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NEW BERMONDSEY INQUIRY COMMITTEE

Date: TUESDAY, 19 DECEMBER 2017 at 6.00 pm

Committee Room 4
Civic Suite
Lewisham Town Hall
London SE6 4RU

Enquiries to: Kevin Flaherty 0208 3149327
Telephone: (direct line)

MEMBERS

Councillor Chris Barnham	L
Councillor Bill Brown	L
Councillor John Coughlin	(G)
Councillor Maja Hilton	L
Councillor Simon Hooks	L

Members are summoned to attend this meeting

Janet Senior
Acting Chief Executive
Lewisham Town Hall
Catford
London SE6 4RU
Date: December 11 2017

ORDER OF BUSINESS – PART 1 AGENDA

APPOINTMENTS COMMITTEE			
Report Title	Election of Chair and Vice Chair		
Key Decision	No		Item No. 1
Ward			
Contributors	Chief Executive (Head of Business & Committee)		
Class	Part 1	Date: 29 April 2015	

Recommendation

To consider the election of a Chair and Vice Chair of the Committee for the municipal year 2015/16.

NEW BERMONDSEY INQUIRY COMMITTEE			
Report Title	Declarations of Interests		
Key Decision	No		Item No. 1
Ward	n/a		
Contributors	Chief Executive		
Class	Part 1	Date: December 19 2017	

Declaration of interests

Members are asked to declare any personal interest they have in any item on the agenda.

1 Personal interests

There are three types of personal interest referred to in the Council's Member Code of Conduct :-

(1) Disclosable pecuniary interests
(2) Other registerable interests
(3) Non-registerable interests

2 Disclosable pecuniary interests are defined by regulation as:-

(a) Employment, trade, profession or vocation of a relevant person* for profit or gain

(b) Sponsorship –payment or provision of any other financial benefit (other than by the Council) within the 12 months prior to giving notice for inclusion in the register in respect of expenses incurred by you in carrying out duties as a member or towards your election expenses (including payment or financial benefit from a Trade Union).

(c) Undischarged contracts between a relevant person* (or a firm in which they are a partner or a body corporate in which they are a director, or in the securities of which they have a beneficial interest) and the Council for goods, services or works.

(d) Beneficial interests in land in the borough.

(e) Licence to occupy land in the borough for one month or more.

(f) Corporate tenancies – any tenancy, where to the member's knowledge, the Council is landlord and the tenant is a firm in which the relevant person* is a partner, a body corporate in which they are a director, or in the securities of which they have a beneficial interest.

(g) Beneficial interest in securities of a body where:-

(a) that body to the member's knowledge has a place of business or land in the borough; and

(b) either
(i) the total nominal value of the securities exceeds £25,000 or 1/100 of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person* has a beneficial interest exceeds 1/100 of the total issued share capital of that class.

*A relevant person is the member, their spouse or civil partner, or a person with whom they live as spouse or civil partner.

(3) Other registerable interests

The Lewisham Member Code of Conduct requires members also to register the following interests:-

(a) Membership or position of control or management in a body to which you were appointed or nominated by the Council

(b) Any body exercising functions of a public nature or directed to charitable purposes , or whose principal purposes include the influence of public opinion or policy, including any political party

(c) Any person from whom you have received a gift or hospitality with an estimated value of at least £25

(4) Non registerable interests

Occasions may arise when a matter under consideration would or would be likely to affect the wellbeing of a member, their family, friend or close associate more than it would affect the wellbeing of those in the local area generally, but which is not required to be registered in the Register of Members' Interests (for example a matter concerning the closure of a school at which a Member's child attends).

(5) Declaration and Impact of interest on members' participation

(a) Where a member has any registerable interest in a matter and they are present at a meeting at which that matter is to be discussed, they must declare the nature of the interest at the earliest opportunity and in any event before the matter is considered. The declaration will be recorded in the minutes of the meeting. If the matter is a disclosable pecuniary interest the member must take not part in consideration of the matter and withdraw from the room before it is considered. They must not seek improperly to influence the decision in any way. **Failure to declare such an interest which has not already been entered in the Register of Members' Interests, or participation where such an interest exists, is liable to prosecution and on conviction carries a fine of up to £5000**

(b) Where a member has a registerable interest which falls short of a disclosable pecuniary interest they must still declare the nature of the interest to the meeting at the earliest opportunity and in any event before the matter is considered, but they may stay in the room, participate in consideration of the matter and vote on it unless paragraph (c) below applies.

(c) Where a member has a registerable interest which falls short of a disclosable pecuniary interest, the member must consider whether a reasonable member of the public in possession of the facts would think that their interest is so significant that it would be likely to impair the member's judgement of the public interest. If so, the member must withdraw and take no part in consideration of the matter nor seek to influence the outcome improperly.

(d) If a non-registerable interest arises which affects the wellbeing of a member, their, family, friend or close associate more than it would affect those in the local area generally, then the provisions relating to the declarations of interest and withdrawal apply as if it were a registerable interest.

(e) Decisions relating to declarations of interests are for the member's personal judgement, though in cases of doubt they may wish to seek the advice of the Monitoring Officer.

(6) Sensitive information

There are special provisions relating to sensitive interests. These are interests the disclosure of which would be likely to expose the member to risk of violence or intimidation where the Monitoring Officer has agreed that such interest need not be registered. Members with such an interest are referred to the Code and advised to seek advice from the Monitoring Officer in advance.

(7) Exempt categories

There are exemptions to these provisions allowing members to participate in decisions notwithstanding interests that would otherwise prevent them doing so. These include:-

(a) Housing – holding a tenancy or lease with the Council unless the matter relates to your particular tenancy or lease; (subject to arrears exception)
(b) School meals, school transport and travelling expenses; if you are a parent or guardian of a child in full time education, or a school governor unless the matter relates particularly to the school your child attends or of which you are a governor;
(c) Statutory sick pay; if you are in receipt
(d) Allowances, payment or indemnity for members
(e) Ceremonial honours for members
(f) Setting Council Tax or precept (subject to arrears exception)

NEW BERMONDSEY/SURREY CANAL INDEPENDENT INQUIRY			
Report Title	Report to Council meeting presenting the report of the New Bermondsey/Surrey Canal Independent Inquiry		
Key Decision		Item No.	
Ward	All		
Contributors	Executive Director for Children and Young People		
Class	Open	Date:	19 December 2017

1. Purpose

1.1 This report seeks the Committee's approval to a report to the Council Meeting on 17th January 2018 which is attached to this report as Appendix 1.

2. Recommendation

2.1 That the Committee comment on and approve the attached report on the New Bermondsey/Surrey Canal Independent Inquiry to the Council Meeting, to be included in the agenda papers for the Council Meeting on 17th January 2018

3. Background

3.1 This Committee was established by the Council at its meeting of 22nd February 2017. The Committee was established to receive the report of the Independent Inquiry and to take responsibility for the report to Council, including any recommendations for action resulting from it. In the interests of transparency and in line with the requirements around proportionality, it was agreed that the Committee would comprise four majority group councillors and the minority group councillor.

3.2 The Committee was given responsibility for monitoring the progress of the Inquiry and monitoring the level of expenditure on the Inquiry and reporting to Council on the final report, including any recommendations for action. The Chair of the Committee, Councillor Chris Barnham, was kept informed as the report progressed but given that the Inquiry proceeded to timescale, concluded well within budget and with a procedure and process set and adhered to definitively by Lord Dyson himself, no decisions were required by the Committee up until this point, so this is its first and final meeting. The Committee is asked to agree the report for the Council Meeting on 17th January 2018. A draft is attached as Appendix 1.

4. Legal Implications

4.1 See attached report

5. Financial implications

5.1 The attached report identifies that £500,000 was put aside to meet the costs of the Inquiry and the final invoices have not yet been received, but final expenditure on the Inquiry is anticipated to be in the region of £250,000.

Appendix 1	Council – Report of the New Bermondsey/Surrey Canal Independent Inquiry Committee
Appendix 2	Report of the New Bermondsey/Surry Canal Independent Inquiry
Appendix 3	Executive Summary
Appendix 4	Correction to the Report of the New Bermondsey/Surrey Canal

If there are any queries on this report please contact Sara Williams sara.williams@lewisham.gov.uk

COUNCIL			
Report Title	Report of the New Bermondsey/Surrey Canal Independent Inquiry Committee		
Key Decision			Item No.
Ward	All		
Contributors	Executive Director for Children and Young People		
Class	Open		

1. Purpose

1.1 On 22nd February 2017, at both a meeting of the full Council and of the Mayor and Cabinet it was decided to establish the New Bermondsey/Surrey Canal Independent Inquiry. The Chair of the Bar Council nominated Lord Dyson, former Master of the Rolls and Supreme Court judge, to lead the Inquiry. The report of the Inquiry was published on the Inquiry's website on 28th November 2017. This report presents the Inquiry Report formally to the Council and makes recommendations. The Inquiry Report and Executive Summary are attached as Appendix A and Appendix B to this report.

2. Recommendations

2.1 That the Council receive Lord Dyson's Report on the New Bermondsey/Surrey Canal Independent Inquiry, acknowledging its authority and independence

2.2 That the Council welcome the report's findings, in particular that "*there was no impropriety, lack of due diligence or breach of a code of practice on the part of any Council officer or member in relation to:*

(i) the decisions to make a Compulsory Purchase Order and the appraisal of the financial viability of Renewal's scheme and its ability to deliver it

(ii) the grant of Outline Planning Permission

(iii) the decision to enter into a conditional contract of sale of the Millwall Land to Renewal

(iv) the decision of the Mayor and Cabinet to pledge £500,000 to Surrey Canal Sports Foundation

(v) the Council's support for Renewal's Housing Zone bid"

noting also that Lord Dyson concluded that *"(a) the Council was not misled by any misrepresentation, misinformation or withholding of information in relation to the decision to make the pledge of £500,000; and (b) there was no inadequacy in*

the Council's inquiry into the circumstances surrounding the production of the Lambert Smith Hampton brochure."

2.3 That the Council records its thanks to Lord Dyson for the thoroughness and timeliness of his report.

3. Background

3.1 At the Council meeting on 22nd February 2017, the Council received a report which described concerns which had arisen surrounding the proposal to issue a Compulsory Purchase Order (CPO) in respect of land at New Bermondsey/Surrey Canal to facilitate a complete development of the area by a developer. The report referred to serious allegations made in articles in The Guardian relating to Surrey Canal Foundation Trust (SCFT), Renewal, council officers and members.

3.2 The Council (and a Mayor and Cabinet meeting on the same evening) agreed to establish an Independent Inquiry to investigate matters related to the CPO. Given the nature of the Inquiry, Council determined that it must be led by an individual who was demonstrably independent of all parties involved, sufficiently knowledgeable, and generally recognised to be a person of suitable integrity and authority to conduct the business in the rigorous, open-minded and unbiased manner that the public would expect. It was agreed that Executive Director for Children and Young People would be the Council's officer lead in relation to the establishment and conduct of the Inquiry. In accordance with the Council decision, she approached the Chair of the Bar Council, Mr Andrew Langdon QC to nominate a suitably qualified and independent person to lead the Inquiry. He nominated Lord John Dyson, former Master of the Rolls and Supreme Court Judge who had the qualifications and availability to undertake the Inquiry. Lord Dyson was appointed to carry out the Inquiry on 16th March 2017. A barrister within Lord Dyson's Chambers, 39 Essex, was appointed to assist Lord Dyson, to help the Inquiry to proceed at pace. He agreed a timescale for the report to be published by the end of 2017, a timescale which he met.

4. Inquiry terms of reference

4.1 At its meeting on 22nd February 2017, the Council agreed terms of reference as follows, but with the important proviso that if the person conducting the Inquiry was of the view that there were any other matters which ought to be explored in the context of the Inquiry, they should investigate those matters and include them in the report. This meant that Lord Dyson had complete discretion to pursue issues raised by critics of the Council, which he duly did

Terms of reference agreed by Council 22nd February 2017

1. To consider the pledge of £500,000 by the Council to SCFT in June 2014 and to establish:-

   (a) Whether the report on which it was based was accurate in its reference to support from Sport England.

   (b) If not accurate, whether the Council was misled by SCFT, Renewal and/or their employees and/or agents, and/or by Council officers.

(c) If the report is not accurate, whether any Member and/or officer committed a breach of the Member and/or employee Code of Conduct in relation to this matter.

(d) If the report was accurate as at June 2014, whether the circumstances have changed since and if so, how, when and whether such change ought to have been reported to Mayor and Cabinet and why it was not.

(e) If the allegations are accurate what is the impact on the overall redevelopment scheme.

2. To consider statements made by Renewal/SCFT to the Council in relation to funding pledges from other sources and to establish whether those statements were misleading and if so, whether Renewal, SCFT, their employees and/or agents and/or Council officers have misled the Council. If the Council has been misled to comment on the impact on the overall development scheme.

3. To consider the bid for Housing Action Zone funds from the GLA in relation to this proposed development and to establish whether statements in it in relation to pledges of funding are misleading and if so, whether Renewal, SCFT, their employees and/or agents and/or Council officers have misled the Council. If the Council has been misled, to comment on the impact on the overall development scheme.

4. To establish whether the Council's Inquiry into the instruction of Lambert Smith Hampton by Renewal and/or its investors was appropriately conducted and reported to Mayor and Cabinet. If not, what further action ought the Council to have taken in this respect.

5. In all the circumstances as to the adequacy of the due diligence of Council officers in advising the Mayor and Cabinet on the proposal for a CPO at New Bermondsey; and

6. The propriety or otherwise of the behaviour of all Members and officers involved in all stages of the process of consideration of the proposed CPO.

7. If in the course of the investigation the person conducting the Inquiry is of the view that there are any other matters which ought to be explored in the context of the Inquiry, to investigate those matters and report on them to the Council.

5. Inquiry opening statement

5.1 On 15th May 2017, having undertaken a preliminary investigation, Lord Dyson published his opening statement on the Inquiry website.

The opening statement as made by Lord Dyson on 15th May 2017

"Scope of Inquiry

The Inquiry will examine the circumstances surrounding the regeneration of land at New Bermondsey/Surrey Canal with a view to determining whether the Council, its Members and officers have acted properly and with due diligence when taking decisions in relation to the regeneration of this land. The Inquiry's investigation will include, but not necessarily be Council during this period:

(1) The resolution of the Mayor and Cabinet dated 7 March 2012 that, in principle, the Council use its compulsory purchase powers to acquire or appropriate land falling within the New Bermondsey site for the purpose of enabling development of the land by Renewal Group Limited ("Renewal").

(2) The grant of outline planning permission on 30 March 2012 (ref: DC/11/76357) for the comprehensive phased mixed-use development of the New Bermondsey/Surrey Canal site.

(3) The Council's decision to enter into the conditional land sale agreement with Renewal dated 20 December 2013 for the disposal of the Council's freehold interest in land leased to Millwall Football Club and Millwall Community Trust.

(4) The decision of the Cabinet (in the absence of the Mayor) dated 25 June 2014 to pledge £500,000 to Surrey Canal Sports Foundation Limited.

(5) The Council's support for Renewal's Housing Zone bid in relation to New Bermondsey/Surrey Canal land.

(6) The resolution of the Cabinet (in the absence of the Mayor) dated 7 September 2016 to make a compulsory purchase order to acquire or appropriate land falling within the New Bermondsey site.

(7) The adequacy of the Council's inquiry into issues surrounding the production of a marketing brochure in relation to land falling within the New Bermondsey site

(8) The adequacy of the Council's appraisal of the financial viability of Renewal's proposed scheme for regeneration of land at New Bermondsey/Surrey Canal and the ability of Renewal to deliver the scheme.

The focus of the Inquiry will be to establish: (i) whether Members and officers acted with propriety, due diligence and in compliance with the applicable codes of conduct in relation to these actions and decisions; and, (ii) whether there is any evidence that decision-makers within the Council were misled by misrepresentations, misinformation or the withholding of information in relation to any of these actions and decisions.

The Inquiry process

The process will be inquisitorial in nature. It will take place in three phases.

Phase 1: *Preliminary investigations* The Chairman of the Inquiry will carry out a preliminary investigation in order to determine the scope of the Inquiry. This phase will have been completed by the publication of this statement defining the scope of the Inquiry.

Phase 2: *Evidence gathering* The Chairman has identified the following individuals and organisations as key participants on the basis that all have

had a significant role in relation to the matters to which the Inquiry relates: (i) Lewisham Council; (ii) Renewal Group Limited; (iii) Millwall Football Club; (iv) Millwall Community Trust; and (v) Surrey Canal Sports Foundation Limited. The Chairman will call for representations and witness statements from the key participants. The Chairman may request that some or all of the witnesses attend oral hearings to answer further questions. In view of the sensitive and confidential nature of some of the matters raised by this Inquiry, all such hearings will be held in private and attended only by the Chairman, the assistant to the Inquiry, the witness who is giving evidence and his or her legal representative(s). It is envisaged that such hearings will take place in the period between 26 June and 28 July 2017. Individuals and organisations other than the key participants identified by the Chairman who wish to make representations may do so in accordance with the guidance and procedure set out below.

Phase 3: Report The outcome of this Inquiry will be reported to Lewisham's full Council and the report will be made public.

Procedure and guidance for making submissions to the Inquiry

The Chairman will write to the key participants to request representations and witness statements on the issues falling within the scope of the Inquiry. Further individuals and organisations who wish to make representations or submit material in relation to this Inquiry must do so before 16 June 2017. Material may be submitted to the Inquiry by email to contact@newbermondseysurreycanalindependentinquiry.com. These further individuals and organisations are urged to confine representations and material to that which is strictly relevant to the scope of the Inquiry as defined above. Representations should be accompanied by a brief statement explaining why the individual or organisation considers that they have an interest in the outcome of the Inquiry and should be entitled to make representations. The Inquiry will not consider representations from individuals and organisations who the Chairman considers do not have a real interest in the outcome of the Inquiry."

6. Conduct of the Inquiry

6.1 Lord Dyson carried out the Inquiry in line with the process and procedures which he laid out above. These processes and procedures were independently determined by Lord Dyson throughout the Inquiry.

7. Findings of the Inquiry

7.1 Lord Dyson's report was published on the Inquiry website on 28th November 2017. His findings were as follows (Paragraph 415 of the Inquiry Report):

"there was no impropriety, lack of due diligence or breach of a code of practice on the part of any Council officer or member in relation to (i) the decisions to make a Compulsory Purchase Order and the appraisal of the financial viability of Renewal's scheme and its ability to deliver it (issues 1, 6 and 8); (ii) the grant of Outline Planning Permission (issue 2); (iii) the decision to enter into a conditional contract of sale of the Millwall Land to Renewal (issue 3); (iv) the decision of the Mayor and Cabinet to pledge £500,000 to Surrey Canal Sports Foundation (issue 4); and (v) the Council's support for Renewal's Housing Zone bid (issue 5). I have also concluded that (a) the Council was not misled by any misrepresentation, misinformation or withholding of information in relation to the decision to

make the pledge of £500,000 (issue 4); and (b) there was no inadequacy in the Council's inquiry into the circumstances surrounding the production of the Lambert Smith Hampton brochure (issue 7)."

7.2 Lord Dyson also made a number of wider observations which are set out in paragraphs 416 of the report onwards.

8. Next steps

8.1 The Council's future decision-making as it relates to the New Bermondsey/Surrey Canal site will be for the appropriate decision making forum depending on the nature of the decision. It is not for Council to determine at this time, but rather to receive and note Lord Dyson's report.

9. Legal Implications

9.1 The Council established and commissioned the external inquiry using its powers under Section 2 of the Localism Act 2011.

9.2 The establishment of the investigation by law is an executive function and so was technically a decision for the Mayor and Cabinet to make, therefore meetings of the Council and Mayor and Cabinet were called simultaneously to ensure that decisions were made in by the appropriate decision-making body with separate decisions taken and recorded.

9.3 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9.4 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

9.5 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.

9.6 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Council, bearing in mind the issues of relevance and proportionality. The Council must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The

extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

9.7 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled "Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice". The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice
https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance

9.8 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty: A guide for public authorities
- Objectives and the equality duty. A guide for public authorities
- Equality Information and the Equality Duty: A Guide for Public Authorities

9.9 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1

10. Financial Implications

10.1 The cost of the Inquiry has comprised the fees for Lord Dyson and his assistant. It has also been necessary to incur some additional QC fees and agency administrator costs. Final invoices have not yet been received, but it is expected that the final cost will be in the region of £250,000. The Council had allocated £500,000 from its contingency budget to meet the costs of the Inquiry so the costs were well contained within the budget.

Report of

New Bermondsey / Surrey Canal

Independent Inquiry

by

The Right Honourable Lord Dyson

November 2017

CONTENTS

Chapter 1: Overview

1. The London Borough of Lewisham ("the Council") is the local planning authority for an area which includes the Surrey Canal Triangle, now known as "New Bermondsey". I shall refer to this area as "the Site". The Site is approximately 30 acres in size. It is shown on the plan annexed to this report as Annex 1. It consists of many industrial buildings and a few dwellings. Of greater significance for the purposes of this Inquiry is the fact that it also includes "The Den", which is the football ground of Millwall Football Club ("MFC").

2. Having visited the Site myself, I can confirm, as seems to be generally accepted, that in particular the area around the football ground it is in great need of redevelopment, although it is no part of anyone's plans to redevelop the football ground itself.

3. The freehold of a large part of the Site is now owned by Renewal Group Limited ("Renewal"). This is a privately owned company which is based in the Isle of Man. Its two shareholders are overseas companies, namely Incorporated Holdings Limited ("IHL") and Independent Advisers Limited ("IAI"). These are registered respectively in the Isle of Man and British Virgin Islands. The Chief Executive of Renewal is Mr Mushtaq Malik. IHL is owned and controlled by a charitable trust of which the principal beneficiary is the Jack Petchey Foundation. IAI is owned and controlled by the Mushtaq Malik Family Trust. Renewal has produced a substantial comprehensive scheme for the development of the Site which it wishes to carry out

4. Part of the development involves the provision of Energize, a new indoor sports facility whose cost has been estimated at £40 million. For this purpose, in 2011 Renewal established Surrey Canal Sports Foundation limited ("SCSF"). In 2012, Renewal applied to Sport England for a contribution to the cost of providing these facilities. Renewal contends that Sport England gave it a pledge of £2 million towards the cost. In the belief that this pledge had been given, on 25 June 2014 the Mayor and Cabinet of the Council ("M&C") resolved to pledge £500,000 of funding to SCSF subject to the terms of the funding being agreed. In January and February 2017, *The Guardian* published a series of articles by Mr Barney Ronay, a sports journalist, which reported that Sport England had

not given a pledge to Renewal and that the Council had been induced to make its pledge of £500,000 on the basis of a misrepresentation.

5. The freehold of a significant part of the Site (but smaller than that owned by Renewal), has at all times been owned by the Council. Part of this land (the football stadium and car park) has been let by the Council to MFC on a 150 year lease from 24 June 1993; and part of it (*The Lions Centre*) has been let by the Council to Millwall Community Trust ("MCT") on a 25 year lease from 19 November 2004. MCT, which is sometimes referred to as "Millwall Community Scheme" ("MCS"), is a football community scheme, independent of but affiliated to MFC. It occupies *The Lions Centre* which houses a covered 3G football pitch as well as other sports facilities. The football stadium and car park and *The Lions Centre* are shown on Annex 1. I shall refer to this land as "the Millwall Land".

6. On 7 March 2012, M&C resolved in principle, but subject to important conditions, that the Council should use its compulsory purchase powers to acquire those parts of the Site that Renewal did not yet own, if the company was unable to complete the assembly of the Site by agreement. These conditions included that Renewal should have a viable business plan and funding for the development scheme. Unless Renewal was able to purchase those parts of the Site which it did not already own, it would be necessary for the Council to make a compulsory purchase order ("CPO") in order to enable Renewal to carry out the development.

7. On 30 March 2012, the Council granted outline planning permission to Renewal for the development of the Site. This would be a huge development and far beyond anything that Renewal had ever done before. Although MFC had hoped to develop the Millwall Land in some form of partnership with the Council, it had decided to withdraw its objections to Renewal's application for outline planning permission. MFC continued to hope that it would be able to develop the Millwall Land, but now in some form of joint venture with Renewal. Discussions between Renewal and MFC eventually foundered.

8. On 11 September 2013, to the dismay of MFC, M&C resolved to enter into a conditional agreement to sell the freehold of the Millwall Land to Renewal. MFC has always complained about this agreement and the process by which M&C resolved to make it. In particular, it complains that it was not given a fair opportunity to bid for the Millwall

Land and put forward a scheme for the development of that land, which would dovetail with the development that Renewal was proposing to carry out on the remaining part of the Site.

9. On 24 September 2013, the Overview and Scrutiny Business Panel of the Council ("OSBP") decided to "call-in" the decision of M&C of 11 September (i.e. to require M&C to reconsider it). On 2 October, M&C affirmed its decision to sell the land to Renewal. The conditional contract of sale was concluded on 20 December 2013.

10. Between 2013 and 2016, the Council received advice from GL Hearn (valuers) and Price Waterhouse Cooper ("PwC") on the viability of the scheme and the ability of Renewal to deliver it. It was also advised by specialist outside lawyers, namely solicitors Bond Dickinson LLP and counsel James Goudie QC and Neil King QC. It also consulted Strutt & Parker (valuers) on the viability and deliverability of a scheme that MFC had put forward in 2013 and revised in 2016 for the development of the Millwall Land.

11. On 7 September 2016, M&C considered a detailed report prepared by its officers which advised that all of the conditions that had been set for the making of a CPO in its resolution of 7 March 2012 had been met. These included that the scheme was viable and could be delivered by Renewal. By a resolution dated 7 September 2016, M&C accepted this advice and resolved that a CPO be made to enable Renewal to go ahead with the scheme. MFC complain that this resolution was flawed in ways that I discuss in more detail in Chapter 4 of this report.

12. On 20 September, OSBP decided to "call-in" this decision on various grounds including that there was uncertainty as to the viability and deliverability of Renewal's scheme.

13. On 28 September, M&C adjourned further consideration of the matter pending the investigation of the allegation that, as apparently evidenced by a brochure published by Lambert Smith Hampton ("LSH") (commercial property consultants), Renewal had marketed the Site with a view to selling it. The question whether Renewal intended to see the project through was of concern to councillors. The outcome of the officers' investigation was their report to M&C dated 13 December 2016. They reported that LSH had "confirmed" that they had not been instructed by IHL or Renewal to prepare the brochure. MFC criticise this investigation as having reached an "*incredible*" conclusion.

14. Meanwhile, Mr Ronay had been following with great interest what was happening at New Bermondsey for some time. The future of MFC, its stadium and sporting facilities was of obvious interest to a sports journalist. He started reporting on the New Bermondsey scheme in an article published on 9 April 2014 and has reported on it extensively since then, both in *The Guardian* and on social media. On 27 October 2016, Mr Ronay reported that Councillor Alan Hall was calling for the CPO decision to be reversed on the grounds that the process had been "*spectacularly mishandled*".

15. MFC was strongly critical of the way in which M&C had decided to appoint Renewal as the developer. The following summary is taken from the letter of 13 December 2016 written to Councillor Hall by Eversheds, MFC's solicitors. They complained that there had been departures from what would reasonably have been expected of a council in that, for example: (i) the Council had appointed a company that had no track record in undertaking developments of the scale of the New Bermondsey development; (ii) the founders of Renewal were a former senior officer (Mr Mushtaq Malik) and a former leader of the council of the Council (Mr David Sullivan); (iii) the parent companies were registered in off-shore tax havens and the beneficial owners were anonymous; (iv) PwC were denied access to information about the parent companies in 2013 and were unable to do due diligence, and despite this the Council entered into a binding conditional sale agreement of the Millwall Land; (v) in these circumstances, it "*beggared belief*" that the Council considered it prudent not to have sought an open and transparent tendering process to ensure that the developer was one on whom it could rely and had the experience, skills and clear access to appropriate funding that would ensure delivery of the scheme; and (vi) having entered into a conditional sale agreement of the Millwall Land in December 2013, it had not even conducted a viability assessment of the scheme: GL Hearn did not produce its initial report until April 2014. These complaints have been maintained by MFC to the present day. A number of the same criticisms were made separately to me by the Association of Millwall Supporters in a helpful written submission, which highlighted to me the sincere concern on the part of the ardent Millwall supporters for the future of MFC.

16. Each of these criticisms was answered by the Council's officers in reports and correspondence at the time and in evidence that I have received. I shall refer to and

assess these answers in detail later. In summary, they say: (i) it is true that Renewal has no track record of a development of this size: that is why the favourable advice of GL Hearn as to the viability and deliverability of the scheme and of PwC as to Renewal's overall ability to deliver the scheme and its proposed funding and delivery strategy were so important; (ii) it is true that Mr Sullivan had been leader of the Council and Mr Malik had been employed by the Council in the past, but neither of them had been involved in planning matters; (iii) it is also true that the parent companies were registered off-shore, but overseas investment in development projects was commonplace in the UK and non-UK resident companies that carry on the trade of property development in the UK are liable for UK tax on the profits of their trade: there had been concern about the lack of information about the ultimate beneficiaries of the trusts holding shares in IHL and IAI, but the details had been disclosed to PwC (although the identity of the ultimate beneficiaries of the trusts was of no real relevance to the issue of the deliverability of the scheme); and (iv) in all the circumstances, there was a compelling case in the public interest to make the CPO.

17. On 9 January 2017, Mr Kavanagh (the recently appointed Chief Executive of MFC) raised a new point. This was a concern that, if the Renewal scheme went ahead, the MFC Youth Academy might lose its English Football League Category 2 status. This was because the sporting facilities provided at *The Lions Centre* would be replaced by facilities provided at Energize, which might be considered to be too far from the stadium to qualify for Category 2 status.

18. On 11 January 2017, M&C adjourned its reconsideration of the CPO decision until 8 February. The decision to do so was taken on counsel's advice in order to allow time for the investigation of the English Football League Category 2 issue to be completed. By now, however, as will become clear when I describe what happened in detail, the allegations that M&C had been misled into making the £500,000 pledge by a misrepresentation as to the existence of a pledge of £2 million funding from Sport England were dominating the debate. Passions were running high. National politicians had entered the fray. On 20 January, Councillor Hall (who was a leading opponent of the Renewal scheme) wrote to Mr Quirk (the Chief Executive of the Council) saying that it appeared that OSBP had been told lies about the existence of the pledge. He said that he wanted an independent investigation to be carried out into the matters referred to in *The*

Guardian article that had been published on 19 January. On the same day, Sir Steve Bullock (the Mayor) also wrote to Mr Quirk requesting an investigation.

19. On 25 January, M&C issued a statement saying that the issues relating to the SCSF were now to be subject to an independent Inquiry and that it was no longer proceeding with a CPO. It had decided (on legal advice) that, whatever the outcome of the Inquiry (i.e. even if the Council were completely vindicated), it would not be appropriate to rely on the resolution to make a CPO that had already been made.

1.1 My terms of reference and the scope of the Inquiry

20. On 22 February 2017, the Council and the M&C (in the absence of the Mayor) both resolved to ask an independent person to conduct an Inquiry, whose terms of reference would be, broadly speaking, to investigate whether members and/or officials of the Council had acted improperly in a number of respects in relation to the history that I have just described in outline. On 16 March 2017, on the recommendation of Mr Andrew Langdon QC, Chairman of the Bar, I was appointed by the Council to conduct the Inquiry.

21. The main issues that I have to address are whether the officers and/or members of the Council acted with propriety, due diligence and in compliance with applicable codes of practice in relation to:

(1) The decision of 7 March 2012 that, in principle, the Council should use its compulsory purchase powers to acquire or appropriate land falling within the Site for the purpose of enabling Renewal to carry out its proposed redevelopment;

(2) The grant of outline planning permission on 30 March 2012 for the comprehensive phased mixed-use of the Site;

(3) The decision to enter into the conditional land sale agreement with Renewal dated 20 December 2013 for the disposal of the Council's freehold interest in the Millwall Land;

(4) The decision of M&C dated 25 June 2014 to pledge £500,000 to SCSF;

(5) The Council's support for Renewal's Housing Zone bid to the Greater London Authority ("GLA") in relation to the Site;

(6) The resolution of M&C dated 7 September 2016 to make a CPO in order to acquire or appropriate land falling within the Site;

(7) The adequacy of the Council's inquiry into issues surrounding the production of a marketing brochure by LSH in relation to land falling within the Site;

(8) The adequacy of the Council's appraisal of the financial viability of Renewal's proposed scheme and its ability to deliver it.

22. My opening statement stated that the Inquiry would seek to establish:

(i) whether members and officers of the Council acted with propriety, due diligence and in compliance with the applicable codes of conduct in relation to these actions and decisions; and,

(ii) whether there is any evidence that decision-makers within the Council were misled by misrepresentations, misinformation or the withholding of information in relation to any of these actions and decisions.

23. I make a number of preliminary observations about the terms of reference.

24. First, it is important to bear in mind that the terms of reference focus on the question of whether Council members or officers have acted with propriety, due diligence and in compliance with the applicable codes of conduct. The inquiry is not asked to consider whether the Council, as a public body, acted unlawfully in a public law sense. Although there may well be areas where the conduct of individuals is both improper and/or a breach of the applicable codes of conduct as well as unlawful in a public law sense, there is no necessary relationship between the two.

25. Secondly, I do not think it is profitable to attempt a sophisticated discussion of what is and is not improper conduct. Most people have no difficulty identifying impropriety where they see it. Certainly, it has connotations of blameworthiness, culpability and fault. The threshold for improper conduct is therefore high.

26. Thirdly, it is recognised that holders of public office should be held to a high standard of conduct, which demands more than simple propriety. This standard is encapsulated in the Nolan Principles for standards in public life, which include: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Section 28 of the Localism Act 2011 places local authorities under a duty to adopt a code of conduct that is consistent with the Nolan Principles. Lewisham Council has adopted codes of conduct for officers and members which adopt all of the Nolan Principles. I have set out relevant excerpts of the codes in Annex 2.

1.2 The procedure that I have followed

27. I make it clear at the outset that this is not a statutory Inquiry. I have no powers to compel witnesses to attend or to insist on the production of documents. I received written statements and representations from fifteen present and former officers and members of the Council; three persons representing Renewal; six persons representing MFC; one person representing MCT; Paul Turner on behalf of the Association of Millwall Supporters; two local residents (Ms Willow Winston and Mr Terence Williams); two members of the broader community (Ms Carole Hope and Mr Richard Parry); Mr Ross Archer, Conservative Candidate for Lewisham Mayor; and Mr Barney Ronay. The names and roles of each of them are set out in Annex 3 to this report.

28. I requested the following to attend my Chambers to answer the questions that I wished to ask them in order to explain or amplify some of their evidence: Mr Mushtaq Malik, Sir Steve Bullock, Councillor Alan Smith, Councillor Alan Hall, Mr Barry Quirk, Ms Kathleen Nicholson, Mr Rob Holmans, Ms Emma Talbot, Mr John Berylson and Mr Barney Ronay. I found all the witnesses who attended very helpful and I am grateful to them for their assistance. There were two witnesses who refused my requests that they attend, but for different reasons. These were Councillor Hall and Mr Ronay.

29. Councillor Hall refused to attend although I offered him several dates to suit his convenience. The reason he gave for his refusal was that the issues raised by the Inquiry were complex and he was not willing to attend without the benefit of the assistance of an independent lawyer to advise him. The Council was unwilling to pay for such legal assistance and he was not willing or able to pay for it from his own resources. The Council had been advised by Mr James Goudie QC that, even if it had wanted to fund legal advice for an individual councillor in such circumstances, it had no power to do so. I do not understand why Councillor Hall was only willing to answer my questions if he had legal assistance. None of the other Council witnesses was provided with independent legal advice or attended with lawyers. It was disappointing for me not to be able to ask him any questions, particularly since he seems to be one of the members who is most vociferous in his opposition to Renewal and its scheme for the redevelopment of the Site. In writing this report, I have, of course, taken full account of his written statement and what he said in correspondence and at meetings.

30. I invited Mr Ronay to attend in order to answer some questions for two principal reasons. First, he has written extensively about the most important of the issues raised in this Inquiry and his repeated and intensive reporting of the debate in late 2016 and early 2017 was the catalyst for the Council decision to seek an independent Inquiry. Secondly, in written representations to me, Renewal has been critical of his reporting. One reason given to me for the refusal of Mr Ronay to attend was that, in order to protect the integrity of its journalism and not to compromise its ability to investigate, *The Guardian* has a policy of not voluntarily sharing unpublished journalistic material. A further reason given was that, as advocates of open justice, they had concerns about what, in effect, was a private Inquiry. I felt that Mr Ronay could have been of assistance to me without divulging unpublished journalistic material. Nevertheless, I have taken full account of the ample material that he has published.

31. In so far as *The Guardian* has criticised me, at least by implication, for conducting the Inquiry in private, I reject the criticism. I felt that the witnesses were most likely to speak freely and frankly in the informal atmosphere of a private Inquiry. The public interest in openness would be sufficiently served in the circumstances of this Inquiry if I were to (i) set out in my report the material evidence that I have read and heard and (ii) explain in detail the reasons for my conclusions on all the issues. I should add that all the witnesses

who accepted my invitation to attend were at liberty to have the benefit of the presence of legal representatives when I asked them questions. The Renewal and MFC witnesses took advantage of this.

32. Renewal has been strongly critical of Mr Ronay's reporting. They say that in a number of respects it has been neither fair nor balanced. I have not found it necessary to deal with these criticisms. This Inquiry is about the propriety of the conduct of the officers and members of the Council and not the conduct of Mr Ronay. I have been able to reach conclusions on all the issues relating to the conduct of the Council without deciding whether Renewal's criticisms of Mr Ronay's journalism are justified.

Chapter 2: The Council's decision to grant outline planning permission (Issue 2)

33. In this chapter I consider the second issue in my terms of reference, namely whether there was any impropriety on the part of the Council in relation to the grant of outline planning permission on 20 March 2012.

2.1 The history up to the Mayor & Cabinet decision of 30 March 2012 to grant outline planning permission

34. The history is tortuous and complex. But it is unnecessary to go into the detail of it. The following summary will suffice.

35. Renewal started acquiring land within the Site in 2004. Since then, it has pursued a programme of private land acquisition such that by about 2014, it owned approximately 97% of the Site (excluding land owned by the Council). The land has mainly been purchased by Renewal with equity, only 18% of it being financed by bank borrowings.

36. The idea of the redevelopment of New Bermondsey first surfaced in the early 2000s. The Council and the GLA supported the comprehensive redevelopment of the area. This support culminated in changes to the local and London-wide planning policy so as to provide for the mixed use of the Site. In June 2010, the GLA changed the designation of the Site from industrial land to land suitable for mixed development. In June 2011, the

Council adopted the Lewisham Core Strategy which identified New Bermondsey as one of five strategic development sites and earmarked the Site for mixed use development with about 2,500 homes. The explanatory text to the Core Strategy noted: "*in view of the importance and complexity of the strategic sites, to ensure a comprehensive approach to their development…. specific proposals will need to be progressed in the context of a site-wide masterplan…".*

37. At the start of the planning process, there were several possibilities as to how regeneration might be effected. Between 2006 and 2009, Renewal and MFC held discussions about the potential for collaborating on a development of the Site. But these came to nothing. I believe that there may be disagreement as to why the negotiations in 2008-09 broke down. I do not find it necessary to explore this since it is not material to the issues that I have to decide.

38. In 2007, the private equity firm Chestnut Hill Ventures gained control of MFC. Chestnut Hill Ventures is an investment vehicle of the family of Mr John Berylson, a Boston-based American businessman who is now the chairman of MFC. Mr Berylson told me that he had always been hugely in favour of the redevelopment of the Millwall Land. He frankly said that the real estate opportunity was a primary reason for his investment in MFC. But he explained to me that, although this was his initial motivation for acquiring MFC, he became (and remains) a committed and passionate supporter of the Club and wants to see it prosper. He believed and hoped that MFC would be an active participant in the development of the Millwall Land.

39. In February 2007, Chestnut Hill Ventures appointed Stock Woolstencroft to prepare an initial masterplan which was subsequently abandoned. In June 2009 they presented to the Council a scheme designed by Will Alsop of SMC Alsop, which contained eight residential towers of up to 40 storeys in height, one in each corner of the stadium and one in the middle of each of the four stands. In 2009 Chestnut Hill Ventures appointed Michael Squire and Partners to prepare a new scheme. Neither scheme was taken forward by MFC.

40. In June 2009, MFC presented proposals to the Council (which were not detailed) for a new lease and the development of the land surrounding the stadium. At about the same

time, the Council created the Surrey Canal Partnership which comprised the Council, Renewal and MFC with a view to encouraging joint working between Renewal and MFC. But the Partnership failed and nothing came of it.

41. On 15 July 2009, the Council resolved to enter into a conditional agreement with MFC to grant it a new lease. This would allow MFC to achieve the regeneration of the Millwall Land. At this stage, it seems that the Council was willing to entertain the idea of working with MFC and/or Renewal to try to deliver the regeneration of the Site and was supportive of both parties as potential developers.

42. In about September 2009, Renewal concluded that working with MFC was not viable, although it seems that it did not communicate this decision at the time. Renewal started taking steps to prepare for an application for outline planning permission in respect of the Site.

43. Between late 2009 and 2010, the Council and MFC continued negotiating the terms of a new lease. The Council made it clear that it was seeking the comprehensive redevelopment of the Site and not just the development of the Millwall Land. Any planning application by MFC in respect of the land around the stadium and/or *The Lions Centre* would need to be part of a masterplan for the Site and would have to dovetail with the redevelopment carried out on the remaining part of the Site.

44. MFC eventually decided to abandon its development proposals at that stage and not to enter into a lease with the Council

45. In January 2011, Renewal submitted an application for Outline Planning Permission in respect of the Site. The application was supported by Renewal's Masterplan as required by the Core Strategy. Between March and September, MFC submitted a number of objections to the application for outline planning permission. These were addressed by Renewal.

46. In February 2011 Renewal approached the Council to seek to acquire its freehold interest in the Millwall Land and MFC's and MCT's leasehold interests for the purpose of delivering a comprehensive redevelopment of the Site. At the same time Chestnut Hill

Ventures /MFC also sought to acquire the Council's freehold in the Millwall Land.

47. On 11 October 2011, MFC withdrew its objections to Renewal's application for outline planning permission. On 13 October, the Strategic Planning Committee of the Council resolved to grant outline planning permission, subject to the satisfactory completion of an agreement under section 106 of the Town and Country Planning Act 1990. The resolution was subject to a number of detailed provisions designed to protect the interests and operations of MFC and MCT.

48. In particular, the Strategic Planning Committee resolved that permission be granted subject to a section 106 agreement which would include a number of provisions designed to protect the interests of MFC and MCT both during and after construction. These included provisions which would secure the ongoing operation of the Den during construction, car and coach parking arrangements and a requirement that *The Lions Centre* could not be demolished until the replacement facilities had been completed. Negotiations about the precise terms of the section 106 agreement involved several meetings with MFC, who were asked at the time to set out in detail the rights that they considered would be required for the future operation of the Stadium.

49. In summary, the scheme for which application was made was for:

    (i) The demolition of all buildings other than the MFC Stadium, Rollins House and Guild House;
    (ii) The provision of up to 240,000 sq m of development on 17 different plots;
    (iii) A range of non-residential uses including retail, cafes/restaurants, Business (B1), hotel, community and leisure assembly, with non-residential floor space of at least 37,000 sq m or 20% of the total floor space, whichever was the lower;
    (iv) Up to 2,400 residential units including up to 20% for affordable housing;
    (v) Between approximately 1.51 ha and 1.77 ha of publicly accessible open space and residential amenity/play space;
    (vi) Between approximately 3.240 sq m and 4,604 sq m of Living Roofs;
    (vii) A network of altered and new streets, pedestrian and cycle paths, and parking spaces for cars and cycles;

(viii) Provision for two bus services to access some of the proposed streets and a public transport interchange with a new Surrey Canal Road station on the East London Line Extension;

(ix) A District Heating Network; and

(x) A vacuum waste storage and handling system.

50. Renewal had developed its Masterplan in discussion with the Council and in consultation with the public. It had worked closely with some 40 experts (including architects, planners and design specialists), the Council and the GLA over several years to refine it in accordance with the London Plan and the Core Strategy.

51. On 7 March 2012, in the light of the progress that had been made by Renewal in relation to land assembly and obtaining planning consent, M&C resolved in principle and subject to a number of important conditions (i) to support the land assembly exercise for Renewal's development scheme by the use of its CPO powers and (ii) to authorise the Director of Regeneration and Asset Management, in consultation with the Head of Law and Head of Asset Strategy & Development, to negotiate the terms of and enter into a CPO indemnity agreement with Renewal. This agreement was required to protect the Council in respect of the costs of the CPO procedure.

52. One of the resolutions passed was that, in the event that Renewal was unable to complete the assembly of the land by agreement by 30 September 2012, a further report be presented to M&C seeking authority to make a full and unconditional CPO to enable Renewal to complete its ownership of the Site. It was also resolved that any resolution to make a full unconditional CPO would be subject to the following conditions being met:

(i) The Mayor being satisfied that Renewal had used their reasonable endeavours to complete the assembly of the Site by agreement/private treaty and that the redevelopment proposals could not otherwise be delivered;

(ii) The requirements of section 122 of the Local Government Act 1972 and sections 226 and 237 of the Town and Country Planning Act 1990 Act were met;

(iii) The Mayor was satisfied that there was a compelling case in the public interest to make a CPO;

(iv) The Mayor was satisfied that there was a delivery mechanism with Renewal and/or others which ensured that there was a comprehensive redevelopment of the Site, and that the new development would be built within a reasonable time period; and

(v) The Mayor was satisfied that Renewal had a viable business plan and funding strategy to deliver a comprehensive regeneration scheme, together with a full and sufficient indemnity agreement and appropriate financial bond covering the costs of making and confirming any such CPO/appropriation for the purposes of section 237.

53. On 30 March 2012, outline planning permission was granted to Renewal and on the same day a section 106 agreement was executed. The section 106 agreement inter alia protected the interests of MFC and MCT.

54. Before I go any further in the history, it is convenient to deal with the second issue, namely the propriety of the grant of outline planning permission. I shall defer dealing with the first issue (the propriety of the decision of 7 March 2012 in principle to make a CPO) because it is better to deal with both CPO issues (issues 1 and 6) together.

2.2 Conclusion on Issue 2

55. I can deal with the second issue very shortly. There has been no criticism of the decision to grant outline planning permission. The application was properly made by Renewal, which was plainly entitled to make it. On the face of it, the application was for a comprehensive development of the Site in accordance with the Council's Core Strategy. In the end, MFC did not object to it. MFC has made a number of serious criticisms of the way in which the Council has dealt with the proposed regeneration of the Site which I shall address. They do not include any complaint about the way in which the Council approached the application for outline planning permission or the decision to grant it.

Chapter 3: The Council's decision to enter into a conditional agreement to sell the Millwall Land to Renewal (Issue 3)

56. In this chapter I consider the third issue in my terms of reference, namely whether there was any impropriety on the part of the Council in relation to the decision of 20 December 2013 to enter into a conditional agreement to sell the Millwall Land to Renewal.

3.1 The history relevant to the decision of 20 December 2013 to enter into a conditional agreement to sell the Millwall Land to Renewal

57. Despite the grant by the Council of outline planning permission and the resolution of 7 March 2012 in principle to use its CPO powers, the question of the ownership of the Millwall Land continued to be under discussion. Between early 2012 and January 2013, the Council considered undertaking a tendering exercise in respect of the sale of the freehold of the Millwall Land. But by the end of January 2013, it decided not to pursue this course. Rather, it decided to encourage Renewal, MFC and MCT to seek to negotiate the transfer of MFC's and MCT's leasehold interests to Renewal by agreement. But MFC did not want to have Renewal as its landlord. It still wanted itself to develop the Millwall Land.

58. In order to put the conditional sale agreement of 20 December 2013 into context, I need to go back to 2011 and examine the history of the dealings between the parties in relation to the ownership of the Millwall Land in a little more detail.

59. Renewal and MFC had both separately been seeking the opportunity to develop the Millwall Land. Renewal was interested in acquiring the Millwall Land to further its planned comprehensive regeneration of the Site as required by the Council's adopted development plan policies. Millwall had only been interested in developing the Millwall Land, albeit in a manner which would dovetail with the development of the remaining part of the Site.

60. The Council has always asserted that the various proposals advanced by MFC amounted to little more than high level schematic sketches. It is not in dispute that MFC has never conducted any formal pre-application discussions with the Council's planning

department, nor has it acquired any land or submitted any planning application. Its proposals are said by the Council to be lacking in detail and unsupported by any business case or evidence as to their viability. The Council says that MFC has sought simply to maximise development on the Millwall Land and has not been concerned with the comprehensive redevelopment of the Site. MFC's response has been (and is) that, if it had been given any encouragement by the Council, it would have spent the money necessary to work up a detailed scheme and demonstrate its viability.

61. On 16 February 2011, Mr Malik emailed Mr Kouvaris of Chestnut Hill Ventures, notifying him of Renewal's intention to acquire the freehold of the Millwall Land. He explained that Renewal had made an offer to acquire the land on the basis that it needed to have control of it in order to deliver all seven phases of Renewal's Masterplan for the development of the Site. He gave an assurance that any agreement would need to ensure the possibility of future expansion of MFC's stadium and the smooth running of the football club including parking and access rights.

62. On 22 February, the Council notified MFC that it had received an offer from Renewal to purchase the Millwall Land. In a letter dated 16 March 2011, Mr Berylson requested the Council to consider not selling the land to Renewal. He said that, if the Council was minded to sell, MFC wanted to have the opportunity to buy so as to secure the future of the Club. He sought (but apparently at this stage did not receive) confirmation that no interest in the land would be sold without reference to MFC.

63. On 22 March 2011, Mr Malik wrote to the Council in relation to the purchase of the freehold and leasehold interests of the Millwall Land. His letter was copied to Mr Kouvaris. He proposed a mechanism for taking the land acquisition forward, and suggested that the Council appoint a suitably qualified expert to carry out a valuation. He noted in his letter that, at a meeting on 6 March, Mr Kouvaris had indicated that Chestnut Hill Ventures would be willing to sell the leasehold interest in the land occupied by MFC "at the right price". He emphasised the need to safeguard the successful operations of MFC and MCT and also the need for a speedy resolution of the land acquisition issue in the interests of all parties.

64. The idea of a joint tender in respect of *The Lions Centre* was first mooted in early 2012. But it was dropped in early 2013. It seems that MCT was unwilling to go down that route and the Council had in any event decided against a tender.

65. On 3 December 2012, Mr Kouvaris wrote to Sir Steve Bullock and proposed that MFC and the Council revisit the agreement that they had reached earlier that a lease be granted to MFC of the land occupied by *The Lions Centre*, saying that they should:

> "*… introduce into the lease or the agreement for lease a time limit so that, for instance, it might provide that if the Club hadn't applied for planning permission to carry out its plans by a certain date and/or hadn't commenced work by another certain date (both dates to fit in with Renewal's phase plan), the lease or the agreement for lease could be terminated by the Council. That way we'd get a fair chance to demonstrate our commitment to the regeneration of the Surrey Canal Triangle site, but you'd still retain overall control and be able to hand the Lion's Centre over to the developer should the Club fail"*

66. On 10 December 2012, Renewal emailed Bond Dickinson (the Council's solicitors) with heads of terms for a proposed *"framework for the Council and Renewal to work jointly and with the spirit of partnership to procure that the regeneration is successfully delivered by Renewal*". The proposal suggested a framework for acquiring the MFC and MCT leasehold interests and the transfer of the Council freehold to Renewal.

67. On 17 December 2012, Mr Rob Holmans (Director for Regeneration and Asset Management) emailed Mr Malik rejecting Renewal's proposal of 10 December 2012. He said:

> *"12. The Council has not agreed that it will transfer its freehold interest…. The Council needs re-assurance that this is in the Council interests and there are adequate mechanisms in place to enable delivery of the scheme."*

68. On 16 January 2013, Mr Malik wrote to Sir Steve Bullock setting out Renewal's position in respect of the delivery of the scheme. He repeated his view that only Renewal could deliver the comprehensive regeneration sought by the Council, particularly in the light of its extensive land holdings within the Site. He emphasised the strategic importance of the Millwall Land to the deliverability and viability of the regeneration scheme and the fact that it would not be commercially possible for Renewal to commence the other

development phases without acquiring that land. Moreover, he explained that the land occupied by MFC was strategically vital, as it would provide Stadium Avenue, a major public open space, which was critical to the Masterplan and linking the two stations to be provided. As regards Renewal's engagement with MFC, he did not mince his words:

> *"It would be unrealistic for us to embark on scheme delivery knowing that at some point, MFC could block development on their land and hold us, and the Council to ransom. In essence we are talking about a car park that under the terms of the s106 will be re provided underground.*
>
> *Our knowledge, experience and third party advice indicates that the MFC and Community Scheme plots cannot be brought forward for piecemeal development, for economic, access and planning reasons.*
>
> *I sense that you may well feel that you should make one final attempt to broker an agreement between CHV and Renewal, but our extensive experience and history over the past 6 years shows that it won't happen. Any agreement with MFC is meaningless as the Club could be placed in administration at any time. A parent company guarantee from CHV is similarly pointless as Renewal would not seek to enforce it against a company registered in Delaware, US (nor would Lewisham).*
>
> *Accompanying this letter I have provided transcripts of all material correspondence between ourselves, the Club and its owners dating back to November 2006 as evidence of exhaustive negotiations.*
>
> *Neither in word nor action have [CHV] ever been committed to regeneration in its fullest sense. They have openly admitted on several occasions that they bought the club predominantly as a property play, and that initially, they ascribed all the value to the land and none to the football club. Hence the Alsop Masterplan which had eight very tall residential towers rising from the football stands and very little else.*
>
> *The current cry that the club needs an alternative source of income in order to survive does not bear scrutiny, as the capital investment required to complete the standalone development would not yield a commercial return, let alone generate surplus funds for the football club. This is a rather opportunistic and ill thought out idea which is wholly inconsistent with the lack of any attempts, as far as we can ascertain in the entire history of the club, to generate alternative sources of income.*
>
> *Given the significant quantifiable benefits the comprehensive regeneration will bring, it is imperative the Council supports and enables this entirely privately funded regeneration scheme to come to fruition rather than agonising over giving free land to a consistently loss making football club with an uncertain future.*
>
> *I also believe that it is time for Lewisham to assert its strategic leadership, act on its recent legal advice and conclusively set a programme and agenda for*

the comprehensive delivery of the Surrey Canal regeneration, rather than always having to react to erroneous articles and speculation in the press

I am sorry if this approach disappoints you but it is Renewal's firm belief and definitive position that it cannot conduct direct negotiations with CHV, nor enter into any agreement without the council being a party. We will however, buy the unencumbered freeholds from the council with suitable safeguards for the future wellbeing of the Club and the satisfactory relocation of the community scheme."

69. On 29 January 2013, Mr Holmans wrote an important letter to Mr Kouvaris saying that the Council was keen to progress the regeneration scheme. His letter included the following:

"Negotiations by agreement

6……

The Council's view is that Renewal Ltd are best placed to deliver the comprehensive scheme across the whole of the SCT site and to this end are working in collaboration with Renewal in order to achieve this.

7. The Council is anxious to get the regeneration scheme moving. We would therefore like at the earliest possible stage to open negotiations with the Club in respect of the acquisition of the land and rights necessary for the re-development comprised within the scheme for the SCT site.

8. At this stage, the Council envisages retaining its freehold interest in respect of the land leased to the Club required for the Renewal scheme, with the Club (subject to what is said below—see under 'Club's Development Proposals' surrendering their lease (or part of it) and the Council granting a new lease over a revised area, coupled with rights necessary to enable the continued operation of the Stadium and its future expansion.

……..

Club's Development Proposals

13. I am aware that the Club has previously been in discussions with the Council regarding the land around the Stadium and that the Club approached the Council with a view to the grant of a new lease and proposals for a development agreement (to include the MCS land) in relation to the development of that land. At that stage no detailed development proposals had been formulated. Those negotiations did not proceed for reasons which were communicated at the time.

14. More recently, I have seen the Club's Annual Report (June 2012) which refers to the Club formulating its plans for the improvement of visitor amenities on both match and non-match days and for the comprehensive redevelopment of the Lion's Centre. It also refers to the Club finalising plans for these sites 'within the overall regeneration scheme'. The Council is willing to discuss any proposals the Club might wish to put forward for the

development of its own land, but it will be necessary for the Club to demonstrate that any such proposals accord with and would enable comprehensive delivery of the wider scheme across the whole of the SGT site.

15. Any such proposals by the Club would also need to be supported by a deliver _mechanism (for example, a development agreement with Renewal and the Council as appropriate and other necessary arrangements which ensured the proposals would be delivered as part of the comprehensive re-development of the whole of the SGT site), together with a viable business plan including funding arrangements, and also indemnity agreements (where appropriate). Any proposals would have to demonstrate clearly how they would dovetail with Renewal's arrangements in connection with the development of other phases. The Council will not consider any proposals which would prejudice the case for the delivery of the wider site.

16. The Council would emphasise its concern that the Club have so far only contemplated development of their land if the MCS land is included. As you know, the land leased to MCS is owned freehold by the Council. The Club has no legal interest in that land and thus no entitlement to any development value it may have. The Council will expect this position to be fully reflected in any proposals put forward by the Club."

70. On 29 January 2013, the Council wrote to Renewal explaining it would not be proceeding with the tender exercise and setting out the conditions for its use of its CPO powers in respect of the Millwall Land. In particular, it stated:

"9. ...

a) If a CPO is made, before it is confirmed, the Council will need to show that compulsory purchase is a matter of 'last resort'. In this regard, it will be necessary to show that genuine attempts have been made to negotiate with MFC and MCS (and other un-acquired interests), but that it has not been possible to reach agreement so that if the scheme is to go ahead, the Council's only option is compulsorily purchase.

b) Counsel's view is that it would be appropriate for the Council and Renewal to appoint joint agents to advise on values and assist with negotiations with MFC and MCS. To this end we have agreed a brief and we are hoping to receive proposals from suitable firms on 31 January 2013, and a meeting has been arranged between Kevin O'Reilly and Abdul Qureshi to review the responses and recommend and appointment.

...

e) The Council must remain open to the possibility that MFC may claim an ability to carry out the comprehensive scheme or that part of it on their land in a way which enables the comprehensive scheme to be delivered across the wider site. If that is MFC's position, they should be allowed an opportunity to demonstrate that. As part of any such proposal, however, they will need to demonstrate a delivery mechanism which would enable the comprehensive

delivery of the wider site, as well as a viable business plan and funding. In reality, this is likely to mean a development agreement."

71. 18 February 2013, John Berylson wrote to Sir Steve Bullock setting out MFC's position in respect of the Millwall Land. He said:

"Let me make it clear at the outset that the Club does want to have the opportunity of redeveloping and extending both The Den and the surrounding land comprised in the Club's lease and the land occupied by the Millwall Community Scheme and intends to bring forward detailed proposals for so doing in negotiation and close consultation with the Council as the freeholder, the planning authority and local authority. We wish to do so within the existing outline planning permission relating to the Surrey Canal Triangle site, within the Council's desired timescale and, in so far as it is necessary to-do so, in co operation with Renewal.

2….

The Club supports and has always supported the comprehensive regeneration of the SCT site…..since the Club was first involved in the regeneration of the SCT site, we have had to pay out over £2.5m in professional fees and expenses in protecting our interests and developing our own proposals, money that the Club could ill-afford and, having not instigated the original planning process, did not expect to have to spend.

6. Am I to understand from this that the Council has decided the Club cannot/will not be able to deliver the comprehensive regeneration of its non-stadium land and The Lion's Centre? And/or that the Council will only work with Renewal? Please confirm. By what criteria has the Council decided that Renewal should be its only partner for the regeneration of the SCT site? When was this decided?

…….I have already demonstrated the ability of Chestnut Hill Ventures to fund the Club's development proposals and our chosen development partner will be of a calibre that its expertise and experience cannot be doubted.

… we not only intend to carry out such redevelopment in strict conformity with the outline planning permission and in consultation with Renewal….but we are also happy to surrender such parts of our lease that are needed for the remainder of the regeneration. ……..

14. As Demos [Kouvaris]made clear in his letter to you, we cannot afford to spend more money on architects and other professionals in formulating detailed plans without knowing what the Council intends to do vis-a-vis the non-stadium land owned by the Club and The Lions' Centre. It is our firm intention, however, that our proposals do accord with and will enable comprehensive delivery of the SCT regeneration scheme as a whole.

If you exclude the stadium itself and the land required for its operation as a football ground, there is not enough land left in the lease to the Club to make its commercial development economically viable. It follows that we need to develop the MCS land in tandem with the non-stadium land."

72. On 25 February 2013, Mr Malik wrote to the Council in response to its letter of 29 January 2013 urging the Council to "*pick up the pace of the negotiations*" with MFC and MCT and confirming that Renewal would enter into an indemnity agreement in relation to the CPO process. He added "*If Club do have genuine plans to develop their leasehold, the Council should push them to provide these as soon as possible so that officers and Renewal can review and evaluate them."*

73. On 18 March 2013, Mr Holmans wrote to Mr Berylson saying:

> *"…if our wider objectives for the area are to be realised we now need to move forward with the redevelopment scheme without further delay. It is now nearly a year since planning permission was granted for this. Renewal has committed considerable financial investment and resources to site assembly, to the planning and design process and to taking the scheme forward. They hope to be in a position to start the early Phases of the development in the very near future. The Council is therefore supporting Renewal in bringing forward this strategic site which is considered essential to delivering the Core Strategy and our objectives for transformation of the wider area.*
>
> *You refer to the Club's wish to develop the land around the Stadium. I am aware that this is something the Club has raised a number of times now, dating back at least to the time of the Club's previous discussions with the Council regarding the grant of a new lease which as you point out was some years ago. To-date, however, no such plans have been forthcoming.*
>
> *In my letter of 29th of January, I invited you to share with us the Club's proposals, which the Club had previously indicated it was formulating and finalising. Your response does not refer to any specific proposals, but simply states that the Club's plans will accord with the outline scheme and refers to your intention that such plans will enable comprehensive delivery of the wider regeneration scheme. Whilst the Council welcomes this assurance, such assurances on their own are not sufficient to demonstrate to the Council that this will be the case. In order that we can consider how your proposals might fit in with and enable comprehensive delivery of the wider scheme within a reasonable timescale, we will need to see, as soon as possible, details of your specific proposals, including plans, proposed timescales, a viable business plan with funding arrangements, and your proposals regarding the mechanics of delivery - what contractual arrangements are proposed to enable delivery in conjunction with the development of the wider site? At this stage, this does not need to be worked up to the level of a detailed planning application, but the information does need to be sufficient to enable Council to give it proper consideration.*
>
> *The Council's aim is for a negotiated settlement to be reached between all parties which would protect the legitimate interests of the Club. However, this must be on clear terms which will secure the comprehensive regeneration in accordance with the wider scheme and without further delay. Therefore on the*

one hand whilst you assert that the Club has the financial wherewithal and a development partner with the relevant expertise, on the other you suggest that you are not in a position to provide the requested information unless you know what the Council's intentions are regarding the non-stadium land and the MCS land. Unless the Council has the information required regarding the Club's proposals, it is simply not in a position to assess whether those proposals will enable comprehensive delivery of the wider scheme consistent with the Council's key objectives.

You suggest that my letter of 29 January "threatened" compulsory acquisition. I did refer to the availability of compulsory purchase powers, but I must emphasise that this was not intended in any way as a threat. The availability of compulsory purchase powers is part of the background in any case where regeneration proposals are being brought forward and the use of such powers is expressly supported in the Council's Core Strategy. But that does not mean the use of the powers is inevitable. As I hope I have demonstrated, the Council's desire is very much for a negotiated position to be reached if that can be achieved in a manner which will secure the parties' objectives.

…

I note the reference to the previous discussions with the Council regarding the Club's lease and the possible inclusion of the MCS land in those arrangements. As you know those discussions took place a number of years ago. No formal agreement was reached and things have since moved on. We now have a consented scheme for comprehensive redevelopment of the site which the Council is anxious should move forward without further delay. As I say, that and how best to achieve its delivery remain our current focus.

I am familiar with the history and track record of both the Club and the MCS and welcome the additional detail. The nexus between the Club and MCS land is acknowledged and, as you know, the proposal is that MCS will be relocated elsewhere within the re-development scheme as is reflected in the Section 106 Agreement. MCS's new location will thus be in close proximity to the Club and would enable the relationship to continue and MCS to continue to serve the communities of Lewisham and Southwark. The position remains, however, that the freehold interest in the land which is leased to MCS is owned by the Council and the Club has no entitlement to that land."

74. On 3 April 2013, Renewal emailed Bond Dickinson and the Council draft heads of terms for the Council's proposed sale of the Millwall Land to Renewal. These provided for the parties to work together to seek to reach agreement by private treaty with MFC and MCT for the surrender of their leasehold interests, and subsequent grant of new leases. The Council insisted on variations to the draft heads of terms in respect of the completion mechanics and the Council's ability to repurchase the land in the event that Renewal failed to commence the delivery. The period after which the buy-back option could be triggered by the Council was shortened from a period of 10 to 4 years.

75. On 2 May 2013, Andy Ambler (then Chief Executive of MFC) wrote to Mr Holmans in response to his letter of 18 March 2013 saying:

> *"…. it takes a considerable amount of money to own and operate a football club and, at the moment and despite the best efforts of our shareholders and the management team, we lose money every year. This just can't continue. The principal shareholders have already put well in excess of £20 million into the Club over the past six years. If the Club is to remain in its present location, we have to get it onto a firmer financial footing….*
>
> *You have asked us for more details of our proposals. Some time ago, we attended a meeting at Renewal's architects' offices and presented an outline scheme for the redevelopment of the non-stadium land and The Lions' Centre. Our architects, Squire & Partners, drew up that scheme. It predated Renewal's application for outline planning permission and so wouldn't have fitted in with the overall regeneration plans.*
>
> *We haven't instructed them further because of the uncertainty surrounding The Lions' Centre but we did engage them - at further considerable expense to the Football Club - to prepare an outline scheme for The Lions' Centre itself because we wanted to show them to the trustees of the Millwall Community Scheme. Those plans are now enclosed and I propose that we come to your offices to present them to you formally as part of our plan for both The Lions' Centre and the non-stadium land."*

76. On 15 May 2013, the Council invited MFC to present its development proposals to its planning team. A meeting fixed for 11 June 2013 had to be cancelled. On 25 June 2013, Mr Holmans wrote to Mr Ambler setting out the Council's current position as follows:

> *"I am sure you are aware that the Council has gone to considerable lengths to safeguard the interests of the Club and its ability to expand the stadium should promotion to the Premiership be achieved, something which the Council would very much welcome. Whilst I sympathise with the Club's financial position, the difficulties this presents, and your desire to produce reliable, predictable, steady non-football income to put the Club on a firmer footing, as you acknowledge the Club's leasehold land (Stadium excluded) is incapable of sustaining a viable development in isolation. So you suggest, as you have previously, the inclusion of the MCS land in a renegotiated lease……*
>
> *As the Council has repeatedly said, if our wider objectives are to be realised, we need to move forward with the re-development scheme without further delay. You have referred to the Club's wish to develop the land around the Stadium (and the MCS land) a number of times going back many years. The Council has given the Club every opportunity to come forward with its own proposals and has made it clear that if the Council is to give any consideration to such a scheme, details of specific proposals are required with*

drawings, proposed timescales, a viable business plan with funding arrangements, proposals for the mechanics of delivery and contractual arrangements to enable delivery in conjunction with the development of the wider site, and in turn, comprehensive re-development of such wider site consistent with the Council's key objectives.

Despite the Council making clear what is required and affording ample opportunity for it to be provided, none of the required information has been forthcoming….

….Renewal have assembled most of the site and continue to commit considerable financial investment and resources to site assembly, the planning and design process and taking the scheme forward. The Council's focus and priority going forward will be in supporting Renewal who the Council considers to be best placed to progress this strategic site which is considered essential to the achievement of the regeneration objectives for the area.

The Council's aim remains for there to be a negotiated settlement between all parties within a reasonable timescale. The Council therefore wishes to commence immediate discussions with the Club for the surrender of your current lease and the grant of a new lease for the Stadium whilst safeguarding the expansion of the Stadium and the continuing successful operation of the Club".

77. In June 2013, the Council and Renewal jointly appointed GL Hearn to provide a valuation of the Millwall Land.

78. On 4 July 2013, Renewal issued to the Council what it (Renewal) says it considered to be the agreed heads of terms in respect of the sale. Paragraph 3 of the document set them out as follows:

"(1) The freehold sale to Renewal of the land currently let to the Community Scheme to be completed upon an agreement being entered into with the Community Scheme (as detailed below);
(2) The freehold sale to Renewal of the land currently let to Millwall FC to be completed upon an agreement being entered into with Millwall FC (as detailed below);
(3) The freehold sale to Renewal of certain land to the west of the new East London Line and to the north and south of Surrey Canal Road;
(4) The freehold sale to Renewal of certain land at Excelsior Works;
(5) The purchase price for each of the above land interests will be best consideration as determined by GL Hearn;
(6) A right for the Council to buy back the land in the event that development does not commence by a long stop date (as detailed below)."

79. On 15 August 2013, Mr Ambler and Mr Andrew Barrow (a property lawyer who was acting as consultant to MFC) together with Mr Ken MacKay of Mackay & Partners presented to Council officers some high level schematic sketches prepared by Mackay & Partners (referred to as the "Millwall Masterplan"). The document describing the scheme contained a section headed "*Deliverability*" which stated:

> *"The owners of the Club have more than sufficient resources to fund the development without recourse to third-party funders. This can be evidenced if necessary.*
>
> *The Club has had preliminary discussions with hotel operators (Whitbread, Citizen) with One Housing Group in respect of some of the housing elements, with Pure Living and Urban Nest in respect of the student accommodation and with Circle Health and other health providers. All are enthusiastic and prepared to pre-commit their involvement.*
>
> *The Club repeats its willingness to accept an overriding lease of the whole site with provisions for it to be truncated in the event that its proposed development is not completed within an agreed timescale. It also remains prepared to share any profits with Lewisham BC."*

80. In a note of the presentation from Mackay & Partners to the Council, Mr Barrow stated that *"[Renewal and MFC] have so far been miles apart on land values*" and "*felt history suggests that Renewal and Millwall will not be able to work together*". Mr Barrow told me that he remembered leaving the meeting thinking that the Mackay plan was "*going straight in the bin*". He said that the officers did not approach the plan with an open mind.

81. On 6 September 2013, Mr Holmans wrote to Mr Ambler setting out the Council's position following the presentation of the Millwall Masterplan. He said:

> *".....I have also made it clear that, if the Council is to give any consideration to proposals brought forward by the Club, in addition to drawings, it would require details of the proposed timescales, a viable business plan with funding arrangements, proposals for the mechanics of delivery and contractual arrangements to enable delivery in conjunction with the wider site.*
>
> *At the meeting you presented a new set of drawings prepared by Mackay and Partners. The submission of a draft set of drawings alone does not demonstrate that the Club are able to deliver an acceptable scheme as part of the comprehensive regeneration of the area with Renewal Ltd and the Council. My conclusion is that, if its wider objectives for the area are to be realised, the Council needs to move forward with the redevelopment scheme with Renewal Ltd without further delay and I am now intending to report to Mayor &*

Cabinet on 11th Sept 2013 on this basis and the sale of the Council land to Renewal."

82. I do not think that it is in dispute that MFC provided little further information to the Council regarding the delivery of MFC's proposed development plans. I put it that way because, in a letter dated 25 September 2013, Eversheds (MFC's solicitors) stated that detailed proposals had been presented and discussed within the last month (see paragraph 93 below). But there is no doubt that MFC did not provide details of the proposed timescales, a viable business plan with funding arrangements or proposals for the mechanics of delivery and proposed contractual arrangements. The MFC witnesses have not suggested otherwise. Rather, MFC has defended its failure to provide any of this further information by saying that it had already spent a great deal of money and was not willing to spend more without some assurance that its plan would be accepted. It says that it was pointless to spend more money on producing further details, because it was clear that the Council had decided to sell the freehold to Renewal. Mr Barrow told me that he thought the Council was being very unreasonable in requiring more detail from MFC and Mackay & Partners. He accepted that more detail would have been required as the scheme progressed. But, he said, the Council had acted unreasonably throughout. MFC had spent millions of pounds on three different architects. Every time, the Council had changed the terms and every time MFC tried to work with Renewal "*another door was closed*".

83. In his witness statement, Mr Berylson describes the letter of 6 September as "*a volte face of monumental significance".* Until now, MFC believed that there was at least a possibility that the freehold of the Millwall Land would be sold by the Council to it (MFC) and that MFC would be able to develop it. They recognised that such development would have to dovetail with the larger development on the rest of the Site so as to ensure a "comprehensive" development. But the MFC case is that the letter of 6 September 2013 closed the door on the possibility of its acquiring and developing the Millwall Land. It says that, economically, this was completely devastating for MFC. That is because when CVS first acquired MFC, they thought that they would be able to develop, as a minimum, the Millwall Land. Mr Berylson also complains in his witness statement that the conditional sale agreement between the Council and Renewal was made "*in bad faith*" and was "*a demonstration of hostility*" to MFC, MCT and the local community; and that it made a CPO for the benefit of Renewal "*virtually a certainty*". He asks why, since

Renewal held only approximately 50% of the Site (if the Millwall Land is included), the Council was proactively enabling this developer to secure the rest of the Site. Why had the Council not considered any other developers? Why had the Council not sought to secure the highest price for this public land instead of working exclusively with this private property developer established by former senior Council people (Mr Malik and Mr Sullivan) and registered in two off-shore tax havens where corporate transparency is singularly lacking? These are all questions that I shall address later in this section.

84. On the same day, (i) GL Hearn produced their "best consideration" valuation of the Millwall Land and (ii) PwC produced a draft report on the financial standing of Renewal and its ability to complete the land assembly phase of the development in advance of the Council entering into a CPO Indemnity Agreement with it.

85. On 10 September 2013, Mr Ambler replied to Mr Holmans' letter of 6 September saying:

> *"You will appreciate that, by working with Mackay and Partners and the other members of our professional team to produce a planning compliant and comprehensive scheme for The Lion's Centre and the non-stadium land, the Club has gone to a lot of trouble and expense to meet your previously expressed concerns.*
>
> *Given time, we can also produce a viable business plan, details of funding and a suitable timeline - and, if our professional team can engage with your planners and other advisers, we can discuss the mechanics of delivery and other necessary contractual arrangements.*
>
> *However, there is little point in doing so unless you and your colleagues are prepared to give serious consideration to the proposed scheme and I would welcome your confirmation that you will do so. If you need any further information or assistance from us, we are at your disposal."*

86. On 11 September 2013, having considered both an open and a confidential officers' report both presented by Councillor Alan Smith, the M&C resolved that (i) a Conditional Sale Agreement be entered into with Renewal Group Limited on the basis of the Heads of Terms to some of which I refer at paragraph 87 below; and (ii) a Compulsory Purchase Indemnity Agreement be entered into with Renewal prior to the Conditional Sale Agreement being completed. This decision was called-in by the OSBP, and re-confirmed by the M&C on 2 October 2013. The M&C had before it a detailed report prepared by the Executive Director for Resources & Regeneration.

87. The Heads of Terms were reviewed by counsel and GL Hearn prior to being approved by the Council officers. They included the following:

(1) The freehold sale to Renewal of land currently let to MCT to be completed on an agreement being entered into with MCT as detailed in the Heads of Terms;

(2) The freehold to Renewal of land currently let to MFC to be completed on an agreement being entered into with MCT as detailed in the Heads of Terms;

……

(5) The purchase price for each of the above will be best consideration as determined by GL Hearn;

(6) A right for the Council to buy back the land in the event that the development did not commence by a long stop date (specified as 4 years from the date of the transfer).

88. I refer below to the material parts of the officers' report to the M&C. An important issue that I have to decide is whether M&C acted improperly in relying on this report on the grounds that (as MFC contends) it contained insufficient information on which to base the important decision to agree, albeit on conditions, to sell the Millwall Land to Renewal.

89. On 18 September 2013, Mr Holmans wrote to Mr Ambler:

> *"As you are aware, there has been lengthy correspondence as well as discussions over many years involving the Council, Renewal and the Club regarding the development of the Lions Centre and the land around Stadium during which the Club has maintained an intention to bring forward proposals. It is only very recently, however, that you have chosen to provide us with some drawings for a possible scheme.*
>
> *You now suggest that given time you can provide the necessary supporting material to demonstrate deliverability of your proposals and how they might fit in with and deliver the wider comprehensive scheme, but there has already been ample opportunity for this information to be provided. Whether you wish to undertake this additional work is a matter for you, but the Council is not prepared to put things on hold while you do that. As stated in my letter of 6th September and on a number of occasions previously, the Council's position remains that if its objectives for the area are to be realised, we need to move forward with the redevelopment scheme without further delay. To this end, as*

you may be aware, I reported to Mayor & Cabinet on 11th Sept 2013 when it was resolved (subject to the usual call in process) to dispose of the Council's freehold interest in the Club's and the Scheme's land to Renewal.

The Council therefore intends to continue to press ahead with realisation of its objectives, which as you are aware may include the use of CPO powers. The Council's clear wish is, however, to try and achieve negotiated agreements for the acquisition of all third party interests, including that of the Club and it is inviting all owners to join in negotiations with the Council and Renewal to help implement the regeneration scheme. I would welcome a meeting with you to discuss the terms for acquisition/re-grant of the Club's interest in more detail at the earliest opportunity."

90. MFC did not provide the Council with any further information.

91. On 24 September, OSBP called-in the M&C decision on the grounds that (i) there was not a firm commitment to social housing provision as part of the development; and (ii) the original proposal for the provision of a multi-faith facility had been changed to a single faith provision.

92. On 2 October, M&C duly reconsidered its decision but resolved to confirm it.

93. On 25 September 2013, Eversheds, who had been instructed by MFC following the Council's decision of 11 September 2013 to enter into a conditional land sale agreement with Renewal, wrote to the Council in the following terms:

"We are unable to understand how, in the light of the Council' (sic) responsibilities, it can authorise concluding such a contract with Renewal Limited, without providing an opportunity for our client to make a bid for the lands in question. We have been advised that our client has been seeking to acquire these interests for an extended period and that detailed proposals for the development of this land have been presented to and discussed with the Council within the last month.

It is therefore extraordinary that the report to Cabinet included no mention of such proposals and that the only reference to the Club is simply a reference to correspondence with our client and "that negotiations are still taking place". It appears that the requirement that the Council should obtain the best consideration reasonably obtainable under section 123 of the Local Government Act 1972 has been wholly ignored. The existence of a prospective purchaser of land, in particular one who wishes to develop that land with their own adjoining land, is a fundamental consideration which the Council must take into account in reaching any decision to dispose of its own land.

As a consequence, we believe that the Council's decision is fundamentally flawed and we must seek your undertaking by return that the Council will not enter into any agreement to dispose of the land to Renewal Limited (or any other person or entity) until a proper opportunity has been given to our client to bid for this land in a fair and transparent process.

In the absence of receipt of such an undertaking, our client reserves its right to take such further steps as it considers appropriate without further reference to you."

94. On 3 October 2013, Mr Holmans responded to Eversheds saying that the Council was aware of its obligations to obtain best value for the land and that it had sought independent advice on valuation. The Council's intention was to "*to press ahead with realisation of its objectives for the regeneration of the site and the wider area."* Its clear wish was still to try to reach negotiated agreements for the acquisition of all remaining third party interests, including that of MFC. His offer remained to invite MFC to reach a negotiated settlement with the Council.

95. On 6 November 2013, CBRE (who were property consultants advising MFC) wrote to the Council repeating MFC's interest in bidding for the Millwall Land and requesting the terms (including price) of any agreement negotiated with Renewal. In his reply dated 3 November 2013, Mr Holmans explained that the Council could not disclose the terms of sale to Renewal for reasons of *"commercial confidentiality",* but that it had been independently advised that the deal represented the best consideration reasonably obtainable in all the circumstances. MFC has never submitted any form of bid for the Millwall Land.

96. On 26 November 2013, Eversheds sent the Council a letter before claim on behalf of MFC threatening judicial review of the Council's decision to enter into the conditional land sale agreement. They sought an undertaking that the Council would not enter into the proposed agreement pending the judicial review proceedings. They alleged that the Council had (i) failed to take proper steps to ensure that it secured the best consideration reasonably obtainable; (ii) failed to take account of MFC's desire to make a bid for the Millwall Land; and (iii) unreasonably refused to disclose the details of the terms of the proposed sale to Renewal.

97. On 6 December 2013, Eversheds wrote a further letter to the Council in respect of the proposed judicial review proceedings. The details are immaterial to this Inquiry.

98. On 17 December 2013, Bond Dickinson provided a detailed response on behalf of the Council to both of Eversheds' letters. They said that (i) the Council had been professionally advised throughout in relation to the proposed sale and had obtained a detailed valuation from GL Hearn confirming that the sale price complied with section 123 of the Local Government Act 1972 (i.e. was "best consideration"): (ii) the Council was not obliged to conduct a tender process; and (iii) for reasons of commercial confidentiality, the Council was not prepared, and was not in a position, to disclose the sale price and other terms of the proposed sale.

99. MFC did not issue the judicial review proceedings that were threatened by Eversheds' letters. On 20 December 2013, the Council entered into a conditional land sale agreement with Renewal in respect of its freehold land, together with a CPO indemnity agreement, by which Renewal agreed to indemnify the Council for the costs associated with utilising its CPO powers in respect of outstanding land interests (including the MFC and MCT leasehold).

3.2 Conclusion on Issue 3

100. The complaints made by MFC and others about the Council's decision to enter into the conditional sale agreement of the Millwall Land with Renewal can be summarised as follows.

(i) It was unreasonable and unfair to enter into the agreement without giving MFC an opportunity to bid for the land;

(ii) The resolution made by M&C on 11 September 2013 was taken on incomplete information and without a proper appreciation of material facts;

(iii) To put it no higher, personal relationships between members of the Council and Mr Malik and Mr Sullivan may have influenced sound commercial judgment: Sir Steve Bullock, Councillor Alan Smith, Barry Quirk and Kathleen Nicholson had all previously worked closely with Mr Sullivan and Mr Malik;

(iv) The agreement itself was unduly favourable to Renewal in that:

(a) The land was sold at an undervalue;

(b) No restriction was placed on Renewal selling on the land;

(c) No obligation was placed on Renewal to develop the land;

(d) There was no claw-back provision in the event that Renewal sold the land at a profit; and

(v) The sale agreement made it inevitable that CPOs would be required because the Council knew that MFC would not surrender its lease. In other words, the "in principle" decision of 7 March 2012 to use its CPO powers was bound to become a reality.

101. I shall deal with these criticisms in turn.

3.2.1 No opportunity to MFC to bid for the land and the fairness of the process

102. There was no obligation on the Council to sell the Millwall Land by means of a tender process. All that was required was that the Council demonstrate that it had achieved "best consideration" as required by section 123 of the Local Government Act 1972. In fact, as we have seen, a tender process was contemplated at an earlier stage, but it foundered in part because the trustees of MCT were opposed to it. But MFC had no appetite for taking part in a tendering process either. In his letter to Sir Steve Bullock of 3 December 2012, Mr Kouvaris said that he was "*filled with misgivings*" about a tender process because he did not think that "*a football club can possibly compete with a well-funded developer, either financially or in the professional assistance needed to submit a competitive tender".*

103. There was nothing to prevent MFC from making a bid for the Millwall Land at any time. If it had done so, the Council would have been bound to consider it. But it did not do so. MFC's complaints at the time were clearly articulated by Eversheds, in their letters of 26 November and 6 December 2013 which were written shortly before the conditional land sale agreement was made. These did *not* include a complaint that MFC had been denied the opportunity to make a bid for the land. As we have seen, the complaints were that the Council had (i) failed to take steps to ensure that the deal

represented the best consideration obtainable in all the circumstances; (ii) failed to take account of MFC's desire to make a bid; and (iii) unjustifiably refused to disclose the terms of the sale to Renewal.

104. The first of the Eversheds' complaints was without foundation. The sale price was certified as best consideration by GL Hearn on 6 September 2013. Even if GL Hearn's valuation was too low, that would not indicate any impropriety on the part of the Council. The Council's duty to act properly in this respect was discharged by relying on the professional advice of reputable independent valuers. No-one has cast any doubt on the integrity, reputation or general competence of GL Hearn.

105. The answer to the second complaint is that Appendix 4 to the confidential part of the officers' report to M&C for its meeting on 11 September contained a five page summary of the negotiations with MFC in relation to the Millwall Land. Of course, MFC was not aware of Appendix 4 and, therefore, cannot be criticised for making a complaint which was not well-founded. Anyway, M&C was well aware of the fact that MFC wished to acquire the Millwall Land. The point was made in Appendix 4 that, if the Council was to consider any proposals by MFC, details would have to be provided; and that at the time of writing the report, no such information had been provided and no offer had been made by MFC to purchase the Millwall Land.

106. In my view, the officers were fully entitled to advise that they could not wait any longer for proposals from MFC. The progressing of the development of the Site had become urgent: I discuss this further at paragraph 119 below. Even if the report had made no reference to MFC's desire to purchase the Millwall Land, I do not consider that the officers could have been criticised for such omission. The focus of their report was on the merits of entering into a contract of sale of the Millwall Land to Renewal. There would have been nothing improper in failing to draw to the attention of the members of M&C the fact that MFC had produced a scheme (but without details) for the development of the Millwall Land. In any event, the members of M&C were aware that MFC had produced such a scheme. If they had wanted to give MFC more time to develop a detailed scheme, no doubt they would have told the officers that this is what they wanted to do.

107. The third of Eversheds' complaints was subsequently referred by Katherine Bergen (a journalist) to the Information Commissioner who decided that the Council had been entitled to withhold disclosure of the contract price, but not of the other contractual terms. Both Ms Bergen and the Council appealed to the First-tier Tribunal. Ms Bergen's appeal against Information Commissioner's decision in relation to the contract price was dismissed; and the Council's appeal against the decision in relation to the disclosure of the other contractual terms was allowed. I see no reason to disagree with the reasoning of the First-tier Tribunal. There was (and is), therefore, no substance in this complaint.

108. It is worth mentioning that the grounds on which on 24 September 2013 OSBP called-in the M&C decision of 11 September did not include any of the three points raised by Eversheds: see paragraph 96 above. This is particularly significant because Councillor Hall (who chaired OSBP) was already a leading sceptic (to put it no higher) of the proposal that Renewal should redevelop the Site.

109. Since the decision to enter into the conditional sale agreement cannot realistically be separated from the Council's decision to choose Renewal to carry out the redevelopment of the Site, it is also necessary to consider the complaint that the Council acted improperly in choosing Renewal instead of giving MFC an opportunity to develop the Millwall Land.

110. I have referred at paragraph 65 above to the offer made by Mr Kouvaris in his letter of 3 December 2012 to meet the Council's concerns about MFC's inability to fund and deliver a development of the Millwall Land by suggesting that the Council grant MFC an overriding lease to MFC on the basis that the lease could be terminated if MFC had not met certain milestones (such as applying for planning permission) by specified dates.

111. I have also referred at paragraph 69 above to Mr Holmans' letter dated 29 January 2013 in which he stated that the Council was willing to discuss any proposals MFC might wish to put forward, but that it would be necessary for MFC to demonstrate clearly that its proposals would dovetail with and would enable delivery of comprehensive development across the whole of the Site.

112. As I have said at paragraph 83 above, MFC accepts that it did not provide further information during 2013 or at any later stage. It says that it was justified in not doing so

because it considered that the Council had closed its mind to the possibility of MFC developing the Millwall Land in conjunction with Renewal's development of the remaining part of the Site. But MFC had been aware for some time that Renewal intended (if they were able to do so) to acquire the Millwall Land in order to deliver the comprehensive regeneration of the Site. And it was aware that on 7 March 2012, the Council had resolved in principle to use its CPO powers in favour of Renewal if the company was unable to complete the assembly of the Site. In these circumstances, and in view of the fact that outline planning permission had already been granted to Renewal on 30 March 2012, it is fair to say that Renewal was in a favoured position to be awarded the comprehensive scheme, provided that it satisfied the many conditions that it would have to satisfy. But none of this meant that, if MFC had put forward detailed proposals for the development of the Millwall Land so as to dovetail with Renewal's proposals, the Council would not have considered them carefully (as they would have been legally obliged to do) or that they would have had no realistic prospects of being accepted.

113. One particular complaint made by MFC is that the Council made much of the importance of having a "comprehensive" scheme for the regeneration and redevelopment of New Bermondsey. It is said that the Council persuaded itself that "comprehensive" meant that the development could only be carried out by one developer; and that since it was known that MFC had no interest in developing any part of the Site outside the Millwall Land, this ruled out MFC as a possible developer. If this were correct, it would mean that all the requests made by the Council to which I have referred above for MFC to provide details of their development plans were disingenuous, because the Council knew all along that MFC had no interest in developing the entire Site. That would be a serious allegation to make. It was not made in any of the voluminous correspondence that was written at the time and I do not accept it. Both Mr Holmans and Ms Emma Talbot (Head of Planning at the Council since April 2016) have told me (and I accept) that the Council was not and is not of the view that "comprehensive" development can only be carried out by one developer. In their view, it could be undertaken by more than one developer, provided that they were all prepared to sign up to the Masterplan, the agreed phasing and timescale. Indeed, when the scheme was first proposed, MFC and Renewal were working together to that end. Moreover, the Council had gone to significant lengths in the early part of the history that I have recounted to try to bring MFC and Renewal together.

114. MFC also complains that the Council acted unreasonably and unfairly in repeatedly refusing to engage properly with MFC and making unreasonable requests for details of its development plan. As is clear from the history that I have related, the correspondence shows that the Council repeatedly told MFC that it was willing to discuss any proposals MFC might wish to put forward for the development of the Millwall Land, but that it would be necessary for it (MFC) to show that the proposals accorded with, and would enable comprehensive delivery of, the Renewal scheme for the remaining part of the Site. MFC never met this requirement. Mr Holmans has told me that MFC never demonstrated how it could deliver any element of the overall development other than in a piecemeal or disaggregated manner. I do not understand MFC to dispute this. Their point was that they were not willing to spend more money on amplifying their proposals when they were convinced that the Council was in reality, if not legally, already committed to Renewal.

115. It is not surprising that by 2013, the Council was reaching the conclusion that Renewal was the only developer in a position to deliver the comprehensive development of the Site and that time was running out for MFC. Renewal had been assembling land on the Site since 2004. It had obtained outline planning permission in 2012. It had produced a detailed plan for the comprehensive development of the Site. All of this showed significant investment and a real commitment to carry out the scheme. On the other hand, the MFC proposals for the Millwall Land lacked detail and it seems that no other developer had shown any interest. This lack of interest may have been attributable to the fact that this is a difficult site, development of which would be subject to a number of constraints, not least of which is the presence of a vibrant football stadium at the centre of Site. To give just two further examples: the existence of high level railway embankments that border the site means that any residential use of premises would have to be above 12 metres in height. This places a significant constraint on the use of development buildings. There are also restrictions on the use of the development for retail and office space. The lack of alternative schemes to the Renewal scheme and the need to progress the development were powerful factors militating in favour of Renewal. There was little financial risk to the Council in entering into the conditional contract of sale. There were, however, risks in making a CPO to support the Renewal scheme. It would be necessary for the Council to be satisfied that Renewal had the ability to deliver the scheme within a reasonable time. That is why M&C's decision of 7 March 2012 in principle to make a

CPO was subject to the important conditions to which I have referred at paragraph 51 above.

116. MFC was not interested in developing the whole of the Site. So it was likely that Renewal would be able to persuade the Council to make a CPO in respect of the whole of the Site excluding the Millwall Land if it was able to satisfy the conditions set by the decision of 7 March 2012. MFC must have known this. If it had produced a detailed scheme for the Millwall Land and had been able to demonstrate that it would dovetail with Renewal's proposals for the rest of the Site, the Council would have been bound to consider it. I am satisfied that it would have done so. It would have relied on the advice of its officers and the independent lawyers who were advising it. They would have been likely to advise that the Council was under a legal duty to consider such a scheme. But that stage was never reached because MFC did not produce a detailed scheme. There was nothing improper about the officers asking for more information. Indeed, it would have been irresponsible and improper of the Council *not* to have asked for this information. In the absence of it, the Council acted properly in deciding not to offer to sell the Millwall Land to MFC.

117. In the course of their evidence to me, the MFC witnesses said that the letters written by the Council repeatedly saying that the Council was willing to give consideration to any proposals put forward by MFC were inconsistent with the tenor of their meetings with the Council representatives and were not genuine expressions of interest on the part of the Council. Mr Barrow, Mr Kouvaris and Mr Black (of CBRE Limited, property agents and surveyors advising MFC) told me that they recalled a meeting with the Council in August 2013 which they attended with a representative of Mackay & Partners. This must have been the meeting of 15 August referred to at paragraphs 79 and 80 above. They said that the officers showed no interest in the scheme and turned the pages of the Mackay documentation in a "desultory" manner. They told me that, if they had been given more encouragement from the Council, they would have produced a more detailed scheme and carried out viability studies. Instead, to their surprise, the officers responded with no comment or feedback.

118. This account of the meeting is not accepted by John Miller (the Council's Head of Planning at the time). But I believe that it is likely that the Council did not encourage MFC to produce a more detailed scheme at this meeting. In his letter of 6 September

2013, Mr Holmans said that the presentation of a new set of Mackay drawings at the meeting of 15 August did not demonstrate that MFC was able to deliver an acceptable scheme as part of the comprehensive development. Crucially, he said that the Council needed to move forward *"without further delay*" and he was now intending to report to the M&C meeting on 11 September on the basis of a sale of the Council land to Renewal. And, as we have seen, that is precisely what he did.

119. But it would be quite wrong to conclude from what happened on 15 August that none of the requests made by Mr Holmans to MFC for a detailed scheme was genuine. I am satisfied that the requests (for example those of 29 January, 18 March and 25 June 2013) were genuine and not simply written "for the record". The Council was acting reasonably in taking the view by the summer of 2013 that (i) it had become urgent to resolve the issue of what role (if any) MFC would play in the development scheme and the future ownership of the Millwall Land; (ii) MFC had been given sufficient time to demonstrate that its proposals for developing the Millwall Land would dovetail with the detailed scheme that Renewal had put forward; and (iii) it had failed to do so. There was no impropriety on the part of the Council in the process that they followed leading to the decision to enter into the conditional sale agreement with Renewal.

120. MFC says that this decision closed the door on any possibility of MFC being able to develop the Millwall Land, because it was unlikely that Renewal, as freehold owner of the land, would be willing to consider any variation of the terms of the leases granted by the Council to MFC and MCT which would have been necessary to enable MFC to develop the Millwall Land. My response to this point is that, even if that was the consequence of the decision to sell the land to Renewal, it did not follow that there was any impropriety on the part of the Council. Having had the benefit of studying the documents, considering the witness statements and hearing evidence from some of the key Council witnesses, I am in no doubt that the advice of the officers to M&C to enter into the conditional contract of sale and M&C's acceptance of that advice were both in good faith and, as they saw it, for the benefit of the Lewisham community at large. There was no impropriety or breach of a code of conduct. If the decision to enter into the conditional sale agreement was otherwise appropriate (as I have held to be), it cannot be said to have been improper solely because it had certain consequences which MFC did not like.

121. There is one final complaint made by MFC to which I should refer. This is that, by insisting as it did by Mr Holmans' letter of 6 September 2013, that MFC put forward inter alia details of a viable business plan with funding arrangements as a condition of the Council giving any consideration to its proposals, the Council was applying a more stringent standard than it applied to Renewal. This complaint is better considered in relation to the M&C decision of 7 September 2016 to make the CPO order when it was satisfied that Renewal had met all the conditions set on 7 March 2012. I consider it at paragraphs 292 to 293 below.

3.2.2 Resolution of 11 September 2013 passed on incomplete information?

122. MFC make a number of detailed complaints about the officers' report on which the resolution of 11 September was based. The principal ones are that the report did not:

(i) Make clear that Renewal is a "£100 company";

(ii) State whether there would be recourse to the shareholders of Renewal in the event that Renewal was unable to complete the sale of the land or meet its other contractual obligations;

(iii) Refer to the off-shore status of Renewal's shareholders;

(iv) Mention that Renewal lacked any experience of large-scale property development;

(v) State that Mr Malik had refused to provide PwC with adequate information and access to management, thereby impeding the due diligence process;

(vi) Refer to the fact that the best consideration of the Council land had been certified by a valuer (GL Hearn) who had been jointly instructed by the Council and Renewal and their fees had been paid by Renewal;

(vii) Reveal the previous involvement of Mr Sullivan in Renewal or that Mr Malik, a former senior officer of the Council, was the driving force behind Renewal;

(viii) Mention that MFC had wanted to buy the freehold of the Millwall Land;

(ix) Mention that a decision to sell the land to Renewal would exclude MFC and every other developer from being involved in the development;

(x) State that financial due diligence was required before the Council could enter into the CPO indemnity agreement.

123. Before I consider these ten complaints, I need to make a few preliminary observations. Mr Holmans has made to me the point that, although the draft PwC report of 6 September 2013 was referred to in Part II (the confidential section) of the officers' report of 11 September, the PwC report was not prepared for the purposes of assisting the Council to decide whether or not to enter into the conditional sale agreement. It was prepared to assess the financial standing of Renewal and its ability to complete the land assembly phase of the development in advance of the Council entering into a CPO Indemnity Agreement with it. He says that this was made clear to M&C at paragraphs 6.5 to 6.9 of the officers' report of 11 September: see paragraphs 125 below.

124. Did M&C rely on the draft PwC report in reaching its decision to enter into the conditional sale agreement? There is no doubt that the committee relied on the officers' report of 11 September and there are parts of that report that might suggest that some reliance was placed by the officers (and therefore by the members of M&C) on the draft PwC report as well. Although, strictly speaking, there was no need to undertake a due diligence investigation for the purposes of the conditional sale agreement, it is understandable that some members of the Council would be interested in the due diligence aspect at this stage of the process. I should, therefore, refer to the relevant parts of the officers' report.

125. Section 1 of the report was said to be (i) to update the Mayor on progress following the "in principle" CPO decision of 7 March 2012 and (ii) to seek the Mayor's approval for the Council to enter into the conditional land sale agreement with Renewal. Section 2 of the report recommended the making of the conditional sale agreement. Section 6 (which was in the confidential part of the report) was headed "*Financial implications*". Paragraph 6.1 stated that the Council was being asked to make a decision to sell its land on the basis of the Heads of Terms which had been certified as best consideration by GL

Hearn. Paragraph 6.2 dealt with the proposed terms of the sale agreement. Paragraph 6.5 stated:

> *"A preliminary due diligence evaluation of the financial standing of the Renewal Group has been undertaken by PWC on behalf of the Council. The purpose of the due diligence is to seek reassurance of the nature of the Renewal Group and its shareholders and also its ability to complete the land assembly and indemnify the Council should there be a need to implement a compulsory acquisition process."*

126. The report continued:

> "6.6 *The findings of the PWC report are extremely limited due to restricted information provided to them and therefore does not provide assurance at this stage that Renewal are in a financial position to deliver the scheme. The report has identified that the Renewal Group are not in themselves self-sustaining and are reliant on funding from the two entities that have joint control of them on a 50/50 basis. These are [IHL] who are registered in the Isle of Man and [IAI] who are registered in the British Virgin Islands. No due diligence on these two companies has been undertaken as access was restricted by Renewal.*
>
> *6.7 In terms of financial analysis, Renewal Group provided PWC with some limited information that supported its financial standing including its accounts, cash flow projections and bank statements. However, the information provided has not provided conclusive evidence of its financial standing and has only provided limited insight.*
>
> *6.8 Despite the limited findings of the PWC report they have noted that the Group's investment in the site to date and its detailed plan are a strong indicator of its intention to proceed with the development of the SCT scheme…..*
>
> *6.9 Taking all of the information provided thus far into account, officers consider that on the balance of probability, Renewal do have the funds to complete the land sale. Ultimately, the sale will not complete unless the funds are received."*

127. Paragraph 6.10 of the report dealt with due diligence on Renewal for the purpose of the CPO process. It recorded that Renewal had stated that it did not propose to provide any further information to enable further financial due diligence to be conducted in advance of entering into a CPO indemnity agreement. The paragraph continued:

> "*Should Renewal subsequently request the Council to consider making a CPO resolution, the CPO Indemnity Agreement requires them to provide the Council with all information and supporting documentation required (including financial information) to enable the Council to make a full and*

proper judgment as to whether the case for the CPO is made out. This will include all necessary financial information to enable the council to be satisfied that Renewal Group Limited has a viable business plan and funding strategy in place to deliver the comprehensive regeneration scheme, if a CPO resolution is made…."

128. Paragraph 6.11 stated:

"*The Mayor will not be asked to consider using compulsory purchase powers unless and until full financial due diligence has been undertaken and officers are satisfied that Renewal Group Limited has a viable business plan and funding strategy to deliver the same."*

129. The officers were clearly saying that the limited findings of the PwC report did not provide assurance "*at this stage"* (i.e. at the conditional sale agreement stage) that Renewal was in a financial positon to deliver the scheme (paragraph 6.6). But the officers were also saying that they considered on the balance of probability that Renewal did have the funds to complete the land sale.

130. In his evidence to me, Mr Holmans said in terms that due diligence was not relevant to the decision to enter into the conditional sale agreement and that what was said about it in the draft PwC report and the officers' report was not relied on by the committee in reaching its decision. I also explored this issue with Councillor Alan Smith. He told me that M&C would have preferred a "clearer" report, but that this was not necessary for a conditional land sale. The sale would be conditional: no land would be transferred if the purchase price was not paid. Due diligence would only become relevant when it came to the question of exercising CPO powers to enable Renewal to progress the development of the comprehensive scheme. I see no reason not to accept this evidence.

131. I shall now deal with the ten individual complaints in turn.

(i) The £100 company point

132. It is alleged by MFC that Renewal was a company with an issued share capital of £100. MFC complains that the officers' report did not refer to the fact that the company has an issued share capital of £100. I have seen the latest annual return for Renewal which shows that, in fact, it has an issued share capital of £2,000. But nothing turns on this detail. The point which I understand MFC to be making is that the fact that the issued share capital of

Renewal is low has a bearing on Renewal's financial worth. This point struck me as an odd one to make as the issued share capital of a company bears no necessary relationship to its worth. As Mr Holmans points out, Renewal had acquired land to the value of tens of millions of pounds and had incurred considerable expenditure in securing outline planning permission and developing the scheme. It was clear that Renewal had access to considerable funds such that to describe it as a "£100 company" would not reflect the reality of its ability to fund a very substantial development from the resources of one of its shareholders and/or by borrowings. In any event, it is difficult to see to what commercial risk the sale agreement would expose the Council. If Renewal did not pay the purchase price at completion, the land would not be transferred to it. The real question about the strength of Renewal's ability to finance the scheme would arise at the CPO stage as was presaged by the conditions which were set by M&C in its principle decision of 7 March 2012. I shall discuss this when I deal with the sixth issue that I have to decide.

(ii) Recourse to shareholders

133. Paragraph 6.6 of the officers' report stated clearly that Renewal was not "*self-sustaining*" and was reliant on its two shareholders, both of which were off-shore companies. But it is unclear why it should matter to the Council *as regards the sale of the Millwall Land* whether Renewal would have needed to have recourse to its shareholders for funding the purchase price. If Renewal did not pay, the sale would not be completed.

(iii) Off-shore status of the shareholders

134. Attention was drawn to the off-shore status of the two shareholders at paragraph 6.6 of the officers' report. But their status was irrelevant to the question whether a conditional sale agreement should be made. I discuss later the separate question of the desirability of awarding the right to carry out the whole redevelopment scheme to a company whose shareholders were registered abroad, a question which has been a matter of considerable concern to some of the Council's councillors.

(iv) Renewal's lack of experience

135. It is true that the officers' report did not mention that Renewal had no experience of large developments and certainly none on the scale of the proposed redevelopment of the

Site. But the conditional sale agreement would not commit the Council to awarding the development to Renewal. Before a decision to exercise its CPO powers and give the green light to the development was made, the Council would need to ensure that due diligence had been done in order to satisfy itself that all of the conditions imposed on 7 March 2012 had been met. In September 2013, that was for the future. I would anyway add that by September 2013, the members of M&C and OSBP would have been under no illusion that Renewal had a track record of large-scale developments.

(v) Mr Malik's impeding of the due diligence process

136. Paragraph 6.6 of the officers' report stated that the findings of the draft PwC report were "*extremely limited due to restricted information provided to them*" and that no due diligence had been undertaken on the two shareholder companies "*as access was restricted by Renewal*". The councillors were therefore told that little (if any) due diligence had been possible and that the reason was that Renewal had been obstructive.

(vi) GL Hearn had been jointly instructed by the Council and Renewal

137. It is true that in their report the officers did not inform the councillors that GL Hearn had been jointly instructed by the Council and Renewal. But there was nothing improper about their failure to do so. The written agreement, pursuant to which GL Hearn was appointed, expressly provided that GL Hearn was to provide a separate valuation report to the Council. This is reflected by the fact that the final valuation report dated 6 September 2013 was addressed to the Council only. It was not relevant to a full and fair consideration of the question whether or not to enter into a conditional agreement for the sale of the land to know that GL Hearn had been jointly instructed by the Council and Renewal. All that the councillors needed to know was that (as stated at paragraph 6.1 of the officers' report), the purchase price had been independently certified as "*best consideration*" by GL Hearn, who were independent valuers. There has never been any evidence that the independence of GL Hearn's judgement was or might have been undermined by the fact that they were jointly instructed by Renewal and the Council to provide advice relating to the land sale and compulsory purchase. MFC has not put forward any independent expert evidence of the value of the Millwall Land.

(vii) Previous roles of Mr Sullivan and Mr Malik

138. It is true that the officers' report made no mention of the previous roles and involvements of Mr Sullivan and of Mr Malik. Mr Sullivan was a councillor at the Council during the period 1982-2002. He held a number of senior positions including being Leader of the Council and Mayor. After leaving the Council in 2002, he started working in the property industry. He worked with Mr Malik and Renewal and took a shareholding and directorship in various companies in the Renewal Group. In 2004 and 2005, he was involved in the purchase of a few units on what was to become known as the New Bermondsey site. In 2007, he resigned from all his Renewal directorships in order to pursue an independent career. Since 2007, he has not had any employment, directorships or shareholdings in any Renewal company or any associated entity or project. He has had no dealings with the Council since 2002. He has had no involvement of any kind in discussions or decisions relating to the regeneration of the Site.

139. Mr Malik held various positions at the Council during the period 1988-1994. Between 1990 and 1994, he was Chief Executive of DirecTeam, a Council-controlled direct service organisation which provided services such as refuse collection, waste disposal, housing refurbishment and many other services. In this capacity, he had no involvement in any planning matters in respect of New Bermondsey or any other regeneration projects within the Council. He had some involvement in planning applications in relation to land, buildings and facilities required for the provision of the Council services. He had no direct contact with planning officers in relation to these planning applications. Between 1994 and 1998, he was Chief Executive of ServiceTeam, a new service provider to local authorities. He left this in 1998. He then went into property development. In 2002, he established the Renewal "brand" and started purchasing and developing properties, each one using a separate Renewal company. In 2005, he established a joint venture between IHL and IAI for the purposes of the New Bermondsey project.

140. In view of this history, there was in my view no need to make any reference in the officers' report to the previous involvement with the Council of either Mr Sullivan or Mr Malik. There is no suggestion that this gave rise or could have given rise to any preferential treatment of Renewal or advantage to it.

141. In his email to me dated 20 July 2017, Mr Ronay referred to the initial point of interest in the story as being the historical link between Renewal and Mr Sullivan: Renewal was

being offered the benefit of public powers and public land by Mr Sullivan's successor and his cabinet. Mr Ronay wrote:

> *"This is not an accusation of impropriety or corruption. But it is something that goes to the heart of a wider story of the close relationship between local government and developers. The public expectation is of complete transparency and the highest possible standard of independence. In reality there is a great deal of crossover in personnel over time, and in some cases relationships that might raise a feeling of concern with some people.*
>
> ……
>
> *No longer a director, [Mr Sullivan] sold his shares in Renewal between 2008-09. By that stage the New Bermondsey project was much further down the line…..Sullivan will, it is to be assumed, have made a profit by selling.*
>
> *None of this is to my knowledge a breach of any rule or law. But it will strike many, not least Labour voters, as odd. Profit for the former mayor is enough in itself to add a troubling element to the scheme."*

142. I can see why Mr Ronay says that this may strike many as "*odd*". But, as he accepts, there is nothing unlawful about what happened so far as Mr Malik and Mr Sullivan are concerned. Nor was there any impropriety or breach of a Code of Conduct. It has not been suggested that the previous involvement of Mr Malik and Mr Sullivan gave Renewal any unfair advantage over other developers who may have wanted to carry out the development of the Site. Nor could it be. As for any perception of "oddness", it is material that some or all of the members of M&C and OSBP must have been aware of the previous involvement of Mr Malik and Mr Sullivan. Finally, to put this point in perspective, I doubt whether, if the previous involvement of Mr Malik and Mr Sullivan had been the only matters of concern to opponents of the Renewal scheme, these opponents would have been critical of the decision to make the CPO.

(viii) MFC wanted to buy the freehold

143. I have already referred to Appendix 4 to the officers' report of 11 September 2013 and the fact that it contains a detailed summary of the negotiations between the Council, MFC and MCT to which I have earlier referred. Paragraph 10 of this summary states:

> "*….it has been made clear [MFC] do not own a legal interest in the MCS Lion's Centre part of the site that if the Council was to give any consideration to proposals brought forward by the Club, in addition to drawings, it would*

require details of proposed timescales, a viable business plan with funding arrangements, proposals for the mechanics of delivery and proposed contractual arrangements between MCS, Renewal and [MFC] to enable delivery in conjunction with the comprehensive regeneration of the area. At the time of writing of this report on 5 September 2013, no such information had been provided and no financial offer for the purchase of the land has been received from [MFC]. [MFC's] position throughout negotiations has been that the Council should "gift" the Council's land to support the fragile financial viability of the Club".

144. This was a full and fair summary of the position. Even if a fuller account of the negotiations had been given by the officers in their already very detailed report, it is unrealistic to believe that it could or would have affected the outcome of the decision to enter into a conditional sale agreement of the Millwall Land.

(ix) Sale of the Council land would exclude any other developer

145. It is true that the report did not spell out in terms that, if the Millwall Land were transferred to Renewal for the purposes of Renewal undertaking the regeneration, it would necessarily follow that MFC would not be developing that land. But that must have been obvious. There was nothing improper in failing to make this explicit. In fact, the report did spell out at paragraph 12 of Appendix 4 that, if negotiations with MFC and MCT for the surrender and grant of new leases were not successful, the Council would have to consider exercising its CPO powers.

(x) Financial due diligence before CPO indemnity agreement

146. This point was adequately dealt with in paragraph 6.10 of the officers' report: see paragraph 127 above.

Conclusion on MFC's ten individual complaints

147. I therefore reject MFC's complaints about the accuracy and adequacy of the report to M&C for its meeting on 11 September 2013. Many (if not all) of them surfaced for the first time when the MFC representatives attended to answer my questions. They come nowhere near to amounting to evidence of impropriety on the part of the officers who wrote that report.

3.2.2 Personal relationships with Mr Malik and Mr Sullivan

148. I have already sufficiently dealt with this point at paragraphs 138 to 142 above.

3.2.3 Sale unduly favourable to Renewal?

149. The four points made by MFC (see paragraph 100(iv) above) were made on its behalf in the Freedom of Information Act proceedings: see paragraph 95 of the judgment of the First -tier Tribunal on appeal from the decision of the Information Commissioner. They were said to be "*red flag"* factors which heightened the public interest in the disclosure of all the disputed information relating to the proposed development by Renewal. At paragraph 164 of its decision, the First-tier Tribunal explained why it did not consider that any of the points was sufficient to heighten the public interest in disclosure. It is true that the issue in those proceedings was somewhat different from what I have to decide. But there is a reasonably close analogy between the two. Indeed at paragraph 161, the First-tier Tribunal noted that:

> "*We note that, whilst multiple allegations of impropriety have been leveled at LBL and Renewal, we have heard no evidence of criminal complaints, police investigations or charges brought, no investigations by the Local government Ombudsman, or by the relevant bodies concerned with officers' or members' conduct in local authorities (in relation to the Nolan Principles or otherwise) and no evidence of professional misconduct proceedings against LBL's external advisers."*

150. I have found the careful reasoning of the First tier Tribunal of assistance to me in reaching my conclusions.

151. I now take the four complaints in turn. I have already rejected the allegation that the sale price was at an undervalue and say no more about that.

152. As regards the second complaint, it is true that there was no restriction placed on Renewal selling on the land. But there was no impropriety here. The terms of the agreement were negotiated by the Council with the assistance of independent specialist lawyers. Under the "master developer" strategy that Renewal intended to use, the development of parcels of land would be subcontracted to other developers. The Council had been advised by GL Hearn that this was a common method of securing cash flow for a development. There was nothing wrong with a sale agreement which permitted Renewal

to do this. It was also of importance that any sub-developers would be bound by the terms of the section 106 agreement. This is a process commonly used on large complex development schemes.

153. As for the third complaint, it is true that no obligation was placed on Renewal to develop the land, but it was a requirement of the conditional land sale agreement that Renewal enter into an option agreement with the Council, giving the Council the option to purchase back the Millwall Land if development had not commenced within four years of the transfer of the land.

154. As regards the fourth complaint, it is true that there was no provision for claw-back if Renewal sold the land at a profit. However, as Mr Holmans has explained in his evidence, the Council had carefully considered this issue and decided that an overage provision was not appropriate in a development of this complexity. It was considered more appropriate to include an affordable housing review mechanism in the section 106 agreement. The review mechanism enables the Council to review the financial viability of a scheme from time to time and increase the percentage of affordable housing that must be provided if sale values exceed certain levels specified in the section 106 agreement. This provision ensures Council is able to share in any increased profitability of the scheme.

155. In any event, the Council was entitled to take the view that Renewal was intent on carrying out the Development itself, but with the assistance of others by means of the master developer model, and that it was not planning to sell on the land that it had acquired or the benefit of the agreement to buy the Millwall Land. The Council knew that Renewal had been assembling the land on the Site for about 10 years. MFC relies on the LSH brochure as evidence contradicting Renewal's assertion that it did not intend to make an early sale. I deal with the LSH issue in Chapter 7 below.

156. But even if the Council would have been better advised to include a claw-back provision in the contract, that is a far cry from saying that there was any impropriety in failing to do so. The contract was agreed after a long and detailed negotiation. The Council were advised by experienced independent lawyers whose advice it followed. Unless this advice was obviously wrong, I find it impossible to say that the Council was guilty of impropriety, whether misconduct (or even mere negligence) in following it; or that there was any breach of a Code of Conduct..

157. It follows that in my view, there was no misconduct or other impropriety on the part of the officers or members in relation to the terms of the contract of sale. In reaching this conclusion, I have also borne in mind the fact that the Council relied on the advice of its independent lawyers.

3.2.4 CPO would inevitably follow from the sale agreement

158. I do not accept that it was inevitable that a CPO would follow from the sale agreement. Clearly, if Renewal satisfied the stringent conditions that were imposed by M&C's "in principle" decision of 7 March 2012, a CPO would be made. But it was by no means a foregone conclusion that Renewal would satisfy those conditions. And the possibility of an agreement between the Council and MFC in respect of the Millwall Land could not be ruled out, if MFC produced a detailed scheme. But even if I am wrong about that and a CPO was the inevitable consequence of the conditional sale agreement, this would not of itself be a reason for saying that there was any impropriety on the part of the Council in entering into the conditional agreement of sale of the Millwall Land. Since, for the reasons I have given, there is no substance in any of MFC's other complaints about the agreement to sell the Millwall Land, the fact that it was inevitable that a CPO would follow cannot be a legitimate ground of complaint.

159. For the reasons that I have set out in detail above, I conclude that there is no substance in any of the complaints about the way in which the Council dealt with the conditional sale agreement of the Millwall Land. The Council officers and the members who took the decisions considered the issues with great care and acted with the utmost propriety. I should also make it clear that there is no evidence that any member or officer of the Council acted in breach of one or more of the applicable Codes of Conduct (which I have set out in Annex 2). So far as I am aware, no allegation of such a breach has been made by anyone.

Chapter 4: The Council's decision to use CPO powers in relation to the Millwall Land (Issues 1 and 6)

160. In this chapter I consider the first and sixth issues in my terms of reference, namely whether the officers and members of the Council acted with propriety, due diligence and in accordance with the applicable codes of practice in relation to the decision to use CPO powers in respect of the Millwall Land.

4.1 The history of events from 20 December 2013 until the date of appointment

161. In order to place in context the remaining questions that I have to consider, I need to set out in some detail the history of events from the date of the conditional contract of sale of the Millwall Land on 20 December 2013 until 22 February 2017 when the Council resolved to appoint an independent person to conduct an Inquiry. In what follows (up to paragraph 264), I have attempted to give an account of events largely based on the documents. My detailed accounts of the facts relating to the £500,000 pledge issue (Issue 4) and the LSH brochure issue (Issue 7) appear in Chapters 5 and 7 of this report. My assessment of what happened and my views on the issues follow later.

162. On the same day as the conditional contract of sale of the Millwall Land was executed, the Council and Renewal also entered into a CPO Indemnity Agreement for the scheme. This obliged Renewal to meet all costs of the CPO process and to provide adequate security to the Council in respect of any liability that it would incur in respect of progressing the CPO.

163. During 2014 and 2015, various attempts were made by Renewal to acquire the leasehold interests of MFC and MCT so as to obviate the need for the Council to use its CPO powers. The Council was well aware that, according to the CPO Guidance issued by the Government, recourse to CPOs is a "last resort".

4.1.1 Attempts by Renewal to acquire MFC and MCT leasehold interests by agreement

(i) The Car Park and the land surrounding the MFC stadium

164. On 25 April 2014, Renewal wrote to MFC making a formal offer to acquire its leasehold interest in the car park and the land surrounding the stadium. The letter enclosed a letter from GL Hearn valuing MFC's leasehold interest at £325,000. Renewal wrote:

> "*It is our and the Council's preferred position to reach a negotiated settlement with you, without recourse to the use of compulsory purchase powers. To that extent, Renewal is willing to make a cash offer of £1 million.*"

165. On 19 May, Mr Kouvaris replied saying that the offer was being reviewed, but MFC did not want to surrender its leasehold interest. On 26 June, he enclosed a response to the GL Hearn letter setting out what he considered to be errors and false assumptions in the valuation. Since October 2014, GL Hearn had been trying to engage in a dialogue with CBRE to discuss the valuation, but without success. MFC has not yet produced a detailed counter-valuation.

(ii) The Lions Centre

166. In about June 2014, the Council sent GL Hearn's valuation of the MCT leasehold interest in *The Lions Centre* to MCT. On 21 July 2014, Keith Murray Consultants, chartered surveyors acting for MCT, emailed MCT his views on the GL Hearn valuation (subsequently shared with GL Hearn). This agreed with the GL Hearn valuation within about £100,000. Nevertheless, at a meeting on 9 September, MCT argued that they would lose £3.56 million as a result of their relocation to Energize as proposed by Renewal's scheme.

167. On 18 September, Bond Dickinson sent Trowers (who were acting for MCT) a draft agreement to provide for the surrender of the MCT lease and their relocation to Energize. But no progress was made in respect of this negotiation.

4.1.2 History up to M&C resolution of 7 September 2016 to make CPO

168. In parallel with Renewal's negotiations with MFC and MCT, Renewal and the Council continued to discuss the possible use of CPO powers in respect of the MFC/MCT

leasehold interests. On 24 March 2014, Renewal wrote to the Council asking it to exercise its CPO powers to complete 100% land assembly and facilitate delivery of the scheme.

169. In May 2014, Mr Quirk was advised by Ms Janet Senior (Executive Director for Resources and Regeneration) and Ms Kathleen Nicholson (Head of Legal Services) that the proposed redevelopment would not progress without a CPO in respect of the land that Renewal did not already own. The Council officers understood (as was the case) that they had to be sure that there was a compelling case to justify a CPO in the public interest. They had to be sure that, if a CPO were made, Renewal's scheme would be deliverable and that Renewal had the financial capacity to deliver it. They were aware that the pre-conditions to the "in principle" decision of 7 March 2012 had to be satisfied before a CPO could be made.

170. They had already decided that they should obtain independent expert advice to appraise the viability of the proposed development and to assess the capability of Renewal to deliver it. That is why GL Hearn and PwC had been appointed. GL Hearn had reported in April 2014, working on the basis of delivery of all aspects of the scheme by a single developer (i.e. *not* on the basis of a split scheme such as was being proposed by MFC), that the scheme was financially viable.

171. The officers had also decided that they needed to discover and disclose information about the ultimate ownership of Renewal to M&C and OSBP. Mr Quirk approached Mr David Ashworth, then of Foddy Consulting, an expert in CPOs. Mr Ashworth met Mr Malik on 31 July 2014 to try to persuade him to provide evidence of Renewal's financial standing that was acceptable to the Council in order to satisfy the pre-conditions for a CPO that were set at the meeting of 7 March 2012. Mr Malik was adamant that there was no need to provide financial information at that stage. He said that his commitment to the project was demonstrated by his investment in the Site on which he had spent many millions of pounds. This should provide sufficient certainty for the Council. Mr Malik's obduracy did not help his cause at that time. It fueled the suspicions of those at the Council who were opposed to Renewal and its scheme.

172. During the following months, Ms Senior met officers, counsel and Bond Dickinson on a number of occasions to consider whether the information that had been provided was sufficient to support the case for a CPO based on the advice provided by GL Hearn and PwC.

173. Between October 2014 and December 2015, in parallel with the negotiations over the potential CPO, Renewal and the Council sought to engage MFC as a party to a supplemental section 106 agreement in respect of Renewal's application under section 73 of the Town and Country Planning Act 1990. These culminated on 18 December 2015 in the grant of Renewal's section 73 application and the amendment to the section 106 agreement.

174. Following a detailed bid by Renewal, and supported by the Council, on 20 February 2015, the Mayor of London and the Chancellor of the Exchequer designated the New Bermondsey Site as one of the first of the Mayor of London's Housing Zones. The GLA allocated in principle funding of £20 million towards delivery of key infrastructure associated with the scheme, including the new Overground Station at Surrey Canal Road. In exchange, Renewal would inter alia deliver additional affordable housing. Following formal approval from the Mayor of London, due diligence would be undertaken by GLA and its consultants as to the ability of Renewal to repay the loan.

175. On 7 April 2015, OSBP resolved to request the Mayor to instruct officers to confirm due diligence and financial assessment, viability and deliverability of the scheme before any further commitments were made; and to request the Mayor to refer the matter to Mr Quirk for a review of the overall scheme.

176. On 22 April 2015, M&C resolved that (i) there would be due diligence in relation to the CPO element of the scheme; (ii) viability would be taken into account by PwC; and (iii) due diligence would form part of the CPO report in the normal way.

177. On 3 June 2015, GL Hearn produced a report updating their earlier report of April 2014. They advised that they had no reason to doubt the ability of Renewal to conclude the land assembly and deliver the scheme. Renewal's proposed Master Developer Strategy was appropriate. It would provide Renewal with a satisfactory level of return. GL Hearn noted that PwC had been instructed to review Renewal's ability to meet its

obligations. Their (GL Hearn's) conclusion was that Renewal's delivery strategy was both viable and implementable and supported the case for confirmation of the CPO.

178. On 17 February 2016, officers submitted a report to M&C saying that all the pre-conditions for the making of a CPO that had been set on 7 March 2012 had been met and recommending that the Council use its CPO powers. This report was withdrawn from the committee on legal advice following receipt of a letter from Shoosmiths, solicitors acting for four owner occupiers, who said that the impact of a CPO on them had not been properly assessed and the necessary human rights balancing/proportionality exercise had not been properly carried out. One of the owner occupiers was Ms Willow Winston. She is an artist who lives and works in her studio within the Site. She acquired her studio in 2000 and has refurbished it. Understandably, she is strongly opposed to being relocated from her studio as she would be if the development were to go ahead.

179. In February, the Council appointed Strutt & Parker to act as an intermediary to see whether they could resolve the differences between the parties so as to facilitate the comprehensive development of the Site. Strutt & Parker were also asked to advise on the viability, deliverability and overall fit of the MFC proposals within the Core Strategy and regeneration objectives.

180. On 24 August 2016, Strutt & Parker produced a report on the 2013 version of the Mackay & Partners' scheme. They advised that factors inhibiting MFC's ability to develop that scheme were that (i) it was unable to acquire ownership of the Millwall Land; (ii) the comprehensive development of the Site would not be achievable through the piecemeal development that the independent delivery of the MFC Scheme would entail; and (iii) the existing land value of the Millwall Land was in excess of its likely residual land value post-development, so that the Mackay & Partners' scheme was unviable.

181. In a letter to Strutt & Partners dated 25 August, Renewal summarised the history of the MFC scheme from its point of view and described the attempts to reach agreement with MFC over the years. It mentioned the fact that in 2014 MFC had sought in excess of £20 million for the surrender of its lease, and that Renewal had offered a sum in excess of the GL Hearn valuation. Renewal was no longer willing to enter into a joint venture with

MFC. It was clear, therefore, that any attempt by Strutt & Partners to bring about a compromise between the parties would be doomed and so it has proved to be.

182. On 26 August 2016, PwC produced their final draft report on Renewal's overall ability to deliver the scheme (including its ability to fund the development). They said that they had had two meetings with Renewal and IAI, but none with IHL (the major proposed funder of Renewal). But they said that this was not unusual for an assignment of this nature. Information about IAI had been withheld from PwC on the grounds that it disclosed personal financial matters that related to Mr Malik's family trust and, in the opinion of the directors, it was not required for the purpose of demonstrating that Renewal had access to the funding that would be required in order to deliver the project. PwC said that they had not had access to the auditors of Renewal or to its property advisers (except for GL Hearn). But, they said, access in these areas was not necessary to complete their work.

183. Renewal had provided financial statements for years 2013, 2014 and 2015. PwC had also received limited information on IHL, but none on IAI. They had received an unsigned performance bond between Royal Bank of Scotland, the Council and Renewal and a signed Development Agreement between IHL, IAI and Renewal. They advised that these documents would need to be signed before the Council proceeded with the CPO.

184. On 30 August 2016, GL Hearn produced a report on the effect of the exclusion of the Millwall Land from the Renewal scheme. They advised that it would significantly affect its viability.

185. Taking account of the advice of GL Hearn, PwC advised that, on the funding assumptions that they made, Renewal's intended Master Developer Delivery Strategy was appropriate and capable of delivering a commercial return. This strategy was a recognised commercial approach. It would involve Renewal selling individual plots to specialist sub-developers, who would undertake the construction. If Renewal were not to proceed with the development, "*the opportunity would exist for an alternative commercial developer, who should be attracted to the site and be capable of achieving returns that would be commercially acceptable."*

186. On the specific issue of Renewal's ability to fund the development. PwC said as follows. The immediate funding need was £14 million. GL Hearn had estimated total development costs at £199 million and a peak cash flow requirement of £61 million with the balance being made up from assumed sales of units as the stages were completed. Renewal did not have sufficient funds as at 31 December 2015 to fund either the short-term or long-term financing needs of the project. It had always represented that future funding would come from the shareholders of IHL and IAI and that this funding would be debt in nature and not equity.

187. PwC said:

> *"Based on information provided, it is not unreasonable to assume that Lewisham will have comfort that they either have £14m in cash or a performance bond supported by RBS when they make the CPO. It has always been represented that the long-term funding would come from the shareholders. We have not seen any details of how they intend to raise the funds for this project, although that is not unusual at this stage of a project and a number of potentially viable funding options exist."*

188. A little later, they said: "*Both IAI and IHL are registered off-shore companies. While the structure of Renewal, IAI and IHL is not unusual, Lewisham will need to consider the reputational risk of offshore companies making significant returns from, in part, UK public sector enabling procedures".* Based on the available information (which might have been out of date by the time of the report), IHL "*appears to have sufficient funds (or the ability to raise such funds) to meet the £14m initial requirement for the CPO in cash should it choose to do so".* Together with the proposed bond, it was *"not unreasonable to assume that Lewisham will have comfort that they either have £14m in cash or a mix of cash and bonds ring-fenced when they make the CPO".* PwC said that it had always been represented that the long-term funding would come from the shareholders. As to this, the report stated that, whilst there were no binding commitments from the shareholders to fund Renewal, *"they have a significant investment in the project already which suggests that commercially further investment is highly likely".* The Development Agreement between Renewal, IHL and IAI provided *"some further but not absolute comfort".* Notwithstanding this agreement, the deliverability of the project was still subject to the shareholders having the funds and being willing to make them available. GL Hearn believed that the main risk to the profitability of the project lay in property prices. Based on GL Hearn's calculations, property prices would have to fall by a particular percentage

in phases 1A and 2 for this to be an issue; and that level of fall in property values had not been seen since 2008/2009.

Officers' report to the M&C meeting of 7 September 2016

189. On 30 August, GL Hearn produced a report on the implications for the viability and deliverability of the Renewal scheme of excluding the Millwall Land. Their conclusion was that the scheme would not be viable unless it included the entire Site i.e. including the Millwall Land. It is not necessary to set out the reasoning of the report because no criticism of it has been made to me. Suffice it to say that it is detailed and I have found it compelling.

190. The officers reconsidered their earlier report of 17 February 2016 and submitted their revised report to the M&C meeting of 7 September 2016. This is a very long and detailed document. Its purpose was to update the M&C on progress on the scheme, to explain why they considered that the pre-conditions for the making of a CPO that were set on 7 March 2012 had been met and to seek approval for the use of the Council's CPO powers to enable land assembly and acquisition of new rights in order to facilitate the comprehensive redevelopment of the Site. A Statement of Reasons for making the proposed CPO was attached to the report. This document is 70 pages in length. It was prepared in accordance with the Government's Guidance on Compulsory Purchase process. It set out the history of the proposals for the redevelopment and an appraisal of Renewal's scheme. It considered whether the purposes of the CPO could be achieved by any other means and set out the history of the attempts to assemble the Site by agreement. In my view, the Statement of Reasons is an impressive document which was clearly drafted with a great deal of care and attention to detail.

191. I turn to the report itself. This too is an impressive and detailed document. It runs to 44 pages in length (excluding various annexes which include GL Hearn's report of 30 August 2016.) Section 5 of the officers' report contains a full and, I believe, fair and accurate summary of the relevant background. Section 7 is headed "Pre-conditions to CPO resolution". Paragraph 7.1 reminded the members of M&C of the pre-conditions that they had laid down by their "in principle" decision of 7 March 2012. At paragraph 7.2, the report stated that officers considered that the pre-conditions had been met. In the

remaining part of section 7, the report explained in great detail why the officers had reached this conclusion. They discussed the history of negotiations with landowners (paragraphs 7.3 to 7.28) and concluded that Renewal had used its reasonable endeavours to complete the assembly of the Site by agreement and that the first pre-condition had been met. They described in great detail the negotiations that had taken place, including those in relation to the Millwall Land. They explained why they did not consider that the MFC proposals provided an adequate means by which the purpose of the CPO might be achieved within a reasonable time (paragraph 7.26). They said that no alternative credible development proposals had been put forward or were likely to be capable of being put forward within a reasonable time without the need for a CPO (paragraph 7.27). At paragraph 7.28, they said:

> "*A continuing dialogue between Renewal and MFC and efforts to reach agreement must continue to be encouraged and supported. Given anticipated development programme, however, if the regeneration proposals are to move towards realisation, Officers consider that formal CPO procedures should commence so that delivery of the necessary land assembly can be secured. Negotiations with Renewal, MFC and all other landowners will continue in parallel with the CPO process with every effort being made to try and conclude the remaining acqisitions by agreement ahead of the CPO".*

192. The report then considered the second pre-condition at paragraphs 7.30 to 7.36 and explained why the officers considered that it too had been met, i.e. that the requirements of section 122 of the Local Government Act 1972 and sections 226 and 237 of the Town and Country Planning Act 1990 were satisfied. At paragraphs 7.38 to 7.45, they explained why they considered that the third pre-condition had been met, i.e. that there was a compelling case in the public interest to make a CPO. At paragraphs 7.47 to 7.60, they explained why they believed that the fourth pre-condition had been met i.e. that there was a delivery mechanism which would ensure that there was a comprehensive redevelopment and that it would be completed within a reasonable time. The officers referred to the conclusions of the GL Hearn and the PwC reports and fairly represented the material content of these reports. They said that the Master Developer Strategy proposed by Renewal was the most appropriate strategy for delivering the comprehensive redevelopment of the Site. It would allow Renewal to offset much of the delivery risk, but at the same time retain overall control.

193. The officers said that the Council needed to be satisfied that, if it proceeded with a CPO to assemble the remaining interests, the necessary resources were likely to be in place to achieve the purpose of the acquisition within a reasonable time. It needed to be satisfied that the scheme was viable, deliverable and fundable (paragraph 7.49). They reported that in April 2014 GL Hearn had reported that the scheme was financially viable on the basis of delivery in all aspects by a single developer. Following a review of the funding assumptions made, PwC had concluded that Renewal's intended delivery strategy was appropriate and capable of delivering a commercial return and would therefore have a reasonable chance of being delivered in line with Renewal's proposals. Renewal proposed to adopt a Master Development Strategy by which it would enter into development agreements with house builders for individual plots and/or phases. In this way, Renewal would retain the freehold interest and would be able to offset much of the delivery risk, but at the same time retain overall control. PwC had confirmed that this approach was a recognised commercial approach for large complex schemes. The officers considered that these reports supported the view that the scheme was viable and an appropriate delivery mechanism was in place.

194. They concluded their consideration of pre-condition (iv) with the following:

> "7.59. *Those opposed to the Scheme have referred to Renewal's lack of a track record in regeneration schemes of this nature and the absence of any development obligations with the Council. There is no policy requirement for a development agreement to be in place or to demonstrate* ***certainty*** *of delivery. Objectors have complained that Renewal will profit from any CPO, but developers reasonably require a profit if they are to bear the cost and risk of bringing forward development. It has been alleged that the Mayor and Cabinet report in February 2016 confirmed that Renewal intends to simply sell plots and seek to make an immediate profit. It is not clear whether this is a misunderstanding of the [Master Development Strategy] approach which is clarified above, but Renewal has confirmed that at no stage has it or its shareholders sought to dispose of its interest in the Scheme nor does it intend to. Further, Renewal and its shareholders will only achieve positive cash flow in the later phases and will therefore be incentivised to continue with the Scheme once started.*
>
> *7.60. Whilst the Council does not have a directly enforceable obligation from Renewal to deliver the whole of the scheme, any such obligation would not in any event guarantee delivery. Officers remain of the opinion that the necessary resources will be available and that the Scheme will provide a sufficient return to Renewal (or another developer/developers), such that the Council can be confident that if the CPO is confirmed, Renewal will wish to*

proceed with the Scheme (for the reasons given above) and the Scheme will be delivered".

195. The report then went on to deal at paragraphs 7.62-7.74 with pre-condition (v) i.e. to consider whether Renewal had a viable business plan and funding strategy to deliver a comprehensive regeneration scheme.

196. In view of the criticisms that have been made by those opposed to the Renewal scheme, it is important to look at this section of the report particularly carefully. The officers said that the majority of the costs and risks for the development of individual plots/phases would be passed to the sub-developers, who were likely to be national house-builders (paragraph 7.62). PwC had confirmed that they considered that the appraisals presented by GL Hearn had been properly considered and reflected Renewal's development intentions (paragraph 7.64). In the event that the Council decided to proceed with a CPO, the CPO Indemnity Agreement would provide adequate security to meet any costs or expenses that might arise from the making of the CPO; and Renewal had offered an "on demand" bond that would enable the Council to require payment from Royal Bank of Scotland if Renewal failed to meet its liabilities under the CPO Indemnity Agreement (paragraph 7.65).

197. The funding of the project would be met by Renewal's two shareholders (paragraph 7.66). Whilst there were no audited accounts for the shareholders of Renewal (not being registered in the UK), the financial information provided by them to PwC indicated that they had significant net assets. PwC considered that they both had the potential to utilise or leverage Renewal's balance sheet to cover both the initial funding and the peak debt (excluding sunk costs) finance required by the project. If the shareholders failed to do this, there were alternative funding strategies which were set out in paragraphs 7.69 and 7.70 (paragraph 7.67).

198. The officers said that there was natural caution about reliance on off-shore funding, but a number of factors should be taken into account in this regard. They set these out in detail at paragraphs 7.68-7.70. They included that: (i) funding for the project to date had been provided almost entirely by shareholders on terms that they would only see a return on their investment as the scheme was delivered; (ii) it was therefore highly likely that the shareholders would make further investment; (iii) the GLA had designated the whole

scheme as one of the first housing zones and had agreed in principle (subject to contract with Renewal and entering into a Memorandum of Understanding with the Council) to provide a £20 million loan facility to Renewal; (iv) with an assembled site, outline planning permission/section 73 permission for the comprehensive scheme in place and the proposal to adopt the Master Development Strategy approach, it was considered that, if the shareholders decided not to fund the scheme, traditional debt funding would be available to Renewal to satisfy the maximum deficit that would arise during the course of the project; and (v) if Renewal were not to proceed with the development, an alternative commercial developer would be attracted to the Site and would be able to achieve returns on investment that were commercially acceptable.

199. The officers said that, if the Council wished to see the comprehensive redevelopment come forward, this was only likely to occur if the Site was assembled and the scheme would only be achieved within a reasonable time if the Council assisted the land assembly by the exercise of its CPO powers (paragraph 7.71). Accordingly they concluded at paragraph 7.73:

> *"In all the circumstances, Officers are of the view that the Scheme is viable and deliverable, and has a reasonable prospect of coming forward in a reasonable timescale in the event the Council secures compulsory purchase powers to complete the land assembly exercise".*

200. The issue of financial due diligence was summarised at paragraphs 9.12-9.16. The key conclusions of the PwC report were set out in section 7 of the officers' report. The officers said that PwC's overall conclusions were that the scheme was viable (paragraph 9.14). They repeated what PwC had said about the ownership of Renewal (paragraph 9.15) and said that the Council should *"note that the nature of the unaudited information provided including ownership means that it has not been independently verified".*

201. At the M&C meeting of 7 September 2016, Councillor Smith introduced the officers' report. He pointed out that the Renewal Group already held interests in 90% of the land needed for the proposed regeneration and that the use of CPO powers could allow the assembly of land so as to allow completion of the scheme. The committee resolved that the pre-conditions for compulsory purchase set by M&C on 7 March 2012 had been met and that a CPO should be made.

202. On 9 September, Mr Barney Ronay wrote the first of the many articles that he wrote in *The Guardian* about the Council's decision to allow and facilitate Renewal's plans for the regeneration of the Site. The heading of the article was: "*Why Lewisham's plans for Millwall's Den really take the biscuit*". He was critical of the decision to partner a developer whose ultimate parents were off-shore companies owned by "*mysterious entities including a family trust*", there being no evidence that Renewal had ever carried out a major development project. Mr Ronay pointed out that MCT would now be evicted when the CPO went through and, in his view, the sale of the Council land could threaten MFC's basic operations. The proposals would be bad for the local community.

4.1.3 MFC's complaints in letter of 19 September 2016 about the M&C meeting of 7 September 2016

203. On 19 September, Mr Berylson wrote to Councillor Hall (chair of the OSBP). Mr Berylson was seeking to influence the OSBP which on 20 September would be considering whether to call-in the M&C decision of 7 September. He made eight complaints about the M&C meeting and said that the way the meeting had been managed was inherently prejudicial to the interests of MFC.

204. I shall set out these complaints and also the answers that were given to them by the officers in their report to the M&C meeting of 15 December 2016. The first complaint was that the information given to the M&C meeting of 7 September was incomplete and omitted to mention (i) the possibility of a tender exercise in respect of the Millwall Land and (ii) that MFC had been denied the opportunity to bid for the Millwall Land. As regards (i) the officers' response was that the idea of a tender exercise in respect of the Millwall Land was abandoned in 2013 because neither MFC nor MCT wanted to participate, and the Council was concerned that a tender process would cause unacceptable delays to getting the development off the ground. As regards (ii), this is sufficiently covered by paragraph 103 above.

205. The second complaint was about the refusal of the Council to disclose the price at which the Council land was to be sold to Renewal. The officers defended this refusal on the grounds that the information was confidential. Their refusal was vindicated in the Freedom of Information Act proceedings.

206. The third complaint was directed at the involvement of Strutt & Parker. Mr Berylson said that MFC was not aware that Strutt & Parker had been asked to assess the viability of the MFC scheme and it had not been given an opportunity to make any comments to Strutt & Parker before their report was written. Moreover, the report was made on the Mackay & Partners' 2013 plan. MFC had not been given an opportunity to discuss in any detail the revised plans on which it had been working in 2016 and which were the subject of a "*potential planning application*" (Mr Berylson's words). The officers answered this complaint in detail in their report for the M&C meeting of 15 December 2016. In summary, they said that Strutt & Parker had advised the officers that CBRE were fully aware that they (Strutt & Parker) were reviewing MFC's proposals. I am not in a position to decide whether this is true or not. But even if Strutt & Parker did not inform MFC that it was carrying out a review of the 2013 proposals, I do not consider that there was any impropriety on their part (still less on the part of the Council) in their failure to do so. As regards the plans which MFC said were the subject of a "*potential planning application*", to this date MFC has not sought to commence pre-planning application discussions on any revised plans. On 4 October 2016, CBRE told officers that further work was being undertaken and that they would be in touch to discuss them "*at an appropriate time*". But no further steps were taken to progress this.

207. The fourth complaint was that Mr Quirk reported to the M&C meeting of 7 September that the Council had tried to bring Renewal and MFC together, but had said that in 5 months there had been only one meeting and not one proposal from MFC as to what they required. Mr Berylson said in his letter: "*We have repeatedly explained what we require"*. The officers' response was that they acknowledged that MFC had repeatedly said that they wished to redevelop the Millwall Land themselves or in partnership with a developer and that they wished, as a result, to secure an income-producing asset. But they had not told officers what consideration or income level they were looking for.

208. The fifth complaint was that MFC had not seen any facts or figures to support the statements made by the Council and Renewal that the viability of Renewal's proposals depended on its acquiring the Millwall Land. The officers' response was that the information was confidential and commercially sensitive. Additionally, there was a significant number of issues regarding the deliverability of the wider scheme if the

Millwall Land were omitted from it. I have already referred to the GL Hearn report of 30 August 2016.

209. The sixth complaint was that M&C had incorrectly been informed that it did not have funding. In fact, funding was available but the Council had not sought information about it. The officers' response was that a mere assertion that funding was available was not sufficient. They pointed to correspondence between December 2012 and November 2013 in which MFC was told that, if any consideration was to be given to its plans, the officers would need to have inter alia details of its funding arrangements. These had not been provided. There is the further point that Strutt & Parker had in any event advised that development of the Millwall Land in isolation was unviable.

210. The seventh complaint was that the officers did not report to M&C that taxpayers' funds were being spent by the Council on independent legal advice "*to keep information about Renewal and the Council's dealings with Renewal out of the public eye".* The officers' response is that this money was being spent by the Council to contest the Freedom of Information Act proceedings (in which the Council was substantially successful). In any event, these legal fees were reimbursed to the Council by Renewal.

211. The eighth complaint was that the tenor of the meeting of 7 September and the manner in which it was conducted was unfair and prejudicial to the interests of MFC. MFC considered that their objection to the meeting being chaired by Councillor Smith (on the grounds that he had previously made derogatory remarks about Mr Berylson) should not have been dismissed. Furthermore, Councillor Smith acceded to the request of three attendees to speak to the meeting (none of them from Renewal). But he asked a Renewal representative (without being requested to do so) to address the meeting more than once to "*defend their position and present new information—particularly relating to the funding of the [MCT] and the Energize Sports Centre—to the meeting which had not been previously disclosed and which was not properly challenged".* The complaint was that this showed a degree of lack of even-handedness.

212. I find it difficult to make a judgement on whether there is any substance in this complaint. But in view of (i) the detail of the documentation that M&C received for its meeting on 7 September and (ii) the fact that the members of M&C were aware of and

had been considering the issues for some time, I consider that it is most unlikely that, if the meeting had been conducted differently, the outcome would have been different.

4.1.4 The OSBP call-in on 20 September 2016 and subsequent events

213. On 20 September, there was a meeting of the OSBP chaired by Councillor Hall. This meeting was addressed by Ms Jordana Malik (for Renewal), three persons representing MFC (including Mr Barrow) and business owners whose businesses were located in the Site. There was much discussion about Renewal's finances and lack of track record in regeneration schemes of this kind. Councillor Curran said that he was concerned that the Council was willing to agree to make a CPO for the benefit of an off-shore company. His view was that the Council should try to retain all its existing freeholds. He asked why there was secrecy surrounding the names of the directors of Renewal. The MFC representatives said that it still wanted to play a full part in the negotiations; it had produced plans for a creative scheme; Renewal should not develop the Site unless MFC had joint control of it; and it did not intend to prevent the development, but it wanted to jointly own the venture, not to stand on the sidelines, and to be given an opportunity to buy the Millwall Land. It asked for the proposed sale to be delayed in order to give MFC a chance to bid.

214. Mr Quirk says in his witness statement that he was taken aback when some members were openly doubting the credibility of the officers' responses to some of their questions. He said that he felt compelled to explain in person that officers were answering questions truthfully and were acting honestly and with integrity. This display of lack of trust in the officers was the culmination of what had been occurring for some time. Mr Quirk says that by early 2016, a number of the leading members of OSBP appeared to have lost trust in some key officers as well as in some of the members of M&C. Questions were being asked about the conduct of the Mayor and Deputy Mayor as well as the professionalism of the advice that was being given by officers. Mr Quirk said that he was shocked when he was asked by Councillor Hall to provide a written assurance that no senior officer or member of M&C had any financial interest in Renewal.

215. It was in this rather febrile atmosphere that OSBP resolved that the M&C decision be called-in on the grounds that:

"(i) Business Panel have specific concerns and were uncertain that the officer report and presentation demonstrated the viability of Renewal's delivery mechanism for the proposed development. It is accepted by all parties that Renewal has no track record.

(ii) Business Panel was concerned that the Council's reputational risk had not been fully considered.

(iii) Business Panel was not convinced that the proposed CPO was in the public interest. Panel members were concerned about the lack of clarity surrounding the provision of sports facilities and affordable and social housing.

(iv) On consideration of a letter from Millwall [dated 19 September] presenting fresh information and evidence, Business Panel believes that there are sufficient grounds for the Cabinet to reconsider their decision.

(v) Business Panel had previously raised concerns about the lack of transparency within this project and had requested the Mayor to ask the Chief Executive to review arrangements to ensure due diligence was in place. Business Panel is concerned that to date they had not received a response to their request from the Chief Executive, having made a request directly to him after the Cabinet had declined to intercede on their behalf.

(vi) In conclusion, the Business Panel agreed that there were insufficient grounds for a compelling case in the public interest to confirm a CPO."

216. In order to assist M&C with its reconsideration pursuant to the call-in, the officers produced a further report dated 28 September. In this report, they dealt with and rebutted in detail each of the points made by Mr Berylson in his letter of 19 September. The answers they gave are largely reflected in what I have said at paragraphs 204 to 211 above.

217. On 28 September, M&C decided to adjourn consideration of the call-in until further notice. This was because Councillor Smith advised that officers had received a copy of a document that was the subject of external investigation. This document was the LSH brochure which is the subject of the seventh issue which I discuss in Chapter 7 below.

218. On 27 October, Mr Ronay wrote another article in which he reported the call-in decision of the OSBP. He reported that Councillor Hall had said that the process had been *"spectacularly mishandled*" and was urging that the scheme be redesigned "*to include Millwall, Bermondsey's enduring community asset, at the heart of its plans*".

Councillor Hall told *The Guardian*: "*Top of our concerns are the mystery directors of the company behind Renewal. The company is offshore and the ultimate beneficiaries are unidentified…We need more transparency and assurance before investing taxpayers' money and taking away other people's property…The reputation of Lewisham Council is at risk".* This accurately encapsulated Councillor Hall's concerns.

219. Mr Ronay also commented on a redacted version of the PwC report of 26 August that had been recently released. He said that the lack of clarity in the financial standing of Renewal was "*startling"*. The question of why the Council were so intent on selling the Millwall Land to these offshore developers remained a mystery. He concluded his article by saying: "*The layers of confusion in the current CPO have now led to a splinter in the council, with a growing sense of anger among Labour backbenchers, the majority of whom stand to the left of this in a space where forced sales of public land to an offshore developer do not reflect Labour values".*

220. On 22 November, OSBP met again. Concern was expressed as to why M&C was not getting on with its reconsideration of the decision of 7 September pending the outcome of the investigation of the LSH brochure. Councillor Curran said that he could not understand why the call-in process was being held up and thought that the LSH brochure was being used as a smoke screen. Councillor Handley said that the uncertainty surrounding the LSH brochure and call-in seemed very suspicious and it also highlighted the lack of transparency about Renewal and its backers. The OSBP resolved inter alia that officers provide a briefing about the CPO process and a report about the LSH brochure.

221. In fact, Mr James Goudie QC had written an Opinion (dated 28 October) in which he had advised that (i) he agreed with the legal advice that had already been given that the outcome of the investigation into the LSH brochure and any impact that it might have on the Renewal Scheme should be presented to M&C as part of its reconsideration; and (ii) since paragraph E18(i) of the Council Constitution provided for one call-in only, once the LSH issue had been investigated and an updated report submitted to M&C, the OSBP would not have a right to ask M&C for further reconsideration.

222. On 30 November, PwC wrote to the Council saying that it was not unusual for investors or developers to dispose of their interests at any point in the development cycle or to seek

indicative bids as a market testing exercise. They said that the findings of their report were unchanged.

223. Although in this historical exposition of the facts I am largely avoiding expressing my views on the issues that were raised, it seems sensible to deal now with the suspicions voiced by OSBP at the meeting of 22 November 2016. In my view, the in-house legal advice given (supported by Mr Goudie) that the outcome of the investigation into the LSH brochure could have had an impact on M&C's reconsideration was correct. If Renewal had in fact been trying to sell its interest in the Site before the development had begun (or early on), this might well have affected the attitude of the Council to agreeing to use its CPO powers to support its scheme. Renewal had portrayed itself as a developer committed to the redevelopment of the Site. It would have mattered if it had planned to make a quick profit by selling at the outset or at an early stage of the development. It would have mattered to the Council reputationally. The suggestion of a possible quick sale (the truth of which Renewal contested) also mattered to it. That is why Renewal disputed the claim that it had authorised LSH to sell.

224. The decision of the M&C to delay its reconsideration was not a smoke screen nor was it some devious stratagem. It was taken on legal advice for good reasons. There could only be one reconsideration. It made sense that this should be done on a proper appreciation of all the relevant facts. In this case, these included the outcome of the investigation into the LSH brochure.

225. On 13 December, there was another meeting of the OSBP. The committee had before it some correspondence, including a letter dated 13 December from Eversheds. It also received presentations including from its officers, as well as from Ms Winston, Mr Kavanagh and Mr Walsh (Chair of MCT).

226. The letter from Eversheds set out complaints, most of which had been made before. In summary, they said that, in view of the shortcomings in Renewal's experience, its financial weakness, the lack of due diligence and the fact that its shareholders were registered in offshore tax-havens, it "*beggars belief*" that the Council considered it prudent not to have sought an open and transparent tendering process. Secondly, they raised the LSH brochure issue again. Thirdly, they repeated their complaint about Mr Holmans' letter of 29 January 2013 and the refusal to allow MFC to bid for the freehold

of the land that it leased. Fourthly, they said that the offer that had been made by the Council to MCT was "derisory" and there had been no further negotiations. The future of MCT was threatened by the Renewal scheme and Millwall's Youth Academy was also threatened by the loss of *The Lions Centre's* indoor astroturf pitch. It was a mandatory requirement under the Elite Player Performance Plan for a youth academy to have full-time exclusive access to such a facility. Finally, the report to M&C wrongly stated that Renewal owned or controlled 90% of the Site. If the Millwall Land was excluded, Renewal's ownership and control was of approximately only 50% of the Site.

227. The officers produced a detailed report for the OSBP meeting of 13 December to which was attached their report which had been prepared for the M&C meeting of 15 December and which recommended that M&C confirm its decision of 7 September to make the CPO.

228. The report for the M&C meeting addressed each of the six issues raised by the OSBP in its decision of 20 September: see paragraph 215 above.

229. As regards the first issue, the report acknowledged Renewal's lack of track record for a development of the size of the proposed project and stated that GL Hearn had reported on viability and deliverability. This had also been considered by PwC who had advised on Renewal's overall ability to deliver the scheme and its proposed funding strategy. The PwC advice had covered the funding needs of the scheme and the assets of the shareholders. The confidential documents referred to had been made available to M&C before its meeting of 7 September and remained available for inspection by members since that date.

230. As for the second issue, the report stated that overseas investment in development projects in the UK was commonplace, especially in London. Non-UK resident companies that carry on trade in property development in the UK are liable to UK tax on the profits of the trade. The identity of the trusts that "sit behind" the shareholders had been disclosed and the details were contained in the PwC report. The names of the beneficiaries had not been made public, since to do so would result in a breach of Data Protection legislation. The concern about reputational risk was understood, but the identity of the ultimate beneficiaries was of no real relevance to whether funding was likely or to the question of deliverability.

231. As for the third issue, paragraph 6.3 of the report contained a long section dealing with the public interest issue. There was a detailed explanation of the benefits that would accrue from having the sports facilities concentrated in Energize, the largest indoor sports complex for community use built in London since 1964. The amount of affordable housing that was proposed and the terms to which it would be subject was also set out.

232. As regards the fourth issue, I have set out the officers' response to Mr Berylson's letter of 19 September 2013 at paragraphs 204 to 211 above.

233. As for the fifth issue, the officers responded that Mr Quirk was made aware of OSBP concerns several months earlier. The Council had commissioned appropriate external professional and legal advice and had reviewed the advice with key officers and the chairman of OSBP (Councillor Hall). The officers considered that the depth of the due diligence undertaken by the external advisers was appropriate to protect the Council's position. Thus Mr Quirk gave assurances that the known business and financial arrangements of Renewal would be made available to all members and this had taken place.

234. As for the sixth issue, the officers remained of the view that there was a compelling case in the public interest for the compulsory acquisition of the remaining land interests to enable the scheme to proceed.

235. The OSBP meeting of 13 December was chaired by Councillor Hall. The minutes of the meeting show that there was a detailed discussion of the issues most of which had now become familiar. Ms Senior introduced the officers' report. Councillor Hall said that he was concerned about the lack of information available to the committee. He did not think the process had been transparent. Ms Senior said that this had a lot to do with the depth of confidentiality and privacy involved. Councillor Hall expressed concerns on a number of points including (i) the LSH brochure issue, (ii) the fact that Renewal could dispose of the land or withdraw from the project at any time, (iii) the fact that the amount of affordable housing was very small and (iv) the future of the sports facilities once *The Lions Centre* was demolished. The committee was addressed by amongst others Ms Winston, Mr Kavanagh and Mr Walsh. Mr Kavanagh made a number of points that had been previously made by MFC. He also said that MFC's English Football League

Academy Category 2 status could be lost if *The Lions Centre* was lost. This was a point that MFC had not raised before. Councillor Hall confirmed that the call-in was still *"active"* and new evidence had been submitted. The committee agreed to make a number of additional comments and requests in support of their existing call-in. These included that (i) M&C be asked to resolve issues raised in relation to the Academy and the Community Trust before the CPO was approved; and (ii) the LSH "narrative" be completed. Ms Emma Talbot was present at this meeting. She told me that all of the members were very opposed to the scheme.

236. On 15 December, M&C decided to adjourn the call-in until January 2017. The minutes of the meeting record that, in justifying this further adjournment, Councillor Smith said that the Council had been and remained firmly committed to the continuing operation of MFC. The Council recognised that MFC must be at the heart of any proposed redevelopment and that to achieve this:

> " *....the Council has throughout put in place measures to protect the Club and the Millwall Community Scheme, including the imposition of planning obligations to secure the use of the new improved sporting facilities that would be provided if the redevelopment proceeds.*
>
> *For the first time, despite years of contact between the Council and the Club, on 13 December the Chief Executive of [MFC]…raised an issue which the Club has never before brought to our attention. The issue which is clearly important to the Club concerns the Category 2 status of the Millwall Football Club Youth Academy. The Club's Chief Executive told the Council on 13 December that such status may be put in jeopardy by the current proposals for the use of the new sporting facilities to replace the Lions Centre, should the redevelopment proceed. We do not believe this to be the case.*
>
> *However, this is clearly a significant issue for the Club and, despite the fact that it has only been brought to the attention of the Council at this very late stage, it is an issue which the Council takes seriously…..We need to get to the bottom of the existing arrangements so that we can understand what future protection would be needed.*
>
> *We believe that sufficient protections are in place already, but we want to be confident that if the compulsory purchase order proceeds, appropriate protections are in place to protect the Category 2 status. For this reason, we are making further enquiries….."*

237. M&C therefore resolved that consideration of the call-in be further adjourned until 11 January 2017.

238. The outcome of the investigation into the LSH brochure issue was reported to the M&C meeting of 15 December. The officers reported that (i) IHL had engaged LSH in April/May 2015 to advise on the New Bermondsey scheme as an investment opportunity including outright acquisition; (ii) LSH's mandate had been amended to focus exclusively on introducing and brokering investors into a fundraising; and (iii) the brochure was issued without the authority of IHL/Renewal. I discuss this in more detail in Chapter 7 below.

239. The Council investigated the Category 2 status issue. On 30 December, Mr Quirk wrote to Mr Kavanagh asking what it was about the current arrangements that enabled MCT to secure Category 2 status and what it was about the proposed arrangements that threatened that status. In his reply of 4 January 2017, Mr Kavanagh said that this was not a simple issue. He said that he needed more information about Renewal's proposals before he could convince the English Football League that the Category 2 status would not be lost if the Renewal development went ahead.

240. On 9 January, Mr Kavanagh wrote again saying that the issue about the future status of the Youth Academy had not yet been resolved. The proposed move from *The Lions Centre* to Energize would trigger the enhanced rule requirements from the English Football League under its Rule 308. The new arrangements would not satisfy the requirements imposed by the Rules. It was therefore almost certain that MFC would lose its Academy Category 2 status. Mr Kavanagh requested a meeting with officers to discuss these matters. A meeting was arranged for 11 January.

241. Also on 9 January, Mr Quirk set out the officers' views. He noted that the English Football League had not said that MFC would lose the Category 2 status. He said that MFC had now been given answers to the questions it had raised and set out the protections that would be in place for the sporting facilities. MCT would not be required to vacate *The Lions Centre* until the new facilities were in place at Energize. The relocation strategy would be agreed with all interested parties.

242. On 10 January, Eversheds wrote to the Council saying that it would not be possible to answer the questions raised by Mr Quirk in time for the meeting arranged for the following day. He therefore asked for the meeting to be postponed. He also said that the

results of the investigation into the LSH brochure issue "*stretch the bounds of credulity".* He asked for confirmation that none of the documents forming part of, or associated with, the investigation would be destroyed, deleted or removed.

243. The officers produced a report for the M&C meeting of 11 January. This answered each of the points made by Eversheds in their letter dated 13 December 2016 (to which I have referred at paragraph 226 above). It concluded by saying:

> *"In all the circumstances, having regard to the matters raised by [OSBP] and the other matters addressed in this report, Officers remain of the view that there is a compelling case in the public interest for the compulsory acquisition of the remaining land interests to enable the scheme to proceed. Officers therefore recommend that the Cabinet agrees the recommendation in this report."*

244. The recommendation was that the decision made on 7 September 2016 be confirmed. But this recommendation was rejected on the advice of Leading Counsel who advised that M&C was not in a position to make a decision on the call-in because a little more time was needed to complete the enquiries into the Youth Academy issue.

245. On 11 January, Mr Quirk wrote again to Mr Kavanagh saying that the Council was taking seriously the Youth Academy issue and that, before a final decision was taken, the Council wanted to give MFC another opportunity to provide the information that he had sought on 9 January. He said that it was M&C's firm intention to make a decision on the CPO in February. It was therefore important that MFC provide a full response by 23 January. He was happy to have an urgent meeting to discuss the matter.

246. I interpose that on 16 January, GLA wrote to the Council saying that it had undertaken its own robust due diligence exercise and concluded a satisfactory due diligence exercise on the landowner and Master Developer Renewal. The letter noted that the controlling parties of Renewal had been disclosed to the GLA enabling a review of the developer's financial viability and capacity to deliver the proposed number of affordable homes and the wider scheme (this was in the context of GLA's decision to make available £20 million in relation to the housing zone).

247. On 19 January, Councillor Smith invited Mr Kavanagh to a meeting of M&C to explore how they might find "*the best possible outcome for Millwall".* He said that the

Cabinet were unanimous that in any development, MFC's future must be secure and MCT must be able to continue its fantastic work in the local area. Councillor Smith referred to the two issues that had recently been identified by MFC, namely the Category 2 Academy issue and the future viability of MCT on a new site. He said that these issues were extremely serious. He invited Mr Kavanagh to a meeting on 8 February saying:

> *"The Cabinet believe that it is essential that we as politicians and decision makers also meet with you to hear your concerns directly"*

248. On 20 January, Councillor Hall wrote to Mr Quirk asking him to arrange for a full and independent investigation of all the matters raised in the *Guardian* article. The investigation would include, but should not be limited to, issues concerning SCSF (the £2 million pledge issue); and how the revelations in the article affected the "section 106 planning permission and the approval of a [CPO]". He also said that the Scrutiny Councillors had raised the issue of governance and due diligence throughout the whole period of the Council's involvement with Renewal and he was "*greatly alarmed by this situation*".

249. On the same day, the Mayor wrote to Mr Quirk requesting an "*authoritative external party*" be appointed to carry out review of the issues raised in the article and to establish "*whether any errors have occurred and whether anyone including me has acted in an inappropriate way*".

250. It is not obvious which of Mr Ronay's articles inspired Councillor Hall's letter. Mr Ronay wrote a large number of articles in January. On 19 January, he wrote an article headed "*Millwall stadium controversy intensifies as false funding claims revealed".* He wrote that the £2 million pledge had been repeatedly mentioned as a material factor by the Council and SCSF whose functions were "key" to the viability of the scheme. In fact, Mr Ronay wrote, no such funding existed and no application for a funding agreement was in process. He said:

> *"The issue of how the mistaken claim of a funding agreement has arisen and then been repeatedly used for promotional effect will be a matter of concern for all connected with the development and potentially for other authorities. It would appear that correspondence between Sport England and the Foundation in 2013 has been misinterpreted, by whatever means, to amount to*

an offer of tangible funding, and then repeated without correction to the present day".

251. Later in the article, Mr Ronay wrote:

> *"As the Millwall CPO wrangle takes its latest twist there will be serious questions over the future of the project in its present form. Concerns have already been raised about the propriety of the scheme that would see public land sold off to a private developer with historical links to Lewisham Council and no history of attempting a development on this scale, in the process taking land from the borough's outstanding community sporting asset."*

252. An article to similar effect (headed "*Millwall stadium foundation awarded taxpayer money with misleading claims"*) was written by Mr Ronay on 20 January.

253. Yet another article was written on 23 January. This was headed "*Tim Farron wants Millwall plans scrapped following latest revelations"*. Mr Farron was leader of the Liberal Democrat party. The article showed how the proposed redevelopment had become an acute political issue. Mr Ronay wrote that Mr Farron had led calls for the CPO of the Millwall Land to be abandoned following revelations in *The Guardian* about the handling of the scheme. He reported that Mr Farron had said that the Council "*must start working with Millwall not against it".* Simon Hughes, the former Liberal Democrat MP for Southwark, was reported as having said that the money from Sport England and other national funds looked shaky at best and that "t*he latest confirmation of this from the Guardian is another reason why the council should call a halt to the current plan and start talking to the club and the trust, rather than threatening them".* Mr Ronay then quoted comments from Mr Peter Garston (MFC director) who said that Mr Berylson would "*see the fight through, even if it means taking the increasingly beleaguered proceedings to judicial review"* and then the following from Mr Garston:

> *"This revelation certainly gives me hope that this scheme will not be seen through. How can it be with so many questions surrounding it?*
>
> *I've been to virtually every council meeting regarding this scheme and found the tone of the responses to questions I and other supported and local residers have raised to be very dismissive. It's time now for those responsible to give us the complete truth regarding this matter."*

254. In another article on 24 January, Mr Ronay reported that Mr Egan, described as a "*a key councillor"* had withdrawn his support for the scheme. He was reported as saying:

> *"I don't think it is acceptable that the public still have questions as to who the financial beneficiaries of the Renewal scheme are. I think this is information we should now be asking of all developers.*
>
> *The allegations in the Guardian in the past week about misleading claims of Sport England are serious and, in my opinion, completely undermine Renewal's credibility."*

255. In addition to the articles referred to above, Mr Ronay published numerous further articles in January and February 2017. In the main, these articles simply repeated the material contained in the 19 January 2017 article. At the same time as these articles were being published, commentary on social media about the New Bermondsey development and the CPO decision was becoming increasingly aggressive in tone. Some of the comments included personal attacks on Council officers, the trustees of the SCSF and employees of Renewal.

256. The frequent publication of articles in *The Guardian*, combined with the commentary on social media, contributed to an increasingly febrile atmosphere amongst Council officers and members. This context is highly relevant to understanding the actions of Sir Steve Bullock during this period, the decision of a number of members of the SCSF Board to resign as well as the Council's decision to set up this Inquiry.

257. Ms Nicholson, in her statement to the Inquiry describes a "*highly charged atmosphere amongst members of the Council"* at this time *"who were under intense pressure from social media postings and press coverage*".

258. No further meeting of M&C took place following the postponement of the meeting fixed for 11 January. Instead, on 24 January 2017, Mr Quirk wrote to the M&C announcing his intention to secure an external review of the matters referred to in the *Guardian* articles relating to the SCSF.

259. On 25 January, the Council announced that M&C would not reconsider the decision of 7 September 2016 and that an independent inquiry was being launched. Its statement included:

"In the last few weeks, the new Chief Executive of Millwall Football Club, Steve Kavanagh, has identified new issues concerning the Club, which the Council is currently considering. Others issues have been raised in respect of the Surrey Canal Sports Foundation (SCSF). We are taking these issues seriously. The issues about the SCSF are now to be subject to an independent inquiry. ***The Council is not now proceeding with an Compulsory Purchase Order on New Bermondsey.*** *Any decision that the Council may take in the future will be a wholly new decision.*

In the meantime, we want to listen to all those who have a direct interest in the future of New Bermondsey. The Deputy Mayor and Cabinet Member for Growth & Regeneration, Cllr Alan Smith, has written on behalf of the Cabinet to Steve Kavanagh to arrange a meeting with the Cabinet and to include representatives from Millwall Community Trust. We believe it is essential that we as politicians and decision makers hear the community directly.

A period of calm reflection is needed. We want to speak to Millwall, the Community Trust and the others affected by the CPO to fully understand their concerns. We are calling on all parties to engage constructively with each other in an attempt to find a workable solution.

Regeneration in this area is essential. This is now an opportunity to find the best possible outcome for everyone."

260. On the previous day, Mr Ronay had written an article in *The Guardian* in which he had said that the announcement of Councillor Egan that he could no longer support the Renewal scheme would "*come as a bitter blow to the beleaguered Lewisham mayor, Sir Steve Bullock, who appears isolated in his unwavering support for the CPO plan".* Owing to his involvement with SCSF, Sir Steve had taken no part in any of the formal discussions and, he told me, he had tried so far as possible to avoid any informal discussions about the Renewal scheme too. But he found it impossible to avoid being aware of the arguments that were being put forward by MFC and others in relation to the CPO and he was increasingly concerned that what was taking place was a tactical campaign to prevent the Council from taking a decision on the CPO rather than an effort to facilitate a proper consideration of the issues involved. He regarded the statement in Mr Ronay's article of his "*unwavering support for the CPO plan*" as being inaccurate and damaging to him personally. He felt that he had no choice but to make a public statement to set out his position accurately. He issued a statement on 25 January. He said that *The Guardian* statement was not correct. He had taken no part in any of the discussions or decisions relating to the Renewal scheme. He also said:

"*However, information has been provided by Millwall to the Council in the last few weeks that raised two concerns that appear not to have been addressed previously in regard to aspects of the future operation of the Community Sports Scheme and the operation of Millwall's own Academy. I have always been clear that Millwall must be at the heart of the development and it is my view that these concerns need to be thoroughly addressed: the CPO should not proceed and that all parties concerned should enter discussions to identify an agreed way to achieve the regeneration of this area while resolving these concerns.*

Other issues of concern have been raised in relation to the operation of the SCSF and as soon as these concerns were raised I wrote to the Council's Chief Executive asking that an independent inquiry take place into them and I cannot comment further until the inquiry reports"

261. These issues of concern were the allegation that M&C had been misled as to the existence of a pledge of £2 million by Sport England.

262. It is sufficient to refer to one final article by Mr Ronay. On 27 January, in an article headed "*How the battle to save Millwall's stadium was won",* he wrote:

"At the end of which something good has happened. All being well, and barring any attempt to weasel out of the local authority's promises, there will be no compulsory purchase of Millwall FC's land and the surrounding community. Millwall are staying in south London. Locals such as 72-year-old Willow Winston, a cult hero of this entire sorry sage, will not be evicted from their homes for the benefit of opaque private developers"

263. In the meantime, Council officers were taking steps to establish an external inquiry into the allegations made in the *Guardian* articles. Ms Nicholson sought advice from Leading Counsel on the conduct and scope of the proposed inquiry. She also sought advice from Leading Counsel on whether the Council could fund independent legal advice for Councillor Hall in his capacity as Chairman of the OSBP or, alternatively, as a member of the Council Urgency Committee. Counsel's advice, which was shared with Councillor Hall, was unequivocal. I set out the central part of it because Councillor Hall has repeatedly made complaints in the media and in correspondence with the Inquiry about the Council's refusal to fund independent legal advice for him without making any reference to the legal advice which he had seen. Counsel advised:

"It is not open to the Council to have or pay for separate representation for different limbs of the single corporate entity. Councils such as Lewisham fulfil different functions, such as housing and social services. However, it has only a single legal personality and it is not possible for example for Lewisham as housing authority to take action against Lewisham as social services

authority. […] Corporate legal advice should be available from the Council's Head of Law to members generally"

264. On 22 February 2017, the Full Council agreed to the establishment of the independent Inquiry.

4.2 Conclusions on Issues 1 and 6

265. Since MFC has made the running in criticising the "in principle" decision of 7 March 2012 and the M&C decision to make a CPO on 7 September 2016, it is convenient to focus on the criticisms that their witnesses have articulated to me in this Inquiry. Most, if not all, of them were ventilated in the contemporary documentation which I have summarised above.

4.2.1 The "in principle" resolution

266. The criticism of the "in principle" decision is that it was not a decision to use compulsory purchase powers of general application in favour of *any* developer that could carry out the redevelopment project. It was a decision made specifically for the benefit of Renewal and one that would almost certainly have deterred any other developer from entering into the arena. It was taken at a time when it is unclear what the Council knew about Renewal. PwC was not appointed to do due diligence on Renewal until July 2013 and even at that time PwC was unable to do due diligence on the company. There has been no suggestion that the Council considered any other developer before selecting Renewal and no evidence that it was or could be satisfied of Renewal's ability to carry out the scheme before the door was closed to other potential developers. MFC also complains that the background paper prepared for the meeting of 7 March 2012 did not state how much of the total Site was *not* owned by Renewal or any of its subsidiaries.

267. It is plainly true that the M&C decision of 7 March 2012 contemplated that the redevelopment would be carried out by Renewal. The officers' report was replete with references to Renewal. For example, paragraph 3.7 of their report for the meeting stated that, if Renewal was unable to complete the assembly of the Site by agreement/private treaty by 31 (sic) September 2012, a further report would be presented to M&C seeking

authority to make a full and unconditional CPO for the Site. Paragraph 3.8 of the report stated that a full unconditional CPO would be subject to a number of stringent conditions that Renewal would have to satisfy.

268. The M&C resolution of 7 March assumed that Renewal would be carrying out the development and accepted the recommendations of the officers' report that a CPO should be made if the pre-conditions for an unconditional CPO which I have set out at paragraph 52 above were met.

269. I reject the argument that the members of the M&C (or the officers who wrote the report) were acting improperly in relation to the "in principle" decision. I accept that the effect of the decision was that, if Renewal (i) was unable to complete the assembly of the land by agreement and (ii) was able to meet all of the pre-conditions laid down in the resolution of 7 March 2012, the benefit of an unconditional CPO would accrue to it. There was nothing wrong in that. The Council was entitled to take the view that Renewal was the obvious party to carry out the development provided that it met the pre-conditions that it had set. Crucially, these included that Renewal had (i) a delivery mechanism for a comprehensive redevelopment of the whole Site within a reasonable time (the fourth pre-condition) and (ii) a viable business plan and funding strategy (and was willing and able to provide sufficient indemnity agreements and an appropriate financial bond to cover the cost of making the CPO) (the fifth pre-condition). Renewal had spent large sums of money in acquiring the majority of the Site. It had obtained outline planning permission. No other developer of the entire Site seemed to be on the horizon. As I have said, this may well have been because it would be a difficult Site to develop on account of the existence of a number constraints such as the football ground and high railway embankments. Attempts had been made for several years by Renewal and MFC to reach agreement for some form of joint development. But these had foundered. In these circumstances, it seems to me that it made sense and was entirely reasonable (and certainly not improper) for the Council to conclude that, subject to appropriate safeguards, it should support a development by Renewal. The fact that there had been no due diligence before the "in principle" decision was taken was of no relevance. That decision was made subject to the fourth and fifth pre-conditions being met precisely in order to ensure that a CPO would not be made until and unless satisfactory due diligence was done.

270. There is no substance in the criticism that the officers' report for the meeting of 7 March 2012 did not state how much of the Site was owned or under the control of Renewal. It was clear from the map which part of the Site was owned or controlled by Renewal.

4.2.2 The resolution of 7 September 2016

271. MFC's central criticism of the decision of 7 September 2016 is that the officers were wrong to be satisfied that the fifth pre-condition specified in the resolution of 7 March 2012 had been met. It also says that they were wrong not to make clear in their report that PwC had been unable to do a due diligence review of Renewal's financial standing. They say that the officers' report provided an unduly rosy account of the assessment made by PwC in their report of 26 August 2016 and failed to provide a true and fair reflection of the tone of the sentiments expressed by PwC.

272. I have referred at paragraphs 204 to 211 to the complaints about the meeting of 7 September made by Mr Berylson in his letter of 19 September. It should be noted that these were all complaints about the fairness or propriety of the process followed by the Council at the meeting of 7 September. In my opinion, the answers given by the officers which I have summarised above are compelling. I am satisfied that there was no impropriety, lack of due diligence or breach of a Code of Practice in relation to any of these complaints.

273. The further complaint (articulated by MFC during this Inquiry) that the officers' report did not paint a true picture is also a complaint of unfair or improper process. If it were the case that the report for the meeting of 7 September had failed to give the M&C a fair and accurate report of the PwC report on the viability of Renewal's business plan and funding strategy, that would be a most serious matter. That is because the officers knew that (i) M&C would not be able to decide to make a CPO unless all of the pre-conditions to which the "in principle" decision was subject had been met; (ii) the fifth of these pre-conditions was of particular importance, in view of the difficulties that had been experienced in obtaining evidence about Renewal's financial strategy; and (iii) there was much opposition in the Council to awarding the redevelopment project to Renewal.

274. As to this last point, Ms Nicholson said in her witness statement that the proposal for a CPO was perhaps the most controversial issue that she could recall during the entirety of her service with the Council. That is a striking statement in view of the fact that she had worked there since 1980. Many members of the community and some Councillors had very strong feelings about whether making a CPO was the right thing to do.

275. It was, therefore, important to ensure that the members of the M&C who were to take the decision whether or not to make a CPO were fully informed of all material facts. The officers were alive to this. Mr Quirk told me that Councillor Hall was continually asking him about due diligence on Renewal and about the track record of Renewal, the viability of its scheme and its financial ability to deliver it. Mr Quirk also said that he shared many of the concerns about the financial viability of Renewal. That was why, with the assistance of the independent lawyers, he and his colleagues reviewed the GL Hearn and PwC reports. He frankly told me that he would have preferred a developer with a stronger track record. But he said that developers with a stronger track record were not looking at sites round the Millwall Land. He believed this to be an unusually risky development for a landowner. I have earlier referred to the constraints on the development of the Site caused, for example, by the existence of the football stadium and car park and the high railway embankments. But the Renewal scheme was imaginative and, in the light of the advice of GL Hearn, he was satisfied that it was economically viable. Despite his reservations, Mr Quirk supported the officers' recommendation that the CPO should be made. He was reassured by the advice of GL Hearn and PwC and the fact that the report had the blessing of independent advice from lawyers who had specialist skills in CPO matters.

276. Ms Nicholson and Mr Holmans told me that Neil King QC was closely involved in the drafting of all reports relating to the CPO issue (including the report for the 7 September meeting). The officers relied on his advice, as well as that of Bond Dickinson, and followed it to the letter. Ms Nicholson said that her overriding concern was that the report should be sufficiently robust to meet any challenge that might be made.

277. So did the officers' report fail to do justice to the PwC report of 26 August? Ms Talbot made the point to me that an unredacted copy of the PwC report and other confidential documents were made available to members in advance of the M&C meeting of 7

September 2016. It follows that members had an opportunity to read the PwC report in its entirety for themselves. I accept this. But I do not consider that this absolved the officers from the obligation to include in their own report a fair and accurate summary of the contents of the PwC report. The officers' report was long and detailed. It was unrealistic to expect all (or even most) of the members of the M&C to read the PwC report thoroughly as well. They would have been likely to rely on the officers' summary and not go to the PwC report to see whether it contained material information which had not been sufficiently summarised in the officers' report.

278. In order to assess the MFC criticism, it is necessary to compare the PwC report of 26 August (to which I have referred at paragraphs 182 to 188 above with the officers' report for the M&C meeting of 7 September (to which I have referred at paragraphs 190 to 195 above.

279. PwC stated that (i) they had not had access to the auditors of Renewal (but added that this was not necessary to enable them to complete the scope of their work); (ii) they had financial statements from Renewal for the years 2013-2015 and limited information on IHL, but none on IAI; and (iii) the deliverability of the project was subject to the shareholders having the funds and being willing to make them available to Renewal.

280. The officers' report made it clear that the funding for the project would be provided by Renewal's shareholders and that there were no audited accounts of the two shareholder companies. It is true that this was not a verbatim repetition of what PwC had said, but the officers' report made it quite clear that PwC had been unable to do due diligence on the shareholder companies and why they had been unable to do so.

281. PwC had said that their review of the funding assumptions had enabled them to conclude that Renewal's intended strategy (i.e. the Master Development Strategy) was "*appropriate and capable of delivering a commercial return and, therefore, would have a reasonable chance of being delivered with Renewal's proposals".* This important conclusion was accurately reflected at paragraph 7.51 of the officers' report.

282. MFC makes the specific allegation that the officers' report failed to make it clear that PwC had been unable to do a due diligence review. It is true that neither report uses the phrase "due diligence". But for the reasons I have just given, there is no substance in this

allegation. I do not accept that the officers' report failed to provide a true and fair reflection of the tone of the PwC report. On the contrary, I consider that it reflected the substance as well as the tone of the PwC report.

283. It might be said that the point made by PwC that the Council would need to consider the reputational risk of off-shore companies making significant returns from a project of this nature was not replicated in the officers' report. I do not believe that MFC has criticised the officers for failing to include this point in their report. This may be because the statement at paragraph 7.68 of the report that "*there is perhaps natural caution about reliance on off-shore funding"* was sufficient to flag up the point. It may also be because the reputational question had already been raised from time to time at Council meetings. It was in the forefront of the minds of members and officers. I do not consider that there was any impropriety on the part of the officers in failing to mention it in their report.

284. In my view, the officers' report for the 7 September 2016 meeting was a model of its kind. It was extremely thorough. It fairly and accurately reflected the reports that they had received and it explained in detail why the officers considered that the pre-conditions for the making of a CPO that had been set on 7 March 2012 had been met.

285. The other criticism made by MFC of the officers' report is not directed at the *process* that was followed by the M&C. Rather it is that the officers reached the wrong conclusion *as a matter of substance*. It is said that they were wrong to advise the M&C that Renewal had a viable business plan and funding strategy for the development (i.e. that the fifth pre-condition was satisfied). I have already summarised the officers' reasoning. Ms Nicholson put the key arguments in favour of the CPO pithily to me. What she told me was by reference to the officers' report of 17 February 2016, but her arguments were as valid in September as they had been in February. The points she made were: (i) the Council had strong section 106 agreements with "up front" benefits to the community and benefits to the developer later; (ii) The Master Developer Strategy approach was good in that it enabled Renewal to pass on the risk to sub-developers; (iii) the peak debt would mean that Renewal would not start to make a profit until the seventh year of the project, so that it would have a strong incentive to deliver; (iv) although audited accounts had not been provided for the shareholder companies, an analysis of the balance sheets of Renewal and IHL showed that there were sufficient funds for the initial stages and there were alternative strategies if the money was not made available; (v) house prices would

have to fall by level which had not been seen since 2008/2009 for the development not to yield a reasonable profit; (vi) there was the added benefit of the fact that the GLA had notified the Council in June 2016 that the £20 million loan was to become a grant; and (vii) the only way to secure the development within a reasonable time was to make the CPO.

286. I should mention the evidence of Councillor Smith who chaired the M&C meetings (Sir Steve Bullock having recused himself). Councillor Smith told me that, whatever doubts he had entertained at the earlier stages, by the time of the meeting of 7 September 2016, the due diligence that had been done by PwC showed all that needed to be known. Renewal had the wherewithal to see through the development. He said that no developer starts with enough money to complete a project. They roll it out in phases. Provided that there is enough money to get through the first phase, then it is usually alright. He said that the Council did not know IAI, but they did know IHL through the Jack Peachey Foundation, a charitable foundation which did a great deal of work in schools. He said that it was "*rock solid*". The involvement of the Jack Petchey Foundation was a source of further comfort to him.

287. Councillor Smith told me his views about the judgements that have to be made on reputational risks of dealing with developers and off-shore companies. He said that the point of due diligence is not to make moral judgements on company structures, provided that the structures are legal. Only one of the Councillors on the M&C voted not to accept the recommendations of the officers' report. The single dissentient was Councillor Dromey. It is worth noting that Councillor Dromey's objection had nothing to do with a failure to conduct due diligence or a challenge to the views expressed in the report about the viability or deliverability of the development. It was based on a concern that the Renewal proposal would provide for insufficient affordable housing.

288. Councillor Smith said that by September 2016, he was of the view that the CPO was overwhelmingly in the public interest. That was the view of all but one of the members of the M&C. It would deliver great benefits to the Council. But as we have seen, that view was not shared by Councillor Hall and the other members of OSBP.

289. It is also of relevance that, in addition to the advice provided by GL Hearn and PwC, the Council was advised at length by Neil King QC and James Goudie QC as well as by

Bond Dickinson. The Council was anxious to ensure that it followed due process and that any decisions made by it were "robust" and not open to any risk of challenge. Accordingly, Bond Dickinson had continual oversight of all aspects of the project and were involved in the drafting and/or review of all key correspondence. In particular, Bond Dickinson and Mr King (counsel specialising in CPO matters) were responsible for reviewing the final versions of all reports submitted to M&C relating to the New Bermondsey scheme.

290. I accept that it does not follow from the fact that the report written for the 7 September meeting was scrutinised and approved by these independent lawyers that the advice contained in it was accurate or well-founded. But unless the report was obviously wrong as a matter of law or fact or was tainted by bad faith or expressed obviously unsustainable opinions, I do not see how the officers who wrote the report can be said to have acted with impropriety or lack of due diligence. Still less is it possible to say of the members who relied on the report that they acted with impropriety or lack of due diligence. No breach of the applicable Codes of Conduct has been alleged and none has been established on the extensive material that I have considered. I am satisfied that the members of the M&C and the officers acted with integrity and honesty and in what they genuinely considered to be the public interest.

291. To summarise, there was a strong division of opinion within the Council on the question whether the pre-conditions for the making of a CPO set on 7 March 2012 had been met. Whether they had been met was, to some extent, a matter of judgement on which it was possible for there to be rational differences of opinion. I repeat that the officers' report was extremely thorough. It was carefully and cogently reasoned. It fairly and accurately reflected the reports that they had received from GL Hearn and PwC. And it had been approved by specialist independent lawyers. For the reasons that I have given, the criticisms made by MFC come nowhere near crossing the high threshold for impropriety to which I have referred. There was no impropriety on the part of the officers or the members either in relation to the process that they followed in reaching the decision that they made on 7 September 2016 or in relation to the substance of the decision itself. I reject the allegation that the officers and M&C were "wrong" to conclude that Renewal had a viable business plan and funding strategy or that there was any impropriety on their part in reaching this conclusion.

292. Before I move on to the next issue, I need to return to the complaint made by MFC (paragraph 121 above) that, by insisting in 2013 that MFC put forward details of a viable business plan with funding arrangements as a condition of giving consideration to its proposals for the development of the Millwall Land, the Council was applying a more stringent standard than it applied to Renewal in 2016.

293. I cannot accept this complaint. I am able to deal with it briefly. The position of MFC in 2013 in relation to the Millwall Land cannot fairly be compared with that of Renewal in relation to the whole of the Site in 2016. By September 2016, Renewal had spent millions of pounds in purchasing large parts of the Site; it had obtained outline planning permission for the development; it had worked up a detailed development scheme; above all, it had satisfied GL Hearn, PwC, the Council officers and M&C that it had a viable business plan and funding for the scheme. As I described earlier in this report, MFC had done none of these things by 2013 and have not done any of them since then either.

Chapter 5: The Council's decision to pledge £500,000 to the Surrey Canal Sports Foundation (Issue 4)

294. One of the issues to be considered by the Inquiry concerns the decision in June 2014 of the M&C (in the absence of the Mayor) to pledge £500,000 to the SCSF. This issue was raised as a result of a series of articles published in *The Guardian* in January and February 2017 which suggested that the SCSF and Renewal had misled the Council by falsely claiming that £2 million had been pledged by Sport England to the SCSF.

295. As set out in the terms of reference, the questions I have to consider are (i) whether the M&C acted properly and with due diligence in taking the decision to pledge £500,000 to the SCSF and (b) whether the M&C was misled by misrepresentations, misinformation or the withholding of information in relation to this decision.

296. However, as I explain in this chapter, it was the allegations of false funding claims that led to the decision to establish this Inquiry. I therefore also offer some observations on the events that led to the media reports of false funding claims being made.

5.1 History relevant to Council's decision to pledge £500,000 to SCSF

5.1.1 Renewal application for Sport England funding

297. The relevant background begins on 15 December 2010, when Renewal applied to Sport England for capital funding towards the cost of constructing Energize, the proposed new indoor sports facility. The written application submitted by Renewal was a significant piece of work, comprising details of the development, indicative costs, financial statements from the developer, a number of business plan models and letters of support.

298. On 22 March 2011, Sport England responded saying:

> *"Sport England recognises the potential of your project and is prepared to indicate to you (1) the financial amounts that are being considered "in*

principle" in relation to the Project and (2) the Development Conditions that you need to comply with in order to progress your application and secure full approval by Sport England" and later:

Sport England emphasises that:

(a) this letter does not constitute any representation on the part of Sport England that an Award will ultimately be forthcoming in respect of your application or that a financial commitment is being made to your project; and
(b) any further development of your proposals in relation to your project will be carried out entirely at your own risk."

299. The letter was accompanied by a document headed "Development Requirement", which summarised "In principle" conditions of the funding as follows:

"*We advise that unless a full grant is made by Sport England, your Organisation should not:*

- *Start work (other than project development) on the Project; or*
- *Enter into any contract without the prior written consent of Sport England*
- *Make any purchase in respect of the Project without the prior written consent of Sport England*

Failure to comply with these requirements will render the Project ineligible and Sport England shall not consider the Project for an Award.

Sport England must be notified immediately in writing of any material change to the Project, and reserve the right to review its "in principle" decision in light of such change.

This "in principle" decision will not be publicly announced by Sport England and you must not initiate, nor co-operate with any publicity at this stage. Furthermore, should you wish to communicate the decision to any other party you should make the contents of this document and the above "in principle" conditions clear to them."

300. Under the heading "*In Principle Funding*" the document stated:

"*The following figures are being considered in connection with your Project:*

Capital Funding

Total cost	*Other funding*	*Sport England allocation*
£43,650,762	*£41, 650, 762*	*£2,000,000*

[…]

Sport England will not proceed to make an offer of award to you in respect of amounts being considered "in principle" until such time that you have responded to the further requirements listed within section 2 of this document "Development Conditions".”

301. As I have said, in 2011 Renewal established SCSF, a charitable trust to oversee the fundraising of the £40 million that was required to deliver Energize and to ensure its long-term availability to the local community.

302. On 7 November 2011, Renewal emailed Sport England attaching an update on fundraising with a list of potential donors. The attachment stated:

“The Sports Facilities at Surrey Canal: London’s Sporting Village will cost circa £40m. Of that £40m £12m has already been pledged leaving £28m to be fundraised. So far we have identified 118 potential funders.

- *£12m pledged so far*
- *£2m Iconic Facilities funding, Sport England*
- *£10m land value from Renewal, agreed with Lambert Smith Hampton, London Borough of Lewisham’s independent valuation experts, September 2011”*

303. At this stage no objection was raised by Sport England to Renewal’s or SCSF’s description of the funding as a “pledge”. Renewal’s submission to the Inquiry states Renewal used the term “pledge” openly in the course of its dealings with Sport England and at no stage prior to September 2014 did Sport England express any concern to it about the use of such language. Sport England had also been sent links to the SCSF website which included reference to the Sport England “pledge” and had not raised any objection.

304. During 2011 and 2012, Renewal was unable to progress the Energize project as planned. This caused a degree of frustration which led to Sport England writing to SCSF on 23 October 2013, stating:

“*As you are aware, Sport England have been working with the Foundation and Renewal in the development of this project for some time through our Iconic Facilities Fund. Due to the period of time it’s taken so far to reach the current stage of the project’s development, Sport England recently discussed with Renewal the need to move the bid from Iconic [i.e. the Iconic Facilities Fund] to our new Strategic Facilities Fund.*

Sport England's Project Committee has recently reviewed the Surrey Canal Sports Village project and progress made during this year. They remain supportive of the development, whilst acknowledging the significant challenges that a project of this scale has encountered. I can confirm that the committee has agreed for the project to move to our new fund with the existing £2m lottery funding allocation retained and that our teams continue to work together to bring this important scheme to fruition.

This decision will allow the project team to work to an agreed and realistic timetable for delivery/construction; and ultimately ensure that Sport England's full support for the scheme remains". (Emphasis added).

305. As part of my enquiries, I contacted Sport England asking a series of questions focusing on the correspondence that Sport England had with Renewal, SCSF and Mr Ronay. The response provided by Charles Johnston, Executive Director of Sport England, included a summary of Sport England's Strategic Facilities Funding Process. The process for applying for funding involves a number of stages. At the first stage, a decision is taken whether a project should be entered onto Sport England's national project pipeline. Once on the pipeline, Sport England identifies projects that are suitable for funding and invites an Expression of Interest to be submitted by the applicant. If the Expression of Interest is deemed eligible by Sport England (by reference to five key criteria), Sport England decides whether to solicit an application for funding. If Sport England's Investment Committee decides to do so, the applicant works with Sport England to develop the project. At an agreed stage, the applicant then formally submits its application which is reviewed by Sport England's Investment Committee. If approved at this stage then an award of Sport England funding is provided.

306. I have not found Sport England's letter of 22 March 2011 and the accompanying document headed "*Development Requirement"* easy to interpret. On the one hand, Sport England made clear that they did not represent a commitment that an award of funds would be made and referred to "*figures*" "*being considered in principle*" (emphasis added). On the other hand, the document headed "*Development Requirement*" referred to an in principle "*decision"* having been taken. It appears from Mr Johnston's summary of the application process that what was being communicated by the letter of 22 March 2011 was (i) a decision of the Sport England Investment Committee that the Energize project was eligible for Sport England funding and (ii) a decision to allocate £2 million to the project from the Iconic Facilities Fund. It seems to me that the best way to describe this decision is as a decision in principle to allocate £2 million to the Energize project. This

interpretation is supported by Sport England's letter of 23 October 2013 which, as set out above, confirmed that "*the committee has agreed for the project to move to our new fund with the existing £2m lottery funding allocation retained".*

307. In his letter to the Inquiry, Mr Johnston of Sport England explained the significance of the statement in the letter of 23 October 2013 in the following terms:

> "*The statement in the letter of 23 October 2013 that "… the existing £2m lottery funding allocation retained…" was not a commitment to fund this project, rather that should this project continue through the funding process and a decision to award funding be made by Investment Committee, there was adequate budget within the programme to support it. This statement was included within the letter given the move from the Iconic Facilities fund to the Strategic Facilities Fund which was a new programme." (*emphasis original)

308. It seems to me that the practical effect of the Sport England letter of 23 October 2013 was to ensure that SCSF did not have to repeat the earlier stages in the application process in order to take it forward.

309. To summarise the position that had been reached at this stage:

(i) On 22 March 2011, Sport England had made an "in principle" decision to allocate £2 million of funding to the Energize Project from the Iconic Facilities Fund. Sport England made clear that this was not a binding funding agreement and that funding would not be available until the SCSF had met a number of development conditions and Sport England had taken a final funding decision;

(ii) Renewal had referred to the allocation of "in principle" funding as a pledge in correspondence with Sport England without any objection prior to September 2014; and

(iii) On 23 October 2013, Sport England communicated to the SCSF its decision to move the allocation of £2 million funding from the Iconic Facilities Fund to the Strategic Facilities Fund.

5.1.2 The Council's decision to pledge £500,000 to SCSF

310. In January 2014, Renewal applied to the Council for grant funding for the Energize project. The application included a brochure entitled "New Energy". The third page of the brochure displayed a letter from the Chair of the SCSF, Steven Norris, addressed to the M&C, which included the following request:

> *"The Foundation already has £12m in commitments from Sport England and the developer, Renewal. In advance of approaching companies and trusts for their financial backing, I would ask the London Borough of Lewisham to publicly and financially support this project and empower us to undertake further fundraising with renewed confidence and vigour."*

311. Later in the brochure, the following information was set out under the heading "*Funding Requirement":*

> *"£40M*
> *IS REQUIRED TO BUILD*
> *THESE LANDMARK FACILITIES*
>
> *Commitments so far:*
>
> *£10M*
> *VALUE OF LAND DONATED*
> *BY THE DEVELOPER RENEWAL*
>
> *£2m*
> *PLEDGED BY SPORT ENGLAND*
> *AS PART OF THEIR*
> *STRATEGIC FACILITIES FUND"*

312. On 25 June 2014, the M&C (the Mayor having recused himself due to his position on the Board of the SCSF) resolved to allocate £500,000 of funding to the SCSF, subject to negotiation of funding agreement and approval by the M&C.

313. Prior to taking this decision, the M&C was provided with an officers' report (prepared by the Executive Director for Resources & Regeneration and the Head of Law), which recommended that the Mayor agree to pledge £500,000 of funding to the SCSF.

314. The officers' report set out details about the proposed facilities and community benefits that would accompany the project before going on to set out the following information under the heading "Financial implications":

> "6.1 *This report proposes that £500k of funding is provided to Surrey Canal Sports Foundation (SCSF) by way of a grant allocation from the Council. The purpose of the grant is to contribute towards the overall total of approximately £40m which is needed by the Sports Foundation in order to plan, design and construct the sports facilities. This grant will be funded from the Council corporate reserves.*
>
> *6.2 The Sports Foundation have indicated that the funding required from the LB Lewisham will be key to unlocking contributions from other contributors. At least £20m of the total funding will be required before the appointment of architects for the design and submission of a planning application. It is anticipated that a decision to provide the funding will support the Sports Foundation's overall funding aims. However, actual payment of the funding at an early stage would be a risk to the Council if the sports facility stalled for any reason. Therefore, as part of any funding agreement, the Council would need to agree a schedule of staged payments that minimised this risk.*
>
> *6.3 The SCSF have provided high level indicative figures to support the viability of the sports facility on an ongoing basis. However, there is no detail to confirm the volumes, projected income and costs used. Further information will be required to confirm ongoing viability in advance of the release of funding."*

315. A section headed "*Legal implications*" noted that the precise terms upon which the Council's funding was to be provided were still to be agreed with the SCSF and set out the conditions that would need to be place:

> "7.2 *The Council will also need to be satisfied that it has reasonable security for its funding and that all necessary match funding has been obtained by the Trust before the Council's funding is paid to the Trust. It is proposed that these matters will be negotiated by officers under the authority delegated by this report, with the final terms of the funding agreement being reported back to Mayor & Cabinet for approval prior to the funding agreement being entered into."*

316. In his statement to the Inquiry, Mr Holmans (who was co-author of the 24 June 2014 report) explained:

> "*the Council were aware in June 2014 that there was no explicit funding agreement in place between SCSF and Sport England. That was evidenced by*

the Council's future requirement to see proof of match funding before committing to entering into a funding agreement.

The requirement for the authority to finalise any funding agreement was based on Renewal being able to unequivocally demonstrate that there was the necessary match funding in place at the time of the funding agreement being finalised. As such the pledge at this time was for the purposes of providing support and helping to unlock additional funding from other third parties."

317. The OSBP considered the M&C decision to pledge funding to the SCSF at a meeting on 8 July 2014. The minutes of that meeting record that:

"*The Head of Financial Services said that the £1/2m mentioned in the report was only a pledge, and there was still work to be done before any money was committed. He added that the Council had to make some commitment to the project to enable other contributors to commit to the project. The Chair asked what the overall commitment of the Council was, as there was concern that the Council might be underwriting this project, and it seemed as if there was a lot of risk involved to make this project viable. He added that members needed to know what the Council was committing money to.*

….

Councillor Siddorn asked officers to explain para 6.2 of the report. The Programme Manager, Regeneration and Asset Management Directorate said that there had been some consultation with Southwark and the GLA, and they had stated that they would make a commitment once the host borough had made a pledge. It was noted that Sports England had pledged £2m. Councillor Siddorn asked whether the money would be released before the building was up and ready, and was told that the detail of the contract had to be drawn up."

318. The OSBP resolved that the decision of the M&C be noted and that various matters be referred to it which are not relevant to the issue with which I am now dealing.

319. As is made clear in the officers' report and the minutes of the meeting of M&C on 24 June 2014, at this stage all that had been agreed was to pledge £500,000 to the SCSF subject to the agreement of terms. There was no funding agreement in place at this stage and no money was ever paid to the SCSF. The officers' report also made clear that any funding agreement would need to: include a schedule of staged payments to minimise any risk to the Council; include a requirement that all other funding was in place before release of funds from the Council; and, be reported back to M&C for approval prior to being entered into.

320. In the event, due to delays with the New Bermondsey development and the Energize

project, no funding agreement has been agreed or reported back to M&C. The Council's funding pledge remains a pledge of funding subject to agreement and approval of terms of a funding agreement.

321. For the same reason, the funding application to the Sport England Strategic Facilities Fund has not progressed further down the Sport England national project pipeline. The position remains as set out in the 23 October 2013 letter that Sport England had made a decision to allocate £2 million of "in principle funding" to the Energize Project from the Strategic Facilities Fund. Mr Johnston confirmed in response to a question from me that there has been no subsequent letter from Sport England to the SCSF or Renewal confirming that there has been no further letter sent to Renewal or SCSF retracting the letter of 23 October 2013 and that the project remains on the Strategic Facilities Funds pipeline.

5.1.3 Correspondence between Sport England and Renewal following the Council's decision to pledge £500,000

322. On 4 September 2014, Sport England emailed Renewal about the funding request brochure sent to the Council, stating:

> *"The attached document has been brought to our attention (I note it is dated January 14) and I have discussed with Charles. Whilst Sport England remain supportive of the scheme, we have not 'committed' or 'pledged' £2m for reasons you are well aware of. Can this document be changed accordingly for future use and any other publications run passed [sic] if you intend to refer to Sport England as we would want to ensure they are accurate when presented in the public domain on the site"*

323. Renewal explained in its statement to the Inquiry that this email was not passed on from Renewal to the trustees of the SCSF or the Council and accepts that this was an oversight on its part. Renewal's statement also explains that Renewal took no steps in response to the email of 4 September 2014 and accepts that "*following the email from Sport England of 4 September 2014, it was an oversight on Renewal's part not to review its publications to see how the Sport England bid was being described and how the word "pledge" was being used to consider whether there was a possibility that such use of language could be misinterpreted to mean that Renewal had a binding funding agreement for £2 million with Sport England*".

324. I note that Renewal did not pass on Sport England's concerns about the use of the word "pledge" in the funding request brochure. From the Council's perspective, no further concerns were raised about its decision to pledge £500,000 to the SCSF until the publication of a series of articles in *The Guardian* newspaper in January and February 2017.

325. There was intermittent email correspondence between various individuals at Renewal and Sport England from 2015 until February 2017 in which Renewal provided updates on the progress of the development.

5.2 Conclusions on Issue 4

326. The key questions for me to determine on the basis of the facts set out above are whether the M&C (i) acted properly and with due diligence in pledging £500,000 to the SCSF; and (ii) was misled by misrepresentations, misinformation or the withholding of information, in relation to its decision to pledge £500,000 to the SCSF.

327. I must begin by considering whether the reference in the "New Energy" brochure to "*£2m pledged by Sport England as part of their Strategic Facilities Fund*" misrepresented the funding position in relation to Sport England. It is now clear that Sport England objects to the use of the word pledge to describe the "in principle" allocation of funding that it has confirmed was in place as at 23 October 2013. However, as is explained above, this preference was not communicated to Renewal until September 2014, some time after the brochure had been produced and after the Council's decision had been taken. I understand why Sport England objected to the use of the word "pledge" to describe the "in principle" allocation of funding, as it could be understood to connote a binding commitment. I do not, however, think that it was unreasonable or deliberately misleading for Renewal and the SCSF to have described the "in principle" allocation of funding as a pledge.

328. More importantly, the contents of the officers' report of 24 June 2014 and the minutes of the meeting of the M&C of 25 June 2014 show that officers and members would have understood that the reference to a £2 million"pledge" did not mean that a binding funding agreement had been concluded between Renewal and Sport England. This is made clear

by the fact that the M&C itself used the word "pledge" to describe its own decision to make an "in principle" non-binding conditional allocation of funding of £500,000 to the SCSF. It is also worth noting that the minutes of the meeting of the OSBP at which the Council's funding decision was discussed recorded that the Head of Financial Services explained to the OSBP that "*the £1/2m mentioned in the report was only a pledge, and there was still work to be done before any money was committed*".

329. I have also concluded that there is no evidence that the Council acted improperly or without due diligence in taking the decision to pledge £500,000 to the SCSF. In reaching this conclusion, I have had particular regard to the fact that the resolution made by the M&C on 25 June 2014 was to agree to fund the SCSF if, and only if, a funding agreement was in place and approved by the M&C.

330. It was an unfortunate oversight on the part of Renewal not to pass on to the Council Sport England's concerns about the use of the word "pledge" in the "New Energy" brochure as communicated in its email of 4 September 2014. Nonetheless, I do not think Renewal acted in bad faith and it would have been hard to foresee the confusion that would, in due course, be generated by the distinction between a "pledge" of funding and an "in principle allocation" of funding.

331. It is also regrettable that Renewal persisted in referring to a pledge from Sport England after Sport England had expressly requested that it stop doing so. On 30 September 2014, Renewal submitted a bid to the GLA to designate New Bermondsey as a Housing Zone. In this application, Renewal sought £5 million of grant funding towards the construction of Energize. Renewal's bid document contained a number of references to Sport England and the so-called "pledge" and appended the funding request brochure that had been sent to the Council. It is regrettable that Renewal did not describe Sport England funding as an "in principle allocation of £2 million from the Strategic Facilities Fund". Had it done so, I do not think any complaint could have been made about the reference to the in principle allocation of Sport England funding. Certainly, there was nothing in the email from Sport England dated 4 September 2014 that suggested that Renewal or the SCSF should not make any reference to Sport England in future publications. Indeed the request that such references be run past Sport England in future suggests that this was expected.

332. As I have said, there was intermittent email correspondence between various individuals at Renewal and Sport England from 2015 to February 2017, with Renewal providing updates on the progress of the New Bermondsey development.

333. The next relevant reference to a Sport England pledge is in the officers' report for the M&C meeting of 7 September 2016 to which I have earlier referred. The report included a single reference to Sport England at paragraph 5.10(b), which stated:

> *"So far the SCSF has received a pledge of the land from Renewal, valued at £10 million (as at 2011), along with in principle pledges of £2 m from Sport England and £500,000 from the Council".*

334. In her statement to the Inquiry, Kathleen Nicholson explains that officers sought assurances from Renewal prior to the M&C meeting that the Sport England pledge remained in force and that Renewal gave this assurance in writing.

335. Renewal should, in my view, have informed the Council at this stage of Sport England's objection to the in principle allocation of Strategic Facilities funding being referred to as a "pledge". I am satisfied, however, that this was due to a failure on the part of Renewal to grasp the significance of the distinction that Sport England sought to draw in its email of 4 September 2014 between a pledge and an in principle allocation of funding rather than any attempt to mislead the Council.

336. More importantly, I am satisfied that the reference to the funding as an in principle "pledge" of £2m is not misleading as to the status of this funding because the officers' report described the pledge as being "in principle", making clear that it was not a firm commitment.

5.3 How the allegations of the claim of false funding came to be made

337. Having reached the conclusion that the Council acted properly and was not misled in taking the decision to pledge £500,000 to the SCSF, it remains for me to explain the sequence of events that led to these concerns being raised. Although this is not strictly relevant to the questions that I have had to determine, it is important that I address this in some detail because, as I explained in the introduction to this chapter, media reports about false claims in relation to the Sport England pledge were the trigger for this Inquiry.

338. As I have set out at paragraphs 249 and following, in January and February 2017, Mr Ronay wrote a series of articles in *The Guardian* which suggested that the SCSF and Renewal had misled the Council by misrepresenting, on a number of occasions, that £2 million had been pledged by Sport England to SCSF in respect of the Energize scheme.

339. The first article, published on 19 January 2017, opened with the assertion that *"The sports foundation at the heart of the Millwall FC compulsory purchase battle has been making false claims of having a £2m funding agreement from Sport England during the ongoing CPO process, the Guardian can reveal".* It continued with the statement:

> *"In fact no such funding agreement exists. No application for a funding agreement is in process. Sport England has confirmed that it has had no official correspondence with the foundation since September 2014."*

340. This article was followed by a further nine articles over the following weeks concerning the Sport England funding. It is not surprising that the allegation that Renewal and SCSF had misled the Council by a false statement that Sport England had pledged to award £2 million attracted media interest. It was a very serious allegation and it was taken very seriously by members and officers alike. It was also powerful grist to the mill of those who were already opposed to Renewal for other reasons.

341. It will be apparent from the conclusions set out above that I have not found evidence to support the central allegation contained in the *Guardian* articles that Renewal or the SCSF misled the Council by making false claims of having a funding agreement with Sport England in place. It is clear from the contemporaneous documents provided to me that neither the SCSF nor Renewal represented to the Council that Sport England had a funding agreement or other binding obligation in place to fund the Energize project. It is also incorrect to say that there was "*no application for a funding agreement in process*". As explained above, and as Mr Johnston has confirmed to me in writing, the effect of the letter of 23 October 2013 was that the SCSF's funding application was transferred to the Strategic Facilities Funding pipeline and Sport England expressly stated its intention to continue to work with the SCSF to progress the funding. It is also clear that Renewal remained in email contact with Sport England until February 2017.

342. It is not my intention to comment on the accuracy of all of the statements reported in the *Guardian* articles. I have reached my conclusions on the basis of documents and statements which were not available to Mr Ronay. However, I will make some observations about the discrepancies between the account in his articles and the contemporaneous documentation.

343. I wrote to Mr Ronay and Mr Johnston seeking more information from them. I received a written response to my questions from the Director of Editorial Legal Services at *The Guardian* saying that the questions concerned "*published information"* and "*on the record exchanges between Mr Ronay and the various relevant entities"*. In addition, I received a number of emails from Mr Ronay. It is clear that he considers himself to be (and I have no reason to doubt that he is) a journalist who is committed to accurate reporting. He has been at pains to set out the steps he took to verify the accounts published in his articles. In researching these articles, Mr Ronay contacted the Council, Renewal, the SCSF and Sport England. His articles quoted verbatim from replies provided by Renewal and Mr Norris of the SCSF.

344. The principal point made by Mr Ronay to me in an email dated 28 June 2017 was that the statement that no funding had been promised to SCSF was based on what had been said by a spokesman for Sport England. Having been asked by Mr Ronay whether it was correct that Sport England had pledged £2 million to the SCSF, a Sport England spokesman provided the following statement to *The Guardian:*

> *"The Foundation did apply for funding in 2010 but have since withdrawn the application. That means they don't currently have any funding "pledged" to them...".*

345. Sport England also provided the following statement on the record to Mr Ronay:

> *"In 2010, we received a funding application from the Surrey Canal Sports Foundation but this was subsequently withdrawn in 2013. We therefore have no funding agreement, of any kind, in place with them"*

346. I wrote to Mr Johnston suggesting that the statement that Sport England has "*no funding agreement, of any kind, in place with them*" seemed inconsistent with the position set out in Sport England's letter to SCSF on 23 October 2013, which confirmed that the

allocation of "in principle" funding had been moved to the new Strategic Facilities Fund. Mr Johnston provided the following response:

> *"I confirm the statement made to The Guardian that there was "no funding agreement, of any kind, in place" with SCSF is correct. As set out above in the funding process, Sport England does not enter into a funding agreement with an applicant until a funding decision has been made, in this Fund, by our Investment Committee. Not only has no decision on this project been made, Sport England does not have a live application from SCSF.*
>
> *The pipeline used for this Fund is a useful tool for Sport England to manage the budget allocated to the overall Strategic Facilities Fund programme.*
>
> *The statement in the letter of 23 October 2013 that "…the existing £2m lottery funding allocation retained…" was not a commitment to fund his project, rather that should this project continue through the funding process and a decision to award funding be made by Investment Committee, there was adequate budget within the programme to support it. This statement was included within the letter given the move from the Iconic Facilities Fund to the Strategic Facilities Fund which was a new programme."*

347. Whilst I understand the important distinction that Sport England draws between a binding funding agreement and an "in principle" allocation of funding, it does seem to me that a more complete, and helpful, answer, that set out the contents of the letter of 23 October 2013, might have avoided the confusion that ensued.

348. This confusion was then compounded by what I consider to be a misleading statement from Sport England to *The Guardian* that it had had no official correspondence with SCSF since September 2014. As I set out at paragraph 325 above, and as Mr Johnston has confirmed, correspondence *by email* between Renewal and Sport England continued until February 2017. Mr Johnston confirmed that Sport England made this statement to *The Guardian* and defended its accuracy on the following basis:

> *"Sport England regards 'official correspondence' as formal letters rather than emails. We confirm that we have had brief email exchanges requesting further project updates but no correspondence by letter since 23 October 2013.*
>
> *Given the pipeline process of the Fund, it would be usual to continue to engage with potential projects as a way of managing the budget for the programme. This helps us determine whether projects should remain in the pipeline, be removed and whether there is capacity to include new projects should they come to Sport England's attention.*

With respect to this project there was no reason for Sport England to discontinue informal communication with the project post-October 2013 as it was still a scheme we were potentially interesting [sic] in supporting."

349. I think that to state, on the record, to a journalist that there had been no "official correspondence" with SCSF, without also making clear either what was meant by "official correspondence" or the fact that "informal" email correspondence had continued, was bound to mislead.

350. The written response from *The Guardian* explains that Mr Ronay sought to clarify the position with Mr St Ledger of Sport England, putting to him that that SCSF claimed to have received a letter from Sport England in October 2013 saying that "*the £2,000,000 pledged will be moved from [Sport England's] Iconic Facilities Fund to their lottery funding allocation allowing it to remain available to the Foundation indefinitely.*" *The Guardian* response explains that:

"Mr Ronay emphasised the importance of being accurate and locking this down. Mr St Ledger eventually confirmed that there had been correspondence between SE and SCSF in September 2014 and a further statement was agreed to the effect that "The Guardian understands that SE confirmed its current funding position with the SCSF in 2014."

351. Mr Ronay was told by Mr St Ledger that a letter had been sent by Sport England to Mark Taylor at Renewal "*to the effect that [Sport England] were concerned at the use of its name in SCSF publicity and [Sport England]asked SCSF to stop making public claims of £2m SE funding*."

352. This, too, is not an accurate account of the contents of the email from Mr Couves at Sport England on 4 September 2013 to Mark Taylor at Renewal. The email stated:

"Whilst Sport England remain supportive of the scheme, we have not 'committed' or 'pledged' £2m for reasons you are well aware of. Can this document be changed accordingly for future use and any other publications run passed [sic] if you intend to refer to Sport England as we would want to ensure they are accurate when presented in the public domain the site."

353. The email did not ask Renewal to "*stop claiming to have £2m promised and to remove mentions of Sport England from its publicity*" as is reported in the *Guardian*

article dated 8 February 2017. When I put this to Mr Johnston in writing, his response was:

> *"Whilst The Guardian article does not verbatim repeat this [what was said in the email], the copy that you have highlighted does not contradict what Jonathan [Couves] requested, and is an accurate summary made by the journalist of the facts contained within this email".*

354. In my view, this response is based on a very strained reading of the email from Mr Couves.

355. As part of his enquiries, Mr Ronay also contacted the Council and Renewal. Renewal issued a number of statements through the London Communications Agency, including the following, issued on 14 February 2017:

> *"At no stage has Renewal or the Surrey Canal Sports Foundation suggested to any third party that a legally binding funding agreement was in place with Sports England. It has always been the case that numerous hurdles would need to be jumped and boxes ticked in order to turn the Sport England support into a concrete funding obligation. To that extent, neither Renewal nor the Surrey Canal Sports Foundation has had any intention to mislead anyone.*
>
> *However, Renewal acknowledges that it jumped the gun in referring to the clear support of Sport England in correspondence between 2011 and 2013 as a "pledge". That was done in good faith, as that is how Renewal genuinely categorised the Sport England commitment – just like the £500K commitment from Lewisham, which is openly referred to as "a pledge", but is equally subject to numerous hurdles, box ticking and full Mayor & Cabinet approval before turning into a binding commitment. In September 2014 Sport England emailed Renewal asking for the reference to "pledge" in an Energize brochure to be changed. Renewal accepts that it was slow out of the blocks in removing references to "pledge" from the Sports Foundation website and ensuring that it was not repeated elsewhere, and Renewal apologises to Sport England for that."*

356. This statement was reported verbatim in *The Guardian*. It contained what I consider to be an accurate account of the sequence of events leading to the allegation that SCSF had misrepresented the status of Sport England funding. It acknowledged that the use of the word "pledge" had been misunderstood and acknowledged that Renewal should have taken steps to remove references to a pledge from any documentation following Sport England's request to do so in September 2014. However, this account was inconsistent with Sport England's unqualified statements that there was no funding agreement of any

kind in place and that Sport England had had no official correspondence with SCSF or Renewal since September 2014.

357. Matters were further confused by correspondence between Mr Ronay and Sir Steve Bullock. On 16 January 2017, Mr Ronay emailed Lawrence Conway, then Head of Communications at the Council as follows:

> *"Please could you ask the Mayor Steve Bullock to consider and answer the following questions. These relate to an article the Guardian intends to publish in the very near future. We are concerned with accuracy and with ensuring the Mayor has a right of reply.*
>
> 1. *As a director of the Surrey Canal Sport Foundation are you satisfied that the descriptions of the relationships and financial promises listed in the Surrey Canal Sport Foundation annual company report are accurate? Have you investigated these to your satisfaction?*
>
> 2. *The Surrey Canal Sports Foundation claims to have £2m of funding promised to it by sport England. When was this promise made and in what form?*
>
> 3. *It has been suggested to The Guardian that no such promise from Sport England has been made. Are you satisfied that it does (sic) and what is this based on?*
>
> *…"*

358. A reply was sent to Mr Ronay on the same day by Sam Elliott (Executive Manager, M&C Office) saying:

> *"The Mayor has asked me to pass on his answers to your questions. They are as follows:*
>
> 1. *To the best of my knowledge the descriptions of the relationships and financial promises in the Annual Report are accurate and I believe that I have discharged my duties as a trustee and director appropriately in relation to this report.*
>
> 2. *In order to give you an accurate answer to this question I am checking when this information was provided and will respond as soon as possible.*
>
> 3. *On the basis of the information provided at meetings of the SCSF Board I am satisfied that funding has been promised by Sport England."*

359. On 24 January, Mr Ronay sent an email to the Council containing further questions for Sir Steve. The response Mr Ronay received was as follows:

> *"1. I understand you have described facts published in the Guardian on this matter as "innuendo". To be clear: The Guardian is suggesting, without ambiguity, that you are director of a charitable company that has made inaccurate claims of a £2m funding agreement. For clarity, which part of this do you dispute?*
>
> *- Please note Sport England itself has requested your foundation stop claiming £2m funding has been promised.*
>
> *2. The Guardian has also published references to the relationship between Mushtaq Malik of Renewal and Lewisham Council. This "longstanding" relationship is mentioned as a strong material factor in the PriceWaterhouseCoopers due diligence report into this scheme. Do you now disagree with PWC and your own report on this issue? Please explain how this can be "innuendo" if it is published in Lewisham's own commissioned report?*
>
> ***- Questions 1 & 2 – The only use of the word "innuendo" that I am aware of was in a hurriedly written private email message to a small number of fellow councillors and my intention was to refer to the responses on Social Media arising from the articles published on Friday. I must presume that is not the source you are basing your questions on so I would be grateful if you could let me have the reference so I can respond further. For the record, I am not disputing either of the statements in these two questions."***

360. There is a clear discrepancy between the initial response given on behalf of Sir Steve on 16 January 2017 and his apparent admission, in his response on 24 January 2017, that the SCSF had made inaccurate claims of a £2m funding agreement. I raised this with Sir Steve when he gave oral evidence and he stated that he had not intended by his response to accept that the SCSF had made false funding claims. He provided the following explanation to me:

> *"When I reread all of this and the emails around this it became clear to me that the answer I had given could be interpreted that I had accepted that inaccurate claims had been made. I can only say that by this stage - and I realise this is not particularly relevant---I hadn't slept for 5 days and was in considerable distress. My intention was to make clear I was not disputing that I was director of the sports foundation and I should have reread or taken more care over that. It was not my intention to accept that there had been a false claim".*

361. Inevitably, the response given by Sir Steve on 24 January 2017 was read as an acceptance that he was "director of a charitable company that has made inaccurate claims of a £2m funding agreement" and was reported as such.

362. From the responses I received to my enquiries, it has become reasonably clear how the allegation of false funding claims came to be reported in *The Guardian*. The immediate cause was the on the record statement provided by Sport England to *The Guardian* in January 2017 that "*In 2010 we received a funding application from the Surrey Canal Sports Foundation, but this was subsequently withdrawn in 2013. We therefore have no funding agreement, of any kind, in place with them".* I have already expressed the view that this response was incomplete and apt to mislead. It has its genesis in Sport England's objection to Renewal's description of the "in principle" allocation of funding as a "pledge". Renewal must also shoulder some of the responsibility for failing to accede to Sport England's request to cease referring to a pledge and its failure to communicate Sport England's objection to the SCSF and the Council. Above all, I have no doubt that the story would not have achieved such prominence had there not already been an atmosphere of suspicion and opposition to the New Bermondsey development.

Chapter 6: The Council's support for Renewal's Housing Zone bid (Issue 5)

363. In this chapter I briefly consider the fifth issue, namely whether there was any impropriety on the part of the Council in relation to the support it provided for Renewal's Housing Zone bid. I should say at the outset that I am not aware of any specific complaint having been made about the Council's support for this bid.

364. As noted at paragraph 331 above, Renewal's submissions to the GLA to designate New Bermondsey as a Housing Zone contained a number of references to Sport England and the so-called "pledge" and appended the funding request brochure that had been sent to the Council. As I have already explained, whilst it is regrettable that Renewal persisted in referring to a pledge from Sport England after Sport England had expressly requested that it stop doing so, I do not think that Renewal acted in bad faith.

365. I certainly do not think that the Council, whose role in this application was confined to providing a letter of support, can be said to have acted improperly. I note that the short letter of support did no more than set out the Council's reasons for supporting the bid and made no reference to the Sport England pledge.

366. In any event, the GLA requested that Renewal withdraw its application for a contribution towards the funding of Energize. This was because the GLA Housing Zone funding could only be put towards housing and transport infrastructure. Renewal submitted a revised bid on 21 November 2014 which left out the Energize application and made no reference to Sport England. All sections of the 30 September 2014 bid document relating to Energize therefore became irrelevant for the purposes of the on-going Housing Zone grant application.

Chapter 7: The adequacy of the Council's investigation into the Lambert Smith Hampton brochure (Issue 7)

367. In this chapter I consider the seventh issue, namely the adequacy of the Council's investigation into the circumstances surrounding the production of the LSH brochure.

7.1 History relevant to the Lambert Smith Hampton investigation

368. As set out above, the CPO decision of the M&C on 7 September 2016 was called-in by the OSBP. The decision was due to be reconsidered by the M&C on 28 September 2016.

369. However, on 26 September 2016 *The Guardian* published an article entitled "*Millwall property developer faces renewed questions over suggestions it wants to sell quickly".*

370. The article suggested that a marketing brochure produced by LSH demonstrated that IHL, one of Renewal's shareholders, had been making active efforts to sell its interest in the New Bermondsey development. The brochure, the article reported, contained the statement that: *"options for the existing joint venture investor at this stage may include – exit, partial exit, introduction of private third-party equity (dilution of equity), debt-funding/refinancing, other structure finance, equity or Debt IPO fundraise [sic]".*

371. There would have been nothing unlawful, of course, in IHL selling some or all of its interest in the Site or the development project. However, as Mr Quirk explained in his statement to the Inquiry, this revelation was of potential significance to the M&C's CPO decision because Renewal had advised officers and members that they had no intention to sell the site, so the potential existence of a sales brochure could have undermined their credibility.

372. As a consequence, reconsideration of the call-in was adjourned. The Council carried out an investigation into the provenance of the LSH brochure, led by Ms Nicholson and MsSenior.

373. The outcome of this investigation was reported in the officers' report prepared for the M&C on 15 December 2016. The following is an extract from the officers' report:

"7.1 Members will recall that the decision was due to be reconsidered by Mayor and Cabinet at its meeting on 28 September 2016. However, Mayor and Cabinet were informed that shortly before the meeting Council Officers had received a copy of a document that was the subject of external investigation and that it was therefore not possible to complete the reconsideration of the decision made on 7 September 2016. Thus, consideration of the call-in was adjourned until further notice.

7.2 The document in question is a brochure prepared by Lambert Smith Hampton (LSH) on behalf of International Holdings Limited (IHL), one of the shareholders in Renewal (LSH Brochure). The LSH Brochure came to light as a result of an article in the Guardian newspaper on 27 September 2016. A copy of the LSH Brochure has been provided to the Council and is appended to this Report at Appendix 4.

7.3 Following the Mayor and Cabinet meeting on 28 September 2016, the Head of Law and Executive Director of Resources and Regeneration have investigated the circumstances around the LSH Brochure. So too have LSH. As a result, the following has been established:

- *IHL engaged LSH in April/May 2015 to advise on the New Bermondsey scheme as an investment opportunity. LSH's original proposed terms of engagement to IHL covered a review of a range of investment scenarios with potential investors, including outright acquisition, acquisition of IHL's shareholding, JV structures, partial investment, and later stage option structures. LSH noted that at this stage their objective was to source "interest in principle" commitment from potential investors.*

- *The scope of LSH's mandate was amended in June 2015 so as to focus exclusively on introducing and brokering financial investors into a fundraising. LSH also noted at the time that IHL might decide to sell part or all of their stake in that process. It is evident from subsequent correspondence that IHL's objective was to attract investment into the project, not to achieve an outright sale of its interest in it, and that wished to remain involved in the project.*

- *In February 2016, IHL confirmed to LSH that it had decided to put a stop to the search for a funding partner until after the CPO process, and decided not to extend LSH's instruction.*

- *LSH have confirmed that during the course of the instruction, they produced the LSH Brochure, but that they had not been instructed by IHL or the Renewal Group or any individual in the Group to prepare it, nor was the LSH Brochure seen or approved by IHL or Renewal.*

- *LSH further advise that the LSH Brochure was not publicised or made available to others. IHL/Renewal have also confirmed that they had not*

seen the LSH brochure until a copy was provided by the Guardian newspaper.

- *As part of the investigation into the LSH Brochure further documentation prepared by LSH (of unknown date), and described by LSH as 'marketing material', has also come to light. This sets out factual information about the project, and makes no reference at all to IHL's intentions in terms of project funding or whether it might wish to dispose of the whole or part of its interest in it.*

- *IHL/Renewal have confirmed that, as with the LSH Brochure, LSH were given no instructions to prepare this documentation, nor did IHL or Renewal see or approve it.*
  Renewal have further confirmed that they were unaware until the LSH Brochure was produced in late September of the IHL instruction to LSH.

7.4 In the course of the investigation, IHL and Renewal have given their assurance they remain 100% committed to the project and its delivery in full and that there is no intention to sell.

7.5 PwC have indicated in their report that it is normal for developers at this stage of a development project not to have in place concluded arrangements for the funding of the project.

7.6 PwC have reviewed the documentation relating to the IHL instruction to LSH and stated that it is not unusual for investors or developers to dispose of their interests at any point in the development cycle or to seek indicative bids as a market testing exercise. They confirm that, having reviewed this material, the findings in their report remain unchanged."

374. The report was provided to the OSBP on 13 December 2016 and its members were requested to submit any comments to the M&C to take into account in its reconsideration. The OSBP agreed to make a number of additional comments to the M&C in response to the officers' report, including the observation that "*the Lambeth Smith Hampton narrative seemed to be incomplete*". It is unclear from the minutes of that meeting in what respect the narrative was said to be incomplete. The minutes of a meeting of the OSBP on 31 January 2017 recorded that it resolved that the M&C be *requested to note that the Business Panel remains unconvinced by the requested results of the investigation into the LSH documents".* The officers replied on 8 February, noting that all of the documents which were supplied to the Council in relation to the investigation were available for inspection by any member on a confidential basis.

7.2 Evidence provided to the Inquiry about the Lambert Smith Hampton investigation

375. I have been provided with details of the process followed by the Council, as well as copies of the materials obtained during the investigation. I have also been provided with written submissions and supporting documentation from MFC which raise questions about the officers' conclusions.

7.2.1 Council investigation into LSH marketing brochure

376. The Council's investigation commenced as soon as it was made aware of *The Guardian* article and the existence of the LSH brochure. As stated above, the investigation was coordinated by two senior Council officers: Ms Nicholson and Ms Senior.

377. Ms Senior requested a statement from Renewal setting out their position in relation to the brochure. Kplom Lotsu (Manager Capital Programme Delivery) was asked to liaise with LSH. In response to an initial query, Mr Lotsu was informed that Massimo Marcovecchio, whom the brochure named as a contact at LSH, was an LSH employee; and that LSH was instructed in relation to the New Bermondsey Scheme on 28 May 2015. Mr Lotsu was subsequently informed by LSH's Chief Executive Officer, Ezra Nahome, that LSH was carrying out a comprehensive internal audit regarding the production of its brochure.

378. Renewal provided a statement in response on 3 October 2016, dismissing the brochure as "bogus". The statement made a number of observations about the brochure, which it said cast doubt on its authenticity. They included that the group structure chart included in the brochure was inaccurate and that the "New Bermondsey" logo had been cropped from the form used by Renewal. The statement went on to explain:

> *"LSH were engaged by IHL during the period of May 2015 to February 2016 for the purposes of assessing funding/investment options and identifying potential parties interested in the delivery of New Bermondsey. The engagement of LSH was under no circumstances for the purposes of achieving a "sale" or an "exit" from the project as suggested by the Guardian Article and the appointment of LSH by IHL was wholly consistent with Renewal's*

intended delivery of the scheme as master developer, and IHL's commitment to continue funding the project.

379. Renewal's statement was supported by three letters. The first was a letter dated 4 November 2015 from LSH to IHL. This short letter was clearly intended to provide IHL with an update on progress. It read:

"To date we have seen significant interest in the New Bermondsey site from the investors we shortlisted in our letter dated 22 June 2015. It should be noted however that the majority of this interest is for an outright sale.

Given your brief was not to achieve an outright sale, we have therefore narrowed the selection process down to [REDACTED]. We will be working through their proposals and revert to you in the next 10 days."

380. The second was a letter dated 12 February 2016 in which IHL wrote to LSH terminating LSH's appointment. The letter stated:

"The Board of Incorporated Holdings Limited (IHL) wish me to pass on their thanks for trying to source potential funding partners on behalf of IHL over the past nine months. However as we are close to moving forward with the CPO the Board has decided to put a stop to the search for a funding partner until such time as the CPO has been completed.

I can therefore confirm that IHL has decided not to extend the current instruction with LSH. We will of course review the position again once the CPO has been completed and consider our funding options before further advancing the development and would propose we speak again regarding the site and our plans at that time."

381. The third letter was from LSH to IHL dated 27 September 2016, setting out LSH's initial response to the *Guardian* article:

"Ranjan [of Highgate Asset Management Limited] has asked that we write to you following reference to LSH in the article that appeared in the Guardian yesterday. We have sent to Ranjan relevant correspondence and marketing material relating to our mandate with IHL dated 8 May 2015, attached is a copy for your information.

Following a review of the papers we are confident that during the period of our mandate there appears to be an audit trail of where information was sent and what that information was. The scope of the mandate is clearly set out but

through your direction it was focused on ensuring that IHL's objective of remaining involved in the project was achieved.

[…]

…whilst our mandate sought to explore a number of options you have always been clear as to outcome. As you know we did receive interest for any outright purchase but as per your instruction and our letter dated 4th November this route was not pursued. Our letter dated 4 November 2015 explains this and that we then narrowed the shortlist to [REDACTED] who at that time appear to fit IHL's brief."

382. Mr Lotsu followed up on the statement provided by Renewal with a series of requests for further information, including a request that Renewal provide the Council with all correspondence between IHL and LSH relating to LSH's mandate as well as a copy of the marketing material referred to in LSH's letter of 27 September 2016 as having been sent to Mr Ranjan on 8 May 2015. As a result of Mr Lotsu's further enquiries, Renewal provided the Council with this material and it has been provided to me.

383. The marketing material referred to in LSH's letter of 27 September 2016 is a brochure entitled "*Project Spyder"* and labelled "*Strictly Private & Confidential*". I have been provided with a copy of this brochure and can see that it is different in content from the brochure that was obtained by *The Guardian*. My understanding is that this brochure is the further LSH material, referred to in the officers' report for the meeting of 15 December 2016 as having come to light during the Council's investigation. The brochure sets out factual information about the project, but makes no reference at all to IHL's intentions in respect of the project and contains no reference to options for investment, whether partial, exit or otherwise. I have also seen a letter from Mr Ranjan to Renewal who has confirmed that the only marketing brochure he has received is the version sent to him on 8 May 2015.

384. It is apparent from the further correspondence provided by Renewal, that Mr Ranjan was liaising with LSH in April 2015 to identify potential investors in the New Bermondsey Scheme. However, IHL did not formally instruct LSH until the end of May 2015. The "*mandate with IHL dated 8 May 2015*" referred to in LSH's letter of 27 September 2016 is in fact a letter from LSH to Mr Ranjan dated 8 May 2015. This letter refers to a meeting which took place with Mr Ranjan on 13 April and explains that LSH

has completed "*stage 1 of our process*", shortlisting three interested parties. Stage 1 is described later in the letter as follows:

> *"We will review a range of scenarios with potential investors, including outright acquisition, acquisition of IHL's shared holding, JV structures, partial investment in later stage option structures.*
>
> *At this stage our objective is to source "interest in principle" commitment from potential investors.*
>
> *From this process we will create a shortlist of interested parties / investment options and review these with you with a view to selecting investors to take forward to the appraisal stage."*

385. The letter then set out proposed "*terms of engagement in respect of the New Bermondsey Project*". This included exclusive appointment of LSH by IHL and an agreed fee structure. IHL wrote to LSH on 28 May 2015 as follows:

> *"Further to your letter dated 8 May 2015 to Mr K Ranjan of Highgate Asset Management Limited please accept this letter as confirmation that the Directors of Incorporated Holdings limited wish to exclusively appoint Lambert Smith Hampton in respect of the New Bermondsey project to seek investor interest, engage and transact per the details contained in your letter."*

386. LSH wrote to IHL on 12 June 2015 proposing a mandate for "*the sale of Project Spider*". It set out a timetable for the bidding process followed by a section headed "*Proposed Purchasers*". This included a shortlist of potential parties to approach and was followed by the statement "*We believe this offers a good cross-section of potential purchasers*".

387. This was followed by a further letter from IHL dated 22 June 2015. This letter set out amendments to the scope of the mandate proposed in the letter of 12 June, which it explained were discussed on a call with Mr Ranjan. Comparing the letter of 22 June with the letter of 12 June, it is clear that the mandate had been revised to focus on securing investment in the New Bermondsey scheme, not the sale of IHL's interest in the scheme.

388. The 22 June letter opened with the revised statement "*Project Spyder is a mandate to introduce and then broker financial investors into a fundraising [sic]. it [sic] may well be that IHL decide to sell part or all of their stake in that process*." The section headed

"*Proposed Purchasers*" had been renamed "*Proposed Investors*" and the shortlist of potential parties was followed by a revised statement that "*We believe this offers a good cross-section of potential investors"*. A follow-up letter from IHL to LSH confirmed that "*the Directors of Incorporated Holdings Limited agree with the agreed amendments to the scope of the mandate as set out in your letter of 22nd June*".

389. The provision of this additional information creates a clearer picture of the timing of IHL's engagement with LSH. Mr Ranjan was dealing with LSH in April and May 2015. It is unclear whether Mr Ranjan was acting on express instructions from IHL throughout this period. What is clear, however, is that IHL did not formally instruct LSH to act on its behalf until 28 May 2015 and did not agree a mandate until 22 June 2015. The mandate of 22 June focused on finding investors rather than purchasers, but did not rule out the possibility that IHL would sell all or part of its interest in that process. As is clear from the correspondence initially provided by Renewal, by 4 November 2015 IHL had made clear to LSH that they had no intention to sell their stake in the project and LSH's brief was not to achieve an outright sale. In February 2016 IHL formally terminated LSH's appointment.

390. The outcome of the LSH internal investigation was reported to the Council in an email from Mr Nahom of LSH on 7 October 2016:

> "*LSH was instructed by IHL in May 2015 to seek investment in the New Bermondsey project. IHL approached a number of potential investors with a view to finding funding partners for IHL. We identified a number of interested parties. A number of these were interested in an outright sale but, as this was not our brief, these were not pursued. One potential investor did make investment proposals but, in February 2016 IHL decided that it would not continue with the search for a funding partner and LSH's instructions were terminated.*
>
> *The position is made clear in letters dated 4 November 2015 and 12 February 2016 which we have been authorised by IHL to disclose to you. These have been redacted to remove the name of the potential investor as this information is commercial confidential.*
>
> *In the course of LSH's search for potential funding partners, confidential marketing materials were prepared by its employees from time to time. Some of these were shown, in confidence, to potential funding partners. These were not circulated more generally and were not shown to or approved by IHL. These materials included a document headed "New Bermondsey: An opportunity to invest in one of London's largest regeneration schemes" a version of which appears to have been wrongfully obtained by the Guardian.*

We are still investigating the precise source of this document. The version obtained by the Guardian was a draft and not intended for public circulation.

In relation to the specific questions you raise, my responses are as follows:

"Did LSH or any of its staff produce this document, if so when, and for what purpose?"

As I have indicated the document obtained by the Guardian was prepared by LSH staff for the purposes I have mentioned. We have not been able to locate a copy of this version in our files, but I believe that it was produced in early 2015.

"If LSH produced the document, was LSH instructed by IHL or any member or individual in the Renewal Group to do so?"

LSH were not instructed to produce the document by IHL or any member or individual in the Renewal Group. As I have indicated, a copy of this document was not seen or approved by IHL or Renewal.

"If LSH produced it, did LSH publicise it/make it available to others, if so, how and when?"

LSH did not publicise the document or make it available to others.

"Also would you be able to clarify on what basis LSH acted on behalf of IHL between November 2015 and February 2016?

LSH were engaged by IHL between May 2015 (not November) and February 2016 for the purposes of seeking potential funding partners to invest in the New Bermondsey project."

391. Although this response was initially provided in confidence, Mr Nahom subsequently acceded to the Council's request to disclose the response to the public in its report to M&C.

392. Having received responses from Renewal and LSH, Katherine Nidd (Service Group Manager Commercial and Investment Delivery for the Council) wrote to PwC requesting that they review the draft report dated 26 August 2016 in light of the information provided by LSH and Renewal. PwC responded with confirmation that, having reviewed the documents, the findings in its report remain unchanged.

393. In her statement to the Inquiry, Katherine Kazantzis (Principal Lawyer in the Property, Planning and Environment Team at the Council) explained that the investigation into the LSH brochure continued throughout October and November 2016 and that advice was received from Bond Dickinson and Neil King QC throughout this process. I have reviewed the external legal advice provided during this period and it is

clear to me that both Bond Dickinson and Leading Counsel were taking an active role in the investigation and aiming to ensure that all questions were answered to their satisfaction.

7.2.2 MFC's evidence about the LSH marketing brochure

394. So far I have set out the information provided to the Council as part of its investigation into the LSH marketing brochure. As part of its submission to the Inquiry, MFC provided further material relating to the brochure. This included a statement from Mr Barrow, who says that he met a representative of a London based property developer on 29 April 2015. This person informed Mr Barrow that the developer "*had met with Renewal or Renewal's agents*" and led him "*to believe that Renewal wished [the developer] to become involved with the New Bermondsey scheme*". The representative provided Mr Barrow with a copy of a marketing brochure prepared by LSH. From Mr Barrow's description, the brochure sounds very similar, if not identical, to the brochure referred to in the *Guardian* article.

395. Mr Barrow explained in his oral evidence to me that the copy of the brochure with which he was provided was marked with a hand written note saying "Petchey wants out". Mr Barrow regarded this as significant because, as I explained at paragraph 3 of Chapter 1, the Petchey Foundation is a shareholder of IHL. I am unable to make any finding as to how these words came to be written on the brochure. Ultimately, I regard this as insignificant because I am satisfied that IHL did not want to sell their interests in the development. They made this clear to LSH in correspondence in November 2015. There was no reason for LSH to record in correspondence to IHL that IHL's brief was not to achieve an outright sale if this was not the case.

396. On 15 September 2015, Mr Barrow received an email from a representative of the developer stating "*We have papers from LSH asking us to put forward proposals for their client. We think they have gone to 3 total but we are 'preferred'*". Mr Barrow told me that on 24 September 2015 he attended a meeting at the developer's headquarters. He described the discussion as follows:

> *"I distinctly recall [the developer's representative] telling me that they had had meetings with Renewal at which the possibility of [the developer] acquiring all of Renewal's interests in New Bermondsey was discussed (the*

exit referred to in the LSH brochure). I do not know if the meetings were solely with the agents or with owners and/or representatives of Renewal. The developer's representatives told me that Petchey's people had asked that their meetings with [the developer] be kept secret from Mushtaq Malik's people."

397. He says that in October, he arranged for a meeting with representatives from the developer at the Site; and that in November and December there was some correspondence between him and the developer. The developer stated that it was going to have another meeting "with Renewal and its agents" and on 21 December 2015 the developer's representative wrote to Mr Barrow as follows:

"Met agents not Renewal who are bit invisible. Starting to get clearer picture on land assembly which I will share when we meet. Basically they say they have spent £XM and there is £YM to pay which gives plenty of margin on their view of the site value (£X + £YM and a big margin). We say they [sic] are quite a few holes in the land assembly numbers involving some chunky interests … and have asked to meet direct with Renewal to get clarity. LSH are asking us for a proposal and we have sent some headline thoughts on a standard JV: we lead going forward and they put in the land (the question is how much they need up front and how this fits with early phases)."

398. Mr Barrow explained that there was more correspondence in January 2016 culminating in an email from the developer stating that "*Renewal and Petchey were having a 'barney on the way forward*!'". On 3 March 2016, the developer emailed Mr Barrow as follows:

"As you are aware we were approached by Renewal/Petchey for a possible JV for New Bermondsey, via Agents. We have asked a lot of due diligence questions largely on site assembly and they have recently withdrawn from discussions with us. They say this is pending the outcome of Lewisham's CPO process, presumably because they believe this will improve the proposition on offer. We are therefore meeting with you off the record to discuss if a relationship with Millwall FC might unlock the scheme."

399. Mr Barrow met the developer again in March 2016. Mr Barrow said that at this meeting the developer's representatives "*again let the MFC representatives believe that there had been meetings between [the developer] and Renewal or its agents at which the possibility of both a joint venture and an outright sale had been mentioned*".

400. MFC have also provided a statement from Matthew Black, Senior Director of CBRE, property adviser to MFC. Mr Black states that he met the developer in question who confirmed that it had been provided with and referred to the LSH brochure.

7.3 Conclusions on Issue 7

401. The key question that I have to consider is whether the Council acted with propriety, due diligence and in compliance with the applicable codes of conduct in its investigation into the circumstances surrounding the production of the LSH marketing brochure. As Mr Quirk explained in his statement to the Inquiry, the reason that the Council investigated this matter in the first place was that Renewal had advised officers and members that it had no intention to sell the Site. The Council wanted to establish whether Renewal had misled the Council in making this statement . I have therefore considered whether there is any evidence on the material available to me to suggest that the Council was misled by Renewal in this respect.

7.3.1 Conclusions on the adequacy of the Council's investigation into the LSH brochure

402. On the basis of the material with which I have been provided and the witness evidence I have heard, I have no hesitation in concluding that the Council acted properly and with due diligence in the way in which it responded to the publication of information about the LSH marketing brochure on 26 September 2016.

403. As will be clear from the evidence set out above, Council officers took immediate steps to set up an investigation into the brochure. They pursued their investigations with diligence and persistence, following up on responses from Renewal and LSH with further queries and requests for documentation. They did not accept answers that were incomplete and insisted on seeing documents rather than settling for summaries of them. Once they had made these enquiries and produced a draft report, the material was reviewed by external solicitors and Leading Counsel.

404. Having completed this investigation, the Council took the additional step of asking PwC to review the new material and consider whether it would impact on the conclusions

set out in its report of August 2016. The officers' report submitted to the Mayor and Cabinet on 15 December 2016 set out fully and clearly the outcome of the investigation.

7.3.2 Conclusions on the Council's substantive findings

405. I have reviewed the documentation obtained by the Council during its investigation as well as the additional material provided by MFC. I am in broad agreement with the conclusions reached by the officers who conducted the investigation, although with the benefit of some additional information from witnesses, I am in a position to add a little detail to the account set out in the report submitted to M&C for its meeting on 15 December 2016. I have reached this conclusion not on the basis that I have disregarded or disbelieved the evidence provided on behalf of MFC. On the contrary, what becomes clear when the two narratives are put together is that they are entirely consistent with each other.

406. Like the Council, I have concluded that LSH began looking for potential investors in the New Bermondsey scheme in or around April 2015. It appears from the contemporaneous documentation that contact in April and May 2015 was between LSH and Mr Ranjan of Highgate Asset Management Limited, not LSH and IHL. In fact, there does not appear to have been direct correspondence between IHL and LSH until 28 May 2015 when IHL formally agreed to instruct LSH.

407. As stated in the officers' report, LSH confirmed in writing that (i) it produced confidential marketing materials from time to time; (ii) these materials included the version of the marketing brochure that was obtained by *The Guardian*; (iii) some of these materials were shown, in confidence, to potential funding partners but were not circulated more generally; and (iv) they were not shown to or approved by IHL or Renewal.

408. I pause here to note that this account is entirely consistent with Mr Barrow's evidence that he met a property developer on 29 April 2015 who informed him that he had met Renewal or Renewal's agents and had a copy of the LSH marketing brochure. LSH has explained that it was approaching potential investors in the New Bermondsey scheme during April and May 2015 and had provided copies of marketing material on a confidential basis to potential investors.

409. In his evidence to the Inquiry, Mr Barrow said that, in his experience as a real estate lawyer, the suggestion that LSH produced marketing material without being instructed to do so by IHL and without getting approval from IHL or Renewal was "*incredible*". Surprising as it may be to a specialist in the field, LSH has confirmed in writing, after conducting an internal investigation, that this is exactly what happened. It seems likely to me that LSH produced this material to assist with gathering a short list of potential investors, with a view to pitching their services to IHL in May 2015. This would explain why the earlier versions of the brochure contained information that, according to Renewal, was out of date and made use of a cropped logo.

410. I agree with the Council that the scope of LSH's mandate was amended in June 2015 to focus on introducing and brokering financial investors, albeit with the acknowledgement that IHL might decide to sell part or all of their stake in that process. I would add, however, that what was amended was the mandate initially proposed by LSH in a letter on 12 June 2015. As explained above, IHL had only formally instructed LSH on 28 May 2015 and the only formal mandate IHL agreed to in this period is that set out in the 22 June 2015 letter. I agree with the Council that it is clear that IHL terminated its instruction of LSH in February 2016.

411. Again, there is nothing in Mr Barrow's evidence that is inconsistent with this account. The email he received from the developer's representative on 15 September 2015 states that it had been invited by LSH to put forward proposals. This is exactly what had been agreed with between IHL and LSH. I have no reason to doubt Mr Barrow's statement that at a meeting in September 2015 the developer told him that it had discussed acquiring all of Renewal's interests in the development. I note that Mr Barrow acknowledges in his own account of this meeting uncertainty about whether the developer had met with the agents alone and does not specify when these discussions took place. The key point, however, is that the formal mandate agreed by IHL was to focus on options for investment, not outright sale. Indeed, it seems likely that the developer Mr Barrow met was interested in achieving an outright purchase of the development, as we know from LSH's letter to IHL of 4 November 2015 that there had been expressions of interest in an outright sale. The same letter also stated in terms that IHL had been clear that it was not interested in a sale. I also note with interest that the deal that the developer described in the email to Mr Barrow on 21 December 2015 – a deal that would involve a "*standard*

JV" where the developer "*lead going forward and they [IHL] put in the land*"—was entirely consistent with the Master Developer strategy that Renewal had been pursuing, whereby Renewal would acquire the land and then partner with an experienced developer to progress the building phase of the development.

412. Finally, like the Council, I have found no reason to doubt Renewal's statement that it was not aware of IHL's instruction to LSH until the publication of the *Guardian* article. Mr Malik confirmed this to me in his oral evidence to the Inquiry. This seems to me entirely plausible given the relationship between the shareholders of Renewal. As is explained at the beginning of this report, Renewal is owned by two companies – IAI and IHL. Whereas IAI is owned and controlled by the Malik family trust, IHL is owned and controlled by a charitable trust, of which the principal beneficiary is the Jack Petchey Foundation. IHL had no obligation to inform IAI or Renewal that it was exploring options for potential investors and it seems entirely plausible to me that it did not inform Renewal or IAI at the early stages in its search for investors. Renewal's statement that IHL had been exploring investment options without informing IAI or Renewal is also consistent with the evidence provided by Mr Barrow that the developer had told him in September 2015 that "*Petchey's people [i.e. IHL] had asked that their meetings with [the developer] be kept secret from Mushtaq Malik's people*" and that in December 2015 the developer had stated that "*Renewal and Petchey were having a "barney on the way forward*!"". This context adds to the credibility of Renewal's position that it was unaware of IHL's instruction of LSH.

413. Overall, I am convinced that there are good commercial reasons why Renewal has wanted to remain involved in the New Bermondsey development. As explained in Renewal's statement to Inquiry it would make no commercial sense to sell the Site before implementation and completion of the scheme because that is when they would expect to see a financial return on their investment.

Chapter 8: the adequacy of the Council's appraisal of the financial viability of Renewal's scheme and its ability to deliver it (Issue 8)

414. For the reasons that I have already given when dealing with issue 6, I have no doubt that there was no impropriety or lack of due diligence in the Council's appraisal of the viability and deliverability of the Renewal scheme. I have dealt with the issues sufficiently in my treatment of the sixth issue in Chapter 4 above.

Chapter 9: Overall conclusion

415. For the reasons I have given, I have concluded that there was no impropriety, lack of due diligence or breach of a code of practice on the part of any Council officer or member in relation to (i) the decisions to make a CPO and the appraisal of the financial viability of Renewal's scheme and its ability to deliver it (issues 1, 6 and 8); (ii) the grant of OPP (issue 2); (iii) the decision to enter into a conditional contract of sale of the Millwall Land to Renewal (issue 3); (iv) the decision of the M&C to pledge £500,000 to SCSF (issue 4); and (v) the Council's support for Renewal's Housing Zone bid (issue 5). I have also concluded that (a) the Council was not misled by any misrepresentation, misinformation or withholding of information in relation to the decision to make the pledge of £500,000 (issue 4); and (b) there was no inadequacy in the Council's inquiry into the circumstances surrounding the production of the LSH brochure (issue 7).

416. I conclude my report with some general observations. In a thoughtful letter to me dated 20 July 2017, Mr Ronay has raised the question of what this Inquiry could reasonably achieve. He repeated his thoughts in an article in *The Guardian* dated 17 August 2017. In his letter, he says that it has always seemed to him that the questions raised are essentially of a political nature: questions of what the public can expect rather than demand of its elected officials. For example, he says, it is neither illegal nor a breach of local government procedure for a Labour Cabinet to award half a million pounds of public money to a charitable company of which its mayor is a director, and which exists as an arm of a private development project. The issues are instead political and moral. Mr Ronay poses a number of questions. Is it politically appropriate for a Labour administration to deal in this way? Does this behaviour raise concerns among

Labour voters and local people generally? Does any of this give the impression of public officials not being seen to be held to the very highest standards? He says that these are issues of legitimate public interest. But it is hard to see how they are questions that can be settled by an Inquiry. He makes the further point that it is hard to see that there were any issues of fact that demanded an Inquiry.

417. It is not in doubt that there is an urgent need for the redevelopment of the Site. It is not surprising that there are those who are impatient at the delay that has occurred in bringing this about. In their eyes, the exhaustive investigations into the viability and deliverability of Renewal's proposals have demonstrated that its scheme is viable and deliverable and that it should be permitted to proceed with the development without further delay. Renewal is the obvious developer: there is no-one else on the horizon. If Renewal is rejected, the Site is likely to remain undeveloped for many years to come. In the eyes of others, Renewal is objectionable principally on account of its lack of track record in large-scale developments and the fact that its shareholders are registered off-shore companies. That is why the decision to make a CPO which would enable Renewal to carry out the development is so controversial. Mr Ronay is right to say, for the reasons that he gives, that there is a political dimension to this decision. That is why, as we have seen, opponents of Renewal canvassed so strongly the issue of the reputational damage that the Council might suffer if Renewal were permitted to carry out the development. It is not for me to express a view about the morality or political wisdom or desirability of allowing Renewal to carry out the development. That would clearly be outside my terms of reference.

418. I have reflected on the points made by Mr Ronay. In my view, this Inquiry has served an important purpose. First, serious allegations have been made against some Council officers and members. These have, rightly, been taken very seriously by them. I have carried out a thorough investigation into all of these allegations and concluded that they are all unfounded. That of itself is an important conclusion both in the public interest and for the officers and members concerned. I have been greatly impressed by the commitment and professionalism of the officers. I hope that in the future all members will be able to work with them in a spirit of trust and confidence.

419. Secondly, serious allegations have been made by MFC about the propriety of the process that was followed by M&C in relation to the decision to enter into the conditional sale agreement of the Millwall Land and in relation to the resolutions to make the CPO, as well as the propriety of the substance of these decisions. I have rejected all of them. I hope that, even if this does not solve the fundamental question of whether the Millwall Land should be sold and a CPO should be made, my conclusions may help to clear the air. In this respect, I hope that particular attention will be paid to my conclusion in relation to the adequacy of the officers' report for the meeting of 7 September 2016.

420. Thirdly, even if what I have just said about the conditional sale of the Millwall Land and the CPO issue is not accepted, it does not follow that this Inquiry has been pointless. I do not accept that there were no issues of fact which it was appropriate to have resolved at an independent Inquiry. First, it should not be overlooked that the catalyst for my appointment was the allegation that M&C had been misled into making a pledge of £500,000 by a misrepresentation that Sport England had made a pledge to SCSF of £2 million. That was a very grave allegation of fact to make. It fanned the flames of a fire which was already burning and added great weight to the case that was being advanced by those who opposed Renewal's scheme. The febrile atmosphere was well captured and almost certainly inflamed by Mr Ronay's repeated articles. I hope that my findings of fact in relation to this allegation will take some of the heat out of the debate.

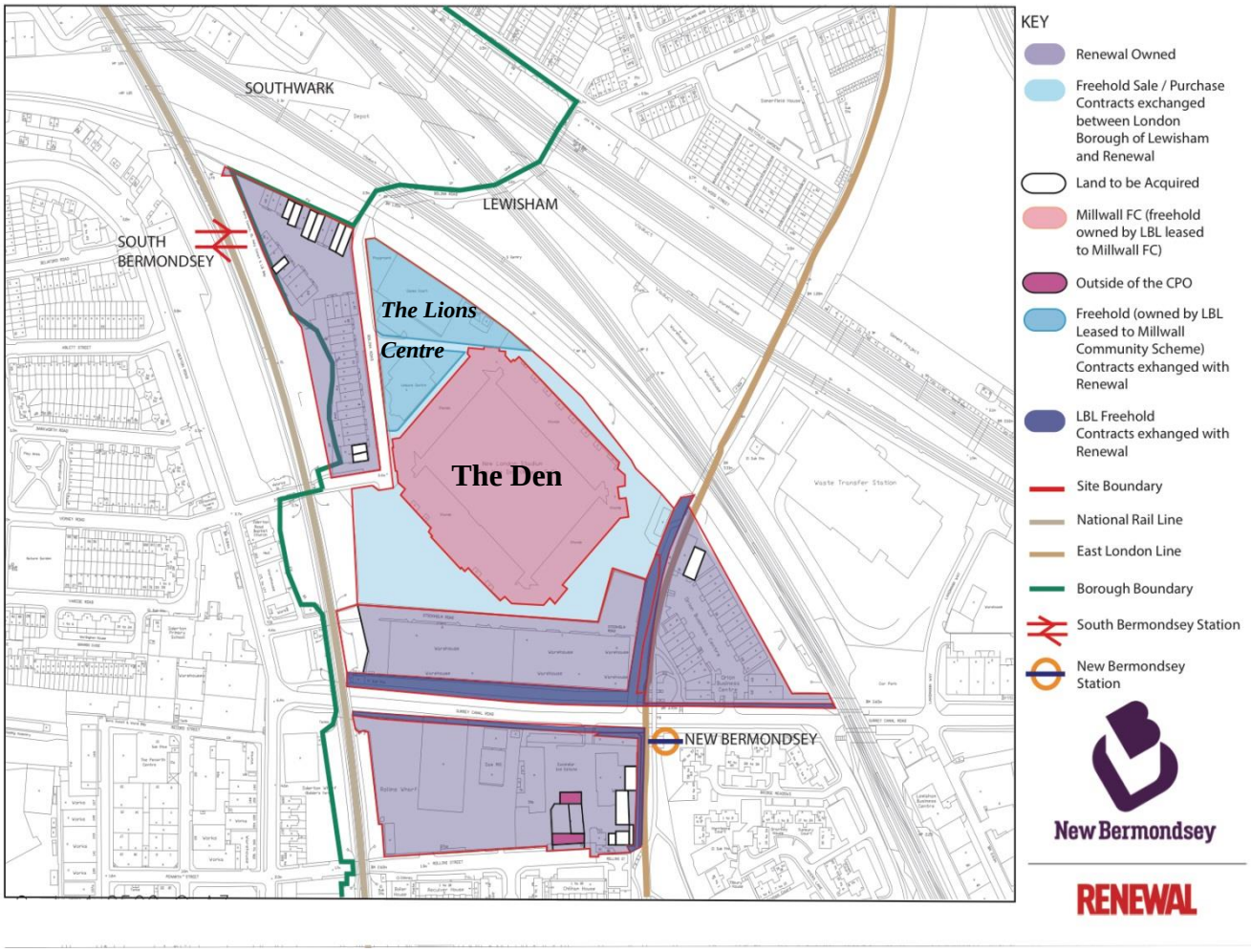
421. Secondly, I have dealt with the issue of the LSH brochure. This issue, which added yet more intensity to the debate in late 2016, raised hotly contested questions of fact which it was appropriate to have resolved in an independent Inquiry. It was a further reason for my appointment. I hope that my treatment of it will also help to reduce the temperature.

422. Before concluding this report, I need to say a little more about MFC. Like almost everybody else, MFC supports the idea of redeveloping the Site. This also is the position of the Association of Millwall Supporters, whose submission to the Inquiry expressed full support for the regeneration of the area and stated that it "would back with all its enthusiasm a scheme designed to benefit all in the area". As I have already stated, the Site is crying out for redevelopment. It is entirely understandable that MFC would prefer to be able to develop the Millwall Land itself. But it has not persuaded the Council that this is a practicable proposition. Some have said that the Renewal scheme would threaten the very

existence of the Club at the Den. A flavour of their remarks is captured in Mr Ronay's article of 27 January 2017 entitled "*How the battle to save Millwall's stadium was won"* and his statement that "*Millwall are staying in South London"*: see paragraph 262 above. But it has always been the clearly stated intention of the Council that MFC should stay at the Den and that measures should be introduced to ensure that it remained at the heart of any proposed development of the Site and that the interests of both MFC and MCS should be fully protected. I refer, for example, to the statement to that effect by Councillor Smith at the M&C meeting of 15 December 2015; the concern expressed by the Council when, very late in the day, MFC raised the issue of the possible loss of its English Football League Category 2 status if there were a move to Energize (see paragraphs 239 to 241 above); Councillor Smith's statement to Mr Kavanagh on 19 January 2017 that the Cabinet were unanimous that, in any development, MFC's future must be secure and MCT must be able to continue its fantastic work in the local area (see paragraph 247 above); and what Sir Steve Bullock said in his statement of 25 January 2017 (see paragraph 260 above). It is unfortunate that this clear publicly stated position of the Council seems to have been ignored in some quarters. I hope that this will not recur during any future discussions. What is now required is a period of calm reflection as was urged by the Council in its statement of 25 January 2017 (paragraph 259 above.)

423. Finally, I should express my gratitude to Ms Catherine Dobson for the great assistance she has given me in the conduct of this Inquiry. Her efficiency, hard work and wisdom have been invaluable. I am extremely grateful to her.

Annex 1: Plan of the New Bermondsey Site



Plan not to scale.

Annex 2: Applicable Codes of Conduct

There are two applicable codes of conduct: The 'London Borough of Lewisham Member Code of Conduct', which applies to all elected and co-opted members (including the Mayor), and the 'The Employee Code of Conduct, which applies to all Council employees. The relevant paragraphs are set out below.

Member Code of Conduct

Para

2.1 Members are required to comply with the following principles in their capacity as a member:

- selflessness;
- integrity;
- objectivity;
- accountability;
- openness;
- honesty;
- leadership
- independent judgement
- respect
- stewardship

2.2(1) Members must act solely in the public interest. They must never improperly confer an advantage or disadvantage on any person nor seek to do so. They must not act to gain financial or other benefit for themselves, their family friends or close associates.

2.2.(2) Members must not place themselves under a financial or other obligation to any individual or organisation that might seek to influence the performance of their duties as a member.

2.2 Members must not act to place themselves in a position where their integrity might reasonably be questioned and should on all occasions avoid situations which may create the impression of improper behaviour.

2.2(8) Members should ensure that their comments and behaviour do not overstep the line of acceptability. They should not bully any person. They should respect the impartiality and integrity of the Council's officers.

2.2(9) Members should promote and support high standards of conduct in particular as characterised by the above requirements by leadership and example

Appendix 1 to Member Code of Conduct: Member & Officer Relations

3 Respect between members and staff, both personally and for their different

roles is essential to good local government.

6 All councillors and the Mayor have the same rights and duties in their relationship with staff and should be treated equally. Members of overview and scrutiny committees are entitled to officer advice and support in the performance of their roles just as executive members are entitled to officer advice and support in the performance of theirs.

7 Members must no pressurise an officer to make a recommendation contrary to their professional view or use undue pressure to seek to persuade an officer to withdraw a report.

10 Officers can expect from members:

(a) Respect and courtesy

[…]

(f) Not to be subject to bullying or to be put under pressures. Members must have regard to the seniority of officers in determining what are reasonable requests having regard to the power relationship between members and officers and the potential vulnerability of officers, particularly at junior levels.

Employee Code

Page

1 The principles underlying this Code of Conduct, which must be observed by all employees are:

Selflessness – employees should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and integrity – employees should not place themselves in situations where their honest and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour. An employee must perform his /her duties with honest, integrity, impartiality and objectivity.

Objectivity – employees should make any decisions on merit, including when making appointments, awarding contracts or recommending individuals for rewards or benefits.

Accountability – employees should be accountable to the Council and the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny into their actions.

Openness – employees should be as open as possible about their actions and should be prepared to give reasons for them.

Respect for others – employees should promote quality and diversity by not discriminating unlawfully against any person and by treating people with respect, regardless of their age, disability, general reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

Duty to uphold the law – employees should uphold the law and on all occasions act in accordance with the trust that the public is entitled to place in them.

Stewardship –employees should do whatever they are able to ensure that resources are used prudentially and in accordance with the law. An employee must:

(a) Use any public funds entrusted to or handled by him/her in a responsible and lawful manner; and
(b) Not make personal use of property or facilities of the council unless properly authorised to do so.

Leadership – employees should promote and support these principles by leadership and example, and should always act in a way that secures and preserves public confidence.

General obligations –

Employees are expected to provide the highest possible standard of service to the public, and to the Council as a whole. An employee must at all times acting accordance with the trust that the public is entitled to place in him/her and to comply with the law and this Code of Conduct.

5 POLITICAL NEUTRALITY AND ACTIVITY

Employees are required to serve the whole Council and its members, not just members of any controlling group and must ensure that the individual rights of all members, including co-opted members are respected.

Employees who as part of their duties are required to provide advice to members or other employees must do so impartially and must not allow their own personal or political opinions to interfere with their work.

9 DECISION MAKING

There are vital legal principles which employees must adhere to at all times when making decisions on behalf of the Council. Decisions must be taken in accordance with the terms of the Council's constitution and its Standing Orders.

Employees must ensure that they use any public funds entrusted to them in a responsible and lawful manner, ensuring value for money to the local community and avoiding legal challenge to the Council.

Appendix – Protocol on Member/Officer Relations

Officers' roles

7 The role of officers is to give advice and information to members to inform their decision making and to implement the policies and decisions of the Council. In giving their advice it is the responsibility of the officer to present his/her professional views and recommendations. Members must no pressurise an officer to make a recommendation contrary to their professional view or use undue pressure to seek to persuade an officer to withdraw a report.

8 In discharging their role as an officer of the authority, staff must act in a politically neutral way.

[…]

Annex 3: Key persons and relevant entities

Officers and members of the Council who submitted written representations

Councillor Chris Best	Lewisham Councillor for Sydenham Ward (1986 to present) and Cabinet Member for Health, Wellbeing and Older People. Provided a written statement to the Inquiry.
Sir Steve Bullock	Elected Mayor of Lewisham Council (2002 to present). Provided a written statement to the Inquiry and gave evidence at an oral hearing.
Councillor Liam Curran	Lewisham Councillor for Sydenham Ward (May 2010 to present). Provided a written statement to the Inquiry.
Councillor Alan Hall	Councillor for Bellingham Ward and Chair of the Overview and Scrutiny Committee Business Panel at Lewisham Council Provided a written statement to the Inquiry.
Rob Holmans	Former Director of Regeneration and Asset Management at Lewisham Council (December 2012 to February 2016). Provided a written statement to the Inquiry and gave evidence at an oral hearing.
Katherine Kazantzis	Principal Lawyer in the Property, Planning and Environmental Team at Lewisham Council (2005 to present) Provided a written statement to the Inquiry.
Kplom Lotsu	Senior Group Manager for Capital Programme Delivery in the Regeneration and Pace Division at Lewisham Council (December 2014 to present) Provided a written statement to the Inquiry.
Paul Maslin	Councillor for New Cross and Deptford Ward and Cabinet Member Provided a written statement to the Inquiry.

John Miller	Former Head of Planning at Lewisham Council/ (2000 to December 2015). Provided a written statement to the Inquiry.
Councillor John Muldoon	Councillor for Rushey Green Ward (2002 to present) and member of the Overview and Scrutiny Committee Business Panel. Provided a written statement to the Inquiry.
Kathleen Nicholson	Head of Law at Lewisham Council (1997 to present). Provided a written statement to the Inquiry and gave evidence at an oral hearing.
Katharine Nidd	Senior Group Manager, Commercial and Investment Delivery within the Regeneration and Place division of Resources and Regeneration Directorate. Provided a written statement to the Inquiry.
Barry Quirk	Chief Executive of Lewisham Council. Provided a written statement to the Inquiry and gave evidence at an oral hearing.
Janet Senior	Executive Director of Resources and Regeneration at Lewisham Council (December 2004 to present). Provided a written statement to the Inquiry.
David Sullivan	Councillor for Lewisham Councillor (1983 to 2002) and Executive Mayor of Lewisham. Director and shareholder of Renewal (2002 to August 2007) Provided a written statement to the Inquiry.
Councillor Alan Smith	Councillor for Whitefoot Ward and subsequently Catford South (1998 to present) and Deputy Mayor and Cabinet Member for Growth and Regeneration (2010 to present). Provided a written statement to the Inquiry and gave evidence at an oral hearing.
Emma Talbot	Head of Planning at Lewisham Council (April 2016 to present).

	Provided a written statement to the Inquiry and gave evidence at an oral hearing.

Representatives of MFC who submitted written representations and/or attended the oral hearing

Andrew Barrow	Real estate consultant and adviser to Millwall Football Club. Provided a written statement to the Inquiry and gave evidence at an oral hearing at which he accompanied Mr Berylson.
John Berylson	Chairman of Millwall Football Club and founder of Chestnut Hill Ventures. Provided a written statement to the Inquiry and gave evidence at an oral hearing.
Matthew Black	Senior Director of CBRE, property consultants, and adviser to Millwall Football Club. Provided a written statement to the Inquiry and gave evidence at an oral hearing at which he accompanied Mr Berylson.
Steve Kavanagh	Chief Executive Officer of Millwall Football Club. Accompanied Mr Berylson at an oral hearing.
Nigel Kennedy	Chairman of Commucan, a communications consultancy, and adviser to Millwall Football Club. Gave evidence at an oral hearing at which he accompanied Mr Berylson.
Demos Kouvaris	Director of Millwall Football Club and Chief Operating Officer and Chief Financial Officer of Chestnut Hill Ventures. Gave evidence at an oral hearing at which he accompanied Mr Berylson.

Representatives of MFC who submitted written representations

Stephen Bradshaw	Chief Executive Officer of Millwall Community Trust Provided a written statement to the Inquiry.

Representatives of Renewal who submitted written representations and/or attended the oral hearing

Mushtaq Malik	Director and chief executive of Renewal. Provided a written statement to the Inquiry and gave evidence at an oral hearing.
Steven Hardisty	Solicitor and in-house legal counsel to Renewal. Attended the oral hearing with Mr Malik.
Gregory Jones QC	Barrister representing Renewal.

Other relevant persons

David Ashworth	Property consultant at Strutt & Parker, engaged by Lewisham Council to act as an intermediary between MFC and Renewal.
James Goudie QC	Barrister who provided advice to Lewisham Council in relation to New Bermondsey development.
Neil King QC	Barrister who provided advice to Lewisham Council in relation to New Bermondsey development.
Charles Johnston	Executive Director of Sport England.
Jordana Malik	Trustee of the Surrey Canal Sports Foundation Ltd.
Steve Norris	Chair of the Surrey Canal Sports Foundation Ltd.
Barney Ronay	Senior sports writer for *The Guardian* newspaper. Provided written responses to questions from the Inquiry Chair.

List of relevant entities

Association of Millwall Supporters	Provided a written statement to the Inquiry.
CBRE	Property agents and surveyors providing consultancy services to Millwall Football Club
Chestnut Hill Ventures	An American private equity and venture capital firm owned by the John Berylson family; owner of MFC.
Energize	A 15,000 sqm indoor sports centre proposed as part of the New Bermondsey development.
GL Hearn	Property surveyors appointed by Lewisham Council and Renewal to provide advice in relation to the New Bermondsey Scheme.
Independent Advisers Incorporated	A BVI registered company, owned and controlled by the Mushtaq Malik family trust and shareholder of Renewal.
Incorporated Holdings Limited	An Isle of Man registered company, owned and controlled by the Jack Petchey Foundation.
Jack Petchey Foundation	A UK registered charity and shareholder of Incorporated Holdings Limited.
Lambert Smith Hampton	Commercial property consultancy, engaged by Incorporated Holdings Limited to identify investors for the New Bermondsey Scheme.
Millwall Community Scheme	A football community scheme, independent from but affiliated with Millwall Football Club. It is referred to in some documents as Millwall Community Trust.
Millwall Community Trust	A football community scheme, independent from but affiliated with Millwall Football Club. It is referred to in some documents as Millwall Community Scheme.
Millwall Football Club	A professional football club, based at the Den.
PwC	Professional services firm engaged by the Council to undertake financial due diligence work in relation to the New Bermondsey development.
Renewal Group Limited	An Isle of Man registered company, owned and controlled by Independent Advisers Incorporated and Incorporated Holdings Limited.

Sport England	A national funding body that allocates National Lottery Funding to sports projects in England.
Strutt & Parker	Property consultancy, engaged by Lewisham Council to act as an intermediary between MFC and Renewal.
Surrey Canal Sports Foundation Ltd	A charitable trust established by Renewal in 2011 to oversee fund raising for the Energize project.
The Lions	Nick-name for Millwall Football Club.
The Lions Centre	Premises adjoining the Den which houses a covered 3G football pitch and provides the base for Millwall Community Trust.

Annex 4: Glossary

The Council	The London Borough of Lewisham
IAI	Independent Advisers Incorporated
IHL	Incorporated Holdings Limited
LSH	Lambert Smith Hampton
M&C	The Mayor & Cabinet
MFC	Millwall Football Club
MCS	Millwall Community Scheme
MCT	Millwall Community Trust
OSBP	Overview and Scrutiny Committee Business Panel
SCSF	The Surrey Canal Sports Foundation Ltd

New Bermondsey / Surrey Canal

Independent Inquiry

Executive summary

1. The New Bermondsey site (the Site) is approximately 30 acres in size. It consists of many industrial buildings and a few dwellings. It also includes the football ground of Millwall Football Club (MFC) which is known as The Den. It is agreed between the key participants to the Inquiry, notably the London Borough of Lewisham (the Council) and MFC, that the Site is in great need of redevelopment.

2. The freehold of a large part of the Site is now owned by Renewal Group Limited (Renewal). Renewal is a privately owned company based in the Isle of Man. Its two shareholders are overseas companies, which are registered in the Isle of Man and British Virgin Islands. The freehold of part of the Site is owned by the Council. This comprises the football stadium and car park (which are let to MFC) and *The Lions Centre* (which houses various sports facilities and is let to Millwall Community Trust). In the report, I refer to this as "the Millwall Land".

3. Renewal has produced a comprehensive scheme for the development of the Site for which it has obtained outline planning permission. It has spent millions of pounds in acquiring properties on the Site and in working up a detailed development scheme. The scheme involves leaving the football ground intact, replacing *The Lions Centre* with a state-of-the-art sports facility called Energize (with an estimated cost of £40 million) and redeveloping the rest of the Site. Renewal established the Surrey Canal Sports Foundation Limited (SCSF) for the purpose of delivering the Energize facilities.

4. On 7 March 2012, the Council resolved in principle, but subject to important conditions, to make a compulsory purchase order (CPO) in respect of those parts of the Site that Renewal did not own, including the Millwall Land. On 30 March 2012, it granted Renewal outline planning permission for the development of the Site.

5. On 20 December 2013, the Council entered into a conditional contract to sell the Millwall Land to Renewal.

6. On 30 September 2014, Renewal submitted a bid to the Greater London Authority (GLA) for £5 million of grant funding towards the cost of the construction of Energize. This bid, which stated that a pledge of £2 million had been given by Sport England, was supported by the Council.

7. On 7 September 2016, the Mayor and Cabinet of the Council (M&C) considered a detailed report by its officers which advised that all of the conditions that had been set for the making of a CPO on 7 March 2012 had been met and resolved to use CPO powers in relation to the Millwall Land. These included that the scheme was viable and could be

delivered by Renewal. On 20 September 2016, this decision was called in by the Overview and Scrutiny Business Panel of the Council (OSBP) on grounds which included that there was uncertainty as to the viability and deliverability of Renewal's scheme.

8. On 28 September 2016, M&C adjourned further consideration of the CPO decision pending the investigation of allegations that, as apparently evidenced by a brochure published by Lambert Smith Hampton (LSH) (commercial property consultants), Renewal had marketed the Site with a view to selling it. The officers reported the outcome of their investigation to the M&C on 15 December 2016. They reported that LSH had confirmed that they had not been instructed by Renewal or Incorporated Holdings Limited (one of Renewal's shareholders) to prepare the brochure. MFC criticise this investigation as having reached an "incredible" conclusion.

9. MFC was strongly critical of the way in which M&C had decided to appoint Renewal as the developer. It criticised the decision to enter into the conditional sale agreement and the decision to make the CPO. The criticisms are summarised at paragraph 15 of my report and the officers' answers to the criticisms are summarised at paragraph 16. Some members of the OSBP shared MFC's concerns. They were particularly unhappy at the prospect of the Council awarding the right to develop the Site to an overseas company whose shareholders were registered in "tax havens" and which had no track record of carrying out a large development project.

10. On 9 January 2017, MFC raised a new point. This was that, if the Renewal scheme went ahead and the sports facilities provided at *The Lions Centre* were replaced by those to be provided at Energize, the MFC Youth Academy might lose its English Football League Category 2 status. On 11 January 2017, M&C adjourned its reconsideration of the CPO decision until 8 February 2017 to allow time for the investigation of this issue to be completed.

11. By now, allegations were also being made that the Council had been misled into making a pledge of £500,000 to the SCSF by what was said to be a misrepresentation by Renewal and the SCSF that Sport England had pledged a sum of £2 million towards the Energize project. This was the catalyst for the decision to have an independent Inquiry. The M&C resolved not to proceed with the CPO until the outcome of the Inquiry was known.

12. The Terms of Reference and the Scope of the Inquiry are set out at paragraphs 20 to 22 of the report. In summary, I have been asked to decide whether officers and/or members of the Council acted with propriety, due diligence and in compliance with applicable codes of practice in relation to the decisions that I have outlined above.

13. I have rejected all of the criticisms that have been made of the conduct of officers and members. I have been particularly impressed by the care with which the officers carried out their consideration of some complex issues and the thoroughness, objectivity and professionalism of their reports.

14. I have reached the conclusion that they behaved with propriety, due diligence and in accordance with the applicable codes of practice in relation to all of the decisions outlined above, namely:
    (i) the decision to grant outline planning permission (paragraphs 33 to 55);
    (ii) the decision to enter into a conditional agreement to sell the Millwall Land to Renewal (paragraphs 56 to 159);
    (iii) the decisions to use CPO powers in relation to the Millwall Land (Chapter 4, paragraphs 160 to 293);
    (iv) the decision to pledge £500,000 to SCSF (Chapter 5, paragraphs 294 to 336);
    (v) the Council's support for Renewal's bid for a grant from GLA (Chapter 6, paragraphs 363 to 366);
    (vi) the investigation into the LSH brochure (Chapter 7, paragraphs 367 to 412); and
    (vii) the appraisal of the financial viability of Renewal's scheme and Renewal's ability to deliver it (Chapter 8, paragraph 414).

15. I have also concluded that (a) the Council was not misled by any misrepresentation, misinformation or withholding of information in relation to the decision to make the pledge of £500,000 (issue 4); and (b) there was no inadequacy in the Council's inquiry into the circumstances surrounding the production of the LSH brochure (issue 7).

16. I draw particular attention to my Overall Conclusion (Chapter 9, paragraphs 415 to 422), where I make some general observations about the purpose that I hope will have been served by this Inquiry. I express the hope that my findings will help to take the heat out of the debate that has taken place and enable all concerned to approach the question of how to bring about the much-needed redevelopment of the Site in a calm and measured way.

The Right Honourable Lord Dyson

November 2017

New Bermondsey/Surrey Canal Independent Inquiry - CORRECTION

A correction to the report was issued on 1st December 2017.

At paragraph 79 of the Report, Mr Andrew Barrow is described as a ‘property lawyer who was acting as a consultant to MFC’. By way of clarification, Mr Barrow was a practising solicitor from 1978 until 2009 when he retired from law and became a property consultant. He was acting as a property consultant to MFC, not as a legal adviser.

Paragraph 31 of the report states that MFC witnesses who attended an oral hearing had the benefit of the presence of a legal representative. This was in error. Mr Barrow attended the hearing but in the capacity of property consultant to MFC, not as a legal adviser.