pura Foods site is likely to see work starting soon on its residential permission and its own connections. Less clear is the future of the 3 Ballymore-owned wharves, between OW and TBW, and so their aspirations should be given little weight. [2.9][2.13][2.20]
- 12.9 For all these reasons, OW is at a special location which, from what could be seen on the boat trip and site visits, is probably more sensitive to its context than most of the other wharves at the eastern end of the Thames. [2.17][2.20]

### *Proposals*

- 12.10 The main structures would be very large. The 17-18m high concrete batching plant, and the 14m high ridge to the aggregate storage bays, would stand close to the eastern boundary of the EIDB separated only by a 3m high fence and a landscape zone which would vary in width including some relatively narrow sections. The cement storage enclosure would rise to over 19m at the ridge but be set back by little more than 10m from Orchard Place close to the proposed start of the footbridge. Again there would be a 3m fence. The heights of the cement storage and batching plant buildings equate to around 7-8 storeys of residential development. Even the aggregates store would equate to 5½ storeys of flats and this building would be well over 100m long. Some matters, such as facing materials, could be controlled by conditions. [3.1][3.3]
- 12.11 While the application for the jetty and its conveyor are in outline form, with all matters reserved except for layout, the illustrative drawings for the jetty suggest that it would extend some 74m into the Thames, be capable of handling a 90m aggregates barge and have an overhead conveyor. The

- existing buildings on the appeal site, rising to a little under 12m in height, would be demolished. [3.9]
- 12.12 The early drawings by the appellants' consultant engineers in August 2010 illustrate the functional approach to the layout and design of the buildings, the jetty, and vehicle circulation. Subsequently, details have been worked up and some pains have been taken to articulate the elevations and illustrate a system of cladding. However, with the exception of the Thames path and ecological buffers, very little has changed to the layout from the early proposals. The analysis in the DAS, and the evidence to the Inquiry, all come after the initial layout which has remained largely unaltered. [3.16-3.17]
- 12.13 The application drawings, and their visualisations, depict the proposed buildings as timber-clad ecologically-sensitive structures drawing inspiration from Britain's industrial heritage. However, there is little evidence that the timber cladding would attract wildlife in significant numbers and few surviving historic industrial buildings are timber clad, especially not on this scale. The drawings imply a good deal of articulation and detail emerging from a screen of planting. On the other hand, the drawings are at a very small scale so that the articulation may appear rather less detailed in reality. The effectiveness of any planting will partly depend on the width of the buffer. [3.17]
- 12.14 Some of the visualisations are taken from a distance and/or use wide angled lenses which emphasise the foreground and increase the sense of distance between the viewpoint and the buildings. In particular, the views from the EIDB are either from near the Thames – Views 01-03, or from right across the basin – Views 04 and 05. The former show the end of the lower aggregates store, with its length considerably foreshortened, and a diminishing perspective view of the batching plant which could be misinterpreted as of a similar height as the aggregates store when in fact it would be around two domestic storeys higher. From across the basin, in Views 04 and 05, the combination of distance and focal length minimise its impact compared with the likely reality in a view from the east side of the EIDB. [3.8]
- 12.15 There are only two images taken from the north side, one from far away at Canning Town (View 06), and the second from under the flyover to the A1020 (View 10). Even the latter is from a point at some distance from the site and so fails to convey in full the likely impact from Orchard Place or from the foot of the proposed Lower Lee Bridge. Indeed, the perspective means that 42-44 Orchard Place appears more prominently in View 10 than the batching plant which would not be the case from the bottom of the Bridge. Nevertheless, even at this distance, something of the height and mass of the batching plant and the cement store can be appreciated in View 10 and its likely impact understood. There is no visualisation from the point at which the Lower Lee Bridge would emerge onto Orchard Place, close to the site entrance. [3.8][8.59]

*Effect*

- 12.16 For the above reasons, the enormity and extent of the proposed buildings would be evident in important public views. The structures would be much larger than their immediate neighbours and, despite the proposed degree of applied articulation, they would appear massive, prominent and overbearing,

particularly from the east side of the EIDB, higher up Orchard Place and at the foot of the proposed Lower Lee Bridge. Compared even with the desolate and vacant site, the proposals would have a significant and harmful impact on the appearance and setting of the EIDB. Taken with the growing importance of the EIDB as not only an open space but a link between the Thames Path, the Fatwalk and the Lower Lee Bridge, the proximity of such large, monolithic structures would cause a great deal of harm to views from the west of the appeal site. From Orchard Place and the foot of the proposed Bridge, the effect would be even more severe. [8.58][8.61]

- 12.17 Although the jetty would no doubt be unwelcome from some angles, subject to reserved matters, it would probably be a low rise structure similar to many others along the Thames. Its conveyor would be a slender piece of engineering and so neither would be particularly prominent or harmful in views of the area in the context of the built up river frontage and other jetties, including that at TBW. [3.9][7.6]
- 12.18 From across the Thames, and even from on board vessels on the River, the effect would be less problematic as the separating distance would generally be greater and as the riverfront enjoys a wide variety of buildings. Also, the combination of the jetty, which would not look out of place on the Thames, and the slightly lower aggregates store, would break down the heights of the more prominent batching plant and cement store behind them. On the other hand, the appellants have identified few surviving industrial buildings of any great size that are timber-clad and the proposed applied articulation would pay scant regard to the uses inside. The rather odd gable on the west elevation, with nothing behind it, would appear incongruous and add little to the quality of its appearance. [3.8][6.49][7.14]
- 12.19 The scheme would therefore harm the character and appearance of the area, including existing and proposed routes around the area of the site. The mass and bulk of the buildings, close to public views within the EIDB and around Orchard Place, would not relate well to their context. The elevational treatment would do little to mitigate the impact of these views.

#### *Historic environment*

- 12.20 Some evidence supports the argument that at least part of the EIDB was once surrounded by buildings. In principle, the introduction of new buildings into the setting of the listed structures would be consistent with this. There is little about the significance of the dock structures that demands a specific type of setting and there is no evidence that this has been harmed by the Virginia Quays development. On the other hand, some of its current and growing significance comes from the pleasant surroundings in which to enjoy the historic structures. To the extent that the proposals would harm the character of the EIDB, the settings of the listed structures would also be affected, albeit that any harm would be less than substantial as defined in the *Framework*. [2.14-2.15][6.49][7.17-7.19][8.58]
- 12.21 EH had no objection. Even if it mistakenly only commented on archaeology, it would have been justified in not objecting as any harm to the settings of the listed structures would be less than substantial and so, in principle, could be outweighed by the public benefits of reactivating the wharf, in accordance with paragraph 134 of the *Framework*. The listed structures at TBW are even

further away and the structures in their more immediate settings provide substantial separation. The significance of these listed buildings, or their settings, would not be significantly affected, just as the existing derelict buildings and vacant site have little affect on these either. While the settings of the listed structures overlap, and share their heritage with other parts of the Thames, there is little in the combined settings, or as a result of being able to see them in the same views, which alters their significance as listed buildings or that is relevant to the appeal proposals. [2.15][6.55][8.56]

### *Safeguarding*

- 12.22 As above, considerable weight should be given to the fact that the appeal site is a safeguarded wharf under LP policy 7.26 and that no other development should be permitted. It follows that it would be wrong to stifle proposals altogether simply because reactivating a safeguarded wharf would inevitably conflict with policies intended to protect the environment, including its natural and historic components. Future adjacent development should take into account the fact that the wharf is safeguarded and permission should not be granted for any proposals on nearby sites which would prejudice the re-use of OW as a wharf. In principle, therefore, the benefits of reactivating the wharf could outweigh the harm to the character and appearance of the area. [5.5][6.6-6.8]
- 12.23 The appellants have argued that there is a proven need for a new concrete batching plant, that its viability is not in doubt, and that the wharf should therefore be reactivated for this use. The Council pointed out that LP Policy 7.26 relates to water-borne freight not to subsequent industrial processes. It argued that this policy applies to handling, and not to processing, and that following the judgment in *Tesco v Dundee*, the meaning of the policy must be taken from its words and must not be construed to mean something different. The Council reasoned that to imply that the Policy necessarily includes the processing of the handled materials would open the way for almost any industrial process to be covered by this Policy. It therefore concluded that, while the site is safeguarded for wharf use, Policy 7.26 should exclude concrete batching as this is an industrial process. [7.1-7.2]
- 12.24 The Council's contention overlooks two important points. First, concrete batching is not a complicated industrial process. Apart from water, and relatively tiny quantities of additives, concrete is a combination of cement and aggregates both of which would be brought to OW as water-borne freight. Batching involves little more than the handling these very bulky, low-value materials, albeit rather precisely for some applications. Handling cement and aggregates is therefore tantamount to handling concrete, and mixing it is very often an integral part of its handling, hence there are concrete batching plants on existing wharves and one is proposed for PW. While it might be theoretically possible to have a batching plant elsewhere, to expect that these materials could be brought into London by river and then moved to a plant elsewhere would be uneconomic and wouldn't happen. Moreover, to require the batching plant to be away from the Thames would defeat the aim of the policy to shift transport onto the River. [5.2]
- 12.25 Second, there is policy support for concrete batching including a reference to it in the *Framework* (paragraph 143). This specifically supports the safeguarding of potential concrete batching sites, albeit not in same sub-sub-



heading as wharves. While it would be absurd to suggest that any industrial process involving any water-borne material would fall under Policy 7.26, this does support proposals for uses which would increase the use of safeguarded wharves for waterborne freight. Support has been strengthened by the REMA to the LP and its up-to-date references to the *Framework*. The scheme would do just that. If more of the aggregates and cement required to mix concrete are to be brought into London via the Thames, as the LP promotes, then there needs to be a further concrete batching plant on a wharf. Although it is true that the area of the Thames that would be occupied by the proposed jetty is not safeguarded, it does not need to be as other uses there are unlikely. The jetty proposal also benefits from policy promoting the use of the BRN. [5.2-5.4]

- 12.26 The conclusion should be drawn that the planning policy context does support the use of wharves for concrete batching. Reference to the Use Classes Order is of little relevance to the definition of water-borne freight. The proposals would be supported by Policy 7.26 and, in principle, this should be given considerable weight in the planning appeal. [5.5]
- 12.27 The Council argued that if safeguarding at OW is not continued when the SWR 2013 is published then the weight to Policy 7.26 would fall away. This would certainly be the case for OW, as is the converse that so long as the safeguarding Direction remains in place, the weight that should be given to LP Policy 7.26 in this Decision remains considerable. Subject to the criteria in LP paragraph 7.77, this applies regardless of disputes over the SWR 2013 (see below). [7.8]

#### *Surrounding allocations*

- 12.28 There was disagreement as to whether the distinction in LAP 7&8 of the CS between Orchard Place North and Orchard Place South refers to north and south of the A1020 or just to north and south of the road within the southern part of the peninsular leading past OW to TBW. From this comes uncertainty as to whether the allocations surrounding OW are for mixed use or for residential mixed use. Given that the road leading into the former Pura Foods site, to the north of the A1020 and for which Ballymore now has a residential permission, is also called Orchard Place, a common sense reading suggests the former interpretation. Moreover, the requirement for effective buffers, by Principle 3 to LAP 7&8, suggests that the neighbouring sites to OW should not be residential. [s2][5.14]
- 12.29 TBW claims, with some justification, to be a sustainable development on account of its wide range of activities. This balances the growing emphasis on residential uses to its north. If TBW were to become surrounded by mainly residential uses it might limit its ability to expand its influence on the peninsular and reduce the sustainability of the community as a whole. Consequently, in principle, reactivating the wharf should not cause any significant harm to TBW. Indeed, re-use as a wharf would probably help to maintain the mixed use feel of the peninsular as allocated in the development plan. By contrast, a greater danger could be that noise sensitive uses, such as residential development, too close to TBW might inhibit its range of uses. [9.1-9.2]

- 12.30 Even if some residential development is allowed at Union, Hercules or Castle Wharf, as characterised by the Council and promoted by their owner, LP policy constrains that this must be designed in a way that would not compromise the use of OW as a wharf and so the distinction is of limited relevance to this appeal. Either way, prior to any grant of planning permission for adjacent sites, which would need to take account of OW's safeguarding, the aspirations of adjacent land-owners for future residential development should be given limited weight in deciding this appeal. [5.5][6.50][10.2-10.3]

*The need for a balancing exercise*

- 12.31 As above, the scheme would harm the character and appearance of the area. It would therefore conflict with a raft of environmental policies. A balance therefore needs to be struck between the benefits of reactivation, and of modal shift to maximise the use of the BRN in accordance with the development plan, and the harm to environment as a result of the proposed development. While the Council is right that Policy 7.26 does not necessarily override all other policies, in practice the wording amounts to a presumption such that the balance should normally be struck in favour of reactivation. However, the matter is not quite as simple as that. A direct comparison would suppose that all the harm that would arise as a result of the proposals would be an inevitable consequence of reactivation. This is not necessarily the case and needs to be studied first. [5.10][6.49][7.7]

*Scale and appearance*

- 12.32 The Council argued that while LP Policy 7.26 may justify reactivation, it does not justify the proposed scale and appearance of the scheme or the jetty. The appellants gave evidence that the design of the plant is *unlikely to be larger or smaller than technical considerations demand*. However, the plants at Bow and Ferme Park, Angerstein/Murphy's Wharf and elsewhere demonstrate that concrete batching plants, and cement storage silos, can come in different shapes in sizes. Even accepting that use of the wharf, as sought by Policy 7.26, would involve aggregates and cement, and that this is tantamount to endorsing a batching plant, there is still a gulf between this conclusion and the need for the extent of the proposals as put forward. Unlike the safeguarding for reactivation, there is no presumption that maximising the use of the BRN should be paramount. [2.18,2.19][5.4,5.5][7.7]
- 12.33 There is no evidence that an analysis has been carried out to show that the projected throughput requires the size and disposition of structures or that the scheme would be uneconomic with a smaller throughput. Even if such an analysis had been carried out, the benefits of maximising the use of the wharf and the BRN, rather than just reactivating it, should be weighed in the balance with any harm that this would cause. [6.51][7.9][8.57]

*Design*

- 12.34 The appellants' argument that *there are limited opportunities when designing a water borne cargo facility such as this* is an assertion which is not supported by a great deal of evidence. Other than consideration of an asphalt plant, it appears that the lengthy consultations were all based on roughly the same layout and disposition of the same configuration and size of

buildings. Although it is just conceivable that the appellants' consultant engineers' solution is the only arrangement that would achieve a viable concrete batching plant on the site, there is scant analysis to support the contention that there is no other possible layout or building configuration that would satisfy these requirements. It is not quite accurate of the Council to say that the genesis of the design makes no reference to protective policies, as the DAS is clear on the importance of the EIDB. It is just that there is no evidence that it was taken into account before the scale and layout were finalised or that it went beyond the cosmetic application of facing materials and landscaping. [6.51][7.10][8.59]

- 12.35 Moreover, even if the scale of the plant was accepted as necessary, either for viability or to maximise the use of the wharf, the drawings refer to a specific proprietary unit and the cement silos would be purpose made. There is no evidence that an alternative design of batching plant or cement silo is not available or that these could not be custom-built to deal with the specific constraints, including views. Similarly, there is no evidence that cement silos must be of a specific height, stand entirely above the ground or be fully enclosed as one unit so preventing any views between them. [3.1]
- 12.36 There is little evidence that thought has gone into alternative layouts and arrangements of structures to take account of the site's environmental constraints or wider context. Indeed, there is little identification of these, or opportunities, unlike the analysis carried out for the Objectors. It may well be that it is unusual for a concrete batching plant to be proposed in such a sensitive location. However, Ferme Park is sensitive because of its residential neighbours, and shows how a plant can be adapted, and the representations following consultations for the scheme at OW highlighted the importance of its visual context. [3.7][8.52]
- 12.37 Other than landscaping buffers to the EIDB and the Thames, the layout appears very similar to the engineers' early proposals. It appears that one workable solution was found and that this was never seriously queried. While there is extensive evidence of design consideration and presentation after the layout and scale had been determined, there is limited evidence to suggest that the disposition of buildings and accesses on the proposed layout has been considered with regard to any factor other than the convenient and efficient running of the proposed plant. [3.4][3.7]
- 12.38 As set out above, future adjacent development should be designed to take account of the policy to reactivate OW as a safeguarded wharf. However, public access to the EIDB, the likely increase in activity with the growing use of the Fatwalk, the extension to the Thames Path and the Lower Lee Bridge, are not just for the future but are already established in both policy and fact. The detailed design and layout of the wharf should therefore take account of them rather than the other way around. [5.5]
- 12.39 For its part, the Objectors have analysed pedestrian connections, important views and the opportunity to improve visual settings. Interested parties have recognised the scope for connections as a result of the Lower Lee Bridge, a feature which is not assessed in the LTGDC report. They have looked at the potential for the EIDB, and its links with the Thames Path and the Fatwalk, rather than at the narrow mitigation for birds and visual screening. While the

Objectors have gone on to argue against a batching plant in principle, and introduced largely irrelevant residential-led schemes, they have successfully highlighted the single-solution flaw in the design approach to the batching plant scheme. [2.6][2.9][2.13][8.52][9.13]

- 12.40 The proposals would continue the Thames Path around to Orchard Place and so, via the proposed bridge, link it, the EIDB and the Fatwalk to the east side of the River Lee. However, it is not evident that the design has taken into account the consequences of this extension in terms of public use or paid any attention to views through the site, to or from the Thames path, or to where the proposed Lower Lee Bridge would terminate. The LVRP Authority and TBW have both emphasised the importance of the bridge but there is little assessment of it in the DAS. Rather than enjoying views down to the Thames, pedestrians leaving the bridge would be faced with two large, high buildings (the batching plant and the enclosure for the cement silos) flanking the elevation of the long aggregates storage building. There would be no views through the site to the Thames or any looking inland from the extended Thames Path. The bridge would also arrive directly opposite the vehicular entry and exit points to OW, making connections less appealing. Although it would be possible to use The Causeway and the front of the site to reach the EIDB, this would be a long detour, compared with crossing Orchard Place, but the latter would be in conflict with regular HGV traffic. These factors suggest either that, in arriving at the layout or design of the scheme's buildings, little if any consideration was given to these aspects of the wider context or that the likely impact was misunderstood or unreasonably discounted. [7.9][8.57]
- 12.41 Other than the conventional use of high level conveyors, above the Thames Path from the jetty to the shore and elsewhere, there has been little consideration of the potential to exploit the different levels around the site, including the greater height of the footpath immediately around the EIDB and on the proposed Lower Lee Bridge, or the gradient of Orchard Place. Apart from the concrete feed hoppers and wash pits, the buildings would all sit on the ground. The jetty would be separated from the land, but otherwise no evaluation has been undertaken of whether the individual buildings on the site could be better arranged to take account of views, as illustrated by the Objectors. No obvious attempt has been made to relate the building heights to their surroundings or to position the taller buildings where they might have less impact on the most sensitive aspects of their surroundings. [7.16][8.51-8.52]
- 12.42 By dressing the structures in timber cladding, and adding landscaping buffer strips, the appellants have acknowledged that there is an issue with the effect of the buildings on the appearance of the surrounding area. However, rather than address the issue by looking afresh at the early design stages they have tried, unsuccessfully, to screen the buildings with cladding and landscaping. What they have not done is carry out an analysis of the processes involved and consider whether there are other means, layouts or buildings designs which could reduce the impact. The objections to the design should not be that it would look like a wharf but that the structures necessary for it to perform as a concrete batching plant would pay scant regard to the existing and established future context which the appellants have basically treated as an industrial setting. This limited analysis prior to determining the scale and arrangements of elements within the scheme is a considerable flaw which has

resulted in proposals which pay scant regard to anything but accommodating a proprietary batching plant, storage and circulation. Indeed, for this reason the attempts to disguise the buildings under timber cladding may well have been misguided from the start. [3.4][7.9][7.16][8.59]

- 12.43 A functional approach to design is certainly not a fault in itself. It is almost inevitable that the structures necessary for the proposed plant would reflect their use despite the appellants' attempts to conceal them. However, given the complicated and, in part at least, sensitive surroundings, this context should have been part of the original parameters. Unlike a number of the Objectors' examples of recent architecture, there is nothing particularly interesting or innovative about the proposed plant. While certainly not the only precedent for the area, the contrast with some of the innovative developments at TBW is stark. Instead, the timber cladding would be a cosmetic rather than an holistic part of an overall design and layout. [6.53][7.10][8.58]
- 12.44 Consequently, it is not enough to say that the wharf is safeguarded, and so anything goes. All reasonable steps should be taken. Just as the plant at Ferme Park is notable for efforts to mitigate harm to the amenities of neighbouring residents, from noise and dust, there is no reason why the proposals for OW could not also reduce the harm to its visual context beyond mere camouflage.
- 12.45 The proposals would lead to a change to the current situation of a vacant and derelict site and of the likelihood that it will remain so if the planning appeal and CPO are rejected. However, the current wharf has limited impact beyond views through its gates whereas the proposed structures would be seen far and wide. The extension to the Thames Path would be a positive benefit but even this would be tempered by the impact of the scheme on the additional stretch of Path. There is no reason why a better scheme for reactivation could not bring greater benefits to the Thames Path and more attractive links to the east of the River Lee, and so reduce the overall harm. [6.55][7.16]
- 12.46 The appellants are entitled to have paid limited regard to some aspects of the future of the area, such as the residential aspirations of Ballymore for its adjacent sites and those of the LVRP Authority for a visitor centre, as the safeguarding requires other uses to take account of it, rather than the other way around. Nevertheless, some elements of the surroundings are not just for the future: the listed structures were there long before the safeguarding, the O2 has been standing since the turn of the millennium, the live/work units, public access to the EIDB and the uses at TBW are all well established, and the proposed Lower Lee Bridge has not only been permitted but has been implemented. All these matters should have been taken into account in the design. [2.13][8.51][9.5][9.14][10.2-10.3]
- 12.47 The matter is one of balance, but the balance to be struck is not between a very harmful wharf activity and no wharf at all, but between a very harmful or a less harmful one. On the latter comparison, while the weight to be given in principle to the benefits of reactivation should be considerable, the weight to be given to this particular scheme should be greatly reduced. In conclusion on this point, the evidence does not support the view that the proposals amount to good design which would accommodate both the parameters for the plant and the site's context.

*Other matters*

- 12.48 The EIDB is important for Teal. While the LVRP Authority, and others, expressed general concern, largely unchallenged evidence for the appellants was that any impact on these birds would be limited and would be generally mitigated by partially dredging the EIDB dock basin to encourage a wider variety of birds. [2.6]
- 12.49 The TA acknowledges that there would be major effects on pedestrian amenity in the short section of Orchard Place between the site and the A1020 Lower Lee Crossing. There would be some 200 HGVs per day in contrast with the small number of current movements. While these should theoretically be set against the likely number of movements if the site's established use was reactivated, given the history of the site and the stance of its current owners, this is highly unlikely. The link back along The Causeway to the Lower Lee Bridge and on to Canning Town would be lengthy, alongside an overbearing cement storage facility. It would not make an attractive alternative to walking more directly to TBW from the East India DLR station, and would probably not be much used, and so would not properly mitigate this aspect of the harm from HGV traffic along Orchard Place. [3.11-3.15][s9][s10]
- 12.50 The access road presents a number of problems. The limited width would discourage pedestrians even if it would not pose a significant risk to highway safety. The proximity of the road to the live/work units is a potential source of significant harm from road noise. On the other hand, conditions could better restrict the use by HGVs to daytime when there are higher background noise levels, on account of the flyover and London City Airport in particular, and so, together with the obligation to install acoustic glazing, mitigate against any excessive noise impacts. [3.12][3.18-3.19][11.3-11.5]
- 12.51 The effect on TBW would be largely on account of sharing its vehicular and pedestrian access with HGVs and the effect that this might have on existing and future tenants. However, even if there might be such a perception, there is no evidence that the HGVs would cause significant risk to highway safety for other vehicular users or pedestrians. Once the Lower Lee Bridge is built, pedestrians to the east of the River Lee would be able to walk across it to TBW, for education, employment or recreation, to a point beyond the entry to OW. On the other hand, as designed, the extension to the Thames Path would not be attractive and so would be unlikely to persuade more pedestrians away from Orchard Place, where they would be in conflict with the increased number of HGVs, and this weighs against the scheme. [3.12-3.15][9.3]
- 12.52 TBW is very well supported and, while an industrial process nearby might not be welcome, it seems unlikely that many users of such a vibrant facility would be so put off as to go elsewhere. Local residents are also concerned that the proposed use would cause unacceptable noise and dust, but some of their representations seem to refer to circumstances on older concrete batching plants. Ferme Park demonstrates that, subject to the suggested conditions, neighbouring residents could be shielded from unacceptable noise and dust. [9.2][9.7][11.5-11.6]

*Conclusions with regard to the development plan*

- 12.53 The legal test, where regard is to be had to the development plan, is that determination must be made in accordance with it unless material considerations indicate otherwise.
- 12.54 OW is safeguarded. This means that any proposals for non-wharf use must be referred to the Mayor. Any redevelopment other than for water-borne freight-handling would only be acceptable under the LP if the wharf is no longer viable, or capable of being made viable. Following the reasoning in the Decision at PW, OW is capable of being made viable for waterborne freight handling as defined in paragraph 7.77. The Mayor is therefore likely to direct refusal for any other purpose. The Objectors seek its release for residential development. It is therefore likely to lie empty unless it is reactivated through a CPO. [4.2][5.5]
- 12.55 The Council accepts the principle of wharf use on the site. Its proposition that the safeguarding is draft, because it is the subject of review, is not supported by the wording of any policy. OW remains safeguarded under the Direction unless and until this is superseded by the SWR and the Direction is lifted. Reactivation would therefore accord with the development plan. [5.10][7.1][7.7]
- 12.56 Conflict with environmental policies is therefore unlikely to outweigh need to reactivate OW in principle, and these include the harm that the proposed batching plant would cause to the character and appearance of the area, including public views from existing and proposed routes around the site. The Council's contention that Policy 7.26 does not automatically override other policies may be right, but the presumption in favour of water-borne freight-handling means that refusal could only really be justified because of the particulars of the proposals, not because it is for a wharf use. [6.7]
- 12.57 In principle, therefore, support from LP Policy 7.26, CS Policy SP08, and DPD Policy DM21 could outweigh conflict with environmental policies, including LP Policies 7.1, 7.4, 7.5 and 7.6, CS Policies SP04, SP10, SO20, SO21, SO22, SO23 and LAP7&8, DPD Policies DM10, DM24, DM27, and, to the extent that they should be accorded any weight as conforming with the *Framework*, OAPF paragraph 4.236 and Lee Valley Regional Park Plan Policy NC2.1. Advice in the *Framework* supports both reactivation and modal shift but conflict with environmental protection policies would go against the principles of sustainability. [5.5][5.7]
- 12.58 The strategic strand of LP Policy 7.26 seeks to increase the use of the BRN to transport freight while Policy 5.20 aims to maximise the use of the Thames. These are not dependent on the SWIR or the SWR 2013 and should be accorded full weight in this case regardless of any doubts the accuracy of these reviews. However, unlike the presumption in Policy 7.26 that safeguarded wharves should only be used for waterborne freight handling use, and contrary to the appellants' assumptions, the aim of modal shift to the BRN, in LP Policy 5.20 and in local policies (CS SP08 and LAP7&8, and DPD Policy DM10 and Site allocation 13), should not necessarily override other policies but should be balanced against them. Nevertheless, substantial weight should be given to the extent that the proposals would contribute to meeting the aim in Policy 5.20 to maximise the use of the Thames. [5.4-5.5]

- 12.59 Supporting paragraph 7.79 to Policy 7.26 expects wharf operators to mitigate the environmental impacts. It sees the challenge as to minimise conflict between uses through modifications and safeguards built into new and established developments. The appeal scheme has not done so or, at the very least, shown that it has taken all reasonable steps. The appellants' approach is therefore inconsistent with national and local design and heritage policy which requires that design take opportunities to improve the environment in general and the waterfront in particular. There is every reason to suppose that reactivation, including a batching plant, could be achieved with a better design and layout, ideally by including the same extent of plant and storage but, if not, through scaling it down slightly. A significant amount of the harm that the scheme would cause is likely to be unnecessary on account of the poor design and disposition of the buildings. [2.19][5.7]
- 12.60 While policies provide a presumption in favour of reactivating the wharf for water-borne freight, which is likely to outweigh most objections in principle, what they do not do is justify poor design in specific proposals which could and should be better. Therefore dismissing the appeal would not prevent reactivation, it would only prevent the harm arising from this particular scheme.

#### *Overall Conclusions on the Planning Appeal*

- 12.61 In principle, reactivating the wharf would conform to the development plan as a whole, despite some unavoidable harm to the environment. However, there is no reason to believe that it would not be possible to devise a viable scheme that would overcome much of the environmental harm but, due to the poor design and layout, the specific appeal proposals would not accord with the development plan. There are insufficient material considerations to outweigh this conflict. On balance, the proposals would be contrary to the development plan and the appeal should fail.

#### **Compulsory Purchase Order (CPO)**

- 12.62 The PLA seeks confirmation of the Order. The power to make the CPO is derived from the 1968 Act and allows the PLA to purchase compulsorily as if it were a local authority. [5.31]
- 12.63 The CPO Circular requires a compelling case in the public interest, that acquisition should be by negotiation wherever practicable, and that the purpose should sufficiently justify interfering with human rights. There is no particular degree of justification required and each case must be determined on its own merits. There are four factors to be considered, briefly these are: the adopted planning framework; the economic, social or environmental well-being of the area; viability and funding – is there a reasonable prospect the scheme will proceed; and whether the purpose could be achieved by other means. Like the main parties, I will largely structure my conclusions to follow these considerations. [5.30]

#### *Planning framework*

- 12.64 Conclusions on the planning framework are largely dealt with in reasoning for the planning appeal above. Safeguarding of OW should be given full force



unless and until it is released. The draft status of the SWR does not alter the fact that OW is safeguarded. The PLA suggested that the SWR is likely to have made a decision on safeguarding, based on the final report, before the Decision on the CPO is made. The Objectors have submitted their evidence to the SoSCLG for consideration as part of the SWR. So long as safeguarding is maintained, it will mean that the SoSCLG is satisfied that the need for this remains. It is not for this report to comment on whether or not the SWR 2013 should be adopted as SPG to the LP. If the relevant recommendations in the final draft are not accepted, and OW is released, then the recommendations in this report should be viewed in a very different light. [6.8][12.57-12.63]

- 12.65 The Objectors have also argued that if the SWR 2013 is found to be flawed then LP Policy 7.26 has nothing on which to bite. However, this Policy refers to safeguarded wharves. So long as OW is safeguarded, and there is no indication it will be released, then Policy 7.26 applies regardless of any flaws in the SWR 2013. [1.14]
- 12.66 The policy framework for safeguarded wharves provides strong support for reactivation of the wharf which, in principle, could outweigh even substantial harm to amenity and to environmental interests. However, the particular design put forward has not adequately taken into account what should be considered as the full site context and, as a result, the quality of design put forward is very likely to be significantly poorer than could reasonably be required. It follows that a better design ought to cause much less harm. Therefore, while the planning framework supports acquisition, and acknowledges that there is likely to be some harm, it does not support the unnecessary harm from the specific design put forward. [s5][12.32-12.50]
- 12.67 The Objectors have argued that policy support cannot be enough to prove that acquisition is necessary but each CPO must be considered on its own merits. In this case, the unusual safeguarding Direction is likely to mean a stark choice between reactivation and continued blight for OW. Objectors have confirmed that it intends to land bank the site until safeguarding is removed. While all relevant matters should be considered, these facts alone provide a strong case in favour of acquisition. Moreover, as the conclusions at PW found, if cargo handlers could be easily deflected from a safeguarded wharf it would render the safeguarding direction and the policy redundant. [4.2][6.1][8.8]
- 12.68 With regard to the PLA's reliance on LP policy 5.20, the Objectors have drawn a distinction between the strategic aims and those, including maximising use of the BRN, which come under LDF preparation. However, not only is this distinction of little consequence given the similar support from CS Policy SP08 and DPD Policy DM21, but increasing the use of the BRN is also a strategic aim under Policy 7.26. [5.4-5.5][6.10]
- 12.69 It is fair to argue that being consistent with policy would not be enough where a wharf is not needed. However, providing a wharf is viable by the definition in LP paragraph 7.77, as interpreted by the findings at PW, for the policy to work, it should be assumed that a safeguarded wharf is needed unless *the prospects of future trading are so poor that it could not possibly be needed for cargo handling, or that there is over provision in existing wharves such that its use for cargo handling would be redundant*. Policy does not

require that there is an urgent demand or a current capacity deficit. While policy support alone may not amount to a justification for a CPO, providing a wharf is needed by this definition, it does add considerable weight in its favour. [4.2][8.5]

*Economic, social or environmental well-being of the area*

ECONOMIC WELL-BEING

- 12.70 LP Policy 5.20, and supporting paragraph 5.90, explain that London needs a reliable supply of construction materials to support continued growth. OW is close to the LLV OA and other markets. Facilitating the growth of London is a significant economic benefit which should be given considerable weight. [5.40][6.10]
- 12.71 The Objectors have raised potential navigational issues that might make operation more difficult and less efficient than originally envisaged. Alternatively, as alluded to by the PLA, in due course technical and management solutions may overcome these concerns. Either way, the matters raised did not demonstrate that the jetty was unworkable and should not be a bar to granting planning permission or to confirming the CPO. [6.14][6.24-6.25]

SOCIAL WELL-BEING

- 12.72 The employment prospects for the site amount to some 33 jobs. This is a significant but not a substantial benefit. Nevertheless, it is rather better than the complete absence of jobs that would arise if the site remains vacant, as is likely if the CPO is not confirmed. Although preferring greater employment use at OW, TBW argued in favour of employment uses for the peninsular in general to create a balance with the extensive new housing proposals and to maintain it as a sustainable community. The small improvement in employment over a vacant site weighs in favour of the CPO. [3.10][9.2]

ENVIRONMENTAL WELL-BEING

*Character and appearance*

- 12.73 The effects of the proposals on the character and appearance of the area, and on the historic environment, are set out for the planning appeal above. The PLA is right to argue that harm to relevant views, which overlap with the settings of heritage assets, would need to be very substantial in order to outweigh the benefits of reactivating the wharf. The LTGDC and GLA were both persuaded to this effect. However, contrary to the evidence from some witnesses on both sides, refusal of planning permission on account of poor design should not necessarily lead to non-confirmation of the CPO. Rather, it would only acknowledge that the current design is flawed. The context should not be allowed to be used as an excuse to prevent the wharf being reactivated, but the design should show clearly how it has been taken into account. Providing that it would be possible to design a scheme that would cause significantly less harm, which it very probably is, any outstanding harm could therefore be outweighed by the benefits of reactivating the wharf. [12.16-12.19]
- 12.74 Moreover, there is no reason why a better layout and design, would necessarily involve significantly greater costs than the elaborate timber

treatment proposed. While dismissing the appeal would lead to some delay, if the SoSDfT was minded to confirm the CPO, and given that the jetty is in outline form only, a better design need not take much longer than approval of reserved matters.

- 12.75 The fact that many existing wharves are unattractive to look at may simply reflect their location and/or the length of time that they have been operating. Just as Bow should not be taken as the only way a batching plant can perform with regard to residential amenity when Ferme Park shows how designs have advanced – and would do further with the suggested conditions – so Angerstein/Murphy’s Wharf should not be taken as the only way that a batching plant on a wharf could look. [2.17-2.19]
- 12.76 The site is currently derelict and unkempt and its vacant buildings detract from views into and across it. On the other hand, apart from 3 brick buildings, it is mostly open and so has little impact on the settings of adjacent listed structures or existing or planned views across it. The scheme would include large structures of limited architectural merit which would obtrude into views and distract from these settings whereas the existing nature of the site does not detract to a significant degree from views out of the EIDB, from Orchard Place or across from the O2. Given the stance of the owners with regard to their aspirations for residential development and that of the GLA with regard to safeguarding, a CPO provides the only prospect of extending the Thames Path at this point. [2.4][2.14]
- 12.77 Harm to the natural environment, and to birds in particular, could be adequately mitigated through conditions and a s106 undertaking. [3.15][6.60][11.8]

*Modal shift*

- 12.78 The PLA has claimed that there would be significant savings in vehicle mileage and so in CO<sub>2</sub> emissions. Although presented by the Objectors as a change in the PLA’s statement of reasons, consideration of modal shift is no more than articulating policy for low carbon and increased use of the Thames. To argue that this is a new point is to ignore the substance of the support (in the LP, in paragraph 7 of the *Framework*, and elsewhere) for moving to a low carbon economy. [6.10][8.44]
- 12.79 The Objectors have argued that use of OW would result in cement transported to OW by water then being driven through central London by cement-tanker to AI/LC’s other plants, thereby making things worse, not better, in terms of sustainability. Furthermore, there is little analysis of longer trips along the Thames and against the tide, or comparison by either side as to whether overall carbon emissions would be greater as a result of an HGV journey from Bardon Hill Quarry or a ship voyage from Glensanda. [6.22][8.42][8.45]
- 12.80 It is hard to make long term predictions as to where cement or aggregates will come from over the life of a batching plant or precisely how they would be transported. Quantifying the carbon savings is therefore more complicated than just reducing HGV miles and use of the Thames is not automatically more sustainable if the scheme would lead to longer overall journeys. The calculations on the benefits of carbon reduction alone are

therefore too complicated and uncertain as to reach any definite conclusions and should be given limited weight. Nonetheless, the advantages of modal shift go beyond carbon reduction into reducing congestion within London and, by directing freight away from the roads and onto the Thames, promoting more sustainable forms of transport, at least within the capital. [6.23][8.46]

- 12.81 AI/LC suggested that, if the CPO is not successful, it may look to set up an inland plant in Silvertown. It was then pointed out that this would be contrary to its own philosophy and environmental credentials. However, it is not unusual for companies to make inflated or unsupported claims as to their environmental credentials. Indeed, AI has probably done so in its corporate statements simply by referring to concrete as a sustainable material, when in fact it has a very high embodied energy. Nevertheless, concrete is still very likely to continue to be used in London in vast quantities. Its use facilitates high density development which, through reduced transport needs and land take, is probably a more sustainable way of living. The arguments are therefore complicated. The likelihood of the AI/LC threat to set up a works at Silvertown is neither supported by evidence nor significantly undermined by its philosophy. [8.45]
- 12.82 What is clear is that the use of OW for concrete would bring a considerable volume of cement and aggregates close to the heart of London, using the BRN, in accordance with part A of LP Policy 7.26. Not to confirm the CPO on the grounds that to shift freight onto the BRN would not necessarily reduce carbon emissions, because of the uncertainty of future sources of supply and the complexity of calculations, would be to disregard policy in favour of modal shift. The benefits of modal shift warrant considerable weight in favour of confirming the CPO. [5.5][6.9-6.13][8.33-8.34][8.44-8.46]

#### CONCLUSIONS ON WELL-BEING

- 12.83 As the proposals stand, the balance of harm to the environment, taking into consideration views from the EIDB, Orchard Place, the proposed Lower Lee Bridge and other vantage points, taking the opportunity to look at changes in levels and the different disposition of buildings, weighs heavily against the scheme because of the unnecessary harm to the character and appearance of the area. However, while this harm counts against the planning appeal, it need not count heavily against the CPO. Rather, there would remain a reasonable prospect that an improved design and layout would be granted planning permission and could achieve the goal of reactivating the wharf without the harm identified. In this case, looked at in the round, the modal shift would mean that the environmental well-being would count in favour of acquisition. Taken with the considerable economic and significant social benefits, the effect of all three strands of the well-being test weigh in favour of confirming the CPO.

#### *Viability and funding*

- 12.84 If the Objectors' contention with regard to the value of the land is correct, then the acquisition cannot viably proceed. However, the question before the Inquiry is not to second-guess the value of the land that would be determined by the Upper Tribunal (Lands Chamber) [Lands Tribunal], but whether there is a reasonable prospect that the PLA would be able to proceed. The PLA has received an expert valuation which it could afford. The appellants have made

a considerable investment in the scheme and there is no evidence that it would not prove profitable. From a common sense reading of the statute, *Grampian* and s232 of the Localism Act, the balance of probability is that there is a reasonable prospect. The fact that the subsequent reality might be different does not mean that this judgement is wrong at this stage. The Lands Tribunal will be presented with evidence and will reach its own view on that. [8.37-8.38][8.45]

- 12.85 The Objectors have argued that excess capacity for wharfage, or alternative wharves, are relevant to 'viability', as are suitability and functionality. These could be reasons that would prevent a wharf operating profitably but, using the tests from PW, the evidence does not suggest that trading would be so poor that the wharf could not possibly be needed or that over-provision would make it redundant. While the dredging costs are still rough estimates, that part of the planning application is in outline and there is little evidence that these could not be absorbed. [3.9][6.25][8.49]
- 12.86 At the end of the Inquiry there was no finalised development agreement between the PLA and AI/LC. However, a completed document was later submitted and the Objectors have commented on this. Notwithstanding the Objectors concerns that, on account of the redactions, the lease does not demonstrate viability, the appellants' commitment to lease the site from the PLA improves the already good prospect that the scheme would proceed and adds weight in favour of confirming the Order. The lease is not tied to a specific planning permission and so does not depend on the current planning appeal being successful. [1.13]
- 12.87 The Objectors have also argued that viability includes whether or not the scheme would be appropriate in its context. There is little in the wording to LP paragraph 7.77 to support this interpretation which should be given little weight. The balance of the evidence firmly supports the argument that OW would be viable as defined in the LP. [8.37]

*Whether the purpose could be achieved by other means*

- 12.88 To establish whether other means are available to achieve the stated purpose of the CPO it is first necessary to consider whether or not there is a need for that purpose to be achieved. As above, from the PW Decision, in establishing whether or not OW is viable the onus is to show that it could not be 'needed'. No such evidence exists. [8.39]
- 12.89 The first reason for the CPO encapsulates the policy background. As well as reactivating a safeguarded wharf, the scheme would shift freight onto the River. Modal shift is at the heart of the relevant policies and the purpose of the CPO even if the figures for carbon reduction were uncertain. It is not enough for the Objectors to claim that the SWR 2013 is flawed to conclude that Policy 7.26 should be given no weight. As well as the Direction, modal shift remains a strong point in favour of justifying the CPO. [8.6][8.8]
- 12.90 The PLA's second reason for justifying the CPO is that there is a forecast shortfall in wharf capacity for importing aggregates within the Port of London. This is a statement of how the forecasts stand at the moment. This is despite the recommendation that six wharves should be released due to surplus capacity in NE London. The Objectors' representations and proofs of

evidence, which are now before the SoSCLG, together with the oral evidence show that there were flaws in the SWIR and argue that these continue into the SWR 2013. If the SoSCLG is persuaded by the Objectors, policy towards OW will be reflected in the published SWR. If not, OW will remain safeguarded and the policy basis for this CPO must reflect that in the SWR. [8.8-8.9]

- 12.91 If OW remains safeguarded there is a presumption that it could be used as a wharf. Given the owners' aspirations this is unlikely to happen without a CPO. This report proceeds on the basis that the SWR will not alter OW's safeguarded status.

*SWR*

DEMAND

- 12.92 Of particular relevance in the conclusions to the SWR 2013, the forecast is that there will be a capacity deficit for the NE sub-region by 2031 of some 0.8mTpa for construction materials, that PW and OW are best placed to satisfy this demand, but that some vacant capacity will remain. The SWR also aims not to safeguard too much over-supply. This acknowledges that the basis of policy is to reserve more wharfage than is required, particularly close to central London, as once lost, it is unlikely ever to be regained. [5.26]
- 12.93 The Objectors have analysed the SWR 2013 and argued that the forecast shortfall of 0.8mTpa is flawed for a number of reasons. First, that it should exclude Crossrail, as this is currently using a wharf safeguarded for waste, and the TTT, as this will be in the West region. The SWR 2013 acknowledges the latter but says that the TTT would still lead to a deficit of capacity if vacant wharves are not reactivated. [8.11-8.13]
- 12.94 Second, the Objectors refer to the division into sub-regions, which they describe as arbitrary and unjustified. The purpose of the sub-regional division is to safeguard the best-placed wharves. While this division is certainly artificial, the justification for sub-division, to avoid a locational mismatch between supply and demand, is clear and logical. This would be particularly important for concrete, which has a limited life once it has been poured into a lorry. Even if disruption is as low as 5% of the time, the cost of losing 5% is not just limited to the value of the concrete but any contractual obligations and the need to discharge concrete from a mixer truck before it sets on the vehicle. The concern about crossing points over, or under, the Thames is therefore legitimate. [6.36][8.22]
- 12.95 Third, concerning the subsequent transfer of 0.4mTpa of demand from the SE sub-region to the NE sub-region, the PLA described this as a planning judgement, not as a re-allocation, as future growth in the NE will be greater than if previous patterns had continued. While the quantum may be hard to reconcile, given concrete's limited life and the difficulties with the Thames crossings, some re-allocation is justified so that the plants are in the right place. [6.36][8.22]
- 12.96 The Objectors have also complained that the PLA refused to disclose any discussions with operators over likely future demand, even with redacted names, and so they cannot be interrogated. However, if these reports were in confidence, that cannot be held as a criticism. [6.32][8.19]

## CAPACITY

- 12.97 It is understandable that the Objectors have questioned why the forecast capacity in the NE sub-region excludes non-safeguarded wharves when the demand figures include construction materials which go through these. However, the explanation is clear in that there should be confidence that future capacity will exist and so this cannot apply to non-safeguarded wharves. [6.38][8.21-8.23]
- 12.98 The omission of the proposed wharfage, and concrete plant, at PW is harder to explain. Although the figure from the operators of 0.5mTpa may be more realistic than the permitted 0.75mTpa, and while the plant has yet to start operating, this would still cut away over half the forecast shortfall with no sound explanation. Given the location of PW, on the north bank only a short distance east of OW, it cannot be said to serve a different market. There is therefore little doubt that the forecast for capacity in the NE sub-region in the SWR 2013 is inaccurate. However, that is the nature of forecasts and is still consistent with safeguarding more wharves than are absolutely necessary. [8.24]

## ALLEGATIONS OF BIAS

- 12.99 The Objectors have claimed that there is a conflict of interest amongst some of those at URS advising the GLA. They cite: the involvement of the same individuals in both the SWR and this Inquiry, an awareness of this within URS, terminology which was altered between the URS report and the final draft of the SWR, the sub-regional division, re-allocating 0.4mTpa from one sub-region to another, tracked changes to strengthen the wording, the omission of figures for PW, misrepresentation of data for Crossrail and the TTT, a decision to retain OW before the other wharves were sieved, and that wharves recommended for release could be viable. The Objectors have painted these matters as evidence of bias, or the appearance of bias, and the entire SWR 2013 as a confection produced by URS, not in good faith by the GLA, purely for the purpose of supporting the CPO. These are serious allegations to which the GLA has responded. The PLA has done no more than adopt the GLA's responses and look at the evidence. [1.14][5.25][8.14,8.16]
- 12.100 These allegations of bias/appearance of bias have also been forwarded to the SoSCLG who will publish the final version of the SWR. No evidence heard at the Inquiry, but not in the representations and evidence considered by the GLA and forwarded to the SoSCLG, proved bias. If the SWR has been published before this report is considered, and it is published unaltered, the SoSCLG will have satisfied himself that the SWR 2013 and its methodology are sound and not infected by bias. The conclusions in this report assume that the SWR 2013 is accepted as to do otherwise would go beyond its remit. If the SWR is not published in its final form as it relates to OW then that could radically alter the interpretation of these conclusions. [1.14]
- 12.101 The involvement of URS in both the report to the GLA for the SWR and in this Inquiry certainly gives rise to suspicions of a conflict of interest and is

therefore unfortunate. The partially unexplained aspects to the SWR 2013, and the degree to which it depends on matters of planning judgement, makes this conflict doubly uncomfortable. However, while it would certainly have been wise for this conflict to have been avoided or, at the very least, for the individuals to have disclosed their dual involvement to all at an early stage, there is no evidence as to the motives for the inconsistencies, omissions or changes or that the report was not written in good faith. Although based on the URS findings, it is still more than likely that the GLA was able to reach its own judgements on the recommendations in the SWR 2013 as it has stated. Consequently, the allegations were not substantiated at the Inquiry and so should be given no weight in the decision on the CPO. This report therefore only deals with the likelihood that the SWR 2013's conclusions are sound and its effect on whether or not there is a compelling case. [5.25][8.14-8.16]

- 12.102 Finally on this point, by arguing that: *The planning judgement is unimpeachable and sensible rather than the disproportionately detailed approach of the Objectors*, the PLA essentially acknowledged many of the more detailed criticisms of the forecasts. Nevertheless, the GLA has robustly defended the SWR 2013 as being its own judgement and has contended that there should be a precautionary approach to forecasts or there would be no point in safeguarding. The SWR 2013 acknowledges that there will continue to be over-capacity. Given this, if there was any bias in the preparation of the report, doing so would have been a pretty pointless exercise as the extent to which there are any inconsistencies, omissions or changes has been exposed. [6.31]
- 12.103 Moreover, the definition of 'needed' from LP paragraph 7.77 and the PW Decision puts the onus the other way around. If the SWR 2013 were to be ignored completely, the situation would be that OW is a viable wharf and safeguarded wharf whose reactivation could make a substantial contribution to the LP aim of shifting freight onto the BRN. This of itself would provide a strong justification in favour of confirming the CPO. [4.2]

#### SUMMARY ON THE SWR

- 12.104 The Objectors argued that proof of a quantitative shortfall is necessary to justify the CPO. That is not the test. Two other important factors come into play in assessing whether or not there is a compelling case: first, that the CPO is supported by policy, which it is; second that it would achieve a considerable degree of modal shift within London, which it would. [8.8]
- 12.105 Safeguarding assumes that more wharves will be reserved than are needed at any one time in order for the policy to have any chance of working. The SWR 2013 acknowledges the limitations of forecasting, explains the need for a precautionary approach and notes that some vacant capacity will remain. However, while it is surely appropriate to release wharves from safeguarding if it is unlikely that they will ever be needed, that is not the same as saying that there is no case for a CPO to reactivate a wharf where there is a reasonable probability it would be required and a reasonable prospect that the scheme would proceed. [5.26]
- 12.106 Furthermore, on account of the generally much higher land value if wharves are released for housing, it is unlikely that those closer to the centre of



London, and therefore better located for wharf use, would otherwise ever be reactivated. If wharves are not coming forward for reactivation, which in general they are not, the fact that too many may have been safeguarded in the past does not mean there is no need to reactivate any of them in the future. [6.1][6.19]

12.107 The SWR is not policy neutral, that is to say it assumes that the LP policy to maximise water-borne freight is capable of working. Although the policy has essentially been in operation since 1997, only with the threat of a CPO at PW has it really started to take effect. It follows that the forecasts are entitled to assume that positive action, as shown at PW and by the current CPO, will be necessary in order that the policy can take effect. To take the opposite view would be to leave London heavily reliant on damaging road transport or even, given the 'shelf life' of concrete once it has been mixed, a shortage of a vital construction material. [4.3]

#### ALTERNATIVE SITES

12.108 Given the sub-regional split and the difficulties with crossing the Thames, it is only really necessary to look at the wharves on the north bank to the east of the City of London. Six are recommended for release. The Objectors have argued that at least some of these would serve AI/LC just as well. One cited in particular was DePass Wharf. However, this is much further downstream, away from where a good deal of the concrete would need to be delivered and so, given the congestion on the roads into London from the east, at a significant locational disadvantage. It is also subject to uncertainty due to a possible extension to the DLR. Evidence on the likelihood of consolidation of wharves, such as Mowhawk and Sunshine wharves, is that this would be fraught with difficulty and uncertainty. [8.41]

12.109 The Objectors' methodology, referring to matters such as whether the wharf was vacant or SIL, was also shown to be flawed demonstrating how difficult and prone to uncertainty such forecasts must inevitably be, and how they are unlikely to be accurate. Together with PW, the PLA produced reasonable evidence to show that OW is one of the best placed and that the Objectors' evidence fails to prove otherwise. There are therefore sound reasons why the appellants did not look beyond OW. [6.42]

12.110 Using the availability of an alternative wharf as a reason not to confirm the CPO for OW is a circular argument as reference to OW as a better located wharf could be used, with good reason, by each and every other owner to defend a CPO on their wharf by comparing it with OW. As concluded at PW, to accept this view would be to make the relevant provisions of the 1968 Act and the safeguarding Directions of no consequence, and the LP policy redundant. [4.2]

12.111 The concrete batching plant at Bow is, to all intents and purposes, rail fed for aggregates but not for cement, although it was before. It could probably be expanded. However, its use would not achieve the planning policy purposes of shifting freight onto the Thames or maximising the use of the BRN and so is of limited relevance. [2.19][5.4][5.29]

### *Conclusions on alternatives*

- 12.112 When the forecasts in the SWR 2013 are examined in detail they do not provide unequivocal estimates of future demand or of the requirement for additional capacity for construction materials. Nevertheless safeguarding, by its very nature, aims to protect more wharves than are necessary. The concern in the SWR is not to have too much over-supply. Whether or not the CPO should be confirmed depends in part on whether there is a compelling case for port and harbour services and facilities.
- 12.113 The Objectors have portrayed this as meaning that there must be an irrefutable need for wharfage. However, the need is based on precautionary forecasts. If it were necessary to provide unchallengeable evidence of need when more wharves are safeguarded than will be required, it would never be possible to provide a compelling case and the power to make a CPO would be pointless. Contrary to the Objectors' arguments, it does not require a proven forecast shortfall. All that is required is a need as found at PW and a degree of justification to be determined on its own merits. [6.2][8.1][12.104]
- 12.114 It is self-evident that there is currently excess capacity as the SWR 2013 proposes to release several wharves. Even if the Objectors' figures were accepted in their entirety, it is unlikely that OW would be released so there would be no change to its safeguarded status as it might still be seen to be needed for port purposes and to achieve modal shift onto the BRN. [5.25]
- 12.115 The Objectors have interpreted the test in the Circular, of whether the purpose could be achieved by other means, as meaning could the forecast need for aggregates in London be achieved by other means. The demand for concrete for construction is such that if there was a shortage, otherwise uneconomic alternatives would come into play such as transporting aggregates on much longer journeys by road. However, the purpose of the CPO is securing the provision of port and harbour services. The power to make the CPO comes from the same Act as the power to improve port facilities. Therefore alternatives which would not use the BRN, such as greater use of the plant at Bow, or a new plant in Silvertown, would not achieve the purpose of the CPO. [5.30-5.31]

### *Negotiations*

- 12.116 The Objectors have land-banked the site in the hope of future planning permission for residential use. If successful, the value of the land would increase by many millions of pounds. Providing OW is viable for water-bourne freight, no other use is acceptable. There was no dispute that the owners will not sell for a policy compliant use and so negotiations were never going to succeed. [6.1]

### *Compelling case*

- 12.117 The Circular requires a *compelling case in the public interest* such that *the public benefit would outweigh the private loss*. The PLA's case must justify the interference with Human Rights. There is no particular degree of justification required and each case must be determined on its own merits. For the above reasons, negotiation is impractical, and the case for the CPO is supported by the adopted planning framework, the economic, social and

environmental well-being of the area, viability is probable and funding is in place demonstrating a reasonable prospect that the scheme would proceed. The purpose of the CPO, securing the provision of port and harbour services and facilities at OW, could not be achieved by other means. [12.62][12.70][12.83][12.87][12.113-12.115][12.116]

- 12.118 With regard to the SOR, there is policy support to bring inactive safeguarded sites back into use, the current owners have no wish to reactivate the wharf, and there is a good prospect of a genuine scheme. Only the need is at issue. From the LP, as interpreted by the PW Decision, a safeguarded wharf should be protected for waterborne freight handling use, unless it can be shown that it would not be viable. OW does not come close to meeting the definition in that Decision. It cannot be in the public interest for this important site to remain vacant when there is a better than reasonable prospect of a scheme being developed which would meet the purposes of the 1968 Act and would be supported by all up-to-date documents within the development plan. [s4][8.6-8.8]
- 12.119 The choice is therefore between maintaining the safeguarding Directions in the knowledge that wharves will not be reactivated, a pointless exercise; releasing the wharves and risking a shortfall in the future as well as making the policy redundant; or pursuing a CPO. Providing OW is safeguarded and viable, with a reasonable prospect of a suitable scheme being delivered, which it is, this provides strong support for finding a compelling case in the public interest.
- 12.120 Whether or not OW is essential to provide further wharf capacity for aggregates is more difficult to assess. The current and draft forecasts both show that it is. Both can be, and have been, faulted. This is not surprising as they are both forecasts, and rely on uncertain and changing information looking several years ahead. Nevertheless, none of the flaws in the forecasts, individually or taken together, show that there would be poor prospects for future trading, or that its use would be redundant, and so should not be allowed to undermine an otherwise compelling case. While it would be wrong to confirm a CPO where there was little or no likelihood that the wharf would be needed, to exclude the possibility of a CPO where there is clear viability and demand would be to invalidate the policy. The SWR 2013 deliberately aims to safeguard more wharves than would be necessary on a precautionary basis to ensure that the potential supply will always exceed the forecast demand. [4.3][5.26][12.104]
- 12.121 Depending on the grounds, the PLA accepted that if planning permission is refused, it would be unlikely that the CPO would be confirmed as the scheme could not be implemented. This is not surprising given that it is seeking both confirmation of the CPO and the planning permission. However, this does not necessarily follow. The Circular only requires a reasonable prospect that the scheme would proceed. It is a matter of judgement as to whether or not a better design would be likely to come forward. The balance from the evidence is that it probably could and would. If followed, these recommendations do not require an unattainable goal, simply that good design skills are deployed to produce a scheme that properly considers how the necessary plant could be arranged and enclosed to minimise the harm to the environment. [5.30][12.50][12.63]

12.122 To refuse planning permission would lead to a delay. However, the PLA has been seeking to acquire OW for many years and the forecasts for growth are steady rather than urgent. Moreover, if the SoSDfT advised the appellants that he was minded to confirm the CPO, it should not take so long for the appellants to obtain an acceptable planning permission that confirmation could not be justified or that it could not wait.

*Conclusion on the CPO*

12.123 For all the above reasons, there is a strong justification in the public interest. The case for making the Order is compelling. The public benefit would therefore justify interfering with the Human Rights of its owners.

### **13. Inspector's Recommendations**

#### **Planning Appeal. Ref. APP/E5900/A/12/2186269**

13.1 I recommend that the appeal should be dismissed.

#### **Compulsory Purchase Order. CPO Ref: PCT5/1/24**

13.2 I recommend that the Order should be confirmed.

*David Nicholson*

INSPECTOR

## APPEARANCES

### FOR THE PORT OF LONDON AUTHORITY AND THE APPELLANTS:

Russell Harris QC instructed by the Port of London Authority and  
Aggregate Industries UK Ltd and London Concrete Ltd

He called

James Trimmer BSc (Hons) DipTP MRICS MRTPI	Port of London Authority
Prof. Robert Tavernor BA DipArch PhD RIBA	Tavernor Consultancy
Prof. David Hill Derek Casey	David Hill Ecology and environment Managing Director of London Concrete Ltd
Colin Cottage BSc (Hons) MRICS IRRV	Glenny LLP
Rory Brooke BSc MSc MRTPI	URS
Michael Woolner BA MRTPI	Director of Firstplan

### FOR THE LOCAL PLANNING AUTHORITY (THE COUNCIL):

Matthew Reed of Counsel instructed by the London Borough of Tower Hamlets

He called

Michael Ritchie LLB PG Dip MSc MRTPI	London Borough of Tower Hamlets
Richard Humphreys BSc DipTP Dip TD	London Borough of Tower Hamlets

### FOR THE OBJECTORS: GRAFTON GROUP & BRITISH DREDGING (SERVICES) LTD.

Peter Village QC both instructed by the Grafton Group and British  
James Burton of Counsel Dredging (Services) Limited

They called

Andrew Hunt BSc MEE FRSA	Director of Quod Planning Services Limited
Tim Denton BSc (Hons)	Moffatt & Nichol
Will Edmonds BA (Hons) DipTP MRTPI	Montagu Evans
Dr Chris Miele IHBC MRTPI	Montagu Evans
David West BA (Hons) MTP MAUD	Studio Egret West
Mark Whitfield BSc (Hons) MRICS	Montagu Evans

### INTERESTED PERSONS:

Dr Hilton	Local resident
John Burton RICS	Urban Space Management (TBW)
Stephen Wilkinson	Lee Valley Regional Park Authority

## CORE DOCUMENTS

### CD No. Document

#### *A Legislation*

- CDA1 European Convention on Human Rights, First Protocol
- CDA2 The Port of London Act 1968, s.5, s.11
- CDA3 Acquisition of Land Act 1981
- CDA4 Public Health (Control of Disease) Act 1984, s.7
- CDA5 Town and Country Planning Act 1990, s.226
- CDA6 Planning (Listed Buildings and Conservation Areas) Act 1990
- CDA7 Port of Tilbury Transfer Scheme 1991 Confirmation Order 1992 (SI1992/284)
- CDA8 Town and Country Planning (General Development Procedure) Order 1995, article 10(3)
- CDA9 Human Rights Act 1998
- CDA10 Greater London Authority Act 1999, s.41-44, s.344
- CDA11 Town and County Planning (Mayor of London) Order 2008, article 2(1) of, and Schedule 1, Part IV
- CDA12 Environmental Permitting (England and Wales) Regulations 2010, Regulation 2 and Schedule 1, Part 1 and Part 2, Chapter 3 (Mineral Industries), Section 3.1 (Production of Cement and Lime), Part B(b)
- CDA13 Port of London Authority (Orchard Wharf) Compulsory Purchase Order 2012 (not yet confirmed)
- CDA14 Land Compensation Act 1961
- CDG15 Planning and Compulsory Purchase Act 2004
- CDA16 Localism Act 2011
- CDA17 Town and Country Planning (Environmental Impact Assessment) Regulations 2011

#### *B Policy*

- CDB1 Planning Policy Guidance 24: Planning and Noise, 1994
- CDB2 UK Biodiversity Action Plan, 1994
- CDB3 Secretary of State's Direction re safeguarded wharves, given under Town and Country Planning (General Development Procedure) Order 1995, article 10(3)
- CDB4 Regional Planning Guidance Note 3B/9B (February 1997)
- CDB5 London Borough of Tower Hamlets Unitary Development Plan (1998), Chapters 2, 6 and 8
- CDB6 World Health Organisation Guidelines for Community Noise, 1999
- CDB7 By Design: Urban design in the planning system: towards better practice (DfT, DEFRA and CABE) (2000)
- CDB8 Lee Valley Regional Park Plan (2000)
- CDG9 Guidelines for Landscape and Visual Impact Assessment (Institute of Environmental Assessment (now IEMA) and Landscape Institute) (2002)
- CDB10 Mineral Planning Guidance 6 (2003)
- CDB11 ODPM Circular 06/04 Compulsory Purchase and the Crichel Down Rules
- CDB12 PPS1 Delivering Sustainable Development (2005) (extract – para. 13)
- CDB13 PPS9 Biodiversity and Geological Conservation (2005)
- CDB14 Design Manual for Roads and Bridges (Highways Agency (2005)) – Not included in hardcopy due to size. Available at [www.dft.gov.uk/ha/standards/dmr/index](http://www.dft.gov.uk/ha/standards/dmr/index).
- CDB15 London Plan Implementation Report: Safeguarded Wharves on the River Thames (2005)
- CDB16 Greenwich UDP (July 2006) (extract – policy D27)
- CDB17 Mineral Policy Statement 1 Planning and Minerals (November 2006) (extract – para. 9 and Annex 1)
- CDB18 Mineral Policy Statement 1 Planning and Minerals Practice Guide (November 2006) (extract – paras. 34-38 and 55-58)
- CDB19 Lower Lee Valley Opportunity Area Planning Framework (January 2007)
- CDB20 London Borough of Tower Hamlets Interim Planning Guidance Core Strategy and Development Control Plan (October 2007)

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- CDB21 London Borough of Tower Hamlets Leaside Area Action Plan (October 2007)
  - CDB22 London Borough of Tower Hamlets Saving Direction of Secretary of State (18 September 2007)
  - CDB23 London Freight Plan (2007)
  - CDB24 East London Framework SPG (February 2008)
  - CDB25 Lea River Park Design Framework (2008)
  - CDB26 Conservation Principles (English Heritage) (2008)
  - CDB27 London Aggregates Monitoring Report (2009)
  - CDB28 National and Regional Guidelines for Aggregates Provision in England 2005 – 2020 (2009)
  - CDB29 PPS4 Planning for Sustainable Economic Growth (2009) (Extract – Policy EC2)
  - CDB30 East London Sub-regional Transport Plan 2010
  - CDB31 The Tower Hamlets Local Biodiversity Action Plan 2010
  - CDB32 ADAS 2010 – Definition and mapping of open mosaic habitats on previously developed land: Phase 1, Final Report. Prepared by ADAS UK Ltd for Defra, March 2010
  - CDB33 Historic Environment Planning Practice Guide (March 2010)
  - CDB34 Principles of Selection for Listing Buildings (DCMS) (March 2010)
  - CDB35 Procedural Guidance – Planning appeals and called-in planning applications (April 2010)
  - CDB36 The London Mayor’s Transport Strategy (May 2010), Chapter 5
  - CDB37 London Borough of Tower Hamlets Core Strategy (September 2010)
  - CDB38 Marine Policy Statement (March 2011) (Extract – para. 3.5)
  - CDB39 LBTH Second Local Implementation Plan (LIP2) (2011)
  - CDB40 Seeing the History in the View (English Heritage) (May 2011)
  - CDB41 The London Plan, Spatial Development Strategy for Greater London (July 2011)
  - CDB42 The Setting of Heritage Assets (English Heritage) (October 2011)
  - CDB43 B Planning Policy Guide 13 Transport (2011) (Extract – Annex B)
  - CDB44 Greater London Authority Industrial Land Demand and Release Benchmarks in London (2011)
  - CDB45 Lee Valley Park Development Framework – Thematic Proposals (January 2011), Park Development Scheme (July 2010) and Visions, Aims and Principles (July 2010)
  - CDB46 National Planning Policy Framework (March 2012)
  - CDB47 London View Management Framework SPG (March 2012)
  - CDB48 Green Infrastructure and Open Environments: The All London Green Grid SPG (March 2012)
  - CDB49 Safeguarded Wharves Review 2011/2012 Further Consultation (July 2012)
  - CDB50 Land for Industry and Transport SPG (September 2012)
  - CDB51 Draft London Borough of Tower Hamlets Managing Development DPD (September 2012), adopted version April 2013 and confirmation of adoption 19 April 2013
  - CDB52 London Borough Tower Hamlets EIA Scoping Guidance (January 2012)
  - CDB53 The London Biodiversity Partnership Biodiversity Action Plan – Available online only at [www.lbp.org.uk/londonhabspp](http://www.lbp.org.uk/londonhabspp).
  - CDB54 London Borough Tower Hamlets Code of Construction Practice
  - CDB55 Innovation and Growth Team Low Carbon Construction Final Report (2010)
  - CDB56 Department for Transport Low Carbon Transport Innovation Strategy (May 2007)
  - CDB57 Sustainable Aggregates Reducing the Environmental Effect of Transporting Aggregates
  - CDB58 Department for Trade and Industry The Energy Review Report 2006
  - CDB59 Department for Transport Guide to the Waterfront Grant Scheme (August 2011)
  - CDB60 DCLG Guidance on the Managed Aggregate Supply System (October 2012)
  - CDB61 DCLG Collation of the Results of the 2009 Aggregate Minerals Survey for England and Wales
  - CDB62 Safeguarded Wharves Review draft 2011
  - CDB63 URS Report – A study of Freight Trade Forecasts and Capacity for London’s Blue Ribbon Network (August 2011)
  - CDB64 Network Rail Document – Value and Importance of Rail Freight (July 2010)

- CDB65 Tower Hamlets Planning for Population Change and Growth (August 2009)
- CDB66 Tower Hamlets Proposals Map submission version (2012)
- CDB67 GLA Supplementary Planning Guidance – Land for Industry and Transport (September 2012)
- CDB68 Thames Path National Trail Development Plan Policies – A Good Practice Guide (November 1998)
- CDB69 Tower Hamlets Managing Development – Development Plan Document submission version (May 2012)
- CDB70 Tower Hamlets Managing Development – Development Plan Inspector’s Report (17 December 2012)
- CDB71 Tower Hamlets Green Grid Strategy (April 2010)
- CDB72 Tower Hamlets Urban Structure and Characterisation Study (September 2009)
- CDB73 Tower Hamlets LDF Submission Document Core Evidence Base: Character Area Assessment
- CDB74 Ministerial Direction on Wharf Safeguarding (June 2000)
- CDB75 London Plan Panel Report (March 2011) (Volume 1)
- CDB76 Institute of Environmental Assessment: Guidelines for the Environmental Assessment of Road Traffic
- CDB77 ODPM The Planning System: General Principles (2005)
- CDB78 Thames Strategy East (2008)
- CDB79 London Plan Revised Early Minor Alterations (June 2012)
- CDB80 GLA Report Rubbish in Resources Out (2008)
- CDB81 PPS5 Practice Guide
- CDB82 Safeguarded Wharves Review 2011/12 Statement of Consultation
- CDB83 Safeguarded Wharves Review Final Recommendation March 2013
- CDB84 Safeguarded Wharves Review - Further Consultation July 2012 – Statement of Consultation

*C Documents*

- CDC1 PLA’s Resolution to make the Order (February 2011), confirmation (January 2012) and reconfirmation (May 2012)
- CDC2 EGL564462, the PLA’s registered title to the river bed and foreshore at, or adjacent to, Orchard Wharf
- CDC3 LN47369, British Dredging (Services) Limited’s title to the Order Land
- CDC4 PLA’s correspondence with Grafton Group 1999 to 2012
- CDC5 London Concrete/Aggregate Industries’ planning applications (references PA/11/03824 and LTGDC-12-001-OUT), Environmental Statement and other supporting documents.
- CDC6 Greater London Authority Stage 1 Response to London Borough of Tower Hamlets and London Thames Gateway Development Corporation (dated 29 February 2012)
- CDC7 Greater London Authority Update Response to London Borough of Tower Hamlets and London Thames Gateway Development Corporation (dated 23 July 2012)
- CDC8 Greater London Authority Interim Response to London Borough of Tower Hamlets (dated 16 August 2012)
- CDC9 Greater London Authority Stage 2 Response to London Thames Gateway Development Corporation (dated 11 September 2012)
- CDC10 London Borough of Tower Hamlets Report for Committee (dated 31 May 2012, 5 July 2012, 16 August 2012 and 27 September 2012)
- CDC11 London Thames Gateway Development Corporation Committee Reports (dated 16 August 2012, 23 August 2012 and Update Report)
- CDC12 a) London Thames Gateway Development Corporation Decision Notice and b) s106 Agreement (dated 28 September 2012)
- CDC13 London Borough of Tower Hamlets decision notice (dated 2 October 2012)
- CDC14 Decision Notice for Leamouth Peninsular North (Application ref: PA/10/01864)
- CDC15 Decision Notice for 42-44 Orchard Place, Live Work Units (Application ref: PA/09/00170)
- CDC16 Appeal Decision re Peruvian Wharf



- CDC17 Stage 1 Referral Letter from Mayor of London re Leamouth Peninsular North (dated 4 November 2010)
- CDC18 C18 Stage 2 Referral Letter from Mayor of London re Leamouth Peninsular North (dated 20 April 2011)
- CDC19 London Thames Gateway Development Corporation Committee Report re Leamouth Peninsular North (dated 7 March 2011)
- CDC20 Scoping opinion re Union Wharf, Castle Wharf, Hercules Wharf (July 2008)
- CDC21 PLA comments on appeal proposals to PINS regarding planning applications for Hercules, Union and Castle Wharves (PA/05/01597, PA/05/01589 and PA/05/01600) (dated 21 July 2006)
- CDC22 PLA comments on appeal proposals to PINS regarding duplicate planning applications for Hercules, Union and Castle Wharves (PA/06/1314 & 13/42; PA/06/1243 & 1344; PA/06/1345) (dated 18 August 2006)
- CDC23 LPA Statement of Case regarding planning appeals for Hercules, Union and Castle Wharves (PA/05/01597, PA/05/01589 and PA/05/01600) (dated 22 August 2006)
- CDC24 PLA letter of representation to London Borough of Tower Hamlets on application PA/11/03824 dated 18 January 2012
- CDC25 Dr Malika Moussaid-Hilton – representation and outline statement, 16 June 2012 and 24 January 2012
- CDC26 UK Power – representation and outline statement, 18 June 2012 and 17 January 2013
- CDC27 Lawrence Graham LLP acting for British Dredging (Services) Ltd and Grafton Group (UK) plc – representation and outline statement, 20 June 2012 and 7 February 2013
- CDC28 Cliff Prior – representation and outline statement, 22 June 2012 and 3 January 2012
- CDC29 Sabine and Leonard Sebastian – representation, 22 June 2012
- CDC30 Kamlavathee Iyer – representation, 22 June 2012
- CDC31 Dr Geeta Kasanga – representation and outline statement, 22 June 2012 and 8 January 2013
- CDC32 Lee Valley Regional Park Authority – representation and outline statement, 22 June 2012, 21 January 2013
- CDC33 Silas Thebith – representation, 22 June 2012
- CDC34 Urban Space Management – representation and outline statement, 22 June 2012 and 7 January 2013
- CDC35 Ms Delia Webb – representation, 22 June 2012
- CDC36 Ms Katarzyna Jaskowska-Usein – representation, 23 June 2012
- CDC37 Mr John Gordon – representation and outline statement, 7 January 2012
- CDC38 Urban Space Management – Statement of case, February 2013
- CDC39 Grafton Group – Statement of Case, March 2013
- CDC40 PLA Board Minutes dated 2 February 2010
- CDC41 PLA Extraordinary Meeting Minutes 17 May 2012
- CDC42 Opinion of Russell Harris QC
- CDC43 Decision Notice for pedestrian and cycle bridge at land at western side of Hercules Wharf, Orchard Place PA/10/00233
- CDC44 Decision notice for details of Bridge at Leamouth Peninsula North PA/11/02164
- CDC45 Section 136/142/106 agreement re Leamouth Peninsula dated 12 December 2012
- CDC46 Leamouth Peninsula section 106 agreement dated 28 November 2011
- CDC47 Lea River Park A13 Crossing Design and Access Statement, March 2010
- CDC48 Thames Water Document – Thames Tideway Tunnel Transport Strategy (Summer 2012)
- CDC49 Port of London Authority – Statement of Reasons
- CDC50 Port of London Authority – Outline Statement
- CDC51 Port of London Authority – Statement of Case

## INQUIRY DOCUMENTS

INQ1	Note on compliance with statutory procedures
INQ2	Convening notice of inquiry (press notice/ letter to all parties)
INQ3	Opening remarks Russell Harris QC (PLA/AI)
INQ4	Opening remarks Matthew Reed (LBTH)
INQ5	Opening remarks Peter Village QC
INQ6	S106 Agreement (a) Briefing note (b) Deed (c) Supplementary Deed
INQ7	Addendum statement of common ground
INQ8	Bundle of correspondence between GLA and PLA
INQ9A	Peruvian Wharf Stage 2 Report
INQ9B	Peruvian Wharf planning permission 3 December 2008
INQ10A	Letter dated 9th February 2010 from Aggregate Ind. to PLA – Orchard Wharf Heads of Terms (Agreement for Lease; Terms for Lease)
INQ10B	'Travelling Draft' – 2013 - (Agreement for Lease; Terms for Lease)
INQ11	Planning permission, application, economic assessment etc for Bardon Hill
INQ12	Gravesend Office Docs
INQ13	Updated Fig 4.4 from Rory Brooke's proof of evidence
INQ14	Email dated 1 May 2013 from Brett to James Trimmer
INQ15	Jetty Assessment
INQ16A	Details of Fatwalk - plan
INQ16B	Lea River Park Project Proposal
INQ17	Extract of the "Use Classes Order"
INQ18	Mayor's second further written representation
INQ19	Justification of Section 106 Agreement
INQ20A	Email Trail & letter dated 3 May from Lawrence Graham to Bircham Dyson Bell
INQ20B	Note on Transshipment and Secondary Construction Materials Data
INQ21	Mike Axon's Transport Rebuttal for Grafton Group
INQ22	Email dated 3 June to James Trimmer Re DePass Wharf
INQ23	Lawrence Graham letter to SoSCLG Re Safeguarded Wharves Review Final Recommendation – March 2013
INQ24A	Second Rebuttal Evidence of James Trimmer
INQ24B	Rebuttal Evidence - URS
INQ25	Port Designer's Handbook (extract)
INQ26	Sharps Acoustics Note dated 13th June 2013
INQ27	1880's Plan of East India Dock Basin and surrounding area
INQ28A	DC/LC rebuttal of Transport Report
INQ28B	Bellamy Roberts Report
INQ29	Marked up version of proposed conditions
INQ30	Illustrative Fatwalk Walking Route Plan
INQ31	Suggested Condition
INQ32	Land Ownership Plan
INQ33	Briefing Note on Noise (Sharps Acoustics LLP)
INQ34	Plan at 9.5m AOD Showing Projections on South Elevation
INQ35	Email dated 18th June from Strettons to Montagu Evans
INQ36	Letter from Lawrence Graham dated 2 September 2013 enc GLA response to FoI request
INQ37	Closing Submissions of Peter Village QC and James Burton on behalf of Grafton Group together with Bundle of Authorities submitted in support of the Closing Submissions of Peter Village QC and James Burton on behalf of Grafton Group
INQ38	Closing submissions on behalf of the London Borough of Tower Hamlets by Matthew Reed
INQ39	Closing submissions on behalf of the PLA/AI by Russell Harris QC

## Schedule of suggested conditions

1. Application(s) for the approval of the reserved matters for the outline part of the permission regarding the appearance, layout and scale of the structures, shall be submitted to the local planning authority not later than the expiration of THREE YEARS from the date of this permission. No part of the development, outline or full, shall be begun until the reserved matters have been approved in writing by the local planning authority.

Reason:

To ensure the development is implemented.

2. No part of the development, outline or full, shall be begun later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matters to be approved. The development indicated on the approved plans shall be completed in its entirety before the use commences.

Reason:

To ensure the development is implemented in an appropriate manner.

3. The development shall be carried out in accordance with the approved details as follows:

- Figure 2.1 rev C Site Location Plan
- Figure 2.3 rev D Proposed Site Plan
- Figure 2.5 rev D Proposed Concrete Batching Plant
- Figure 2.6 rev C Proposed Cement Storage Terminal
- Figure 2.7 rev B Proposed Site Wide Elevations
- Drawing 2565/20 rev B Details of Loading Bay and DDA Compliant Facilities
- Drawing 2565-24 Rev B Plan at 9.5m AOD showing projections on South Elevation
- Figure 3 42-44 Orchard Wharf, SE and SW Facades

Reason:

For the avoidance of doubt and in the interests of proper planning.

4. No works shall be carried out under this planning permission until all parties with any legal or equitable interest in the area shown edged red on the approved plan "Figure 2.1 rev C Site Location Plan" accompanying the planning application and annexed to this permission have first entered into a planning obligation under Section 106 of the Town and Country Planning Act 1990 in the same terms as the planning obligation annexed to this permission.

Reason:

To ensure that the requirements arising from the development which have not been provided for in the application are addressed.

5. No development shall take place until full details of materials (including material samples, specifications and annotated plans) to be used in the facing materials, external signage, external lighting and external plant have been submitted to and approved in writing by the local planning authority.

Development shall be carried out in accordance with the approved details.

Reason:

To ensure that high quality of materials are used in the construction of the development.

6. No development shall take place until full details of landscaping on site shall be submitted to and approved in writing by the local planning authority. The details shall include:
- a. Works to the southern and eastern boundary of the site for the continuation of the Thames Path;
  - b. Works to the southern boundary of the site for the provision of a biodiversity strip of five metres in width with brownfield-style vegetation;
  - c. Planting along the western boundary of the site;
  - d. Fencing and means of enclosure for all boundaries, including samples of materials;
  - e. Location of brownfield-style green roofs ("brown roofs"), designed to maximise the habitat value for black redstarts, to be installed on the concrete plant feed hoppers and office building;
  - f. Translocation of Kidney Vetch, Hare's Foot Clover and Common Stork's Bill from existing grassland areas of the site into the brownfield habitats within the new landscaping; and
  - g. Brownfield-style vegetation included within the landscaping areas surrounding the car parking and office areas in the north of the site.

The landscaping details shall be implemented in accordance with the approved details and thereafter permanently retained.

The landscaping scheme shall be implemented in the first planting season following first operation of the development. Any plants or trees required as part of the implementation of the condition that die or are removed, damaged or diseased within a period of five years from the first planting season shall be replaced to the satisfaction of the local planning authority in the next planting season with others of a similar size and species.

Reason:

In the interests of landscape quality, preserving and enhancing the character and appearance of the area, and ensuring protection of wildlife and supporting habitat.

7. No development shall take place until a strategy that seeks to maximise the use of the River Thames for the transport of construction and waste materials to and from the site has been submitted to and approved in writing by the local planning authority. The approved strategy shall be implemented thereafter for the entirety of the construction phase.

Reason:

To ensure that the impact of the construction phase of the development on the transport network is minimised as far as reasonably possible.

8. All aggregates (including sand) and cement used in connection with the primary operation of the approved use shall enter the site by river and by no other means.

Reason:

To promote the sustainable transport of freight and ensure that the inward

movement of goods is by water in the interests of the local and strategic road network capacities.

9. The cycle storage shown on approved drawing No. 2565/20 rev B shall be provided prior to the occupation of the development and thereafter shall be made permanently available for the occupiers of the development.

Reason:

To ensure that adequate cycle storage is available upon first operation of the development and permanently thereafter.

10. The details of staff and visitor car parking facilities, as shown on drawing No.2565/20 rev B, shall be implemented in their entirety prior to first operation and thereafter shall be permanently retained.

Reason:

To ensure sufficient parking and access is retained.

11. The parking of all vehicles in relation to the operation, servicing, delivery, visiting and/or staffing of the site shall be contained within the confines of the site.

Reason:

In the interests of the free flow of the public highway

12. The operation of the facilities on site, and all HGV traffic entering or leaving the site, shall only occur between the following hours:

- Concrete batching plant: 0700-1900 Monday to Friday and 0700-1300 Saturday
  - Shovel loaders associated with the aggregate storage facility: 0700-1800 Monday to Friday and 0700-1300 Saturday.
  - Cement terminal: 0700-1800 Monday to Friday and 0700-1300 Saturday
  - Loading and unloading of barges and ships: 0700-2300 Monday to Saturday.
- No operations shall occur on Sundays or Bank Holidays.

Reason:

To protect the amenity of surrounding existing and future residents and building occupants and the amenity of the public realm.

13. The commercial operation of the development hereby permitted shall not commence until a Noise Management Strategy is submitted to and approved in writing by the local planning authority. The Strategy shall include a commissioning report that demonstrates that attenuation performance meets the standards set out in the approved Noise and Vibration chapter of the submitted Environmental Statement or to an otherwise agreed level, (which level does not have any adverse effects over and above that set out in the Environmental Statement, the local planning authority certifying in writing accordingly) and shall include details of sound attenuation methods, including exhaust silencers, acoustic enclosures, glazed surfaces and any other attenuation measures.

Such measures shall be implemented in full before the commencement of the commercial operation of the development hereby permitted and permanently retained thereafter.

The level of noise emitted from the application site (identified by the red line on approved plan "Figure 2.1: rev C – Site Location Plan") shall not exceed LAeq1hr = 56 dB between 0700 and 1900 hours; and LAeq1hr = 50 dB between 1900 and 2300 hours, as determined at 1 metre from the windows on the building facades identified on approved plan "Figure 3: 42-44 Orchard Place, SE and SW facades. The level of noise shall be assessed in accordance with the provisions of BS 7445, one year after the site becomes occupied.

Reason:

To protect the amenity of surrounding existing and future residents and building occupants and the amenity of the public realm and to ensure that the acoustic mitigation measures specified in connection with the development are in place prior to the operation of the development to protect the amenity of surrounding existing and future residents and building occupants and the amenity of the public realm.

14. No development shall take place until:

- A) The implementation of a programme of archaeological work has been secured in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the local planning authority.
- B) No development or demolition shall take place other than in accordance with the written scheme of investigation approved under Part A).
- C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the written scheme of investigation approved under Part A) and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.

Reason:

To ensure heritage assets of archaeological interest that may be within the site are suitably recorded and protected.

15. Prior to the commencement of any works on site, the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the local planning authority:

- (a) A preliminary risk assessment which has identified:
    - i) All previous uses
    - ii) Potential contaminants associated with those uses
    - iii) A conceptual model of the site indicating sources, pathways and receptors
    - iv) Potentially unacceptable risks arising from contamination at the site
  - (b) A site investigation scheme, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - (c) The results of the site investigation and detailed risk assessment referred to in (b) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  - (d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy (c) are complete and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- The scheme shall be implemented in full thereafter.

Reason:

To protect the quality of controlled waterways.

16. Prior to the first commercial operation of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a long-term monitoring and maintenance plan) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.

Reason:

To confirm that any remediation is completed to an acceptable standard.

17. If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with and the amendment has been approved in writing by the local planning authority. In this event, the amendment shall be carried out in full.

Reason:

To ensure that any contamination not previously identified is dealt with appropriately.

18. No development shall take place until the following detailed engineering report for all lengths of the river wall and/or flood defence structure and its supporting anchorage systems within the site shall be submitted to and approved in writing by the local planning authority in consultation with the Environment Agency:

- a. A report identifying the structural condition and life expectancy.
- b. A report, including calculations, demonstrating the stability and integrity of the flood defences as existing and as a result of the development.
- c. A report identifying proposals for a repair/replacement renewal (as appropriate) for any structural component that in general has a life span of less than 60 years.
- d. A report identifying environmental impacts and any works and measures necessary to mitigate and compensate for such impacts including the effects of additional loading on the flood defence as a result of the conveyor.

The works shall be implemented in accordance with the recommendations contained in those reports.

Reason:

To ensure that flood defence protection for the site is commensurate with the nominal lifetime of the development and that environmental impacts are fully taken into account.

19. No development shall take place until details of the safe flood refuge area shall be submitted to and approved in writing by the local planning authority. The details shall demonstrate that the refuge is at or above 4.75 metres AOD and can accommodate all workers on site. The details shall be implemented in full thereafter.

Reason:

To ensure the safety of all workers on site in the event of a flood event that breaches or overtops the flood defences.

20. Prior to the submission of reserved matters, the following hydraulic engineering reports shall be submitted to and approved in writing by the local planning authority in consultation with the Environment Agency:

- a. A report identifying the effects on river flows and changes to the foreshore morphology caused by the jetty structure and any vessels (including maximum size of vessel and duration of stay).
- b. A report identifying proposals for preventing scour of the foreshore and/or restoring flood defence wall stability as a result of scour.
- c. A report identifying environmental impacts and any works and measures necessary to mitigate and compensate for such impacts.

The reports shall consider effects during construction and ongoing maintenance and shall reflect current bathymetric and bed sediment conditions. The reports shall inform the design of the jetty and the reserved matters application to minimise its impact on the river and flood defences along with any mitigation or compensation works required.

Reason:

To ensure the stability and integrity of the flood defences thereby reducing the risk of flooding and to ensure that the development will not have a negative effect on the important habitat of the foreshore.

21. No development shall take place until a surface water drainage scheme based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development shall be submitted to and approved in writing by the local planning authority. The scheme shall include:

- Drainage calculations.
- Locations and details of associated attenuation and flow control structures.
- Attenuation of water discharged to the sewerage to Greenfield runoff rates.
- Consideration of the implications of exceedence and failure of the water reuse system.
- Demonstration that pumping of water is not required.
- Details of roof runoff to a separate and sealed system to be discharged to the River Thames.

The approved scheme shall be implemented in full thereafter.

Reason:

To ensure the satisfactory storage and disposal of surface water from the site, prevent the increased risk of flooding, ensure future maintenance of the surface water drainage system, minimise pollution of the River Thames and minimise surface water discharge into the sewer network to prevent flooding elsewhere.

24. Piling or any other foundation designs using penetrative methods shall not be permitted on the landward part of the site other than with the express written consent of the local planning authority, which may be given to those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be implemented in accordance with the express written consent.

Reason: To ensure pollution pathways are not established that may migrate into controlled waters.

25. No development shall take place until an Ecological Management Plan, including long term design objectives, management responsibilities and maintenance schedules



for all areas of ecological mitigation and enhancements, shall be submitted to and approved in writing by the local planning authority.

The Ecological Management Plan shall be implemented in full.

The Plan shall comprise the following elements:

- Details of the methodologies for the precautionary pre-construction survey of reptiles, along with methodologies for any capture and translocation that may be required, including any necessary habitat enhancement/creation at the identified receptor site;
- A precautionary re-survey for bats of the roof void and exterior of the security building and the window boards of other buildings immediately before demolition;
- At least four black redstart nest boxes and eight bat boxes to be installed at appropriate locations on the buildings;
- Materials and machinery which could provide nesting opportunities for black redstarts or other bird to be stored away from site or covered or moved on a daily basis to reduce the risk of attracting nesting birds;
- The newly created habitats and use of the bird and bat boxes to be monitored for a period of at least 10 years;
- Details of maintenance regimes; and
- Timber fendering to be installed on the walls of the aggregate storage bays to provide additional habitat.

The Ecological Management Plan shall be implemented in full thereafter.

Reason:

To ensure the protection of wildlife and supporting habitat

26. No development shall take place until a plan for minimising light spill onto the River Thames and adjacent corridor habitat and onto East India Dock Basin Nature Reserve shall be submitted to and approved in writing by the local planning authority. The plan shall include details of directional lighting and light sources focused with cowlings in close proximity to the River Thames and East India Dock Basin. The approved details shall be implemented and retained in full thereafter.

Reason:

To protect the river ecology.

27. No development shall take place until a working method statement to cover all works riverward of the flood defences including any piling or dredging, shall be submitted to and approved in writing by the local planning authority.

The method statement shall include methods, timings, duration and ecological mitigation and shall be implemented in full thereafter.

Reason:

To ensure the protection of river and foreshore habitat and species.

28. Prior to the first commercial operation of the development, full details of the refuse storage area shall be submitted to and approved in writing by the local planning authority. The details shall be implemented in full and permanently maintained for the purposes of waste disposal for the lifetime of the development.

Reason:

To ensure that the adequate refuse storage facilities are available upon occupation and permanently thereafter.

29. A Construction Environmental Management Plan (CEMP) shall be submitted to the local planning authority and approved in writing prior to the implementation of development. The CEMP shall include specific details relating to the demolition, construction, logistics and management of all works associated with the development during the construction period and include:

- a) Details of the site manager, including contact details (phone, facsimile, email, postal address);
- b) The location of a large notice board on the site that clearly identifies the name and contact details of the site manager and a "Considerate Constructors" contact telephone number;
- c) Any means, such as a restriction on the size of construction vehicles and machinery accessing the site, required to ensure that no damage occurs to adjacent streets throughout the construction period;
- d) Any means of protection of services such as pipes and water mains within the road;
- e) Measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage and unloading of building materials and similar construction activities;
- f) Measures to be adopted to ensure that pedestrian access past the site on the public footpaths is safe and not obstructed during construction works;
- g) Location of workers conveniences (e.g. portaloos);
- h) Ingress and egress to and from the site for vehicles during site works period;
- i) Proposed numbers and timing of truck movements throughout the day and the proposed routes;
- j) Procedures for controlling sediment runoff, dust and the removal of soil, debris and demolition and construction materials from public roads or places;
- k) Building, engineering and other operations to be carried out only between the hours of 0800 and 1800 Monday to Friday, 0800 to 1300 Saturdays and shall not be carried out at any time on Sundays or Public Holidays
- l) Location of vehicle and construction machinery accesses during the period of site works;
- m) Details of the mitigation measures for dust and emissions as well as methodology for monitoring during construction;
- n) Details of the effects of construction traffic on air pollution;
- o) Details of the storage of any chemicals on site;
- p) Demolition/site clearance/vegetation clearance to be undertaken between September and mid February only. If this is not possible, buildings or vegetation to be cleared must be surveyed for nesting birds by an ecologist. If nesting birds are found, the area around the nest to be left undisturbed until the young have fledged; and
- q) The roof of the security building to be dismantled by hand and the window boards on the adjacent flat-roofed building to be removed by hand, in the presence of an ecologist.

If bats are found to be present, all work will stop whilst further specialist advice is sought.

The construction of the proposed development shall then be carried out in accordance with the details set out within the approved Construction Environmental Management Plan.

Reason:

In the interests of local residential amenity.

30. Prior to occupation of the development hereby approved a Deliveries and Servicing Plan shall be submitted to and approved by the local planning authority. All servicing and deliveries to the site shall be accommodated on site only. The plan shall be implemented in full thereafter.

Reason:

To ensure the deliveries and servicing does not result in unacceptable impact on the local highway network.

31. A minimum of 60kWp of photovoltaic cells shall be installed within the development hereby permitted. The renewable energy technologies shall be implemented in accordance with the proposals made in the "Energy Report dated December 2011" and retained for so long as the development shall exist.

Reason:

To ensure a reduction in carbon dioxide emissions.

32. The total import of aggregates and cement per annum to the site shall not exceed 350,000 Tonnes and 260,000 Tonnes respectively.

Reason:

To accord with the traffic impact calculations in the submitted Transport Statement and avoid an unacceptable level of traffic movements on the adjacent public highways.

33. A strategy for the ongoing maintenance of buildings and structures on the site shall be submitted to and approved in writing by the local planning authority before the use commences and that strategy shall be complied with for the life of the use.

Reason:

To maintain a satisfactory level of external appearance.

34. Notwithstanding the provisions of the s106 agreements dated 28 September 2012 and 19 April 2013 no development shall take place until a travel plan has been prepared and agreed in writing by the local planning authority.  
Such travel plan shall as a minimum include:

- i. measures to promote walking, cycling, public transport and car sharing to the site
- ii. indicators and targets to be achieved in terms of modal split of workers at the site
- iii. the process of monitoring and review of such indicators and targets
- iv. the procedure for varying, amending, substituting or adding of such targets and/or indicators
- v. the sanction/actions to be taken where identified targets are not met

Thereafter the development shall only be occupied in accordance with the provisions of the travel plan as approved and/or varied in accordance with this condition.



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.