

# **Andrew Jones BSc MRICS**

## **SUMMARY PROOF OF EVIDENCE**

**FOR PUBLIC INQUIRY COMMENCING ON 15 January 2019**

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### **APPEAL SITE**

Gondar Gardens Reservoir, Gondar Gardens, London, NW6 1QF

### **APPELLANT**

LifeCare Residences

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### **APPEAL**

Appeal against London Borough of Camden refusal of planning permission for;

Partial demolition of the existing reservoir, including the roof and most of the internal structure, and the erection of six 4-6 storey buildings and four 2-3 storey link buildings with common basement levels within the retaining walls of the existing reservoir to include 82 Self contained extra care apartments (class C2); a 15 bed nursing home (Class C2). Associated communal facilities including reception area, guest suite, lounge, restaurant, cafe, bar, library, exercise pool, gym, therapy rooms and cinema; Associated support facilities including staff offices, welfare and training spaces, storage, laundry, kitchen, cycle storage, car parking and plant areas and a site-wide biodiversity-led landscaping and planting scheme including external amenity space, drop off area, retention pond and slope stabilization and associated engineering works.

### **Planning Inspectorate Reference No's.**

APP/X5210/W/18/3198746

### **London Borough of Camden Application Reference**

2017/6045/P

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## Introduction

I am Andrew Jones BSc MRICS of BPS Chartered Surveyors. I am a Director of BPS a company I started almost 19 years ago. I have been involved in assessing viability for major developments for planning purposes since 2004 and act for 17 London Boroughs and 20 Unitary and District Council's in this capacity.

Since BPS was founded the practice has advised more than 70 local authorities and governmental bodies.

I have also been a part of MHCLG's Expert Consultation Panel concerning revisions to the NPPF and PPG.

I confirm that I have prepared this report in accordance with the Royal Institution of Chartered Surveyors Practice Statement and Guidance Note, *Surveyors acting as expert witnesses* (4<sup>th</sup> Edition), issued 2 July 2014.

### Statement of truth

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

A handwritten signature in black ink, appearing to be 'A. Jones', written in a cursive style.

**Signed Andrew Jones BSc MRICS  
Director BPS Chartered Surveyors**

## 1.0 Summary of My Evidence

- 1.1 The Appellant's sales model requires purchasers to make substantial payments of up to 30% of the value of the property on resale in return for relatively small savings on RPI increases in service charges and other service costs provided to occupiers of the scheme. This charge is referred to by the Appellant as a Deferred Membership Fee (DMF) however such exit fees are commonly referred to in the retirement sector as event fees.
- 1.2 My evidence considers this sales model and contrary to the arguments of the Appellant I demonstrate that:
- a) Event fees are well known in the retirement living sector and therefore in no way unique to the Appellant and as such value arising from their imposition should form a relevant part of the scheme's viability assessment.
  - b) I consider that the role of developer and operator can be and often is combined and therefore it is perfectly reasonable to consider that value generated by the operation of the scheme should form part of the assessment of scheme GDV. Indeed any notional separation of these functions should not in my view be a reason to assume that a developer would be willing to sell the scheme at a value less than its market worth.
  - c) I consider the absence of any information from the Appellant about the value of the event fee and its impact on anticipated sales values to provide an incomplete and understated view of scheme viability. I consider the inclusion of hypothetical value from ground rental income in no way comes close to reflecting the sums of money generated by the DMF provisions.
- 1.3 Based on information available concerning Battersea Place, a recent scheme completed by the Appellant, it can be seen that projecting this information onto the Appeal scheme indicates that the DMF provisions are worth at least a further £18m over the GDV identified in the Appellant's appraisal when these provisions are valued over a 23 year period and a lot more when considered over the 150 year life of the residential leases.

- 1.4 I also demonstrate that the latest sales values provided by Alder King are based on much lower value sheltered housing schemes whose specifications and locations offer no fair comparison to the appeal scheme. I consider that the Appellant's sales evidence serves to mask the impact of the DMF provisions and this is apparent when comparisons are made with other luxury retirement schemes in locality where event fees are not being sought.
- 1.5 On this basis my appraisal confirms there is a more than adequate development surplus to fully comply with the Council's affordable housing policies especially in light of the low benchmark land value which has been agreed with the Appellant.
- 1.6 It can be seen from the chronology of reports and correspondence set out in Annex 11 that the Appellant has only reluctantly and recently agreed to provide some information concerning the impact of the DMF provisions and financial information concerning Battersea Place post refusal of consent. It is quite apparent that the Council in refusing consent was fully entitled to consider that the absence of this information at the time of the decision meant the Appellant's financial assessment lacked transparency. It can be seen from my proof that the evidence remains absent and in my view little or no weight can be placed on the Appellant's viability assessment.

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## Introduction

I am Andrew Jones BSc MRICS of BPS Chartered Surveyors. I am a Director of BPS a company I started almost 19 years ago. I have 27 years post qualification experience. My initial training was with Jones Lang Wootton, now Jones Lang LaSalle; later in my career I was appointed a Partner in the Consultancy division of Donaldsons, now DTZ. I have considerable experience of a wide range of major and minor developments from mixed use town centre schemes through to large housing estate developments. I have advised several national house builders in relation to scheme appraisals and financial structuring of transactions.

I have led negotiations on the financial terms of major development projects for several local authorities (as land owner and facilitator) including social housing schemes, regeneration projects and other town centre re-development schemes.

I have been involved in assessing viability for major developments for planning purposes since 2004 and act for 17 London Boroughs and 20 Unitary and District Council's in this capacity.

Since BPS was founded the practice has advised more than 70 local authorities and governmental bodies.

I have also developed bespoke financial appraisal tools, including a framework appraisal tool for L.B. Tower Hamlets to assist the authority in computing development viability and deliverable planning obligations as part of major development master planning in London Docklands. This predated the Three Dragons Toolkit by several years.

I am currently working with several local authorities including a number of London boroughs in assessing the financial viability of a wide range of residential led developments submitted for consideration through the planning process. Where appropriate I have also been involved in negotiating Section 106 agreements for the delivery of affordable housing and other contributions in relation to a number of major applications.

I have also been a part of MHCLG's Expert Consultation Panel concerning revisions to the NPPF and PPG.

I confirm that I have prepared this report in accordance with the Royal Institution of Chartered Surveyors Practice Statement and Guidance Note, *Surveyors acting as expert witnesses* (4<sup>th</sup> Edition), issued 2 July 2014.

### **Statement of truth**

I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

A handwritten signature in black ink, appearing to be 'AJ', with a stylized flourish extending to the right.

**Signed Andrew Jones BSc MRICS  
Director BPS Chartered Surveyors**

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- Annex 2 Copy Leases - Battersea Place**
- Annex 3 My Calculation of the Value of the DMF**
- Annex 4 Market Research of Luxury Retirement Developments**
- Annex 5 Law Commission report – Event Fees in Retirement Property.  
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- Annex 14 Comparison of Battersea Place Sales Values with Local Market Sales**
- Annex 15 Land Registry Title- Gondar Gardens**

## 1.0 Scope of my Evidence

1.1 The Council in its decision notice of 30 January 2018 cited 16 grounds for refusal. My evidence is intended to address reason three which is set out below:

*3. The proposed development, without the provision of affordable housing, would fail to maximise the contribution of the site to the supply of affordable housing in the borough, contrary to policy H4 (Maximising the supply of affordable housing) of the London Borough of Camden Local Plan 2017, policy 3.12 of the London Plan 2016 and Policy 1 of the Fortune Green and West Hampstead Neighbourhood Plan 2015.*

1.2 My company has been retained by the Camden Council to provide advice in respect of development viability in a planning context since 2006. I have therefore been involved in this project since the planning application was first submitted.

1.3 The Appellant's affordable housing offer at the point the Council refused consent was nil. This was subsequently revised to a cash sum of £710,000 offered in a letter drafted by Rapleys, the Appellant's viability advisors, dated 13 September 2018. This offer is considered by the Council to be still well below the actual viability of the development as evidenced by my original report to the Council of 11 January 2018<sup>1</sup>.

1.4 It is apparent the Appellant acknowledges its terms of sale in respect of the proposed apartments will generate what is commonly referred to as event fees and that these have a substantial value. However for a variety of reason the Appellant considers the value of these fees to be personal to the Appellant and outside of the normal considerations of scheme viability.

1.5 I consider the Appellant's approach to be inconsistent with National Planning Policy Guidance (NPPG) and that proper application of the guidance demonstrates the scheme to be capable of delivering a fully policy compliant contribution of £12,758,093.75 or the on-site equivalent.

### **Elements to Consider**

1.6 In contesting the reasons for refusal the Appellant has raised five questions which it considers bear upon this element of the decision these being:

a) Does the scheme provide C2 or C3 use and what are the implications for affordable housing

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<sup>1</sup> See Annex 9

- b) If affordable housing is to be provided by the scheme should it be provided on site or off site
  - c) If affordable housing should be provided off-site what should the financial contribution be
  - d) Has the appellant used industry standard practices and methodology in assessing the viability of the proposed development
  - e) Should the deferred membership monies be included in the viability appraisals
- 1.7 Evidence provided by John Diver, the Council's planning Case Officer for this application, will address questions a) and b). Point c) has now been agreed and forms part of the Viability SOGC and the policy compliant in lieu contribution is identified as £12,758,093.75.
- 1.8 My evidence seeks to address questions d) and e). This focusses on the proposed terms of sale of residential units within the scheme. I demonstrate that these terms have the effect of generating substantial additional revenue from this scheme than has been allowed for in the Appellant's appraisals.
- 1.9 I also highlight the relative immaturity of the luxury retirement housing market and the very limited evidence base that exists to demonstrate the impact of the sale terms on anticipated initial sales revenue.
- 1.10 In addressing the above I examine the mixture of approaches taken by developers to generating revenue from schemes and I attempt to quantify the financial impact of these differences. In looking at this aspect I also draw upon the findings of the Law Commission Report *Event Fees in Retirement Properties* which was published 20 March 2017<sup>2</sup>. This report highlights the controversy surrounding event fees and also draws upon the 2013 Office of Fair Trading investigation. The OFT found that terms in leases imposing this type of event fee were potentially unfair contract terms, contrary to what is now the Consumer Rights Act 2015.
- 1.11 The Law Commission Report led to a House of Commons Briefing Paper Number 05994, 22 September 2017 Leasehold retirement homes: exit/event fees which is also set out in Annex 3. I have also included a screen shot from the web site of the National Association of Estate Agents (NAEA) concerning event fees which it describes as *common in specialist housing for older people*. I have also included an extract from the BBC reporting on this issue.
- 1.12 The Appellant's argument is that its approach is non-standard and therefore personal to the Appellant and in this context should not form part of the considerations concerning scheme viability. The argument itself is not accepted on the construction, see paragraph 7.22. Instead it promotes what it considers to be a "standard" approach and seeks to substitute this for the actual approach it

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<sup>2</sup> See Annex 3

intends to follow when computing scheme GDV for viability purposes. I consider this argument itself flawed see the discussion at 7.21-7.24

- 1.13 I then consider how an assessment of scheme GDV incorporating the additional value arising from the proposed event fees should be calculated and be treated in the assessment of scheme viability to demonstrate the Appellant is proposing an affordable housing scheme substantially below what the scheme can viably deliver.

## 2.0 The Appeal Scheme

- 2.1 In summary the appeal scheme comprises 82 self-contained units and a 15 bed nursing home. The Design & Access Statement seeks to define the self contained apartments as:

*LifeCare Residences (LCR) has developed its product over a 35 year period with the primary aim of providing an integrated approach to lifestyles, healthcare and support services that is responsive to the varied and changing needs of older people. An integral part of this concept is the immediate availability of care if required, however, it is intended to be subtle and kept in the background in order to maintain the residential feel of the development<sup>3</sup>.*

- 2.2 The Design & Access statement in offering further explanation about the concept makes the following additional statement:

*This model has been developed successfully in the UK at LCR's existing communities in Dorchester and Nursling (Southampton) and more recently at Battersea Place. Battersea Place is the first development of this type anywhere in London*

- 2.3 The development at Battersea Place was completed in four stages and handed over between April and July 2016<sup>4</sup>. It has been referred to by Rapleys (the Appellant's advisors on planning viability) in their FVA of 27 July 2017 as being the most relevant sales evidence because it reflects the sales model adopted by the Appellant:

*Battersea Place development, which as the only current extra care for sale scheme in London is the best and only comparable. We have disregarded Pegasus Life and Hill/Hanover due to their model being very different<sup>5</sup>.*

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<sup>3</sup> Section 1.0 Of the Design & Access statement prepared by Robin Partington & Partners dated October 2017

<sup>4</sup> See paragraph 3.3 Alder King's Report to LCR dated 8 August 2018

<sup>5</sup> Page 2 Rapleys FVA dated 27 July

### 3.0 The LCR Sales model

- 3.1 Savills 2017 report<sup>6</sup> in advising on the value of the proposed apartments for the Appellant makes the following statement:

*We have assumed a 30% deferred management fee in line with your Battersea Place scheme to allow for the service charge to be reduced to assist affordability.*

- 3.2 This statement needs some explanation. In providing this I have been reliant on a document set out in *Annex 1 Battersea Place Key Financial terms*<sup>7</sup>.

- 3.3 I understand this document forms part of the marketing material provided to prospective purchasers of the Battersea Place scheme and reflects the proposed basis of sale intended for the Appeal scheme at Gondar Gardens.

- 3.4 I have provided a summary of the key terms below. The document confirms that purchasers will make three payments:

- a) A purchase price for the unit
- b) An annual service charge
- c) A deferred Membership Fee (DMF)

- 3.5 Payment a) is relatively self-explanatory and comprises a payment for the purchase of a long lease of 150 years.

- 3.6 Payment b) represents a fixed service charge which is subject only to increases to reflect changes in the Retail Price Index (RPI). The service charge actually paid by the purchaser is however fixed to the initial annual payment charge with no additional RPI increases passed on to the purchaser for the duration of their residence.

- 3.7 Payment c) becomes due when the apartment is sold. Purchasers are offered two options:

#### **Option 1**

A fee is payable to the Appellant on the following scale

- l) If the property is sold within 1 year a payment equivalent to 10% of the original sale price is made

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<sup>6</sup> See Annex 7

<sup>7</sup> This was provided to us by Nick Fell of Rapleys in an email dated 6 December 2017

- II) If the property is sold within 2 years the fees is 15% of the original sale price is made
- III) If the property is sold within 3 years or more then 20% of the original sale price is paid

In addition should the property have appreciated in value from the point of original purchase to point of re-sale 50% of any capital gain made will be paid to the Appellant

## **Option 2**

A fee is payable to the Appellant on the following scale

- I) If the property is sold within 1 year a payment equivalent to 10% of the sale price is made
- II) If the property is sold within 2 years the fees is 20% of the sale price is made
- III) If the property is sold within 3 years or more then 30% of the sale price is paid

No additional payment is required under this option.

- 3.8 It is to be assumed that when creating these options the Appellant took the view they would deliver broadly similar cash payments.
- 3.9 Annex 2 includes four copy leases I have sourced from the Land Registry. The identity of the purchasers has been redacted. It can be seen that each of the leases integrates the options outlined above as key terms of the lease. In effect the obligation to make the deferred membership fee is cyclical and repeats at every subsequent property sale.
- 3.10 It should be noted that the lease also contains restrictions concerning the age of purchasers, (65), their mental and physical health. There are also restrictions concerning shared tenancies and identified tenants which appear geared to preventing changes of tenancy other than through sale. The lease also includes a requirement for the Appellant to retain exclusive marketing rights for a period of 6 months and joint sale rights thereafter.
- 3.11 The Office of Nations Statistics release data concerning life expectancy in the UK. The most recent release covers the period 2015 to 2017. This ONS concludes:

*Life expectancy at birth in the UK did not improve in 2015 to 2017 and remained at 79.2 years for males and 82.9 years for females.*

- 3.12 The units at Battersea Place are sold to an age restricted market of a minimum 65. There is no restriction above this age. Therefore assuming each unit was sold to 65 year olds it could be expected that there would be a resale on the following periods assuming average lifespan:

	Re-sale period	Total resales over lease
Men	14.20	x 10.56
Women	17.9	x 8.38

- 3.13 Clearly the frequency accelerates the older and more infirm the purchaser.

- 3.14 The deferred membership fee (DMF) is classed by the Law Commission as an event fee. The following definition is taken from the Law Commission Report *Event Fees in Retirement Properties* published 20 March 2017<sup>8</sup>:

*A fee payable under a term of or relating to a residential lease of a retirement property on certain events such as resale or sub-letting. Event fees may be referred to by a variety of names including exit fees, transfer fees, deferred management fees, contingency fees and selling service fees.*

- 3.15 This report highlights a number of important conclusions concerning these event fees which are set out below:

### **CONTROVERSY AROUND EVENT FEES**

#### ***Disadvantages and benefits of event fees***

*1.8 Event fees are controversial and often leave leaseholders frustrated and angry. Such fees may be triggered in circumstances which a leaseholder may not expect or which come as a surprise. Event fees are typically a deferred payment made at the end of a person's period of occupation; however, they may be broadly drafted. For example, some event fees are payable on any "disposition" or "material change in occupation". A leaseholder may expect to pay an event fee when they sell the property. However, in certain cases event fees can also be charged when the property is inherited or mortgaged, when a spouse, civil partner or carer moves in, or when an existing resident moves out.5 In this report we refer to these situations as "unexpected circumstances". Event fees may also be payable on sub-letting, regardless of the length of the sub-lease.*

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<sup>8</sup> See Annex 5



*1.9 Event fees and their financial consequences are not always clear to consumers when they are deciding whether to purchase a retirement property. An event fee of 1% and an event fee of 1% for each year of residence may have markedly different financial consequences. Our research indicates that event fees and such consequences are often not explained clearly enough to consumers.*

*1.10 Additionally, event fees may exploit consumers' "behavioural biases", which means that consumers may not take event fees into account when making a decision to purchase a retirement property. For example, consumers give more attention to immediate costs than to future costs. They fail to adjust their assessment of the total offer when future costs are revealed. We believe that it is paramount that consumers are provided with clear information about any event fees at an early stage in the purchase process to counteract these biases.*

3.16 In summary the terms of such event payments can frequently be unclear to purchasers and may not always be reflected in the decision to purchase retirement homes. I need to also be clear that I am not seeking to infer whether the Appellant does or does not comply with the Law Commission's recommendations concerning transparency of charging to the residents/future residents of the scheme, nor am I seeking to comment on whether such charges should or should not be charged.

3.17 My points in drawing attention to the Law Commission report are:

- a) Such deferred payment schemes are not new or in any sense unusual in the retirement housing market or indeed personal to the Appellant. This is further underpinned by other documents set out in Annex 3 commenting on the well-known practice of charging these fees in this sector.
- b) The Law Commission report clearly highlights concerns where such mechanisms are deemed to be unfair and promotes adoption of a code of practice to be approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.
- c) The proposed reforms include a prescribed cap, the purpose of the cap is intended to ensure that an event fee paid on sub-letting or change of occupation must be proportionate. It is designed to ensure that the landlord/operator does not receive a windfall.
- d) The code of practice also recommends that marketing material clearly identifies the financial costs and benefits associated with the event fee and that this is fully transparent to the purchaser.

## 4.0 Assessing the Financial Benefit of the LCR Sales model

4.1 It will be seen from Annex 11 that there has been significant number of exchanges with the Appellant's advisors requesting information. The purpose of my company's communications can be summed up as follows:

A) To secure information about the proposed terms of sale of the apartments in particular the operation of the DMF and the likely financial benefit this generates.

B) To secure information about the proposed quantum of service charge, the anticipated services to be provided and the costs of providing those services to determine the whether the proposed service charge represents a further source of revenue to the Appellant. Accounts for Battersea Place for the period ending march 2018 show a net operating profit before tax of £2m down from £7m for the previous financial year.<sup>9</sup>

C) Based on B) above to determine the net benefit arising to the Appellant from the DMF provisions relative to the RPI cost increase in services met by the Appellant.

4.2 It will be seen from Annex 11 that substantive information has only been provided as recently as 13 September 2018 with information continuing to be provided up to 6 November 2018. At the time of the application the Appellant resisted providing any relevant information concerning the DMF and service charge as evidenced from the following extract from a letter from Nick Fell of Rapleys to Kelly Donnelly of my practice dated 18 December 2017 which is set out in full in Annex 11

*Further to our recent correspondence and telephone conversation last Friday 15th December I would like to confirm my client's position with respect to your request for further information regarding LCR's accounts, assumptions regarding service charges, annual maintenance charges and sinking funds at their existing scheme at Battersea Place. I understand that you would like this information in order to carry out a Net Present Value (NPV) calculation of the 'Deferred Management Fee' (DMF) that is agreed between the Operator of the Development and the Purchasers of the flats. You then intend to extrapolate from this information a NPV calculation of the proposed DMF for the proposed units at Gondar Gardens and include this in your Gross Development Value.*

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<sup>9</sup> See Annex 13 for Battersea Place Retirement Village Ltd Report and Financial Statements year ended March 2018

*It is our position that for the purpose of assessing the viability it is not appropriate to carry out a NPV calculation of the DMF and include this in your Gross Development Value. As set out in the attached Key Financial Terms summary for Battersea Place you can see that the Operator of the completed scheme is offering a product to the market that allows residents to cap their service charge, domiciliary care charges and nursing home fees. This means that occupiers of the flats can budget for a set amount without significant annual price increases. They also do not pay ground rent or additional contributions towards sinking funds. As a result the operator absorbs these additional costs but agrees with the occupiers that they will recover these costs through the deferred management fee when the flats come to be sold at some point in the future. As we have previously discussed if LCR decided not to implement a DMF with the purchasers but instead charged a much higher annual service charge for all of the management costs I do not believe that you would be seeking to capitalise this and include it in the GDV.*

*The DMF is part of LCR's a business model and is a commercial agreement that the operator and purchaser of the flats enter into. The important point is that the original purchase price of the flats is at Market Value and it is against this that we should be assessing viability.*

*I appreciate that you have taken a different view on the application of the DMF in your appraisal; however, it remains our position that this should not be included and as such we will not be engaging you further on this point. We otherwise remain committed to reaching an agreement with you on the other elements of the viability appraisal submitted as part of the planning application; we have sought the additional information from Savills and the applicant and hope to be able to provide these to you this week. I shall look forward to hearing from you further once the above has been reported back to your client.*

- 4.3 At the point of writing this document the following information is still not available to me:
- a) The proposed service charge which is anticipated to be levied at the appeal scheme
  - b) The costs to the Appellant of providing those services
  - c) The anticipated RPI costs to be met by the Appellant on these services as part of the DMF arrangement
  - d) The net revenue/operating profit arising to the Appellant on providing those services
  - e) The Appellant's assessment of the net value of the DMF

- f) The Appellant's assessment of the Earnings Before Interest Tax, Depreciation & Amortization (EBITDA) from running the development post completion
- 4.4 In consequence of this information shortfall I have had to work with what information has been provided to me which mainly relates to the Battersea Place development undertaken by the Appellant which can be characterised as headline in nature as such I have not been able to make any estimate in consideration of:
- a) The extent of any operating profit included within the proposed service charge for Gondar Gardens
  - b) Therefore the value a notional operator might be willing to pay for the right to provide the proposed services
- 4.5 Consequently my assessment of scheme value excludes this component but this should not be interpreted as meaning the operation of the development has no value outside of DMF receipts or that it should not be a relevant factor in determining viability for the purposes of establishing the appropriate level of affordable housing delivery.
- 4.6 I consider the Appellant's approach in this respect to fall significantly short of the requirements set out in the NPPF concerning disclosure where in accordance with paragraph 57

*57 It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.*

This is echoed by the following extracts from the NPPG:

*Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.*

*Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return.*

Any viability assessment should be supported by appropriate available evidence informed by engagement with developers, landowners, and infrastructure and affordable housing providers. Any viability assessment should follow the government's recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available.

Emphasis added

- 4.7 The call for transparency of information is also set out in the Mayor's SPG evidenced from the following extracts:

*1.9 This SPG sets out in what circumstances a viability assessment will be needed to support an application, what information must be included in the appraisal, and makes clear that the information should be treated transparently.*

- 4.8 The Mayor also considers there to be higher information threshold in relation to schemes which fail to make a significant affordable housing contribution such as the Appeal scheme:

*1.16 The further any development falls short of the relevant affordable housing threshold, the greater the importance of a robust viability assessment to demonstrate why a lower level of affordable housing is necessary for the scheme to go ahead, and the more that should be done to increase the affordable housing contributions during the implementation of the scheme should viability improve.*

- 4.9 In failing to provide the requested information Rapleys appear to have relied solely on their assessment of whether the information was of relevance to viability as evidenced from letter of 18 December 2017 extracted above. The Mayor's guidance highlights why failure to disclose requires a fuller justification:

*1.23 If an applicant wishes to make a case for an exceptional circumstance in relation to an element of their assessment, they should provide a full justification as to the extent to which disclosure of a specific piece of information would cause an 'adverse effect' and harm to the public interest that is not outweighed by the benefits of disclosure*

- 4.10 Given the limitations of the information available to me there is no clear method to appraise the value of the DMF. Some of this ambiguity arises from the Appellant's failure to engage in this exercise and to fully disclose all relevant information, but also in part because the period of and quantum of payments is dependent on the initial age of residents, their life expectancy or other reasons for potential disposal of the property.

- 4.11 I have received no indication of the likely service charge levels which might be charged by the Appellant in respect of the appeal scheme, therefore precise

computation of the benefits of the DMF are difficult to determine. This lack of clarity was a considerable issue at the point the Council made its decision to refuse consent.

4.12 The 2018 service charge schedule set out in Annex 8 and provides no breakdown of costs of service relative to operating profit. All the schedule provides is a group total for a range of services some of which are relatively ambiguous in the context of an annual service charge such as:

- *Provision of the necessary means for the tenants to receive adequate TV signal*
- *VAT on costs incurred with providing the services*

4.13 In my view however the terms of sale create the clear potential to generate sales revenue which far exceeds the RPI costs “saved” by purchasers my reasoning behind this statement is set out below.

4.14 The average unit price of the appeal scheme based on Alder King's proposed values<sup>10</sup> is - £1,176,862 this contrasts with Savills earlier assessment of unit values of £1,135,037<sup>11</sup>. A difference of just 3.55%

4.15 I have looked at the service charge for Battersea Place and note the service charge expenditure for the year ending March 2018<sup>12</sup> is £1,801,141. This equates to £17,319 per unit based on 104 units in the scheme. I acknowledge the service charge may be different in respect of the appeal scheme but I have been directed to Battersea Place as providing the relevant basis for comparison. This is also the only information I have been provided concerning prospective service charges, which may also include other elements of profit which is not effectively disclosed.

*Our reflected premium is in line with the premium achieved at your Battersea Place development, which as the only current extra care for sale scheme in London is the best and only comparable.*<sup>13</sup>

4.16 RPI as at October 2018 shows a monthly rate of increase of 0.14% equating to an annual rate of 1.69% as issued by the Office for National Statistics.

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<sup>10</sup> See Annex 6 A letter from Rapleys to BPS dated 13 September 2018 incorporating a report from Alder King dated 1 July 2018.

<sup>11</sup> See Annex 7 Rapleys 27 July 2017 incorporating a report from Savills dated 25 July 2017

<sup>12</sup> See Annex 1

<sup>13</sup> See annex 7 Page 2 Savills report 25 July 2017

- 4.17 Assuming service charges at the appeal scheme would be broadly similar to Battersea Place. The annual RPI increase to an individual unit service charge would be £293. If a unit was purchased and sold within 1 year in the appeal scheme, under option 2 the DMF would equate to 10% of the units value which would equate on Alder King's figures to a payment of £117,686. A simple comparison of these figures shows a significant net financial benefit to the Appellant of £117,393.
- 4.18 Extending this comparison to a three year period and assuming RPI was 1.69% throughout this period the RPI service charge increase would represent a cumulative figure of £1,776 on a per unit basis. Based on option 2 a DMF equating to 30% of the value of the property would be payable amounting to £353,058 based on Alder King's average unit price. Again a simple comparison of these figures shows a net benefit to the Appellant of £351,282
- 4.19 I have also looked at the key financial terms of the other two UK schemes developed by the Appellant. I have no information regarding relevant service charges but note that the Grove Place Hampshire scheme operates similar DMF provisions to the Battersea Place scheme and as propose at Gondar Gardens, whereas the Somerleigh Court, Dorset scheme imposes only a 1.5% event fee on sale of the property. The relevant key financial terms of sale are set out in Annex 12.
- 4.20 I have provided an assessment of the value of the potential DMF for the appeal scheme on a discounted cashflow basis<sup>14</sup> as amounting to over £18m.

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<sup>14</sup> See Annex 3 for my detailed calculations and assumptions

## 5.0 Relevance of DMF to Establishing Scheme Viability

- 5.1 My view is that the Appellant through seeking to omit the financial impact of the DMF provisions significantly understates the true value of the proposed development and in consequence this serves to understate scheme viability and thereby the level of affordable housing contribution the scheme can viably support.
- 5.2 I consider the Appellant's approach to assessing viability fails to comply with the NPPF and NPPG issued in July 2018 as highlighted from the extracts below. The Appellant's Statement of Case in essence claims that the sales terms imposing the DMF are unique to the Appellant and that in consequence scheme value should be based on a more generic approach to establishing scheme GDV. Furthermore the Appellant assumes an artificial separation of identifies and functions between the land owner, developer and operator of the scheme in the belief this separation creates a further reason why DMF should be ignored for the purposes of assessing scheme viability.

*5.3.17 The Appellant has used best practice to assess the viability of the scheme. Reference will be made to the Financial Viability in Planning Guidance Note published by the Royal Institution of Chartered Surveyors and the industry benchmarks contained therein. Reference will also be made in evidence to the specialist nature of the retirement housing sub-sector and the proper distinctions to be made between the functions of the landowner, the developer and the operator of the scheme. The evidence will show that these distinctions are highly relevant when assessing the viability of proposals in this specialist sector.*

- 5.3 The Appellant's position is further amplified by the following extract from Rapleys' letter of 13 September (Page 3)

*The Deferred Management Fee (DMF) is a point of concern for BPS. We have set out our position on this on a number of occasions and explained that the assessment of the scheme for viability purposes should be based on current day Market Values for the sale of the Assisted Living Extra Care apartments and investment value of the care bed units and that the DMF is not relevant in the assessment of the residual land value of the proposed scheme. The DMF relates to a commercial agreement between the purchasers of the apartments and the operator*

- 5.4 I consider the Law Commission Report, House of Commons Briefing Paper, NAEA guidance on event fees and the BBC report <sup>15</sup> concerning event fees to

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<sup>15</sup> See annex 3 for these documents



clearly illustrate that event fees are a well-established feature of the retirement homes industry.

## 6.0 Would Separation of Interests Materially Impact Scheme Viability?

- 6.1 It is evident from my analysis set out in Annex 3 and section 3.0 above that the provisions for charging a DMF in the individual leasehold interests generate a clear and very significant financial benefit to the Appellant.
- 6.2 The Appellant argues that viability should assume that in all cases the functions of land owner, developer and operator should all be considered as separate and effectively unrelated. Based on this presumption the Appellant argues that that value arising from DMF payments would in effect be solely to the benefit of the notional operator and have no impact on value received by the notional developer, assuming this split of functions. I consider this approach to be fundamentally flawed on two grounds:
- a) The assumption that there must be a separate land owner, separate developer and separate operator assumes that these roles can never be combined. In reality there are a significant number of retirement developers who successfully combine these roles, including Pegasus Life, McCarthy & Stone, Churchill Retirement Living being just some examples of this common model. It would therefore be potentially artificial and incorrect assumption to assume these roles must never combine or more importantly, to assume they are unrelated financially.

Consequently in my view an assessment of viability based on the combined roles or even a separate roles but acknowledging there is a financial relationship is entirely consistent with the sector and also the intentions of the Appellant.

- b) Even allowing for an assumption of role separation I see no reason why a developer in constructing a scheme where sales values are predicated on terms which secure event payments and which would generate the operator a net sum in excess of £18m on a current day basis<sup>16</sup>, would chose to accept a level of payment from an operator for ownership of the scheme which did not directly reflect this value, especially if the market value of individual units was effectively suppressed because of the imposition of these terms. The notional purchase price of the scheme by the operator should therefore reflect the units full market value whether this comprises suppressed market values and DMF or simply unrestricted market values i.e. leases sold without these limitations.

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<sup>16</sup> See my calculation in Annex 3

The assumption of a sale to a notional operator has not been adopted by Rapleys in their own appraisal as they clearly identify an assumption of 18 months<sup>17</sup> to allow individual sales to be completed post completion. This period would not be necessary if there was a single sale to an operator and highlights a selective approach to establishing the viability of the scheme.

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<sup>17</sup> Page 10 Rapleys report 27 July 2017

## 7.0 Can Future Income Form Part of the Assessment of GDV?

- 7.1 It is apparent from section 4 above that Rapleys consider the income from DMF to not be relevant in assessing the residual value of the scheme when establishing its viability as this

*is a commercial agreement between the purchasers of the apartments and the operator.*

- 7.2 I consider any financial event fee of the scale envisaged by the Appellant's DMF will have a material impact on achievable unit values. This assumes purchasers are well informed and well advised on the DMF implications consistent with the recommendations of the proposed Code of Practice on marketing event fees made by the Law Commission. More specifically the Code of practice advocates that marketing material provides a clear comparison of the financial costs of such event fees in comparison to the benefits such as savings on service charge RPI costs.

- 7.3 To test this opinion I have set out in Annex 4 an assessment of asking prices for a number of comparable retirement living schemes which are being marketed without DMF exit based fee structures and which have very similar specifications and level of facilities to the appeal schemes. It can be seen that unit pricing is at least 30% above Alder King's estimate of unit values for the appeal scheme which suggests either Alder King has substantially undervalued the proposed units or the discount they have applied reflects the impact of the DMF provisions.

- 7.4 I have also looked at sales of properties in the locality surrounding Battersea Place<sup>18</sup> to determine the relative pricing of the units in this scheme to the surrounding non-retirement private residential market. It can be seen from my analysis that despite the Battersea Place units being new build, offering a very level of on-site facilities as well as a range of services, unit prices are broadly on par with second hand units of similar sizes which benefit from no additional facilities or services. This further suggests the imposition of DMF terms has a depressing effect of unit sales values.

- 7.5 My analysis suggests one or a combination of the following factors:

- a) The market values of units subject to significant event fees such as proposed by the Appellant are below the value of schemes which are not subject to such terms.

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<sup>18</sup> See Annex 14

- b) The costs of the scheme are excessive when compared to the proposed values being generated. It is relevant to note that the costs are very comparable to the Pegasus Life scheme on Fitzjohn's Avenue where asking prices are 54% - 68% higher than this scheme. The Mayors Housing and Viability SPG offers the following guidance in this respect.

*3.23 There should be a clear alignment between a development's specification, assumed build costs, and development values, and there should be consistency with comparable sites. Applicants should submit elemental cost plans that are consistent with the level of detail provided in the drawings in support of planning applications (i.e. RIBA Plan of Works Stage C). Wherever possible such assessments should be benchmarked against other similar projects. Where an appraisal is based on current day values, costs should not include build cost inflation*

This guidance suggests the values for this appeal scheme are not in step with its costs when compared to the Pegasus life scheme.

- 7.6 I note Alder King has relied on sales evidence for schemes including Battersea Place. The other seven sales suggested by Alder King as relevant are all are McCarthy and Stone developments which cater for a very different segment of the market to the Appellant. While McCarthy and Stone provide some level of communal space and dining facilities, there are no luxury amenities as seen at the Lifecare Residences and Pegasus Life developments; such as gyms, swimming pool, events co-ordination and convenience of on-site nursing home. There are also no similarities in open market values for the locations of the sites specified by Alder King and many of the sites are located on the outskirts of London, or even as far as Kent, which would not attract the same values as Hampstead. Facilities offered by McCarthy & Stone typically comprise a communal seating area and wardens room. McCarthy & Stone typically charge no more than 1% of unit value as an exit fee.
- 7.7 I consider these schemes, with the exception of Battersea Place to not be representative of the market aimed at by the Appellant's proposed scheme and consequently of little value in making relevant comparisons. Furthermore the only relevant scheme, Battersea Place, reflects the same exit fees as the appeal scheme, therefore it provides no relevant basis from which to determine whether units in the appeal scheme if not subject to DMF provisions would achieve a higher price.
- 7.8 My analysis is constrained to examination of asking prices due to the absence of actual sales data for schemes providing retirement housing at the luxury end of the market in this locality. My analysis does however indicates a substantial

discount to other luxury retirement living schemes and at a scale which simply can't be explained by the difference in asking terms compared to sales values..

- 7.9 The discount to market value was also apparent in Savills<sup>19</sup> assumptions when providing scheme values to inform Rapleys 2017 assessment of viability as evidenced by the following extract from Savills report setting out their valuation assumptions:

***Assisted Living apartments –***

*□ We have estimated based on current market conditions that the gross development value of the proposed assisted living apartments is £93,073,000.*

*□ This equates to an average of £1,122/sqft. Our reflected premium is in line with the premium achieved at your Battersea Place development, which as the only current extra care for sale scheme in London is the best and only comparable. We have disregarded Pegasus Life and Hill/Hanover due to their model being very different.*

*□ We have assumed a 30% deferred management fee in line with your Battersea Place scheme to allow for the service charge to reduced to assist affordability.*

*□ We are concerned that the lack of car parking will be an issue for sales rates, and believe that the buyer ages will be similar to Battersea Place – with buyers in need of care and ready to relinquish car ownership. We have assumed similar transport solutions as Battersea Place.*

Emphasis Added

- 7.10 Savills approach contrasts with the approach taken by Alder King whose views on unit values now replace those of Savills in advising the Appellant. In reading Alder King's report of August 2018 it is apparent their analysis of sales evidence makes no differentiation between schemes where event fees are charged and those where it is not. I consider this to be a significant oversight.
- 7.11 I do however note that despite Alder King making no allowance for the impact of DMF on unit values compared to Savills their unit values are within 3.55% of those proposed by Savills. A very small margin of difference and one which suggests a broadly similar level of discount though no discount is overtly stated in the Alder King valuation report.
- 7.12 In approaching my estimate of scheme GDV I have not sought to measure the precise impact on individual unit values arising from the imposition of the DMF. I have simply used the information available from Battersea Place to compute

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<sup>19</sup> Savills report to the Appellant 25 July 2017

the financial advantage available from that scheme overall as a percentage of overall sales values and to apply a similar percentage uplift in capital value to Alder King's sales values. This exercise is limited to the information available to me from the Appellant which has not sought to provide its own estimate of the DMF value.

- 7.13 Rapleys rely for their approach on their interpretation of RICS Guidance Viability in Planning 2012 to suggest the DMF impact and associated value can be ignored. I note following significant criticism of this guidance in the High Court ruling set out in *Parkhurst Road Ltd v Secretary of State for Communities And Local Government & Anor* [2018] EWHC 991 (Admin) (27 April 2018) In this case Justice Holgate made the following recommendation;

*147. It might be thought that an opportune moment has arrived for the RICS to consider revisiting the 2012 Guidance Note, perhaps in conjunction with MHCLG and the RTPI, in order to address any misunderstandings about market valuation concepts and techniques, the "circularity" issue and any other problems encountered in practice over the last 6 years, so as to help avoid protracted disputes of the kind we have seen in the present case and achieve more efficient decision-making.*

- 7.14 The RICS are now reviewing this guidance as indicated in a recent consultation exercise concerning mandatory professional statement on conduct and reporting which suggests the guidance is considered to be out of step with current NPPF and NPPG:

*The second,[consultation] to follow, will be a full review of Financial Viability in planning (1st edition), RICS guidance note 2012, to reflect the changes in the National Planning Policy Framework (NPPF) 2018 and Planning Practice Guidance (PPG) 2018.*

- 7.15 In relying on guidance which is widely seen in the industry as flawed I consider Rapleys have overlooked much more recent Policy and relevant guidance in the July NPPF and NPPG when identifying the correct policy approach. The majority of guidance in relation to viability is set out in the NPPG but the following extract from the NNPPF puts this guidance in perspective:

*57. Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and*

*any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.*

- 7.16 Noting there is a negative impact on initial sales values arising from the DMF provisions, I consider it entirely consistent with assessing viability in accordance with the NPPG that the terms of sale are properly and fully taken into account in the assessment of scheme GDV. In reaching this conclusion I highlight the following extract from the NPPG.

***Should viability be assessed in decision-taking?***

*Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.*

*Such circumstances could include, for example where development is proposed on unallocated sites of a wholly different type to those used in viability assessment that informed the plan; where further information on infrastructure or site costs is required; where particular types of development are proposed which may significantly vary from standard models of development for sale (for example build to rent or housing for older people); or where a recession or similar significant economic changes have occurred since the plan was brought into force.*

*Paragraph: 007 Reference ID: 10-007-20180724*

*Revision date: 24 07 2018*

*Emphasis added*

- 7.17 In my opinion this paragraph references the possibility that viability may vary from standard models and that the emphasis is on the applicant to demonstrate their impact on viability. In this regard the approach taken by Rapleys and Alder King falls short of this requirement through their seeking excluding the value generated by the DMF. Looking more specifically at whether income streams should be included I reference the following paragraph from the NPPG:



**How should gross development value be defined for the purpose of viability assessment?**

*Gross development value is an assessment of the value of development. For residential development, this may be total sales and/or capitalised net rental income from developments. Grant and other external sources of funding should be considered. For commercial development broad assessment of value in line with industry practice may be necessary.*

*For broad area-wide or site typology assessment at the plan making stage, average figures can be used, with adjustment to take into account land use, form, scale, location, rents and yields, disregarding outliers in the data. For housing, historic information about delivery rates can be informative.*

*For viability assessment of a specific site or development, market evidence (rather than average figures) from the actual site or from existing developments can be used. Any market evidence used should be adjusted to take into account variations in use, form, scale, location, rents and yields, disregarding outliers. Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan.*

*Paragraph: 011 Reference ID: 10-011-20180724*

*Revision date: 24 07 2018*

**Emphasis Added**

- 7.18 It is clear from this extract that future income flows should be taken into account. This guidance does not suggest income flows should be considered discrete or that they should be excluded from the viability assessment through creating artificial assumptions about operational separations. Indeed the guidance on reassessment mechanisms in the NPPG acknowledges some income streams may be difficult to predict but that should be no reason why appropriate mechanisms should not be put in place in order to capture these financial benefits to increase the level of affordable housing delivery up to policy compliance, see the NPPG extract below;

**How should viability be reviewed during the lifetime of a project?**

*Plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles.*

*Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for*

*developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.*

Paragraph: 009 Reference ID: 10-009-20180724

Revision date: 24 07 2018

7.19 The RICS Guidance note makes the following statement:

*An objective financial viability test of the ability of a development project to meet its costs including the cost of planning obligations, while ensuring an appropriate Site Value for the landowner and a market risk adjusted return to the developer in delivering that project.*

7.20 The Guidance goes on to state:

*In undertaking scheme-specific viability assessments, the nature of the applicant should normally be disregarded, as should benefits or disbenefits that are unique to the applicant. The aim should be to reflect industry benchmarks in both development management and plan making viability testing.*

7.21 Rapleys have interpreted this statement to mean that because the terms of the DMF are specific to the Appellant they should in effect be ignored. Rapleys then conclude that the "market in general" would assume that purchasers in the scheme would be subject to a requirement to pay an annual ground rent in substitution to the DMF and so have included capitalised ground rental income in their appraisal amounting to £820,000 compared to our assessment of the value of the DMF which exceeds £18m.

7.22 I consider Rapleys to have misapplied the RICS guidance. It is important to note that the RICS specifically reference *the nature of the applicant should normally be disregarded as should be benefits or disbenefits unique to the applicant*. I consider this statement was intended to address factors such as the applicant's nature such as whether the applicant is commercial developer or say a Registered Provider. The disbenefits and benefits referring to the applicant's ability say to access cheap or conversely costly finance. The intention being to assess viability as if a typical developer not a specific developer were making the application.

7.23 The inclusion of DMF is not a factor in the nature of the Appellant. It is a widely recognised method of generating money through what are more commonly termed event fees. There is no specific reason why any developer might not adopt this approach or the precise terms of sale. I consider it a considerable

leap of interpretation to suggest event fees should simply be ignored because of scheme specific wording or precise terms. The DMF is clearly a product of the development as without the development the DMF would not be generated.

- 7.24 My view is underpinned by the NPPG which clearly takes an holistic view to assessing scheme GDV. This is underpinned by the following paragraph which indicates that viability should be determined by the value generated by a development not the characteristic of the developer.

### ***Viability and decision taking***

#### ***Standardised inputs to viability assessment***

##### ***What are the principles for carrying out a viability assessment?***

*Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return.*

*This National Planning Guidance sets out the government's recommended approach to viability assessment for planning. The approach supports accountability for communities by enabling them to understand the key inputs to and outcomes of viability assessment.*

*Any viability assessment should be supported by appropriate available evidence informed by engagement with developers, landowners, and infrastructure and affordable housing providers. Any viability assessment should follow the government's recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available. Improving transparency of data associated with viability assessment will, over time, improve the data available for future assessment as well as provide more accountability regarding how viability informs decision making.*

*In plan making and decision making viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission.*

*Paragraph: 010 Reference ID: 10-010-20180724*

#### **Emphasis Added**

- 7.25 The NPPG also provides guidance for the decision maker in assessing the weight to be given to an applicant's viability assessment, highlighting the relevance of the transparency of assumptions behind the evidence provided.

***How should a viability assessment be treated in decision making?***

*Where a viability assessment is submitted to accompany a planning application this should be based upon and refer back to the viability assessment that informed the plan; and the applicant should provide evidence of what has changed since then.*

*The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and viability evidence underpinning the plan is up to date, any change in site circumstances since the plan was brought into force, and the transparency of assumptions behind evidence submitted as part of the viability assessment.*

*Any viability assessment should reflect the government's recommended approach to defining key inputs as set out in National Planning Guidance.*

*Paragraph: 008 Reference ID: 10-008-20180724*

*Revision date: 24 07 2018*

*Emphasis Added*

- 7.26 It can be seen from the chronology of reports and correspondence set out in Annex 11 that the Appellant has only reluctantly agreed to provide some information concerning the impact of the DMF provisions and financial information concerning Battersea Place post refusal of consent<sup>20</sup>. It is quite apparent that the Council in refusing consent was fully entitled to consider that the absence of this information at the time of the decision meant the Appellant's financial assessment lacked transparency. It can be seen from my proof that the evidence remains absent and in my view little or no weight can be placed on the Appellant's viability assessment.

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<sup>20</sup> Some information was first provided in Rapleys letter of 13 September 2018

## 8.0 Overall Conclusions & Summary

- 8.1 It can be seen from my assessment of the value of the DMF that there is considerable value attached to these provisions and that in my view they have the effect of suppressing the market value achievable for the units in comparison to other unfettered schemes.
- 8.2 Whilst it can be argued there is scope for some variation in my assessment of the DMF value being in excess of £18m it should also be noted that my assessment of the value of the DMF is time limited to a period of 23 years, reflecting a full anticipated cycle of tenancy turnover at Battersea Place. In the context of a 150 year lease there is the probability of more than six such cycles of payments to occur so my assessment of the value of the DMF is more likely to represent a substantial under assessment of value than an overstatement. On this basis my appraisal confirms there is a more than adequate development surplus to make a full policy compliant payment<sup>21</sup>
- 8.3 The additional value apparent in the scheme is also underpinned by the benchmark land value for the scheme being agreed at a figure of £1,100,000 whereas Land Registry title<sup>22</sup> evidences the Appellant paid £11,000,000 for the site on an unconditional basis in June 2016.
- 8.4 The approach taken by the Appellant to establishing viability seeks to take the value of the DMF out of the scheme appraisal through claiming it is received by a notional operator which has no impact on scheme value and that it should be considered a benefit personal to the Appellant and should therefore be ignored.
- 8.5 I consider this reasoning to be flawed as it is evident that the NPPG requires schemes value to be fully appraised including the value of future revenue streams. The imposition of event payments is not a factor in the “nature of the developer” but is simply a variation in the basis of sale.
- 8.6 A stand back assessment of this prime site in Hampstead would indicate that it should be delivering a high proportion of affordable housing, especially given its very high specification reflected in its high construction costs and very low site value. The only factor effectively limiting this contribution being the very large DMF value which the Appellant urges should be ignored as a factor influencing scheme viability.
- 8.7 My evidence identifies a number of leading retirement developers which don't seek to charge event fees such as DMF but which also undertake the combined roles of land owner, developer and operator. In comparison to such developers the value of the DMF provides the Appellant with in my view over £18m of profit

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<sup>21</sup> See Annex 10 for my Scheme Appraisal

<sup>22</sup> See Annex 15

in addition to the 20% profit (£19,815,537) already included in the Appellant's financial appraisal<sup>23</sup>

- 8.8 At almost 40% this level of profit runs contrary to the NPPG and as such should not represent grounds for this scheme to deliver less than full compliance with the Council's requirements for an affordable housing contribution of £12,758,093.75 or its on-site equivalent . The relevant NPPG extracts are set out below:

*In plan making and decision making viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission.*

*Paragraph: 010 Reference ID: 10-010-20180724*

*Revision date: 24 07 2018*

- 8.9 This guidance should also be taken in context with the NPG guidance provided in relation to developer profit as set out below:

***How should a return to developers be defined for the purpose of viability assessment?***

*Potential risk is accounted for in the assumed return for developers at the plan making stage. It is the role of developers, not plan makers or decision makers, to mitigate these risks. The cost of complying with policy requirements should be accounted for in benchmark land value. Under no circumstances will the price paid for land be relevant justification for failing to accord with relevant policies in the plan.*

*For the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. Plan makers may choose to apply alternative figures where there is evidence to support this according to the type, scale and risk profile of planned development. A lower figure may be more appropriate in consideration of delivery of affordable housing in circumstances where this guarantees an end sale at a known value and reduces risk. Alternative figures may also be appropriate for different development types.*

*Paragraph: 018 Reference ID: 10-018-20180724*

*Revision date: 24 07 2018*

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<sup>23</sup> See the scheme appraisal set out in Appendix 6 of Rapleys letter of 13 September 2018 – Annex 6