**THE LONDON BOROUGH OF SOUTHWARK**

**TOWN AND COUNTRY PLANNING ACT 1990**

**AND ACQUISITION OF LAND ACT 1981**

**Revised Inquiry into**

**THE LONDON BOROUGH OF SOUTHWARK**
**(AYLESBURY ESTATE SITES 1B-1C)**

**COMPULSORY PURCHASE ORDER 2014**

**PINS REFERENCE: NPCU/CPO/A5840/74092**

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**Proof of Evidence of**

**Rastko Novakovic (35% Campaign)**

**For the Aylesbury Leaseholders Group**

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**9th December 2017**

1. My name is Rastko Novakovic. I am giving evidence on behalf of the 35% Campaign which is a campaign set up by the Elephant Amenity Network, of which I have been a member since 2010.
2. The 35% campaign was established with the aim of ensuring that developments comply with the Council's minimum requirement of 35% - with a focus on the Elephant and Castle area. A full description of the group is available on our web site: [35percent.org](35percent.org)
3. We run an active blog, which is a resource not just for local residents, but also journalists and academics. Our campaigning - especially around viability testing - has resulted not just in high profile media coverage[1] but also policy change.
4. We have a network of individuals with expertise who we can call upon, including architects, and academics specialising in planning and development viability. We called upon these when we took part in a landmark Information Tribunal case in 2014.
5. After winning the case and forcing the disclosure of the viability assessment for one of London's most high profile redevelopment schemes, we successfully lobbied Southwark Council and the GLA to introduce transparency in viability testing.
6. Before counsel became involved in the first inquiry in 2015, I acted as an advocate for the objectors and have taken a close interest in the Aylesbury regeneration scheme since the first the inquiry.
7. I have since been involved in undertaking research with purposes of providing privoing evidence to the public inquiry.
8. Have been sure to substantiate all the assertions I have made with documentary evidence which is largely in the public domain.

1 https://www.theguardian.com/cities/2015/jun/25/london-developers-viability-planning-affordable-social-housing-regeneration-oliver-wainwright

9. My evidence forms part of the central submission advanced by the 35% Campaign that the cpo should not be confimed in relation to the FDS, because the scheme in so far as it is related to the FDS and the scheme as a whole does not acccord with the requirements of the AAAP.

10. Much of the evidence on which the 35% Campaign relies is evidence which postdates the first inquiry and therefore raises further issues to support the case advanced by the objectors that there is not a compelling case in the public interest for confirmation of the order.

11. In light of developments since the first inquiry, the first part of my statement addresses the question of the viability of the scheme underlying the order, in line with the Inspector's question of whether the scheme is likely to be blocked by any impediment to implementation. It charts the many factors hampering viability and influencing both the NHHT's and the AA's ability to deliver the scheme and deliver it in compliance with the AAAP.

12. The second part of my statement interrogates the lack of NHHT's commitment to social rented housing which is a barrier to the scheme being delivered according to the AAAP.

13. The third part of my statement shows how in specific cases, NHHT successfully avoided providing social rented units in the Borough of Southwark. I show the AA's lack of s106 monitoring despite statements made to the previous CPO inquiry. I conclude with examples of two developments which are part of the Aylesbury regeneration (one delivered and one under construction) which are not compliant with the AAAP.

14. The following is a full list of appendices attached to my proof:

**RN1** Guardian article (26/10/2010) - '£180m cut from regeneration plans for Tony Blair's flagship housing project'

**RN2** Housing Associations and the Delivery of Affordable Housing in London – An Issues Paper, June 2013

**RN3** FT article (10/07/2015) 'Summer Budget: rent cut pushes social landlords towards financial crisis'

**RN4** Moodys report (05/10/2016) on Notting Hill Housing Group

**RN5** Research Update (04/10/2016): Notting Hill Housing Downgraded To 'A+' On Weakening Financial Profile; Outlook Negative On Heightened Sales Risk

**RN6** Rating Action (26/09/2017): Moodys downgrades 54 UK sub-sovereign issuers and changes outlook to stable; universities and two local authorities retain negative outlook. Affirms University of Cambridge's Aaa rating with stable outlook.

**RN7** Rating Action (20/10/2016): Moodys affirms Genesis Housing Association rating at Baa1 with a negative outlook after assessing their latest standalone business plan

**RN8** Notting Hill Housing Trust Credit Rating - Moodys

**RN9** FT article (23/06/2016) 'Spiralling costs stall London housing projects'

**RN10** 35% blog post (18/03/2015) ‘Stand up for more social housing (at 80% of market rent)’

**RN11** Southwark Council's DEVELOPMENT VIABILITY SPD, March 2016

**RN12** GLA planning report (D&P/0543G/01) from 11 September 2017 - Grahame Park Estate: Plots 10, 11 and 12

**RN13** Guardian article (07/08/2015) 'The housing association that will no longer build homes for the poor'

**RN14** Inside Housing article 'Neil Hadden: The full interview' (04/08/15)

**RN15** Southwark Council evidence from previous inquiry: s106 monitoring and deed of variation processes

**RN16** Local Governmment Ombudsman - Complaint reference: 16 005 626 - London Borough of Southwark (30/11/2016)

**RN17** Sunday Times article (23/04/2017) 'Affordable housing pledges swept under mat'

**RN18** Planning report for the L&Q’s phase 1a scheme of Aylesbury regeneration

**RN19** Application for s106 variation to phase 1a scheme (14/AP/3717, 30 Sep 2014)

**RN20** Phase 1a of Aylesbury regeneration accomodation schedule submitted in conjunction with the above application for s106 variation (14/AP/3717)

**RN21** Inside Housing article (14/09/2017) '80% of government housing funding is on private housing'

**RN22** G15 Capital Structure and Gearing Study - https://www.housingnet.co.uk/pdf/e5ce62_a0bb612a1fd3447c8ff33f459e738fcd.pdf

**RN23** Steve Hilditch blogpost (07/01/2017)

**RN 24** This is Money article (03/09/2009) 'Merger talks for housing associations: Genesis 'fighting for survival' as sector struggles'

**RN 25** Guardian article (29/03/2015) 'Tenants hit by £50m rent rise as social housing converted to 'affordable' homes'

**RN26** Southwark News article (01/10/2015) “Council takes no legal action over ‘44 missing social housing units”

**The scheme is financially unviable**

15. I submit that there is a likelihood that the scheme will not be delivered in compliance with the AAAP, because of the risk financial pressures posed to the viability of the scheme.

16. There have been several government policy changes introduced since the adoption of the AAAP in 2010 that increase the financial risk to the scheme underlying the compulsory purchase order:

    a) Eleven months after the AAAP was adopted, the **government withdrew PFI funding** from 13 redevelopment schemes, including the Aylesbury, which lost £180m (RN1).

    b) In the **2010 Spending Review**, the level of capital funding from government to build new affordable homes over the period 2011 and 2015 was cut by 60% compared to the previous programme. The capital subsidy for Social Rent was ended.

    c) The government subsequently introduced the **Affordable Rent** tenure, for which rents of up to 80% market rent could be charged to social housing tenants. (See the Pat Turnbull / London Tenants Federation proof of evidence for more details).

    d) In 2012, changes introduced in the **Welfare Reform Act** introduced a cap on the maximum benefit a household can receive of £26,000 per annum and restrictions on payments to households deemed to be under-occupying their home, the '**bedroom tax**'.

    e) In 2015, the **Housing & Planning Act**, required Housing Associations to reduce their social rents by 1% per year for four years.

17. There has been a noticeable decline in government funding for social rent. This article in the *Inside Housing* magazine entitled '80% of government funding is for private housing' confirms that:

*"The number of affordable homes funded by the government has plummeted by 50% between 2010/11 and 2016/17 from 56,000 to 28,000, according to figures from the* ***Department for Communities and Local Government****. At the same*

*time, the number of homes for the cheapest social rents built using government finance has collapsed, from 36,000 to just over 1,000."*

18. The introduction of **'affordable rent'**, **benefit caps** and the **bedroom tax** all present the risk of increased rent arrears to housing associations. An issues paper on the deliverability of affordable housing in London (2013) published by the **GLA's Housing Committee** (RN2) said that:

*"These changes create risks for housing associations: rental arrears and bad debt could increase as tenants receive reduced benefit under the new arrangements. Housing associations operating exclusively in London anticipate an average increase of 55 per cent in levels of rent arrears following the introduction of these reforms."*

19. The paper also warned of the risk posed by the introduction of **Universal Credit**:

*"Additionally, the Universal Credit - which replaces housing benefit - will be paid directly to tenants. Recent pilots have demonstrated an 8 per cent shortfall in rent collected and housing associations are concerned that they will face additional costs to recover rents as a result of direct payment."*

20. The GLA paper also drew attention to an increased funding risk and greater indebtedness:

*"At the same time as housing associations are facing increased risks to their income streams they are also experiencing significant funding risks. Low interest rates have enabled banks to provide cheaper, short-term finance to housing associations but increasingly, housing associations are looking at other alternatives. Retail banks are tending to offer only short-term debt, generally for periods of five years and seeking to re-structure existing debt to the sector where possible. The sector has responded by increasingly relying on capital markets to provide new long-term debt. In 2012, housing associations raised £4 billion from capital markets - half the total bond issuance by housing associations during the last 25 years, and four times the previous annual record of £1 billion."*

21. A recent gearing study (RN22) shows that NHHT's **debt to social lettings ratio** is high (603%) compared to other housing associations. According to

its latest financial statements (2016/17) the group is carrying a total of £1.3 billion of debt. The high debt to social letting revenue ratio is likely to exert continued pressure on NHHT to reduce this ratio by raising rent levels.

22. The GLA paper cites a **Homes and Community Agency** warning: *"….that, as housing associations increasingly access capital markets, they understand the inherent risks associated with different types of debt and manage those risks appropriately."*

23. The combined risks to revenue and from borrowing have led to a deterioration in the creditworthiness of housing associations;

*"In February 2013, the ratings agency **Moodys** downgraded credit ratings for almost all English housing associations. The downgrade came 24 hours after UK sovereign debt lost its AAA rating, but a significant reason cited for Moodys decision was concerns it had about the weak regulatory framework in the sector. In particular, it raised concerns that the Homes and Communities Agency would not bail out struggling social landlords in their entirety, protecting only the social housing assets a housing association has; housing assets at market rents may not be protected. Moodys did not rule out the possibility of further downgrades for the sector as a result of planned welfare reforms".*

24. The GLA paper spells out one consequence - higher borrowing costs:

*"Lower credit ratings make housing associations less attractive to institutional investors who may seek higher rates of return if they perceive increased risks in the sector. Consequently, housing associations may face greater borrowing costs when they seek to raise finance from capital markets, reducing their ability to build new stock."*

25. The GLA paper draws upon Parliaments Communities and Local Governement Committee, L&Q housing association and accountants PriceWaterhouseCoopers research;

*"In 2012, the **Communities and Local Government Committee** published its report: Financing of new housing supply. While the report encouraged housing associations to make use of bond finance, it acknowledged that there is a limit to how much housing associations can borrow. The Affordable Rent model requires*

*housing associations to become 'debt rich'. In their report Where Next? Housing after 2015, the London and Quadrant housing association and PricewaterhouseCoopers modelled what the financial profile of the housing association sector might look like by 2015. They found that gearing - defined as the level of third party debt compared to the level of reserves and government grant held - would be between 85 to 95 per cent by 2015."*

26. The GLA paper sums up the attendant risks thus; "*that housing associations would be susceptible to fluctuations in interest rates, inflation and a dip in the housing market*".

27. The GLA  paper continues:

*"The (CLG Commitee) report also highlighted that housing associations will be left in a challenging financial position and a further large affordable housing programme under the same rules would be difficult for the sector to manage. Additionally, most housing associations have gearing covenants which limit how much they can borrow relative to their assets."*

28. There is continuing and general concern about the financial health of the housing association sector.  In July 2015 The Financial Times reported (RN3) **Treasury** forecasts that landlords' rents will be 12 per cent lower than previously forecast by 2020-21, in direct response to the changes in the 2015 Housing and Planning Act. The **Office for Budget Responsibility** said the drop in rental income was likely to result in housing associations calling off plans to build 14,000 homes; the **National Housing Federation** said this figure was nearer to 27,000.

29. In June 2016 Notting Hill's credit rating was downgraded by **Moodys**. A subsequent report (RN4) from Moodys mentioned NHHT's significant development pipeline among its three major schemes; the Aylesbury estate, Canada Water and a scheme in Hounslow, of which the Aylesbury estate is by far the largest.

30. Moodys notes that while *"the development programme is the primary driver behind  Notting Hill's substantial debt growth", however "only 50% of capex in the business plan is committed (as of June 2016)".*

31. Notting Hill Housing Group's 2016 financial statement echoes this, stating that:

*"Following changes announced by the Government in July 2015, we paused our start on sites to reassess scheme viability and to review our blend of tenures to reflect Government priorities. Starts on site slowed down as we paused to reappraise the tenure split of schemes following the social rent cuts announced in the Government's summer budget."*

32. In the same spirit in September 2016, the AA's Cabinet report (see **GT6** in George Turner's proofs) said that *"the impact of measures in the Housing and Planning Act have reduced the ability of NHHT's Board to progress Phase 2 and Plot 18 at this stage"* (para 8) and that partly *"due to the costs"*, NHHT was no longer willing to fund the demolition costs of the FDS that it was obliged to under the terms of the Development Partnership Agreement (DPA) - (para 12). This reveals a less financially stable and committed business partner and is further evidence that viability trumps all other considerations.

33. By viability trumps all, I mean that the fact that a development agreement is in place and the scheme has been given planning consent, should not be taken as a guarantee that it will proceed. The final say on when or whether the scheme will proceed lies with NHHT's board, which has to take into account the viability of each scheme and its impact on the viability of NHHT group as a whole.

34. Also in Sept 2016 Notting Hill's credit rating was downgraded by **Standard & Poor's**, which concurred with Moodys and explained (RN5) its rationale as follows:

*"The downgrade reflects our view that Notting Hill's financial profile will structurally deteriorate over the next years, on the basis of much higher debt and having less liquidity to finance the group's significant development program in the London area."*

*"Given Notting Hill's large development program, we now anticipate a substantial debt increase in the next few years..."*

35. In October 2017, Notting Hill's credit rating was downgraded once again by **Moodys**, It was downgraded to A3 from A2 and outlook changed from stable to negative on the basis of a *"weakened financial management score, driven by a lack of adherence to its treasury policy sustained for several months"* (RN6). Moodys pointed out that Notting Hill has also breached its own treasury policy requiring 18 months of liquidity.

36. The Moodys downgrade report goes on to explain that Notting Hill has only 15 months of liquidity left at present:

*"Notting Hill's treasury policy, revised in March 2016, calls for sufficient liquidity to cover all committed development, or, if higher due to aspirational development, 18 months' projected cash flow. Due to a combination of funding not materialising as planned and deferring of funding due to its merger discussions with Genesis Housing Association, the current position stands at 15 months. While Moodys expects the policy breach to be resolved in the coming months, given the association's profile as a significant developer with a sustained high exposure to market sales activity, a lack of adherence to the policy negatively impacts its credit profile."*

37. I have appended the history of credit rating downgrades in an extract from **Moodys** website at appendix (RN8).

38. **Genesis** housing association (with whom Notting Hill is about to merge) has been in financial difficulty for a long time. It was going to merge with Notting Hill when it was on the verge of bankruptcy in 2009 but the merger fell through (see RN24).

39. **Genesis** has been the subject of even more downgrades than Notting Hill over the past 5 years. Its rating is Baa2 – one of the lowest credit ratings among housing associations. If this downward trend continues, Genesis will soon be classed as a '<u>non-investment grade speculative</u>' company.

40. A recent downgrade by **Moodys** cited (RN7)

*"a structural reliance on non-social housing income to cover interest expense". "GENESIS's business model shows a continued structural reliance on non-social activity and any underperformance in market sales activity would exert additional rating pressure."*

*"Moodys notes that GENESIS has generated sales margins of 11% over the past three years on a standalone basis but GENESIS ambitiously expects to generate sales margins of 28% over the next five years."*

41. Part of the reason that **Moodys** didn't downgrade Notting Hill further was that it has a strong operating margin – currently averaging 34%. However, its merger with Genesis will see the combined group's operating margin pulled down by Genesis. The 21% profit margin that Notting Hill anticipates from the Aylesbury redevelopment (and agreed in the DPA) will see the group's average operating margin further reduced.

42. The increased debt exposure and reduced credit rating of the combined Notting Hill Genesis group will result in increased financing costs of the Aylesbury estate scheme. This is especially so given that the scheme is 100% debt financed (see paragraph 9.2.1 of the DPA).

43. The increased financing costs will result in a lower profit margin, which will affect the group's credit rating, thereby increasing financing costs in a vicious circle.

44. It also means that NHHT's board will be less likely to approve proceeding with schemes that offer lower operating margins, for example: NHHT's **Wood Dene** estate regeneration where the site lay empty for nearly 10 years and work commenced only in the last few months.

45. Further viability concerns are associated with the fact that since the DPA was signed in 2015 there has been a rapid increase in construction costs – averaging 10% per year (see the FT article in RN9).

46. The Acquiring Authority has rejected all of our requests to provide viability information relating to the FDS or wider Aylesbury scheme.

47. We have requested a '**technical review report**' into the viability of the scheme completed recently by consultants Gerald Eve. This was presented to the Aylesbury regeneration steering group at their meeting which took place on 26 May 2017. However our request was rejected by the Acquiring Authority on the grounds of 'commercial confidentiality'.

48. We also requested the **steering group minutes** which it provided (but redacted) and the '**report from the project director**'; the '**DPA Annual Review Report**'; '**Project Review Report**'; and '**Business Plan risk log**' referred to in the steering group minutes. The Acquiring Authority rejected our request, again citing 'commercial confidentiality'.

49. Given the overwhelming evidence throwing doubt on the viability of the scheme, we believe it is imperative that the inquiry is supplied with the above documents in order to be able to determine whether the scheme is likely to be blocked by viability impediments and whether the scheme as proposed can viably be implemented in accordance with the development plan.

50. The Acquiring Authority recently introduced a policy (RN11) requiring viability assessments to be disclosed and made public for all new developments in the borough triggering affordable housing requirements (regardless of whether the proposals are policy compliant). Given the Acquiring Authority's public and open stance on the transparency of viability assessments, it is very difficult to see how it can now claim that the viability information for the FDS scheme should not be disclosed.

51. Moreover, in 2010 the AA entered a development partnership agreement for the redevelopment of the Heygate estate, which required a minimum of 12.5% social rented housing. The developer only provided 3%, on unviability grounds. It is stemming from this breach of policy and in light of the AA's inability to secure policy-compliant regeneration schemes that the AA's Viability SPD was introduced.

52. The Aylesbury Development Partnership Agreement (DPA) allows changes to the business plan and DPA if viability assessments show that the scheme has become unviable (DPA para 4.8.4 pg 136). Both parties are also free to terminate the DPA if phases are deemed unviable (DPA para 4.8.6 pg 136). In this way, the DPA prevents viability from being an overriding factor which could lead to a breach comparable to the Heygate redevelopment.

53. The likely result of the viability issues hampering the scheme, is that NHHT will either not proceed with the scheme or it will proceed with an amended

and more viable tenure mix; i.e. substituting social rent for affordable rent – as in its **Bermondsey Spa** regeneration. See paragraphs 71 - 76 of these proofs and RN10 which shows how the 35% campaign brought this case into the public eye.

54. NHHT is the developer for the regeneration of the **Wood Dene** estate, Peckham, which had 323 council homes. In 2013 NHHT submitted a planning application to the Acquiring Authority claiming that – despite original promises to replace the council homes, it wasn't viable to provide more than 54 of the proposed 333 new homes as social rent. As a result there will be a net loss of 269 social rented homes.

55. NHHT is the developer of sites A & B of the **Elmington estate**, Camberwell, where 375 council homes have been demolished. As the result of it submitting a viability assessment claiming the development wasn't viable, it received permission to build 279 new homes, of which only 41 will be social rent, a net loss of 334 social rented homes.

56. Further, the 41 replacement social rented homes will only be social rent for the first tenancies – after these expire, the section 106 agreement allows NHHT to let them at affordable rent. **CD63 (**Planning Officer's report dated 30th July 2015) confirms that these flats will be let to rehouse ex-Aylesbury tenants and will remain social rented units only until that tenancy expires.

57. Moodys 2016 report (RN4, page 5) states that on average NHHT is delivering 7% social rented housing across schemes in its current pipeline. For NHHT, social rent is a rent product to be discouraged and avoided – see part 2 of these proofs.

58. This goes in line with NHHT's planket policy of converting all re-lets to affordable rented units: "All our re-lets (when we rent out a home previously occupied by another customer) will be re-let at Affordable Rent..." ('*Affordable Rent Update*' on NHHT website, accessed 13th June 2014[2]).

2 https://web.archive.org/web/20140613103301/http://www.nottinghillhousing.org.uk/customers/permanent-rented-housing/information-for-permanent-rented-housing-tenants/affordable-rent-update

59. Genesis doesn’t have the best track recored for delivering on estate regeneration either. Its **Grahame Park** regeneration was recently rejected by the GLA for a ‘wholly unacceptable’ net loss of social rented housing.

60. I note in paragraph 8.14 of the Acquiring Authority’s updated statement of case that NHHT has been allocated *“£172,599,343 to support the building of 5,262 homes across London as part of a Strategic Partnership agreement for the Mayor’s 2016-21 Affordable Housing Programme.”*

61. In an email dated 24th October 2017, the Acquiring Authority’s Neil Kirby has since clarified that *“Of this, an amount of £30.8m was indicatively allocated to support the delivery of affordable housing on the First Development and Plot 18 sites.”*

62. I note that the Mayor’s 2016-21 Affordable Housing Programme provides for three tenures – none of which are social rent:

> 2 The Mayor is committed to delivering homes that are tailored to the different needs of Londoners. His *Homes for Londoners: Affordable Homes Programme 2016-21* will help increase the supply of new homes and the number of those that will be genuinely affordable. The majority of homes delivered through this programme are expected to be built by partners who are delivering half, or more, of their homes in London as affordable. Homes funded in this programme are expected to be primarily composed of three affordable products:
>
> - London Affordable Rent;
> - London Living Rent;
> - London Shared Ownership.

63. On 24 November 2017 we requested a copy of the funding bid submitted by NHHT to the GLA via its IMS system including the Named Project Details submitted by NHHT in relation the Aylesbury scheme. This would have allowed us to interrogate the precise tenure and rent levels proposed for the order land.

64. On 1 December 2017, the Acquiring Authority’s Neil Kirby responded *“I have previously informed you of the level of funding that NHHT have received from the GLA. I have no further details of the funding submission.”*

65. The Acquiring Authority’s response is unhelpful – we know how much NHHT has been allocated but we requested details of the allocation. We request this information be provided to the inquiry in order for it to be able to understand the precise tenure and rent levels associated with the allocation.

**NHHT’s lack of commitment to social rented housing**

66. NHHT’s chief executive **Kate Davies** has been a consistent advocate of controversial changes to social housing, such as ending secure council tenancies.

67. Ms Davies was chair of **Centre for Social Justice** working group which produced the policy proposals document ‘Housing Poverty: From Social Breakdown to Social Mobility. In the foreword Ms Davies opines that *‘social housing has come to re-inforce inequality and social division in society’* and that *‘social housing is not a desirable destination; private ownership is preferable to state provided solutions’*.

68. Ms Davies is entitled to her views, but what is relevant is that they indicate a strong antipathy towards a social rented housing as a socially beneficial housing tenure and therefore give rise to legitimate doubts as to her willingness and commitment to lead NHHT in delivering what is required by the AAAP, particularly if faced with challenging viability issues.

69. In her report, Ms Davies opined that social housing providers should be able to set rent levels without restrictions:

> **2.7** We propose that the law should be changed so that councils and housing associations are free to let social homes on whatever terms they judge most appropriate to meet the particular needs of incoming tenants.

Extract from Kate Davies' CSJ report

62. Kate Davies was also a key advisor to the extremely influential **Localis review**, which had proposed the reforms.

63. In the three years following the introduction of the reforms, NHHT converted 853 of its social rented homes to affordable rent – among the highest number among housing associations to do so (see RN25).

64. An account from former NHHT board member **Steve Hilditch**, (also former head of policy for Shelter and housing adviser to the last Labour government) gives an insight into NHHT and its changed priorities:

*"The Trust came to be dominated by a philosophy which saw social renting as something to be disparaged, a 'dead end' and a route into 'dependency', and which also placed home ownership on a pedestal called 'aspiration'. Provision of social rented homes was downgraded in priority, there were moves into making tenancies conditional (eg on seeking work), whilst more and more effort went into shared ownership and private development. There were skirmishes at the Board over individual schemes where the proposed balance between social rent and shared ownership was weighted in favour of the latter even though the finances of the scheme seemed to allow for more social renting in the mix."*

*"It came to a head in early 2008 when a new 5 year development programme was put before the Board. It was fully costed, certified by the Director of Finance as a credible and viable plan, and it reflected in full the policy of the then mayor, Ken Livingstone, that development should be 50% affordable (35% social rent and 15% intermediate). Having drafted Ken's housing strategy, I was delighted that NHHT planned to follow the lead. But the proposal was withdrawn by the chief executive and a different strategy was brought to the next Board. The amount of shared ownership was significantly increased and the share of social rent significantly decreased. After a long and difficult Board meeting, where I was an isolated advocate for the first strategy, the revision was passed (as I recall) by 8 votes to 1. The mix in the programme was proposed to shift from (social rent: intermediate) 70:30 to 40:60, much more extreme than even the policy of the incoming mayor Boris Johnson (although still much better than now)."*

*I resigned. In my (July 2008) letter to the Chair, a clever businessman who helped improve the Trust in many other ways, I commented:*

*"I cannot support the Board's decision to approve the strategic plan proposed by the Corporate Management Team and the underlying attitudes it reflects. The basic premise of the growth strategy is that NHHT should make 'shed loads of money' from private development, which can then be applied to meeting housing needs. But this argument falls if CMT and the Board then decide to provide many fewer social rented homes than could be provided within reasonable business parameters. Real choices were available in deciding the strategy – and the final decision reflects serious differences of principle. In short terms, I feel that NHHT is fixated with promoting home ownership and has insufficient commitment to meeting housing need."* (RN23)

65. In July 2017, NHHT announced a merger with **Genesis Housing** association, the new group will become 'Notting Hill Genesis Housing Association'. Genesis is similar in size to NHHT and employs a simliar profit-driven approach. In August 2015 it announced that it would no longer be building social housing and that it would be considering selling or raising the rents on its existing social homes once they become vacant.

66. A Guardian article dated 7 August 2015 (See RN13) entitled '*The housing association that no longer builds homes for the poor*' confirms Genesis's changed objectives and the fact that it helped fund the research evidence that influenced the government's tenure reforms.

67. Genesis' business strategy was laid out in a widely noted Inside Housing interview with its chief executive, Neil Haddon, in August 2015 (RN14). The strategy included the intention to abandon building rented social rented homes, to increase the 'churn of tenures' in high property value areas (as a way of realising value and with a specific reference to selling social rented homes) and to reduce the affordable housing offer and tenure mix in upcoming section 106 schemes.

68. While the interview took place in the wake of the Budget announcement of four years of 1% social rent reductions and in part was a reaction to that, Mr Haddon made it clear many elements of the strategy, such as churn, were already being pursued.

69. The combination of Ms Davies' antipathy to social rented housing and Genesis' business strategy gives Objectors well-grounded fears that

Notting Hill Housing Genesis will not deliver the social rented housing that the AAAP requires. This fear is substantiated by both NHHT's and Genesis' separate records in delivering affordable housing in Southwark and London.

70. The AAAP requirement to build social rented housing is unequivocal. However, lack of public funding for social rent, plus the availability of funding for affordable rent, together with viability challenges, create a strong temptation to substitute, by various means, affordable rent for social rent. NHHT/Genesis has shown that, through its record of delivery, its ethos and business strategy, it is only too willing to succumb to this temptation and not the social rented housing the AAP demands.

**S106 monitoring, delivery, tenure mix and distribution**

71. The Objectors submit that the non-viability of the scheme will result in NHHT delivering affordable instead of social rent. At the previous CPO inquiry in May 2015, the Acquiring Authority argued that this would be prevented by the terms of the section 106 agreement requiring social rent rather than affordable rent. The Objectors responded that this was also the case at with the **Bermondsey Spa** regeneration where the Acquiring Authority had failed to monitor delivery.

72. The 35% campaign presented evidence that all of the approved 44 social rent homes were delivered at 'affordable rent' of up to 62% market rent. The AA claimed that it would investigate the matter and decide whether there was a planning breach or not. Having investigated the matter, the AA announced in October 2015, that there was a planning breach. In other words, as the Objectors had indeed claimed, between the approval stage (at planning committee) and the securing stage (the written s106 agreement) there was a breach which resulted in 44 social rented units being classed as affordable rented ones (see RN26).

73. The AA decided that even though there was a planning breach, it would not be enforced, but agreed with NHHT that the missing units would be reprovided as part of the Manor Place NHHT development. NHHT agreed to convert 34 units at its Manor Place development which had been approved as affordable rent to social rent. NHHT said it would provide the remaining

10 units on other developments in the borough but it is unknown whether these have been provided.

74. The Acquiring Authority submitted evidence (RN15) at the previous inquiry, claiming to have robust S106 monitoring procedures in place to ensure that providers deliver according to section 106 requirements. This is an extract from that document:

**S106 Monitoring**

8. The Council aims to review compliance of the major aspects of each S106 obligation (payments, Affordable Housing provision and works in kind) every 12-18 months. Should any concerns arise the following process should be followed:

- **Stage 1,** monitor the obligations / respond to any concerns raised.
- **Stage 2,** investigate concerns and identify potential remedies.
- **Stage 3,** negotiate compliance in full; or seek legal / court action (subject to Head of Development Management approval); or agree an alternative provision through a Deed of Variation (subject to an application made under S106A or S106BA and Head of Development Management approval).

73. Following the close of the previous inquiry, the 35% Campaign submitted a detailed complaint to the **Local Government Ombudsman**, listing circa 40 futher suspected breaches in affordable housing tenure delivery. Following an investigation, the Ombudsman issued a decision (RN16) in which it was found that the Acquiring Authority had no monitoring procedures in place, and did no checks whatsoever to ensure that providers delivered affordable housing in accordance with s106 tenure requirements. The findings were summarised in an article in the Sunday Times (RN17).

74. The Ombudsman directed the Acquiring Authority to conduct a **borough-wide audit** of compliance and introduce s106 monitoring procedures going forward. It has now been over a year since the Ombudsman’s directions were given and Southwark has not yet completed the required audit.

75. We submit that the Acquiring Authority’s failure to monitor the delivery of developments, combined with the viability concerns and NHHT’s track history with the Bermondsey Spa regeneration, means that the scheme is unlikely to be implemented according to the planning consent.

76. This claim is further supported by evidence from the **phase 1a** planning process where two years after permission was given, the developer L&Q applied for a variation to the tenure mix and distribution as a result of viability. The officer's report for the application (RN18) said:

*"Under Section 106A of the Town and Country Planning Act 1990, the Council may agree with the developer to vary a section 106 agreement. This discretionary power to bilaterally agree with the developer a variation to the agreement must be done by way of a deed of variation." (Paragraph 6)*

*"The request is to vary the legal agreement to provide a different tenure mix to that granted in the outline planning approval." (Paragraph 7)*

*"The proposal would result in a 48% private housing and 52% affordable housing mix across the development." (Paragraph 27)*

*"The applicant has advised that the development granted outline planning permission is unable to proceed in the current market. A 3-dragons viability assessment (FVA) has been provided to support the request." (Paragraph 31)*

*"The FVA advises that in the current housing market the development is viable with a tenure mix as set out in Table 2." (Paragraph 32)*

*"In conclusion, the acceptance of the request to vary the legal agreement will allow the development to proceed on a key regeneration site. In so doing key early enhancement benefits to the area will be gained which would act as a catalyst for further regeneration of the area. While the development would provide a mix of housing slightly different to that sought by the relevant policy documents, this difference is considered minor in the context of the regeneration programme, necessary at this time in order for the development to be financially viable and proceed, and could potentially be redressed in future development stages of the estate wide programme. It is therefore recommended that the request to vary the legal agreement is agreed." (Paragraph 35)*

77. In 2014, the developer applied (RN19) for a second variation to the section 106 agreement's affordable housing requirements. This time the application was retrospective and requested a change to the section 106 agreement in order to reflect changes to the tenure mix that had already been made – i.e the scheme as delivered.

78. The application said "*The tenure mix resulted in* ***46% affordable housing and 54% private housing*** *across the scheme.*" (see page 1 of RN19). This is not in line with the planning consent which was for 52% affordable housing and 48% private housing (see paragrah 27 of RN18) or the AAAP policy BH3 which requires 59% affordable housing on this site.

79. Therefore, the council's explanatory note (paragraph 24 in RN15) given to the previous inquiry, which states that the scheme has delivered 51.3% affordable housing is false. We have gone from 59%, to 52%, to 51.3% to currently settle at 46% affordable housing on a scheme which is part of the Aylesbury regeneration and which is meant to be secured through both the AAAP and the Acquiring Authority's planning process. I submit that both are being seriously and systematically failed.

80. In addition, the accommodation schedule (RN20) submitted in conjunction with this application shows that the scheme has been delivered such that the tall block (D3) closest to the park is 100% private tenure and blocks A and C (furthest from the park) are 100% affordable housing.

81. This is in contrast to the section 106 agreement which required a mix of both affordable and private units in each of the five blocks. It also a breach of Policy BH3 of the AAAP which says *"All development blocks should seek to provide the tenure mix which is appropriate for the proposals site in which the block is located, as set out in policy BH3, unless it can be demonstrated that this is not possible through an open-book financial appraisal."* (Paragraph 3.3.8)

82. This second application to vary the legal agreement is registered on the Acquiring Authority's planning portal as 'pending decision'. There is no officer's report available and it is not known whether the variation has been approved.

83. I submit that as a result of viability issues, the scheme for the order land is likely to be the subject of similar such variations to tenure mix and tenure distribution.

84. My claim is further supported by the fact that NHHT has already applied for a variation to the consented tenure mix for the next phase of the regeneration, **plot 18**, where work has already commenced on site.

85. This site originally gained planning consent for 122 new homes of which 56 would be affordable. Earlier this year NHHT applied for a variation to convert 33 of the affordable units to private sale (ref:17/AP/3885) meaning that now just 23 of the 122 new homes on this site will be affordable.

86. NHHT claims that it will make up the shortfall by providing more affordable homes on later phases. I submit that this emerging pattern will be repeated with the affordable housing/tenure mix being kicked into the distance as viability constraints are realised when each phase becomes active. The result is that the redevelopment of the Aylesbury estate will likely follow that of the now notorious Heygate estate scheme.

**Conclusion**

87. NHHT and Genesis face a plethora of viability issues. Their track record demonstrates a lack of commitment and ability to deliver social rented housing.

88. Planning consent should not be taken as an indication of what will be delivered on the order land as developments are subject to variations, both those agreed by NHHT and the Acquiring Authority and those which have not been agreed by both parties. There is strong evidence of schemes delivered or currently in construction which do not comply with local planning policies or the AAAP. The Acquiring Authority does not have systems in place to sufficiently monitor, secure, deliver or guarantee that the scheme underlying will comply with the requirements for the order land.

89. I submit that for the reasons listed above, the scheme underlying the order is unlikely to proceed according to the development plan. It is unlikely to deliver the social and environmental benefits envisaged by AAAP and the order should therefore not be confirmed.