

APPENDIX D

THE PROGRESS OF THE SCHEME SINCE APRIL 2020

1. On 29 July 2020, planning permission 20/AP/0681 was granted for some connecting London underground tunnels. The construction of the connecting tunnels by LUL will be required to successfully bring into operation the new underground station box as part of the Scheme. The need for this planning permission was expressly referred to in the April 2020 Cabinet report (Agenda Item 24).
2. Highways stopping-up orders under the Town and Country Planning Act 1990 in respect of the Scheme were also made in summer 2020, one for the East Site (30 July 2020) and one for the West Site (4 June 2020). Those orders came into effect when demolition began on site (as to which see below). No challenge was brought to the orders.
3. On 27 July 2020, EC's group company, Elephant and Castle Development UK Limited ("EC Dev UK"), entered into an asset protection agreement with Network Rail, with EC guaranteeing its group company's obligations. This was a requirement of Network Rail, to safeguard the railway infrastructure during the redevelopment.
4. On 5 August 2020 EC and its group companies entered into conditional agreements with UAL for (i) the relocation of UAL to a new university campus building to be built on the East Site and (ii) the purchase of the current LCC site by Elephant Three Properties Ltd (EC's group company). UAL is the anchor tenant for the East Site and without the acquisition of the current LCC site the West Site cannot be delivered. The entry into such agreements was a pre-requisite to the Council making any CPO or entering into any arrangements to override third party rights under the April 2020 CPO resolution.
5. The overriding rights mechanism approved by Cabinet as Agenda Item 25 in April 2020 was put in place for the large majority of the Scheme on 6 August 2020. The Council took interests in both the LCC site (from UAL) and in the large majority of the East Site (from EC). On 30 April 2021, the remaining areas to be built upon as part of the Scheme, owned by LUL and TfL, were also the subject of similar transactions. On each occasion, public notices were published in the Southwark News, advertising the intention and effect of the process. No complaint or challenge was raised to the use of those procedures. The interests held by the Council have been surrendered. As required by the Cabinet resolution, prior to the arrangements being entered into, indemnities were given in favour of the Council by EC with Get Living Plc providing a guarantee for any default liability the Council may have to pay compensation to affected parties. Accordingly, the objective of the Cabinet in overriding third party rights which may otherwise frustrate the Scheme has been achieved.

6. EC procured the discharge of the pre-demolition conditions on the 2019 permission and any pre-demolition obligations under the related section 106 planning agreement during 2020.
7. In September 2020 the affordable replacement retail units in Elephant One (50 New Kent Road, owned by a group company of EC), Perronet House (owned by the Council) and the temporary retail units at Castle Square (adjacent to 50 New Kent Road, on Elephant Road) were opened.
8. Following the opening of the Perronet House, Castle Square and other replacement retail units, on 24 September 2020 the Shopping Centre and the adjacent external market area within its grounds closed to the public.
9. The section 106 relocation fund (provided by EC) and the additional £200,000 fund made available by the Council to local independent traders from the East Site have largely been expended. The Council concentrated its additional £200,000 fund on making grants in 2020 to eligible local independent traders from the East Site without an offer of an affordable unit.
10. At the time of the April 2020 Cabinet meeting the High Court had dismissed (on all grounds) a judicial review claim against the Council's grant of the January 2019 planning permission for the Scheme. It was noted in the Cabinet report, though, that there might be an appeal of that decision by the claimant. On 22 October 2020 the Court of Appeal gave permission to appeal to the claimant on all grounds. The substantive appeal was heard by three Court of Appeal judges on 16-17 March 2021. The Court of Appeal judgment was given on 28 May 2021 and it unanimously rejected all grounds of the claim, upholding the High Court's decision. The unanimous decision of the Court of Appeal further vindicated the Council's (and EC's) position on the matter. The Council's consideration of the planning application was entirely lawful.
11. On 29 October 2020, EC and the Council agreed a variation to part of the section 106 agreement, so that EC would be allowed to demolish the existing buildings on the Shopping Centre without first entering into a development agreement ("DA") with LUL. The requirement to enter into the DA with LUL was left in place in the section 106 agreement but was relaxed so that demolition could take place beforehand. This variation of the section 106 agreement meant that no "Implementation" of the Scheme (ie works of piling or other substantive construction works) could take place pursuant to the section 106 agreement until the DA with LUL was in place, and that the DA had to contain (among other items) a requirement on LUL to enter into a further section 106 obligation, prior to Implementation, as to the fit-out of the station box and an agreed programme for the phasing and completion of the station box works. As explained below, this position was further amended.
12. On 1 October 2020, EC Dev UK entered into a funding and co-operation agreement with the Thameslink train operator, Govia Thameslink, to fund the required operational changes to the railway station, including the provision of a new surface level access to the new town centre scheme on the western boundary of the railway station.

13. In October 2020, a demolition contractor took possession of the Shopping Centre and the immediately surrounding land owned by EC. Demolition work on the Shopping Centre and the immediately surrounding buildings began in January 2021, implementing the 2019 permission.
14. On 27 October 2020, EC entered into an agreement with Network Rail to release existing easements over the Shopping Centre site. This allowed EC to remove the then existing footbridge from the railway station into the Shopping Centre.
15. On 1 December 2020, EC entered into an agreement with London Power Networks PLC, the electricity undertaker, for the surrender and re-grant of electricity sub-station leases on the East Site. The existing sub-station leases on the East Site were surrendered pursuant to that agreement on 27 September 2021.
16. In December 2020, a further planning application was submitted to amend the permitted Scheme under the 2019 permission, to allow for an enlarged station box, with enough capacity to potentially accommodate both Bakerloo and Northern Lines. This application, made by EC, was agreed in advance with LUL. The Council granted the permission (reference 20/AP/3675) on 12 March 2021. Again, the need for such a permission to further the Scheme was expressly envisaged in the April 2020 Cabinet report.
17. On 8 April 2021, a non-material amendment approval (reference 21/AP/1064) to the 12 March 2021 planning permission was granted. This simplified the description of development and removed references to building heights and unit numbers in that description. The purpose of this approval was to pave the way for a further planning application, for further minor material amendments to the East Site of the Scheme (reference 21/AP/1104), submitted on 25 March 2021. Those further amendments can be summarized as follows:
 - Additional office accommodation within Building E2;
 - Reduction in cinema area and provision of additional leisure area at basement level;
 - Reduction in retail area in East Site, offset by an increase in retail area in West Site;
 - Four additional residential units (representing a 0.4% increase);
 - Reconfiguration of residential unit mix to provide additional 2-bed and 3-bed units;
 - Amendments to residential communal amenity space;
 - Provision of additional UAL floorspace;

- Minor alterations to building heights (reduction of up to 670 mm) and positioning (up to 700 mm);
 - Alterations to pedestrian routes and walkways; and
 - Reconfiguration of internal layouts and elevational changes.
 - Amendments to conditions 1 (approved drawings – to reflect revised drawings), 19 (detailed construction drawings of the East Site), 20 (detailed construction drawings of the proposed new UAL building on the East Site), 25 (green roof –condition deleted as there is no green roof on Building E1), 26 (basement access design), 27 (western railway viaduct boundary –condition deleted as there is no proposed boundary treatment along the west-facing viaduct), 29 (public toilet), 31 (landscaping scheme), 45 (sound insulation in the proposed UAL building – condition deleted), 48 (external noise levels in private amenity areas – condition deleted), 51 (opening hours of cafes/restaurants/bars) and 54 (wind microclimate).
18. Some of these changes were the result of further discussions with UAL as to their requirements and had been discussed with the Council’s planning officers and the GLA prior to submission. All of the changes are minor in nature. All of the main constituent parts of the Scheme (as envisaged in April 2020) are still present. The 35% affordable housing provision by habitable room was maintained. On 6 July 2021 the Council’s Planning Committee resolved to grant planning permission for these changes, subject to completion of a section 106 deed of variation and no call-in by the Mayor. This further planning permission was granted on 29 July 2021. Works pursuant to this permission have now been implemented on the East Site.
19. On 7 May 2021 the Council received an application from EC (reference 21/AP/1581), supported by TfL, to further amend the section 106 agreement to remove the requirements for details of the timescales for the fit out and opening of the station box to be provided in the development agreement with LUL. TfL had advised in writing that owing to the long term funding uncertainty that TfL faces as a result of the global pandemic, which has had a significant impact on TfL revenue, TfL/LUL were unable to commit to the funding of the fit-out (and consequently the opening) of the new underground station box. That means that the DA could not be entered into, which would mean that Implementation of the Scheme could not take place once demolition had finished. EC therefore requested, with TfL support, that the terms which LUL could not commit to at this stage were removed from the section 106 agreement, thus enabling the DA to be entered into and EC to proceed with works beyond demolition.
20. This request was carefully considered by the Council’s planning officers and they concluded that: the changes remove the certainty as to the fitting out and opening of the new station box; there is no guarantee that LUL will have the necessary funds in the future; it is possible that the entire site could be occupied without the new station box being opened, and if that happened it is likely that access to the existing underground station would need to be

managed more frequently; whilst the delivery of the new station box was a factor in the grant of planning permission, EC has no control over LUL funding; if the Scheme cannot be Implemented that will lead to a vacant site at the heart of the town centre, which would not bring the various other benefits of the Scheme; TfL/LUL do have funding for the enlarged station box (but not fit-out) and connecting tunnels; and when all of these factors are considered in the round, including the unprecedented situation that LUL finds itself in due to the pandemic, the amendment to the section 106 agreement was acceptable. The deed of variation to implement these changes was completed on 29 June 2021.

21. On 18 December 2021, EC Dev UK entered into a building contract with the major building contractor Multiplex for the substantive construction (ie beyond demolition phase) of the East Site.
22. On 23 December 2021 a further important milestone was reached when EC and EC Dev UK entered into the DA with LUL and TfL, with Get Living Plc providing a guarantee of the development obligations. The DA deals with the construction of the enlarged Underground station box on the East Site by EC Dev UK, which when completed will be handed over to LUL for fit-out. As can be seen from the preceding paragraphs, there is not absolute certainty that TfL/LUL will have the funds to fit-out the station once it is handed over, though there is a high likelihood that the station will be fitted out within a reasonable timescale of handover. In addition, the DA brings TfL's landholdings adjacent to the Shopping Centre site on the East Site into the Scheme by agreement, with EC having acquired several plots from TfL.
23. Also on 23 December 2021, EC entered into a debt facility agreement with Starwood Property Trust Inc, to provide the necessary debt funding (£365 million) to continue and complete the East Site redevelopment. This gives further confidence that the funding of the East Site is secured.
24. Following the entry into the facility agreement, notice to proceed with the substantive construction of the East Site redevelopment was given to Multiplex under the building contract on 23 December 2021.
25. On 18 January 2022, T3 Residential Limited, a group company of EC which has been set up to become a for profit registered provider of the affordable housing on the Scheme, entered into an affordable housing grant funding agreement with the GLA. This secured £9,631,750 of grant funding from the GLA to facilitate the provision of the 172 affordable housing units on the East Site.
26. On 17 March 2022, piling works began on the East Site, marking the commencement of the substantive construction of the East Site redevelopment. This also triggered the payment of the East Site grant funding to T3.
27. In May 2022, LUL and TfL granted crane oversail licences to facilitate works on part of the East Site.

28. In late 2021 and during 2022 the Council has granted several non-material amendment approvals under the July 2021 planning permission, permitting non-material amendments in respect of submissions under conditions 10, 24, 25 and 28 of that planning permission.
29. On 10 June 2022, the Council granted planning permission (reference 21/AP/4628) for the installation of underground heating pipework and associated works, to run from 50 New Kent Road to the East Site under Elephant Road and the railway station. The proposed connection will enable the East Site to benefit from heating produced at the 50 New Kent Road site. On 5 August 2022, Network Rail granted an easement in favour of EC to allow the heating pipework to run under the railway station.