

## Extraordinary meeting of the Board of Governors

4.00 - 5.00 pm on Thursday, 24 June 2021  
via MS Teams

### Agenda

<i>No.</i>	<i>Item</i>	<i>Pages</i>	<i>Presenter</i>
1.	Welcome and apologies		JC
2.	Declarations of Interest <i>Governors are required to declare any interest in any item of business at this meeting</i>		JC
<b>Proposal for discussion</b>			
3.	SBC estate disposal and development	3 - 58	PI
4.	Report from Chair of MPIC on the proposals	Verbal Report	RR
5.	Consideration of recommendation		JC

**Date of next meeting**  
**4.00 pm on Thursday, 22 July 2021**

**Members:** Jerry Cope (Chair), Michael Cutbill (Vice-Chair), John Cole, Maureen Dalziel, Peter Fidler, Mark Lemmon, Nicki Martin, Jeremy Parr, David Phoenix, Rashda Rana, Tony Roberts, Maxwell Smith, Kate Stanton-Davies, Vinay Tanna and Harriet Tollerson

**Invitee** Ruth Farwell

**Apologies:** Duncan Brown and Deepa Shah

**In attendance:** Michael Broadway, Richard Flatman, Paul Ivey, Fiona Morey, James Stevenson and Carol Rose

### Supplement:

- Avison Young due diligence report
- VWV legal advice note, April 2021

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# Agenda Item 3

	INTERNAL
Paper title:	SBC – London Realty Proposal for Clapham site and Plot C at Vauxhall
Board/Committee	Board of Governors
Date of Meeting	24 June 2021
Author(s)	Carol Rose, Executive Director of EAE
Exec Sponsor	Prof Paul Ivey Deputy Vice-Chancellor & Chief Business Officer
Purpose:	For discussion and approval
Recommendation:	<p>The Executive recommends that the Board:</p> <ul style="list-style-type: none"><li>• accepts the due diligence report prepared by Avison Young and the responses to the queries raised;</li><li>• acknowledges its duties under charity and company law for the sale of the properties (as set out in the VWV advice note included as an appendix to the pack);</li><li>• notes that the SBC Board has resolved (to be considered at the SBC Board meeting of 21 June 2021) “that the terms of the disposal are the best that can reasonably be obtained” for SBC (as required under the asset deed with the DfE);</li><li>• having taken into account the three matters above, and, if thought fit, consents to SBC entering into the draft Heads of Terms in substantively the form presented; and</li><li>• delegates to a sub-committee of the Chair of the Board, the Chair of MPIC, the Chair of FPR and the Vice Chancellor to give prior consent to SBC to any subsequent substantive variation to the agreed Heads of Terms and to consent to any related agreements.</li></ul>

## 1.0 BACKGROUND

- 1.1 At the April 2021 meeting of the SBC Board, it was agreed that the proposal from London Realty, Residential Developer, be investigated further and that a due diligence exercise be undertaken by Avison Young Consultants to inform a decision as to whether or not the proposal would be progressed. This report was

circulated to all Board Members for questions and comment. A number of questions were received and the responses are attached as Appendices A - G to this report.

- 1.2 A draft Heads of Terms has been prepared and is attached as Appendix H. Following a number of amendments, the document is nearing finalisation by Eversheds the SBC Solicitor and Brecher the solicitor acting on behalf of London Realty.

## **2.0 DUE DILIGENCE**

- 2.1 Questions submitted were copied to all Executive, SBC Board and MPIC members. Answers to the questions together with external confirmation where appropriate are attached as Appendices A – G as follows:-

Appendix A – Due Diligence Q and A report

Appendix B – Clarification/confirmation letter from Brecher Solicitors dated 3 June 2021

Appendix C – Optivo letter of support dated 12 April 2021

Appendix D – Court Reporter article dated 7 June 2021 - outcome of court case

Appendix E – Parkside Clapham Holdings letter of support dated 30 April 2021

Appendix F – Optivo Financial Statements 2019 – 2020 (available in a separate supplement)

Appendix G – Clapham and Plot C Sources and Uses

## **3.0 HEADS OF TERMS AND EXCLUSIVITY AGREEMENT**

- 3.1 Extensive work has been undertaken on the draft Heads of Terms by both parties involved. Comments have been discussed and where appropriate included in the documents which are currently in draft form pending finalisation. A separate Exclusivity Agreement is being negotiated.

- 3.2 The draft Heads of Terms can be found attached as Appendix H to this report with accompanying appendices as follows:-

Appendix H – Draft heads of Terms (10 June 2021)

Appendix 1 – Official copy Clapham Site Title Plan

Appendix 2 – Clapham site – existing College use

Appendix 3 – Vauxhall site plan indicating Plot C location

Appendix 4 – Official copy Vauxhall Site Title Plan

Appendix 5 – London Realty Clapham site Masterplan  
Appendix 6 – London Realty Clapham proposed site plan  
Appendix 7 - London Realty Phasing Plan

3.3 It has been clarified by Eversheds acting on behalf of SBC that Heads of Terms are not generally a legal document and parties can make changes to them and withdraw from the transaction right up until entering into the contract. Often, they are marked “Subject to Contract” to make it clear that until the contract is entered into, the parties still have the right to ask for changes and to withdraw.

3.4 The Exclusivity Agreement, currently being negotiated, will be a binding agreement for a set period of time prior to the signature of the contract.

#### **4.0 CONFIDENTIALITY AGREEMENT**

4.1 A confidentiality agreement will be prepared for signature by both parties following the decision as to whether or not the proposal will be progressed.

#### **5.0 EXPERT ADVICE**

5.1 Expert consultants will be engaged by SBC to advise on the various aspects of the proposal following a decision to the proposal and the securing of planning permission. This includes, but is not limited to, planning, design of the Gateway Centre and programme.

#### **6.0 VALUE FOR MONEY**

6.1 To date, three consultants have been engaged by SBC to advise on the disposal of the land at Clapham and Vauxhall and to supply indicative values - Jones Lang LaSalle (JLL), Turner Morum and Avison Young. Valuations in the region of £71.5m were suggested which would be an insufficient receipt to cover the cost of the NESC match funding, the provision and fit out of Blocks B and D at Vauxhall and the upgrade of S Block at Clapham which, in total was projected to cost in the region of £81.2m (including inflation). The London Realty proposal comprises an offer worth £94m which would fund the building of a purpose built Gateway Centre at Clapham to replace S Block and provide a nett cash receipt of £77,925m. The nett cash receipt which would cover the match funding requirement for the NESC and the construction and fit out of Blocks B and D. Additionally, London Realty would gift back the freehold of the Gateway Centre to SBC.

## **7.0 RECOMMENDATION**

7.1 The Executive recommends that the Board:

- accepts the due diligence report prepared by Avison Young and the responses to the queries raised;
- acknowledges its duties under charity and company law for the sale of the properties (as set out in the VWV advice note included as an appendix to the pack);
- notes that the SBC Board has resolved (to be considered at the SBC Board meeting of 21 June 2021) “that the terms of the disposal are the best that can reasonably be obtained” for SBC (as required under the asset deed with the DfE);
- having taken into account the three matters above, and, if thought fit, consents to SBC entering into the draft Heads of Terms in substantively the form presented; and
- delegates to a sub-committee of the Chair of the Board, the Chair of MPIC, the Chair of FPR and the Vice Chancellor to give prior consent to SBC to any subsequent substantive variation to the agreed Heads of Terms and to consent to any related agreements.

## SBC Development- Due Diligence Q&A Report (Review of Counterparties on Land Acquisition)

Ref.	From	Question	Response
28/05.01	Nigel Duckers	For the sake of clarity can I ask if the responses to Stephen Lamont referred to in 1.2 as Appendices 1, 2 and 5 have been provided or - rather - is this information incorporated into the report (as seems the case)?	<p>All of the information referenced within Appendices 1, 2 and 5 is incorporated within the Due Diligence Report (Review of Counterparties on Land Acquisition) dated May 2021.</p> <ul style="list-style-type: none"> <li>• Appendix 1 – Thornton Park Finance Structure</li> <li>• Appendix 2- Example of Finance Diagram</li> <li>• Appendix 5 - Brecher Solicitors Letter (Appendix A)</li> </ul>
28/05.02	Nigel Duckers	Can I confirm that the proposed developer is Parkside Clapham Holding Ltd and not London Realty who presented to the SBC Board. In relation to London Realty, I have previously asked (in writing on two occasions), why the directorship of Mr Rakan Abdulziz Alfadl – who was a founding director – was terminated on 27/11/2018 and what this meant for the stability and direction of London Realty. I am struggling to understand the relationship between the two companies.	<p>Within the Review of Counterparties on Land Acquisition Report, Section 2, Consortium Members, Sub-section 2.1 Consortium Structure, the diagram identifies each party which relates to the land transaction.</p> <ul style="list-style-type: none"> <li>• <b>Residential Developer</b>, London Realty Ltd (UK Company No 004494575) Directors, Roger Williams and Marcus Williams</li> <li>• <b>Developer</b>, Thornton Park Southside Ltd (UK Company No: 11612800) Directors, Roger Williams, Marcus Williams and Rakan Alfadl</li> <li>• <b>Institutional Finance</b>, M &amp; G Real Estate (Prudential Life Assurance Company Ltd) UK Company No: 00015454</li> <li>• <b>Shareholders Equity</b>, Parkside Clapham Holdings Ltd (UK Company No: 10117019)</li> <li>• <b>Optivo Housing Association</b>, (UK Charity No: 7561)</li> </ul> <p>Rakan Alfadl resigned from London Realty Ltd to focus on other companies i.e. Parkside Clapham Holdings Ltd and has now become a director in Thornton Park Southside Ltd. The team that conducted the presentation to the SBC Board was conducted by the two Directors of London Realty - a long established brand name. London Realty continues with the two Directors listed and there are currently no plans for a further appointment.</p>
28/05.03	Nigel Duckers	Research shows that Mr Alfadl – a founder of London Realty – is President, Chief Executive Officer and Director at Sahara Building Contractors, on the board of Savola Group, Rabya Trading and Agricultural Co Ltd, Alfadl Group and Al-Takamul Group International Co. He is the sole director of Parkside Clapham Holdings Limited as Avison Young say.	Noted
28/05.04	Nigel Duckers	It is clear from the report that there is insufficient evidence that Parkside Clapham Ltd would be capable of supporting the £30m investment (1.5.2). (Not to say that they can't – as is also pointed out). The latest company registration (10117019) information held at Companies House states Mr Alfadl is a national and resident of Saudi Arabia.	Within the Companies House checks that Avison Young conducted it identified Rakan Afadl as having UK residential status in some companies and Non-UK resident in others. Companies House state that he operates a Practising Business in the UK and it has been established that he has not been listed disqualified on either Companies House or within UK Sanctions lists.

		<p>This is contrary to Avison Young's statement in 4.4 that he is a UK resident. What is the evidence that this is the case?</p> <p>This seems unlikely to me, given his extensive business affairs in Saudi.</p>	<p>Brecher, the solicitor who completed the transaction for Thornton Park have been asked to confirm that Rakan Afadl was born in the UK and has dual citizenship. Please refer to Appendix B - Brecher response dated 3 June 2021 reference CXB/N40-119.</p>
28/05.05	Nigel Duckers	<p>Avison Young state that checks have been run on the 11 shareholders of Parkside Clapham Holdings Ltd. What is the result of that? Where are they resident? Would we de facto be signing with a Saudi-run company, registered in the UK?</p>	<p>The result on the Director and Shareholders as stated within section 4.4 of the report: <i>"We have searched the UK Sanctions' list (dated 7th April 2021) for the names of the shareholders / director and have not found any named individuals on that list. Likewise we have searched the Consolidated List for the names of the shareholders / director and have not found any named individuals on that list."</i></p> <p>This UK registered Special Purpose Company (SPV) is not unusual and as stated within the Avison Young report Parkside Clapham Holdings Ltd has been successful in delivering the Thornton Park Estate strategy with both M&amp;G and Optivo.</p>
28/05.06	Nigel Duckers	<p>I also note that Companies House records shows that the confirmation statement of 24<sup>th</sup> April 21 (for Parkside Clapham Holdings Ltd) is overdue. Compulsory strike off action was discontinued on 17th April – I am assuming this is what is referred to in 4.3 - but has this statement now been filed? There is also an outstanding charge on the account. Has this been paid?</p>	<p>This was raised at the SBC Board where London Realty supplied information to Avison Young that the "Compulsory Strike-Off" was now discontinued after accounts were filed. The accounts were filed late owing to a change in the tax regulations for treatment of corporate interest which required a review by independent tax advisors prior to submission of the accounts to Companies House. The outstanding charge was between Thornton Park Commercial Ltd and Parkside Clapham Holdings Ltd concerning a Deed of Consignment. As the Thornton Park Estate buildings are now 18 months into construction I can only assume it was settled and not registered due to Covid.</p>
30/05.01	Jerry Cope	<p>As Nigel has implied, the key outstanding issue to me here, alongside double-checking Mr Alfadi's status, is the lack of proof that Parkside Holdings Limited can fund their part of the development (£30m). It would however seem odd if two pretty well established and competent organisations like M&amp;G and Optivo had not received, or will not receive, appropriate assurances or indeed guarantees. We should ask what these assurances or guarantees are or are expected to be. Alternatively as suggested in the Report, we may need to insist on all or nearly all of the £30m being placed in escrow at the appropriate time.</p> <p>Like Nigel, I am also unclear where London Realty fit in the structure of all this - do they have no financial interest in this project other than as a middleman/co-ordinator?</p>	<p>As identified above and within the Due Diligence Report (Review of Counterparties on Land Acquisition) dated May 2021, the Developer is Thornton Park Southside Ltd (UK Company No: 11612800) Directors, Roger Williams, Marcus Williams and Rakan Alfadl. It is not unusual in this type of transaction that the Developer either has pin-point equity of nothing. The Developer will broker the deal, complete the planning process, facilitate a design solution, complete Heads of Terms/ Legal contracts and find Funding Partners. Up to planning approval, these services alone are estimated to cost in excess of £5 million, all of which remains Developer risk. Once the transaction is complete the Developer will build and on occasion sell the commodity which will often include long term maintenance factorisation.</p> <p>Brecher, the solicitor who completed the transaction for Thornton Park have been asked what assurances/guarantees were required from either M&amp;G or Optivo. Please refer to Appendix B Brecher response attached dated 3 June 2021 reference CXB/N40-119.</p> <p>As like the Thornton Park Development project, we have the:</p> <ul style="list-style-type: none"> <li>• <b>Developer, Institutional Finance</b>, (M &amp; G Real Estate who will fund the build-to-rent portion), <b>Optivo Housing Association</b>, (who will fund the affordable housing portion) and <b>Shareholders Equity</b>, (Parkside Clapham Holdings Ltd who will fund the commercial portion and working capital).</li> </ul>

31/05.01	Richard Flatman	<p>I certainly took some assurance from the credibility of those presenting to us. I don't know how they and London Realty fit into the overall structure and their level of investment in the success of the project</p> <p>The due diligence and legal advice looks very thorough. Certainly Parkside Clapham Holdings Limited doesn't in its current form look like it has access to £30m but they found the £30m before for the previous development, so if we judge them on their outcomes then they may be an appropriate partner. The report helpfully sets out other steps we can take to provide comfort/assurance on these matters</p> <p>I was also surprised to see that M&amp;Gs net current liabilities exceed its assets by £4bn but this does not seem to have affected the D&amp;B rating and as the report points out it is a question of which fund is used. Again the report has helpfully suggested actions we may take in this regard i.e. detailed letter of support</p> <p>So a very thorough report and a clear set of actions we can take. Key concerns around (i) how LR fits into overall structure and (ii) Parkside funding capability</p>	<p>Please refer to the notes above concerning the two key concerns around (i) how LR fits into overall structure and (ii) Parkside funding capability.</p> <p>Please refer to Appendix A - Brecher response attached dated 3 June 2021 reference CXB/N40-119.</p>
32/03.06	Steve Balmont	The AY paper "Review of counterparties on Land Acquisition" is commissioned by and addressed to LSBU. I presume the Board of SBC can place reliance on it?	The commission was conducted though the LSBU procurement CCS contract for ease but was conducted for and on behalf of South Bank Colleges as noted within the Avison Young report.
33/03.06	Steve Balmont	Please can the letter of support from Optivo be shared (or can you direct me to where I can find it)?	Please find attached Appendix C copy of the Optivo letter of support dated 12 April 2021
34/03.06	Steve Balmont	I note we will seek stronger letters of comfort and reassurance from M&G and from Optivo. I suspect this is fairly standard in relation to transactions such as this. We might usefully ask both parties precisely when they expect to be able to provide us with less qualified comfort.	Both parties (M&G and Optivo) have stated that they will provide detailed letters of support when the full costs are established and prior to them approaching their credit committees. It was also agreed that prior to the planning application being presented to Lambeth Council agreements would be signed committing each of the institutional funders to the project. Currently London Realty has opened discussions with the Local Planning Authority and lodged a Planning Performance Agreement (PPA) in support of the Development.

35/03.06	Steve Balmont	In the event we seek and are offered a Parent Company Guarantee or other assurance from one of the key members of the consortium (M&G, Optivo and Parkside), we should undertake proportionate due diligence to satisfy ourselves that the guarantor has sufficient means to provide the guarantee in the amount proposed.	A further due diligence exercise will be conducted when we are presented with who at the time is the parent company for both M&G and Optivo. With regards to the Shareholders Equity refer to Appendix B - Brecher response attached dated 3 June 2021 reference CXB/N40-119 which states that the funds will be lodged within an escrow account.
36/03.06	Steve Balmont	Please can we investigate whether members of the consortium have any residual exposure to actual or contingent liabilities or other risks and claims associated with the development next door at 44 Clapham Common or related to any other development. We may wish to obtain representations from the directors of each company on this matter.	As identified in January 2021, London Realty had a dispute with Lambeth Council concerning the Community Infrastructure Levy. Lambeth Council took London Realty to Court to resolve but lost their case. Lambeth Council advised LSBU in February 2021 that they were subsequently appealed the judgment and taking the case to the High Court. On the 7 June 2021 the High Court overturned the result in favour of the Council. Please refer to Appendix D attached press release "High Court Overturns Developer 07.06.2021".  We are not aware of any other disputes.
37/03.06	Steve Balmont	M&G: Various numbers are in the papers quoting Assets Under Management and committed/uncommitted funds. Please can we seek clarification that: <ul style="list-style-type: none"> <li>○ M&amp;G UK Residential Property Fund has and expects to have uncommitted funds available to finance this project when investment is expected?</li> <li>○ Does the M&amp;G UK Residential Property Fund have a Moody's/S&amp;P/Fitch credit rating and, if so, what is it and is it investment grade?</li> <li>○ Can we establish how the M&amp;G UK Residential Property Fund is regulated? FCA, FSA, BoE, PRA? (Cl. 3.4 says "M&amp;G" is regulated by the FCA)</li> <li>○ If Prudential rather than M&amp;G finances the project, can we have similar information to that above?</li> </ul>	Awaiting Response from Avison Young - verbal clarification to be provided at the meeting.

38/03.06	Steve Balmont	Please can AY re-check the references to net tangible assets and net current liabilities in Cl. 3.3 of their review of counterparties? I cannot agree the amounts. Company Number 00015454 is Prudential Assurance Company Ltd, said to be the ultimate parent of M&G (presumably M&G UK Residential Property). The accounts at 31/12/20 show total assets of £197bn and Equity of £142bn. I cannot see/derive the numbers quoted in the AY report of £4bn or £6bn.	Awaiting Response from Avison Young - verbal clarification to be provided at the meeting.
39/03.06	Steve Balmont	AY state the main parties to the consortium each have an anti-slavery policy. Can someone say whether there is any cause for concern regarding the policies, to save me from having to look them up?	We do not see this to be a cause for concern but have asked each party to provide as part of our procurement policy a copy of their Anti-Slavery Policy.
40/03.06	Steve Balmont	As I think I may have flagged at a previous meeting, the very thin capitalization of Parkside prompts a need for some reassurance before SBC commits to a project with them to a value of c£30m. I assume that Parkside is an SPV. However, using the same SPV as that used for 44 Clapham Common or other developments introduces the risk of cross contamination comprising claims against Parkside for matters unrelated to the SBC Estate project. I would like additional comfort at the point SBC contracts in the form of a parent company guarantee or funds held in escrow or similar. As above, we need to satisfy ourselves on the credentials and resources of the guarantor. I derive very limited comfort from the fact Parkside worked in the same consortium on other projects given we don't know if they are completed.	Please refer to Appendix B - Brecher response attached dated 3 June 2021 reference CXB/N40-119.
41/03.06	Steve Balmont	What comfort can Parkside provide that their corporate structure, which relies on shareholder loans, remains robust? Can we have representations and reassurances from those parents that support will be available and will remain in place until the project is complete? Can we check that those lenders are good for the promise?	Please refer to Appendix B - Brecher response attached dated 3 June 2021 reference CXB/N40-119.

42/03.06	Steve Balmont	Parkside may not file P&L, full balance sheet and cash flow statements, but should we ask for the information regardless?	<p>On the 30 April 2021, London Realty issued correspondence that stated:</p> <p><i>The attached letter from Brecher Solicitors confirms that Parkside Clapham Holdings Ltd has made available a facility of £30m for the development of Thornton Park and this demonstrates that the company is able to support the equity investments in the current and proposed new schemes.</i></p> <p><i>Funding of £30m has not been fully drawn down at this stage and so the £30m will therefore not show in the company accounts. The accountants for Parkside Clapham Holdings Ltd confirm that accounts are up to date with Companies House and advise that the accounts were filed late owing to a change in the tax regulations for treatment of corporate interest which required a review by independent tax advisors prior to submission of the accounts to Companies House.</i></p> <p><i>The shareholders obtained independent legal and tax advice from leading London law firm Stephenson Harwood who recommended that the shareholders provide funds as loans to Parkside Clapham Holdings Ltd rather than share capital which is why the company's net asset value effectively equals the liabilities.</i></p> <p><i>A letter of support from the director of Parkside Clapham Holdings Ltd is attached as Appendix E for information.</i></p>
43/03.06	Steve Balmont	Action by Companies House for non-filing of accounts is noted, but have they explained the non-filing of the Confirmation Statement? That's not very clever of them!	See above.
44/03.06	Steve Balmont	I am less concerned than others about the status of the Saudi shareholders, providing there is no evidence suggesting anything inappropriate in the AY research. A considerable proportion of corporate UK is owned by overseas investors, including much of the electricity we each consume in London.	Noted.
45/03.06	Steve Balmont	Can we ask Optivo to comment on the anomaly in their corporate structure flagged in Cl. 5.1?	Please refer to Appendix F Optivo Financial Statements 2019-2020
46/03.06	Steve Balmont	Can Optivo provide comfort that they have no actual or contingent claims against them which could reduce their tangible net worth materially below the amount shown in their accounts?	Awaiting Response from Avison Young - verbal clarification to be provided at the meeting.
47/03.06	Steve Balmont	Optivo was formed in May 2017, yet the directors were appointed on 1 August 2019. Should we be concerned there is a 16 month gap?	Optivo was founded in May 2017 with the merger of companies Amicus Horizon and Viridian, the inconsistencies in accounting reference numbers were identified within the Avison Young report which identified no concerns.

48/03.06	Steve Balmont	<p>The VWV advice to SBC is reassuring, but I think we should look again to satisfy ourselves the key conclusions remain valid as at the point the Board makes its decision, given that no doubt we will receive additional information up to the time of that decision. I don't propose asking VWV to do more work – presumably we can form a view ourselves relatively easily? Cl. 3.25 to 3.28 of VWV advice seem to be key, and flag actions we need to take.</p>	Noted
49/04.06	Jeremy Parr	<p><b>DD on individuals/organisations</b></p> <p>Has the question about Mr Alfadi's dual nationality now been fully answered?</p> <p>I note that we have done sanctions checks. Sanctions imposed on Saudi nationals are relatively new since February when the Biden administration imposed some so there are not many people affected so far. So a sanctions test is fine, but I am conscious we don't know much at all about these investors.</p> <p>I couldn't see from the email chain what we concluded "London Realty" is? I can't see it in the structure, so my conclusion is that it's just a trading name or a brand and the developer will be Thornton?</p>	Please refer to Appendix B - Brecher response attached dated 3 June 2021 reference CXB/N40-119.
50/04.06	Jeremy Parr	<p><b>Financial strength/commitment</b></p> <p>The report is very useful as general background on the counterparties. As others have remarked, it is not particularly reassuring in that regard in the sense that Parkside is an SPV company and the nature of commitments from the solid companies/funds M&amp;G/Pru and Optivo are soft at this stage. These are big names behind the finance, but to me the critical factor is the nature of commitments they would eventually make which are not as yet clear.</p> <p>I don't really feel that concluding that in the past Parkside, Thornton, M&amp;G or anyone else has eventually funded projects gives us much comfort at all. Our position at this point seems very early stage without a strong view of the real risk matrix.</p> <p>Parkside is clearly not presently good for the money, being an SPV backed by individual foreign nationals. If we are to transact with it, we could consider seeking equity commitment letters or the like from its investors. Otherwise</p>	Please refer to Appendix B - Brecher response dated 3 June 2021 reference CXB/N40-119.

		<p>we are contracting with a bare SPV. That said, if the investors are foreign nationals it is extremely difficult to sue and more importantly enforce any judgement against their assets - that is to me a real concern in eventually getting to a position where there is sufficient back up for their £30m. For example, there appears to be no obvious “parent” entity which could provide a guarantee. We can ask for an escrow and if we get it, that solves that issue but it is unclear if that would be on offer.</p> <p>Ultimately, I am most interested in the nature of the legal and contractual matrix and the commitments, rights or other security that SBC will receive. In that context I am taking the opportunity below to set out a few questions which track back into the London Realty presentation - answers would be helpful to provide the context in which we are considering the strength of the financial backers and counterparties.</p>	
51/04.06	Jeremy Parr	<p><b>Cash flow, payments and security</b></p> <p>In the London Realty presentation in appendix 2, paragraph 7.1 there is a reference to a detailed breakdown of the projected cash flow for the delivery of the entire estate strategy being found at appendix 3. At appendix 3, I am only able to find the legal advice. Is the detailed breakdown of projected cash flow for the SBC matter available in that or another form?</p> <p>In the heads of terms schedule C referring to option 2, the total for transaction 1 is approximately £33.562 million and for transaction 2 is £60.435 million. Is it correct that the payment for transaction 1 will be the £16,435 (being net of the amount which will be owed for the sale back of the Education Centre)? Similar figures are set out in appendix 2, paragraph 7.2 but I cannot quite make them add up.</p> <p>The heads of terms in appendix 1 of the London Realty presentation are high-level. It is not clear to me as a matter of structure within the project at what point SBC is asked to part with ownership of the relevant land and whether it retains any ownership or security over that land or some sort of “step in” right to influence the completion of the project in the event that the project collapses because of a developer insolvency, construction problems or some other event. Could this be clarified? If we will have some form of security or other rights even if things go wrong then that is</p>	<p>a) Please refer to Appendix G Clapham and Plot C – Sources and Uses document dated 12 April 2021 which Avison Young utilised in their report.</p> <p>b) Purchase Price</p> <p>Phase 1 – total of £33,564,731.00 apportioned:</p> <ul style="list-style-type: none"> <li>£33,564,731.00 paid on Legal Transfer of Phase 1, comprising of land associated with “Appendix 2 – Existing Clapham Site Plan” and land identified in “Appendix 3, Plot C” in Vauxhall;</li> <li>The Purchaser will design and build a 6,387m2 turnkey development known as Building 5 (Gateway Centre), of which;</li> <li>£16,075,000 of this purchase will be placed in an escrow account by the Vendor in support of the new Building 5 (Gateway Centre), drawn down on application.</li> </ul> <p>The freehold associated with Building 5 (Gateway Centre) will be gifted back to the Vendor.</p> <p>Phase 2 – total of £60,435,269.00 apportioned:</p> <ul style="list-style-type: none"> <li>£60,435,269.00 paid on Legal Transfer of Phase 2, comprising of land associated with “Appendix 2 – Existing Clapham Site Plan”</li> <li>Building 1 - £36,832,581.00;</li> <li>Building 2 - £23,602,688.00</li> </ul>

		<p>obviously reassuring at one level - if that is not the way these sort of projects are structured then we need to understand that.</p> <p>For example, in paragraph 3.5 of the heads of terms SBC is stated to provide vacant possession of phase 1 on 30 September 2022 and of phase 2 on 30 September 2023. Is our “security” that in fact we retain ownership of the property until that time under the terms of the contract? Or in fact does the property secure the finance which is provided for the project?</p> <p>In appendix 2 paragraph 7.2, it is stated that full planning permission is expected in January 2022 and once received £16.435 million will be released to SBC. However, it does not say from whom that money will be received. Could this be clarified? Similarly, in the same paragraph there is a reference to the remaining £60.435 million being released In September 2023. Again, it is not clear from whom the £60.435 million will be received. Could this be clarified? Depending on the answer to the immediately preceding question, the financial strength of the payer or any security SBC would have for payment would obviously be relevant.</p>	<p>Total cash sum payable (minus the funds paid into the Escrow account by the Vendor to pay for the Gateway Centre) for Phase 1 and Phase 2 - £77,925,000.</p> <p>The Vendor has not elected to charge VAT and will make no election to do so in respect of this transaction. [To be confirmed]</p> <p>A refundable deposit of £500,000 is payable on exchange of contract to be held as Stakeholder.</p> <p><b>Note:</b> In the event that Planning Approval for Property 1 is stalled but Property 2 is complete a Legal Transfer can occur at Vauxhall for Plot C identified in “Appendix 3, Plot C” for the sum of £25,278,483.00.</p> <p>C) A new draft Heads of Terms is being prepared between Brecher and Eversheds solicitors and is also appended to the SBC Board report for 21 June 2021</p> <p>d) Funds will be received from the <b>Developer</b>, Thornton Park Southside Ltd (UK Company No: 11612800).</p>
12/04.06	Jeremy Parr	<p><b>Financial commitments from M&amp;G as financier</b></p> <p>In the London Realty presentation appendix 2 at paragraph 10 there are a number of responses to questions previously asked. At 10.5 it is asked at what point does M&amp;G commit to the development funding. It is stated that they have already committed via a letter of support and that Thornton Park have a funding agreement of £150 million with them which will be extended. However, this answer does not explain the nature of the legal arrangements that will back up these commitments for SBC’s project.</p> <p>So I do not feel that the question has been fully answered until we have a better picture as to what they will commit, when and via which of their vehicles.</p>	See response above.



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[www.brecher.co.uk](http://www.brecher.co.uk)

DATE: 03 June 2021

YOUR REF:

OUR REF: CXB/N40-119

Stephen Lamont  
Senior Project Manager  
Lambeth (NESC)  
Estates and Academic Environment  
London South Bank University  
London Road SE1 6LN

Dear Mr Lamont,

## **Lambeth College**

Roger Williams has asked me to write to you in connection with London Realty's proposed Lambeth College development project. I have known Marcus, Roger and Rakan Alfadl for approximately 15 years and have acted for them on a number of development projects during that time advising on the financing, security and funding arrangements determined by the requirements of each particular project.

You have asked what assurances were required by M&G in respect of equity funding on the Thornton Park development. For that project we put in place investor funding arrangements via a parent company (Parkside Clapham Holdings Limited) and then a £30m line of credit between the parent company and the project company. A copy of the shareholder's funding agreement was provided to M&G during their financial and legal due diligence and was acceptable to them.

As part of the funding arrangements with M&G it was agreed that the further funds which were required to be made available by Thornton Park's shareholders (for the first phase of construction costs) were to be put into an escrow account on closing. The funds were then used to meet the construction costs as they fell due.

For the proposed Lambeth College development we would propose that, following the granting of planning permission and prior to works starting on site, the required amount of investor's equity is put into an escrow account so that you have comfort that the funds are allocated and ring fenced ready to be utilised in the project.

I understand that there is a potential concern from one of your board members that you would be signing with a Saudi run company, registered in the UK. Your board member can rest assured that the properties to be developed on this project will not be owned by any Saudi investors or by a Saudi owned company. They'll be owned by M&G UK Residential (or the Prudential Assurance Company), Optivo Housing Association and, of course, Lambeth College.

I understand that you also asked about Rakan Alfadl and about Parkside Clapham Holdings Limited.

Rakan was born in the UK to Saudi parents and holds British and Saudi Arabian passports. Rakan was educated in the UK and lived in London for many years until it became necessary for him to take the reins of his family business in Saudi Arabia. Rakan now divides his time between Saudi Arabia and London.

Parkside Clapham Holdings Ltd is an English company, pays UK corporation taxes and operates entirely in accordance with English law.

The development company proposed for the Lambeth College project is Thornton Park Southside Ltd which is an English company and which will be directly owned and managed by Roger Williams, Marcus Williams and Rakan Alfadl. It will pay UK corporation taxes and operate entirely in accordance with English law.

Thornton Park Southside Ltd is anticipated to have three funding sources:

M & G - Institutional Funding  
Optivo - Institutional Funding and  
Shareholders' and Investors' Funds.

Funding from the shareholders and investors will be injected into the company to cover the costs of exchange of contracts, planning costs and the pre-construction work. Then following planning consent the further amounts required will be placed into an escrow account before legal completion, as set out above.

I trust this answers the questions raised and I should be pleased to assist further if you have any further questions.

Yours sincerely

*Charles Bezzant*

**Charles Bezzant**  
**Partner**

DDI: +44 (0)20 7563 1024  
Email: cbezzant@brecher.co.uk



Marcus Williams  
Director  
London Realty Estates Ltd  
14 Northfields Prospect  
Putney Bridge Road  
London SW18 1PE

12/04/2021

Dear Marcus,

### **Clapham Common Southside**

We would be pleased to work on a new development project with London Realty, subject to its fitting into our current objectives.

It helps of course that funding documentation was agreed for Thornton Park SW4 this would form an excellent starting point for the next development.

Optivo are one of the largest housing providers in the UK and a member of the G15 group of London's largest housing associations. We've over 45,000 homes across London, the South East and the Midlands, giving 90,000 people somewhere affordable to call their own. We work with residents, local authorities, and partners to meet housing need, and to create safe, sustainable communities for our residents.

We've an ambitious growth programme to develop 4,850 homes by 2022. This opportunity is a great fit for our programme and mirrors the objectives of our Development Strategy.

**We'll be investing £3.5bn in new homes over the next ten years.** We've sufficient capital to fund developments like this one. We'll raise £1.5bn new finance to support our growth programme – putting us in a powerful position to tackle the housing crisis. For further details on our Financial Performance please see our 'Investors' page on our website: [www.Optivo.org.uk](http://www.Optivo.org.uk) where you will be able to see our Financial Strategy and Credit Rating.

Kind regards,

*Mostafa Zaman*

**Mostafa Zaman**  
New Business Manager - London  
Land & New Business  
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# High Court overturns developer's exemption from £466K CIL late payment surcharge

7 June 2021 by Court reporter

The High Court has overturned an inspector's decision and ordered a developer to pay nearly £466,000 in community infrastructure levy (CIL) late payment surcharges, after a judge rejected the argument that a council's issuing of a revised demand notice rendered previous demand notices "irrelevant" and therefore wiped out any prior surcharge liabilities.



The Royal Courts of Justice

Thornton Park (London) Limited was granted planning permission by the London Borough of Lambeth in March 2018 to demolish existing buildings on the south side of Clapham Common and to construct six blocks providing mixed office and residential uses, with a gross internal area of almost 40,000 square metres.

After a liability notice was served, the developer assumed responsibility to pay the agreed CIL and confirmed that the development would commence on 26 November 2018. A demand notice followed and, after a payment deadline was missed, interest began to accrue.

After the planning permission was varied, reducing the extent of the development's internal space, a number of revised liability and demand notices were issued by the council.

The final demand notice was served on 10 December 2019 requiring immediate payment of £5,102,230. Late payment surcharges were stated to be £465,617.

Thornton Park successfully appealed to an inspector appointed by the housing secretary, and the surcharges were overturned in August last year.

The inspector found that service of a valid demand notice was "a mandatory requirement" without which no liability to CIL could arise. When the final revised demand notice was issued, its predecessors ceased to have any legal effect and any previous liability to late payment surcharges was wiped out.

The council, the inspector ruled, had acted prematurely and without apparent lawful authority when it demanded payment of the surcharges prior to the expiry of 30 days following the service of the revised liability notice on 27 November 2019. The demand notice was therefore invalid, he found.

The secretary of state did not resist the borough's judicial review challenge to the inspector's decision, but Thornton Park did. The developer argued that, when the revised demand notice was served, any previous demand notices "became irrelevant in fact and law" and that any prior surcharge liabilities were expunged.

Upholding the council's case however, Mrs Justice Thornton said: "The inspector erred in finding that Lambeth had no lawful authority to impose a late payment surcharge with respect to unpaid CIL.

"Liability for a late payment surcharge is not contingent on the service of a liability or demand notice. The issue or service of a revised liability and/or demand notice does not have the effect of extinguishing liability for a late payment surcharge which has already been incurred."

The judge noted that liability to pay CIL comes into being on the date that a development is commenced and that the power to raise a late payment surcharge arises 30 days thereafter.

She added: "The purpose of a liability notice is to record and inform a party of liability for CIL. The purpose of a demand notice is to record and inform when payment, pursuant to such liability is due and what sum, including any surcharge or interest.

"Each notice plays a part in the administration of the CIL scheme by informing the person liable to pay CIL of certain material facts regarding their specific case. Their role is not, however, to determine when liability arises or when payment is due.

"It follows from their administrative role that a revised liability or demand notice may reflect and record a change in to the quantum of liability and/or payment dates, but it does not itself change the genesis or origin of the liability."

Crucially, she told the court: "In particular, a revised notice is not capable of 'wiping the slate clean' by extinguishing liability to pay CIL, surcharges or interest which has already accrued."

Thornton Park's arguments to the contrary, she added, were based on "a literal reading" of the Community Infrastructure Levy Regulations 2010 which did not accord with the modern "purposive" approach to the interpretation of tax-raising legislation.

Describing the developer's arguments as "circular", she noted that a revised demand notice has to be issued whenever a late payment surcharge is imposed. If the due date for payment of CIL were to be reset on the issue of each new demand notice, the power to impose late payment surcharges "could never arise and is rendered meaningless".

The judge concluded: "It cannot be the intention of the regulations that past failures to pay CIL liability... should be capable of being expunged merely because some event has occurred requiring service of a revised demand notice. This would provide developers with a perverse method of avoiding late payment surcharges.

"This could be done by transferring CIL liability to another entity which requires the collecting authority to issue a revised demand notice... or by applying for a non-material amendment to alter the chargeable development in a minor way in order to generate the need for a revised liability and demand notice.

"The same could result from an inadvertent administrative error on behalf of the collecting authority which generated the need for a revised demand notice to be issued."

The court heard that Thornton Park had cited an unanticipated delay in the arrival of development finance in seeking to pay CIL by instalments. In February last year it remitted all sums in CIL and interest demanded by the council. Payment of the surcharges was, however, deferred pending the outcome of the case.

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**Parkside Clapham Holdings Limited**  
**14 Northfields Prospect**  
**London SW18 1PE**

30 April 2021

Professor Ivey  
LSBU  
Deputy Vice-Chancellor  
London South Bank University  
Technopark  
London Road SE1 6LN

Dear Professor Ivey,

**45 Clapham Southside London SW4 and Land at Belmore Street, London SW8**

I am writing as director of Parkside Clapham Holdings Ltd to support London Realty's proposals for the Lambeth College development project at 45 Clapham Common Southside SW4 and the land at Belmore Street SW8.

The shareholders of Parkside Clapham Holdings Ltd have had a positive and successful working relationship with the principals of London Realty for over 15 years.

Parkside Clapham Holdings Ltd was formed to invest in the Thornton Park development and we are pleased with the way that Marcus and Roger Williams have diligently navigated the planning process and are managing the ongoing construction works for the end users M & G and Optivo Housing Association.

Parkside Clapham Holdings Ltd has committed £30m of funding to the Thornton Park development and the shareholders are able to invest the required amount for the proposed Lambeth College development, on the same basis that the investments were made for Thornton Park (subject to contract and planning).

I am hopeful that London Realty will be selected as the developer by LSBU and look forward to participating in this exciting project.

Yours sincerely,



Rakan Alfadl  
Director  
For and on behalf of Parkside Clapham Holdings Limited

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## Clapham & Plot C - Sources & Uses

### Clapham

#### Sources

BTR Institution / Shareholder's Funds - Land for Buildings 1,2,3	68,719,430
Housing Association (Building 4)	32,939,200
BTR Institution - Development Funding	141,726,499
Building 5 Escrow Account	16,075,000

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<b>Total Sources</b>	<b>259,460,129</b>
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#### Uses

Building 1: land, construction	87,951,799
Building 2: land, construction	54,641,335
Building 3: land, construction	20,338,944
Building 4: construction costs	32,939,200
Building 5: construction costs	16,075,000
Construction Contingency	10,359,100
Professional fees	12,971,700
Project Contingency	7,367,615
Amenity Fit-out	1,250,000
Furnishing	804,000
Finance costs	14,761,436

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<b>Total Uses</b>	<b>259,460,129</b>
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### Plot C

#### Sources

BTR Institution / Shareholder's Funds - Land	25,278,483
BTR Institution - Development Funding	43,565,041
Housing Association	28,177,572

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<b>Total Sources</b>	<b>97,021,097</b>
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#### Uses

Land & Construction	83,428,363
Contingency	5,477,797
Professional fees	5,477,797
Finance costs	2,637,139

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<b>Total Uses</b>	<b>97,021,097</b>
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#### Notes:

1. Clapham Building 4 includes Predevelopment Costs
2. Clapham Finance Cost are on Drawdowns
3. Building 5 Escrow funded from Plot C Land

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## HEADS OF TERMS

### Proposed development of Clapham Common Campus and Plot C Belmore Street, Vauxhall

Date: 17 June 2021 (v5)

#### 1. **Property Details**

##### 1.1 **Properties**

###### Property 1

Freehold land being the land registered at the land registry under title number TGL150604 (Appendix 1) and known as:

45 Clapham Common Southside  
London  
SW4 9BL

Comprising of buildings identified within the attached "Appendix 2 Existing Clapham Site Plan" as:

Phase 1 – Block A, Sports Hall and Carpark; and

Phase 2 – Blocks B, C and S.

###### Property 2

Freehold land, outlined in red as identified within "Appendix 3 - Plot C", being part of the land registered at the land registry under title number TGL149378 (Appendix 4) and known as:

Vauxhall Centre (Plot C)  
Belmore Street  
London  
SW8 2JY

Comprising of one Plot C as identified within the attached "Appendix 5 – Vauxhall Masterplan".

The Properties are being sold with Freehold tenure.

##### 1.2 **Vendor**

South Bank Colleges (CRN 11495376)  
103 Borough Road  
London  
SE1 0AA

For the attention of: Professor Paul Ivey  
Tel: 0207 815 6002  
Email: [iveyp@lsbu.ac.uk](mailto:iveyp@lsbu.ac.uk)

### 1.3 Purchaser

Thornton Park Southside Limited (CRN11612800)  
 30/34 North Street  
 Hailsham  
 East Sussex  
 BN27 1DW

For the attention of: Roger Williams  
 Tel: 0203 745 2174  
 Email: [roger@londonrealty.co.uk](mailto:roger@londonrealty.co.uk)

### 1.4 Purchase Price

£77,925,000 exclusive of VAT and made up as follows:

#### 1.4.1 Phase 1 – total of £33,564,731.00 apportioned:

1.4.1.1 £33,564,731.00 paid on Legal Transfer of Phase 1, comprising land associated with "Appendix 2 – Existing Clapham Site Plan" and land identified in "Appendix 3, Plot C" in Vauxhall; [NB: Apportioned as to £17,489,731.00 in respect of Phase 1 and £16,075,000 to be held on escrow (see para 1.4.1.3) in respect of the Gateway Centre];

1.4.1.2 The Purchaser will design and build a 6,387m<sup>2</sup> turnkey development known as Building 5 (Gateway Centre);

1.4.1.3 £16,075,000 (which shall be deducted from the payment made in para 1.4.1.1) will be placed in an escrow account in support of the new Building 5 (Gateway Centre), drawn down on application. The escrow account will be held by an escrow agent in the joint names of the Seller and the Buyer.

The freehold associated with Building 5 (Gateway Centre) will be gifted back to the Vendor.

#### 1.4.2 Phase 2 – total of £60,435,269.00 apportioned:

1.4.2.1 £60,435,269.00 paid on Legal Transfer of Phase 2, comprising of land associated with "Appendix 2 – Existing Clapham Site Plan";

1.4.2.2 Building 1 - £36,832,581;

1.4.2.3 Building 2 - £23,602,688.

1.4.3 Total cash sum payable (minus the funds paid into the Escrow account by the Vendor to pay for the Gateway Centre) for Phase 1 and Phase 2 - £77,925,000.

1.4.4 The Vendor has not elected to charge VAT and will make no election to do so in respect of this transaction. [To be confirmed]

1.4.5 A refundable deposit of £500,000 is payable on exchange of contract to be held as Stakeholder.

**Note:** In the event that Planning Approval for Property 1 is stalled but Property 2 is complete a Legal Transfer can occur at Vauxhall for Plot C identified in "Appendix 3, Plot C" for the sum of £25,278,483.00.

2. **Other Details**

2.1 **Vendor's Solicitor**

Eversheds Sutherland (International) LLP  
Bridgewater Place  
Water Lane  
Leeds  
West Yorkshire  
LS11 5DR

For the attention of: Charlotte Tanikal  
Tel: 0113 200 4024  
Email: charlottetanikal@eversheds-sutherland.com

2.2 **Purchaser's Solicitor**

Brecher  
4<sup>th</sup> Floor  
64 North Row  
London  
W1K 7DA

For the attention of: Thelma Marshall  
Tel: 0207 563 1022  
Email: [tmarshall@brecher.co.uk](mailto:tmarshall@brecher.co.uk)

3. **Conditional Agreements**

3.1 **Property 1**

- 3.1.1 It has been agreed that the Vendor and the Purchaser will use reasonable endeavours to enter into a conditional contract, conditional upon planning permission being obtained for the redevelopment of Property 1, to include 4 Residential Buildings and a Gateway Centre. The conditional contract will include the terms set out in this clause 3.1.
- 3.1.2 The Purchaser will use [all] reasonable endeavours to obtain planning permission for the redevelopment of Property 1 which must include the College building, which must be at least 6,000 square metres. The list of Vendor and Purchaser onerous conditions will need to be agreed as part of the negotiation of the contract.
- 3.1.3 Following receipt of a satisfactory planning permission, the Purchaser shall complete on Phase 1, comprising of land associated with "Appendix 2 – Existing Clapham Site Plan" and land identified in "Appendix 3, Plot C" in Vauxhall.
- 3.1.4 The Vendor is to provide vacant possession of Phase 1, comprising of land associated with "Appendix 2 – Existing Clapham Site Plan" and land identified in "Appendix 3, Plot C" Vauxhall at the end of [September 2022] subject to Practical Completion of building (Block A) at Vauxhall.
- 3.1.5 The Vendor is to provide vacant possession of Phase 2 at the end of [September 2024] subject to completion of buildings (Blocks B & D) at Vauxhall.

### 3.2 **Property 2**

- 3.2.1 The conditional contract to be entered into by the Vendor and the Purchaser will also be conditional upon planning permission being obtained for the development of Block C within the existing envelope of the current outline planning consent for residential use. The conditional contract will include the terms set out in this clause 3.2.
- 3.2.2 The Purchaser will use all reasonable endeavours to obtain planning permission for the development of Block C. The list of Vendor and Purchaser onerous conditions will need to be agreed as part of the negotiation of the contract.
- 3.2.3 Following receipt of a satisfactory planning permission, the Purchaser shall complete the purchase of the land associated to Plot C identified in Appendix 3 at Vauxhall.

### 3.3 **Gateway Centre**

- 3.3.1 The conditional contract to be entered into by the Vendor and the Purchaser will also deal with the Vendor being gifted the freehold interest in the Gateway Centre on completion of the sale of Phase 1 of Property 1.
- 3.3.2 In addition, £16,075,000 will be placed in an escrow account by the Vendor in support of the new Block 5 (Gateway Centre), and will be drawn down by the Purchaser on application. The escrow account will be held by an escrow agent.
- 3.3.3 The conditional contract will need to include:
- 3.3.3.1 the right for the Vendor to step-in; and
- 3.3.3.2 the development obligations of the Purchaser.
- 3.3.4 The Purchaser must ensure that the Gateway Centre is a turnkey development.
- 3.3.5 The Purchaser must provide the Vendor with a full suite of warranties and the Vendor (who shall act reasonably and expeditiously) shall be allowed to approve the building contractor and professional team and the construction documents.
- 3.3.6 The sale contract will need to deal with the vehicular and pedestrian rights of access for the Purchaser to access the Gateway Centre post Practical Completion.
- 3.3.7 Following Practical Completion of Building 5 the Gateway Centre, Phase 2 shall take place, subject to completion of buildings (Blocks B & D) at Vauxhall.

## 4. **Planning**

### 4.1 **Property 1 - Planning**

- 4.1.1 The Purchaser is intending to submit a full planning application for a multiphase development comprising the erection of four residential (Use Class C3) buildings alongside a new gateway education facility to be utilised by the Vendor.
- 4.1.2 Initial target date for planning is September 2022. To be extended to [x] in the event of planning delays (for example appeal, proceedings etc).
- 4.1.3 The following points should be considered in the planning application for Property 1:

- 4.1.3.1 any conditions / planning obligations should be drafted so as to permit delivery of the development on a phased basis. If there is to be any inter-dependency between the various phases (for example a site wide planning condition) there will need to be contractual protection for the Vendor to ensure that responsibility for compliance with / discharge of the relevant matter is apportioned to enable the education development to come forward independently of the residential units;
- 4.1.3.2 the responsibility for any CIL / S106 liability should be at the Purchaser's cost. An indemnity may be required to ensure that the Vendor has sufficient protection in the event of any failure to pay CIL / S106 liability;
- 4.1.3.3 the Vendor must approve the planning application in relation to the education facility and be invited to take part in all discussions and decisions regarding the education facility;
- 4.1.3.4 the Vendor will provide a list of onerous conditions in relation to the education facility.

#### 4.2 **Property 2 – Planning**

- 4.2.1 The Purchaser will either submit a new planning application or an application to amend the existing permission. **Clarity is required.**
- 4.2.2 Initial target date for planning is September 2022. To be extended to [x] in the event of planning delays (for example appeal, proceedings etc).
- 4.2.3 Notwithstanding the proposed application route, it will be necessary to consider the terms of the existing permission and existing S106 agreement to understand whether any amendments are required to the conditions / obligations contained therein as a result of the proposed strategy from the Purchaser. It will be necessary to ensure that the delivery of the remaining components of the existing permission are not compromised / delayed by the implementation of Plot C.
- 4.2.4 To the extent there is any relationship between the delivery of the retained development and Plot C it will be necessary to give consideration to how the new residential development and the development on the retained land will be delivered.
- 4.2.5 The responsibility for any CIL / S106 liability should be at the Purchaser's cost. An indemnity may be required to ensure that the Vendor has sufficient protection in the event of any failure to pay CIL / S106 liability.
- 4.2.6 The Vendor should be consulted with any planning application and be invited to any meetings/discussions.

#### 4.3 **Planning Generally**

- 4.3.1 The Purchaser is obliged to appeal against the refusal of a planning application for the proposed developments or the grant of any planning permission subject to unsatisfactory conditions in the event planning counsel, at the cost of the Purchaser, advises that there is a 50% or greater chance of being successful.
- 4.3.2 The Purchaser is obliged to defend any proceedings brought following the grant of planning permission for the proposed developments in the event planning counsel, at the cost of the Purchaser, advises that there is a 50% or greater chance of such defence being successful.

- 4.3.3 The Purchaser is to use reasonable endeavours, skill and care acting as a reasonable and commercially prudent developer having regard to inter-alia planning policy to secure both planning permissions at the earliest reasonable opportunity.
- 4.3.4 The Purchaser is to pay for any reasonable additional costs incurred by the Vendor in assisting the planning process following the request of such assistance by the Purchaser.
- 4.3.5 The Vendor shall enter into any Section Agreement (including any agreement pursuant to section 106 of the Planning Act, section 111 Local Government Act 1972, sections 38, 228 and or 278 Highways Act 1980, section 33 Local Government (Miscellaneous Provisions) Act 1982 and section 104 Water Industry Act 1991 ) associated with the proposed developments as reasonably required subject to prior approval (not to be withheld or unreasonably delayed) and provided this does not impose any liability until the consent is implemented and that the liability follows ownership of the land. The Purchaser will indemnify the Vendor for any costs, losses or other liabilities associated with such Section Agreements.
- 4.3.6 All costs associated with the planning applications must be borne by the Purchaser.
- 4.3.7 Before the planning applications are submitted, the Purchaser must submit the same to the Vendor for approval and allow the Vendor not less than 10 working days to approve the same. The Vendor's approval is not to be unreasonably withheld or delayed and shall be deemed to have been given if no response has been provided within ten working days of submission.
- 4.3.8 The Purchaser will take any reasonable representations of the Vendor into account and, once amended, the planning permission must be resubmitted to the Vendor for further approval.

## 5. Construction

### 5.1 Property 1 – Construction

Comprising of five buildings as identified within the attached "Appendix 6 - Clapham Proposed Site Plan", split into two distinct phases as per the "Appendix 7 - Clapham Proposed Phasing Plan". The Buildings Schedule of Area comprise of:

	Phase 2				Phase 1						Totals	
	Building 1		Building 2		Building 3		Building 4		Building 5 Gateway Centre			
	No.	Mix	No.	Mix	No.	Mix	No.	Mix	No.	Mix	No.	Mix
1 Bed	136	65.1%	60	45.1%	26	54.2%	105	71.9%	0	0.0%	327	61.0%
2 Bed	59	28.2%	53	39.8%	20	41.7%	30	20.5%	0	0.0%	162	30.2%
3 Bed	8	3.8%	20	15.0%	2	4.2%	11	7.5%	0	0.0%	41	7.6%
4 Bed	6	2.9%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	6	1.1%
<b>Total</b>	<b>209</b>	<b>100%</b>	<b>133</b>	<b>100%</b>	<b>48</b>	<b>100%</b>	<b>146</b>	<b>100%</b>	<b>0</b>	<b>0.0%</b>	<b>536</b>	<b>100%</b>

	Phase 2		Phase 1			
	Building 1	Building 2	Building 3	Building 4	Building 5 Gateway Centre	Totals
	m <sup>2</sup>	m <sup>2</sup>				
Residential	12,740	8,164	2,865	8,743	0	32,512
Commercial	3,142	0	0	0	0	3,142
College	0	0	0	0	6,387	6,387
<b>GIA</b>	<b>15,882</b>	<b>8,164</b>	<b>2,865</b>	<b>8,743</b>	<b>6,387</b>	<b>42,041</b>

## Phase 1

- 5.1.1 The Vendor will want to instruct its own Technical Advisor (TA) in relation to the Gateway Centre to:
- 5.1.1.1 review and approve all initial design drawings;
  - 5.1.1.2 ensure the design includes everything required;
  - 5.1.1.3 oversee the detailed design during construction; and
  - 5.1.1.4 oversee the construction itself in a monitoring role.
- 5.1.2 The Gateway Centre must be on a turnkey basis and the Vendor and the Purchaser shall work together to ensure that detailed designs are agreed and deliver a scheme satisfactory to the Vendor.
- 5.1.3 The Vendor will require a full set of warranties from the developer's design team, contractor and sub-contractor, together with the ability to 'step-in' in the event of insolvency, severe delay, or breach of the sale agreement.
- 5.1.4 The overall agreement does not change if the construction costs change, or if there are any delays or additional costs due to such things as unforeseen physical conditions, access issues, utilities delays, force majeure or other delays, any further planning delays, etc. The only time the Vendor would be responsible for payment of any sums towards the build is if they request a variation, it is subsequently priced, negotiated, and agreed.
- 5.1.5 The escrow account would have to be maintained at a level commensurate with the sums anticipated to completion (including claims for additional fees resulting from variations or delays) and not the anticipated build costs less sums paid.
- 5.1.6 The construction programme needs to be agreed by the Vendor/College in order to keep disruption to a minimum.
- 5.1.7 The Vendor and the Purchaser are to agree access requirements over the Purchaser's land for the purposes of the development of Phase 1.
- 5.1.8 The Vendor and the Purchaser shall agree the proposed timetable for construction of Phase 1 to ensure its timely delivery.
- 5.1.9 The Purchaser shall not be permitted to apply to alter the planning permission with regards to Phase 1 without the consent of the Vendor.

## 5.2 Property 1 – Construction

### Phase 2

- 5.2.1 The Vendor and the Purchaser are to agree access requirements over the Purchaser's land for the purposes of the development of Phase 2.
- 5.2.2 The Vendor and the Purchaser shall agree the proposed timetable for construction of Phase 2 to ensure its timely delivery.
- 5.2.3 The Purchaser shall not be permitted to apply to alter the planning permission with regards to Phase 2 without the consent of the Vendor.

## 5.3 Property 2 – Construction

Comprising of one building as identified within the attached "Appendix 5 – Vauxhall Masterplan". The Building Schedule of Area comprise of:

Apartment Type	Vauxhall Block C		
	No.	Mix	m <sup>2</sup>
1 Bed	193	76.3%	9,860
2 Bed	28	11.1%	1,797
3 Bed	32	12.7%	2,566
<b>Total</b>	<b>253</b>	<b>100%</b>	<b>14,223</b>

## 6. Exclusivity

- 6.1 The Seller and the Buyer will enter into an exclusivity agreement.
- 6.2 This will give the Buyer exclusivity in relation to Property 1 and Property 2 until [3 months from the date of the Exclusivity Agreement].
- 6.3 During the period, the Seller will not talk to or deal with any third parties in relation to the disposal of Property 1 and Property 2 unless the exclusivity agreement is terminated early.

## 7. Conditions

- 7.1 Subject to contract.
- 7.2 Subject to the Purchaser carrying out and completing satisfactory due diligence on the Properties.
- 7.3 Subject to all parties securing board approval to the proposed transaction.
- 7.4 Completion is to be subject to expiry of the Judicial Review period (which shall be 6 weeks and 5 working days), free from challenge, following receipt of planning permission. The Purchaser has the ability to waive the Judicial Review period.
- 7.5 Vacant Possession will be provided on completion of each phase.
- 7.6 Subject to the Vendor receiving appropriate consents from the DfE

**8. Overage**

- 8.1 The Overage Period shall be for a period of 15 years from the date of completion of sale of each of the Properties.
- 8.2 Overage shall be payable by the Purchaser to the Vendor upon the grant of each acceptable planning consent in relation to the relevant the Property.
- 8.3 The Overage percentage shall be 50% and shall be the difference between the value of the relevant Property with the benefit of the planning granted before completion of the sale and the value of the relevant Property with the new planning permission.
- 8.4 Overage will only become payable if the development for which the new permission is granted is commenced or the relevant Property is sold with the benefit of the new planning permission.
- 8.5 Open Market Value shall be calculated based on the RICS Red Book Valuation, with expert determination in the event of a dispute.

**9. Funding**

Before the application for planning is submitted, the Buyer is to use reasonable endeavours to enter into a legally binding agreement with Optivo and M and G in which Optivo and M and G will commit to funding the project should consent be received on terms reasonable acceptable to all parties.

**10. Acknowledgements**

- 10.1 The parties acknowledge these heads of terms do not constitute a binding agreement for the sale and purchase of Property 1 and/or Property 2 or require the parties to enter into one save for clause 6 and clause 10.2 below.
- 10.2 The Seller and the Buyer agree not to disclose the terms of the Transaction, its existence or the terms of these heads of terms to any third party, save as required by law, and are to instruct their respective professional advisors not to do so.

Signed for and on behalf of the Seller: )

Name:

Position:

Date:

Signed for and on behalf of the Buyer: )

Name:

Position:

Date:

**APPENDIX 1**

**Official Copy Title Plan - TGL150604 (Clapham Centre)**

DRAFT

**APPENDIX 2**  
**Existing Clapham Site Plan**

DRAFT

**APPENDIX 3**

**Plot C (red line)**

DRAFT

**APPENDIX 4**

**Official Copy Title Plan - TGL14378 (Vauxhall)**

DRAFT

**APPENDIX 5**  
**Vauxhall Master Plan**

DRAFT

**APPENDIX 6**  
**Clapham Proposed Site Plan**

DRAFT

**APPENDIX 7**  
**Clapham Proposed Phasing Plan**

DRAFT

**These are the notes referred to on the following official copy**

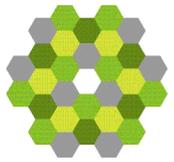
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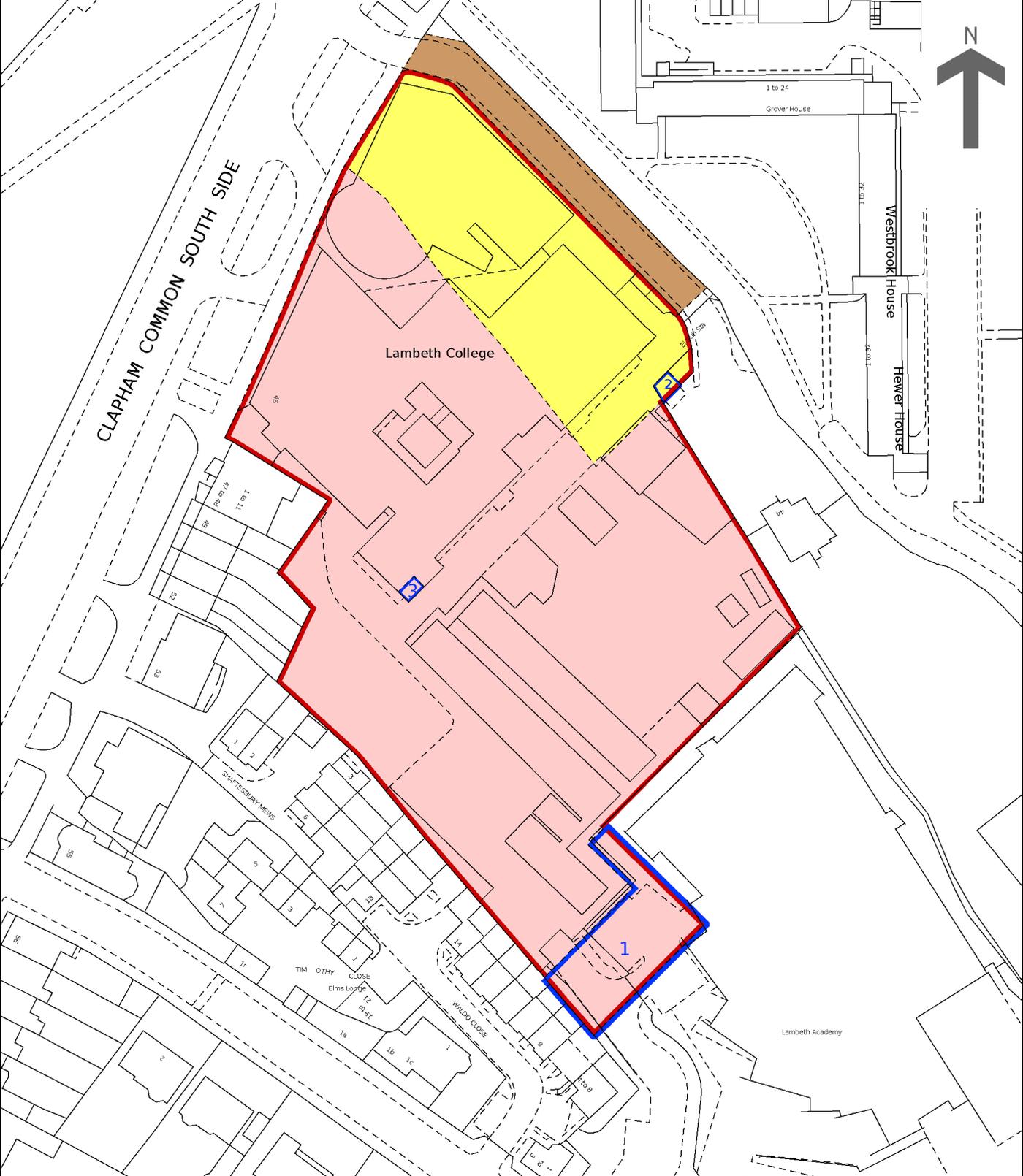
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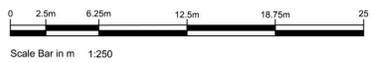
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Existing Site Plan

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DATE	DRAWN	DESCRIPTION OF REVISION	REVISION LETTER	CHECKED BY
02.07.2019	AB	Issue for Planning	A	BA
22.06.2019	AB	Draft for Planning	#	BA

CLIENT  
LAMBETH COLLEGE LONDON SOUTHBANK UNIVERSITY  
PROJECT TITLE  
LAMBETH COLLEGE, NINE ELMS CAMPUS

DRAWING TITLE  
LANDSCAPE MASTERPLAN  
DRAWING STATUS  
PLANNING

DRAWING SCALE  
1:250  
PAPER SIZE  
A1

DRAWN BY  
AB  
CHECKED BY  
BA

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JUN 2019  
CHECKED DATE  
JUN 2019

REVISION :  
A

DRAWING NUMBER :  
TM372-L01

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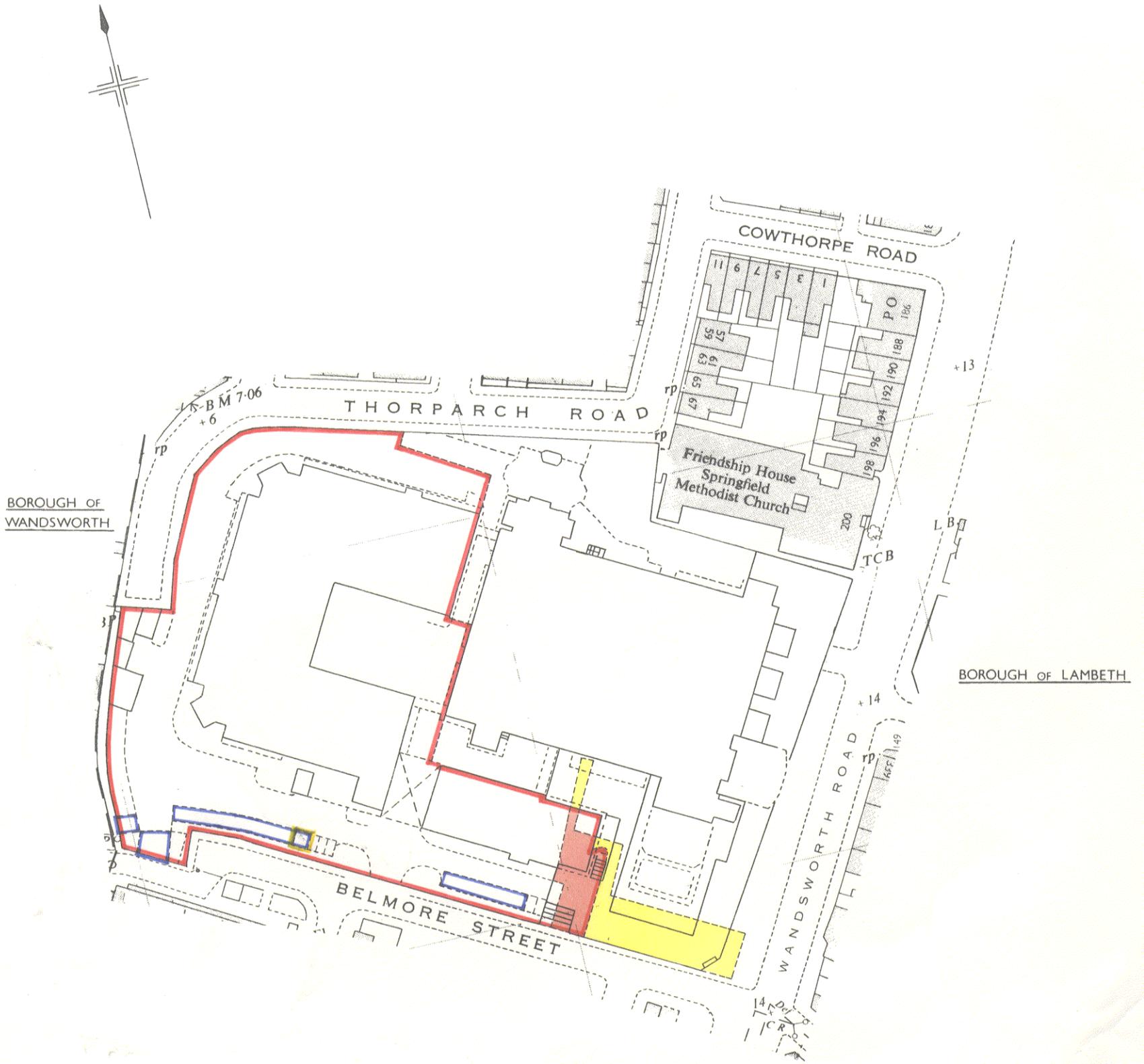
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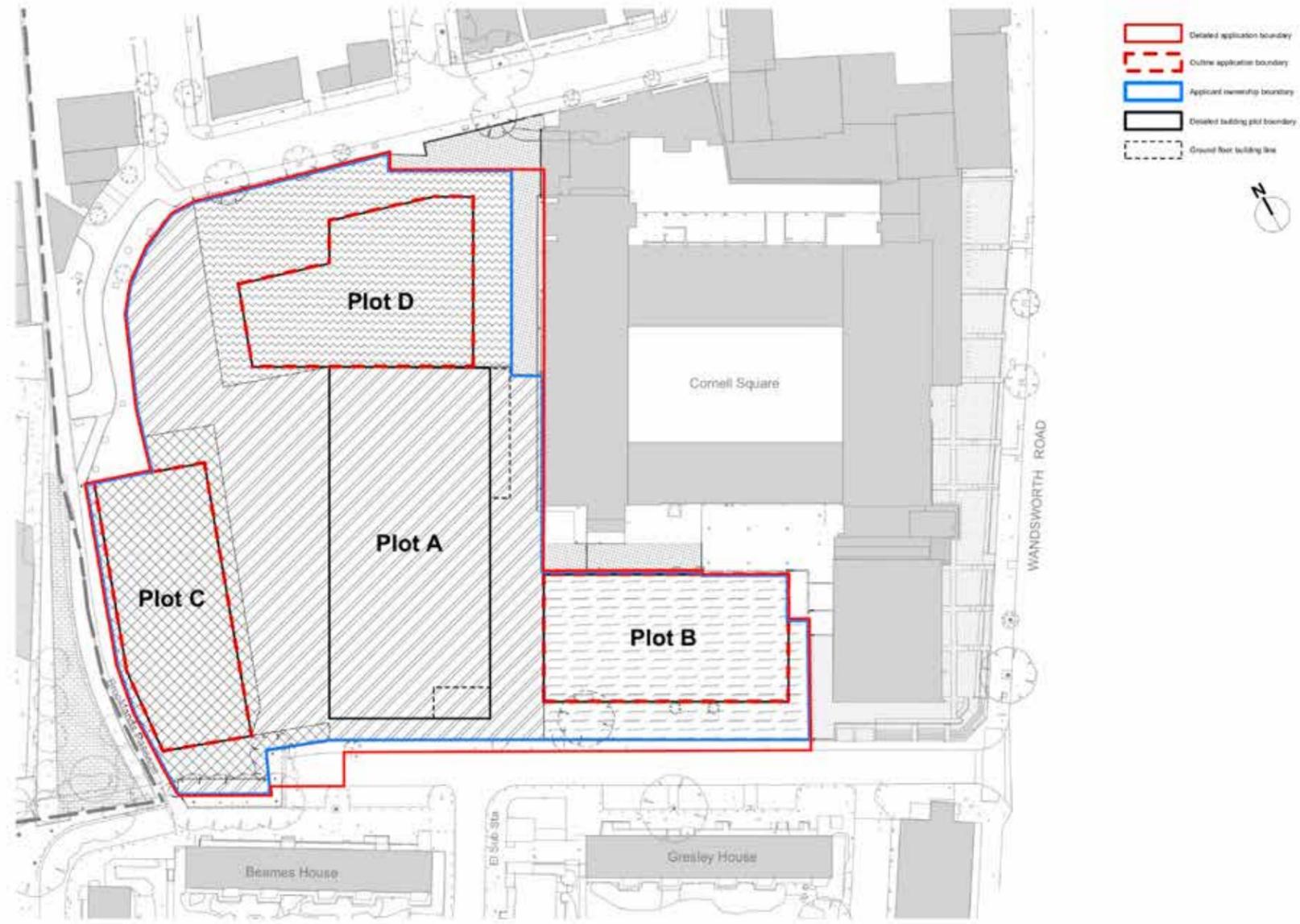
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H.M. LAND REGISTRY		TITLE NUMBER		
		TGL 149378		
ORDNANCE SURVEY PLAN REFERENCE	COUNTY	SHEET	NATIONAL GRID	SECTION
	GREATER LONDON		TQ 2976 @	H
Scale: 1/1250		© Crown copyright 1974		

Old Reference LN XI 32 C



# MASTERPLAN



Existing site plan with proposed buildings A, B, C and D overlaid

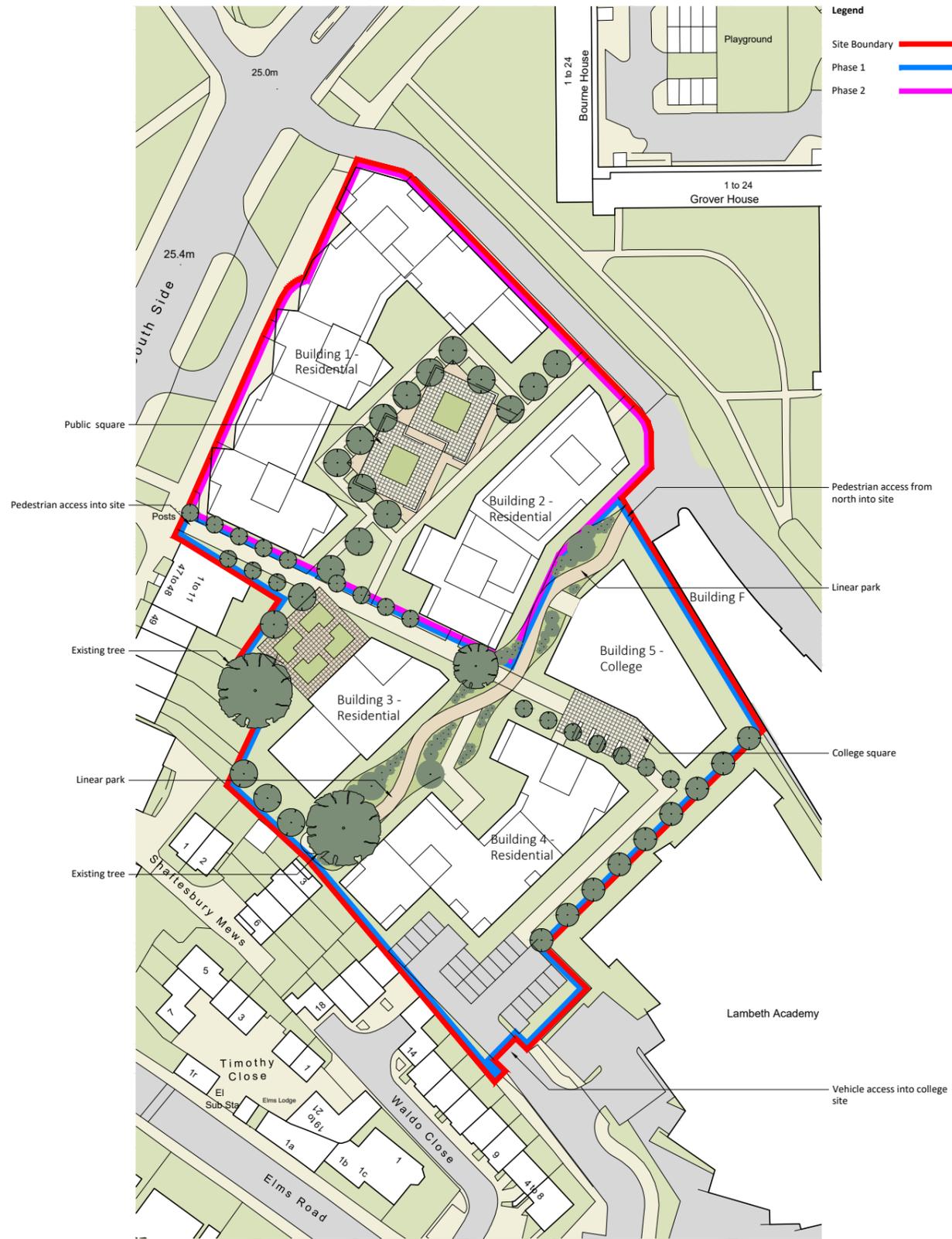


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# PHASING



PHASE 1 TO START SEPTEMBER 2022  
PHASE 2 TO START SEPTEMBER 2023

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