Homes & Communities Agency
The social housing regulator

BY EMAIL ONLY
Mr Barrie Clegg
Save Our Stow
13 Mark Avenue
Chingford
London E4 7NR

17 May 2012

Dear Mr Clegg

I am replying to your letter dated 17 April regarding the future of Walthamstow greyhound stadium. You have requested that the Social Housing Regulator launches an inquiry into London and Quadrant (L&Q) and the economic standards involved in connection with its acquisition and proposed development of the Walthamstow site.

As Social Housing Regulator, we have considered your letter and your subsequent email sent to us on Friday 10 May.

Before addressing the specific issues, it may be helpful to provide you with an outline of how we deal with allegations, taking account of the independence of social housing providers, our regulatory remit, the Regulatory Framework and our approach to Value for Money (VFM). This is to help explain the context of the response to your allegations by the Social Housing Regulator, as part of the HCA.

Our approach to allegations
When we receive allegations such as those you have made to us, we cannot take up those matters on behalf of an individual or group as an arbitrator, nor can we seek remedy or redress for them or provide legal advice.

Our role firstly is to establish whether the information received from the individual falls within the remit of the Social Housing Regulator. If it does not, then no further investigation is required by us. If an allegation does fall within our remit we then consider whether it raises an issue of regulatory concern that could indicate that the provider concerned might be in breach of one of our standards.

If we decide that an allegation does raise such a concern, we will ensure that the issues are investigated, obtaining information from the provider and other sources as necessary. This may involve us asking the individual that provided the initial information for further information if we need it.

Homes and Communities Agency
7th Floor, Maple House, 149 Tottenham Court Road, London, W1T 7BN

0300 1234 500
homesandcommunities.co.uk

Kevin Millgate
kevin.millgate@hca.gsi.gov.uk
0207 393 2005

Homes & Communities Agency
The social housing regulator

Using the information we receive we will consider whether or not there has been a breach of a standard, and whether there are any actual or potential generic weaknesses against our standards, and we will weigh up whether or not action is necessary to correct the situation. Such action may include use of our regulatory powers, but equally it may be the case that the provider concerned is able to take satisfactory corrective action on its own.

The independence of registered social housing providers
Registered social housing providers ('providers'), such as L&Q, are independent organisations with a committee or board of management which has overall responsibility for the work of the organisation. The Social Housing Regulator is responsible for regulating providers registered with us and does this by setting national standards which providers must meet. Underpinning all of this is the principle of co-regulation. This requires providers to meet the relevant standards and to be responsible for the delivery of their social housing objectives as independent organisations. It is for providers themselves to decide how best to fulfil these requirements within parameters set by the standards.

The Regulatory Framework
A new set of common standards apply to providers from 1 April 2012, and these are the basis of the regulatory framework. From your letter it is apparent that you are familiar with the framework and the guidance notes that set out the HCA's approach to the use of statutory powers.

Under the framework the regulator has distinct roles in relation to economic regulation and consumer regulation. Economic regulation is a proactive form of regulation of which there are the following Standards: Governance and Viability, Value for Money and Rents.

We regulate at an organisational level. In common with all other large providers L&Q has been and continues to be assessed against the applicable Regulatory Framework. Our current views of L&Q are set out in the current publically available Regulatory Judgement available on the former TSA's web site:

http://www.tenantservicesauthority/London and Quadrant Housing Trust RJ.pdf

Value for Money Standard
A new Value for Money Standard (VFM) only became effective on 1 April 2012. This Standard is different from a less onerous set of VFM requirements under the former TSA's Regulatory Framework which lapsed on 31 March 2012. The recent change means that a provider's approach to VFM cannot be judged retrospectively against a standard that only became effective around six weeks ago. We will not draw immediate conclusions about a provider's compliance with the new standard. During the first year of the new standard we will be drawing evidence together to assess whether providers are developing and delivering a strategy to achieve continuous improvement in their performance and the use of their assets in meeting their objectives.

As you have noted, under the new VFM standard providers are required to articulate and deliver a comprehensive and strategic approach to achieving value for money in meeting their objectives. Boards must maintain a robust assessment of the performance of all their assets and resources. This means managing their resources economically, efficiently and effectively to provide quality services and homes, and planning for and delivering on-going

improvements in value for money. Section 1.1 of the Standard sets out the following specific expectations that providers shall:

- Have robust approach to making decisions on the use of resources to deliver the provider's objectives, including an understanding of the trade-offs and opportunity costs of its decisions

- Understand the return on its assets, and have a strategy for optimising the future return on assets – including rigorous appraisal of all potential options for improving value for money including the potential benefits in alternate delivery models – measured against the organisation's purpose and objectives

- Have performance management and scrutiny functions which are effective at driving and delivering improved value for money performance

- Understand the cost and outcomes of delivering specific services and which underlying factors influence these costs and how they do so.

As you have also noted section 1.2 of the standard sets out how provider's boards shall demonstrate to stakeholders how they are meeting the standard.

In summary therefore, providers are expected to have a VFM strategy and processes in place to achieve that strategy at an organisational level. The role of the Social Housing Regulator is confined to assessing whether or not a provider has complied with this approach.

The standard does not set out requirements aimed at the VFM of individual services, activities or projects such as the Walthamstow greyhound stadium. For this reason the Social Housing Regulator does not have a remit under the value for money standard to review individual projects unless there were specific concerns that these were fundamentally at odds with or risked undermining the provider's overall strategic approach. This is consistent with the statutory objective placed on us to minimise interference and be proportionate, consistent and transparent in our regulation.

The allegations

Turning to the detail of your letter you have raised the following issues and allegations which we have considered in accordance with our established approach to allegations:

1. Mike Johnson of L&Q confirmed that L&Q were given local political encouragement to acquire the site. Did this therefore mean that the due diligence pre-purchase was less than thorough? Subsequent events suggest this to be the case.

2. L&Q bought the stadium believing it to be non-viable. The previous owners had made large pension fund payments mainly for their personal benefit that reduced profits. Why did L&Q not know about this, it was publically available information? If they were deliberately misled, why are the previous owners not being sued for fraud?

3. L&Q bought a site without planning permission that had a visible leisure and employment activity operational upon it. Who advised them they

would be granted planning permission and that the site was worth over £18m? Why are these advisors not being sued for damages?

4. It has recently been disclosed that there are considerable barriers to development from the site being in flood zone 3a and that the land was used as a rubbish tip in 1919 for 10 years. Why did these issues not get picked up pre-purchase?

5. L&Q have refused to disclose their viability analysis of the site, although in a letter to the planning authority they claim that they cannot afford to pay any section 106 contribution because the scheme does not make any profit. SOS have produced a residual value calculation of the scheme which shows that should they manage to get planning permission and progress to try and build 300 homes (note only 30% affordable) they will lose approximately £26m.

6. David Montague (CEO of L&Q) stated at a meeting with Stella Creasy MP and Iain Duncan-Smith MP that L&Q had a bankroll of £400m and could therefore pursue this scheme to completion. That may be the case but it is not a value for money exercise is it?

7. At current land values in this borough, a consented scheme for 300 units, in this location, would be prices at about £10m. The L&Q scheme doesn't have consent and is not likely to get one, not for 300 units. It also has exceptional costs associated with the site (Flood attenuation/ground remediation and off site payment of £1.75m for loss of the leisure facility). An open market value of the site, without planning permission would be in the region would be in the region of £6m. L&Q claim they have not written down the value of the assets. Why not?

8. Millionaire businessman and greyhound racetrack promoter (Bob Morton) has made a fully documented offer to L&Q to buy the site off them for £9m. This exceeds the site's current market value as a residential development site. Acceptance of this offer is the optimum property business decisions for L&Q. Any other action wastes publically funded reserves.

9. L&Q have consistently misled the public about their intentions for the site and issued false information. We have provided some commentary on these aspects in appendix 4, which details some of the consultation activities they engaged in over the past 4 years.

The Social Housing Regulator's response to the individual allegations:

Allegation 1

As explained above we do not regulate individual projects. Instead we take a view of provider's compliance at an organisational level. Due diligence in relation to its acquisition and development decisions is a matter for L&Q. We would expect L&Q routinely to discuss proposed projects with local stakeholders and authorities, in keeping with the expectation under the neighbourhood and community standard that registered providers shall co-operate with local partnership arrangements and strategic housing functions of local authorities where they are able to assist them in achieving their objectives. It would not be unusual for a provider to discuss a potential project with local councillors and

council officers. These issues do not fall within the remit of the Social Housing Regulator and therefore we will take no further action in relation to them.

Allegation 2
L&Q bought the site as a development opportunity, not as a dog racing stadium. It is not unusual for any developer to acquire a project that had previously been used for one purpose but then develop it for alternate use. The form of development that is allowed is a matter for the local and regional planning process. The pension payments and the profitability of the former site that you mention were a matter for the former owners, shareholders and any creditors. These issues do not fall within the remit of the Social Housing Regulator and therefore we will take no further action in relation to them.

Allegation 3
As explained above in allegation 2 it is not unusual for a developer to acquire a project that had previously been used for one purpose but then develop it for a different use. Providers sometimes acquire land for future development without formal planning permission at the point of purchase. Instead, as part of their due diligence, they will hold discussions to understand the intentions of the local and regional planning authorities for a particular site or area. We are aware there is a formal valuation that supported the acquisition. Again it would not be unusual for a valuation to be predicated on a developer's plans for a site rather than valuing it on its existing use. These issues do not fall within the remit of the Social Housing Regulator and therefore we will take no further action in relation to them.

Allegation 4
As explained above we do not regulate individual projects. Whether the site was subject to flood risk it would be a matter for L&Q's own due diligence, the Environment agency responsible for flood management and the local and regional planning authorities and the provider's design team. These issues do not fall within the remit of the Social Housing Regulator and therefore we will take no further action in relation to them.

Allegations 5 and 6
It is a matter for L&Q what commercially sensitive information it discloses about individual developments. The Social Housing Regulator does not evaluate or arbitrate on the relative profitability and merits of different development options or appraisals for individual projects. I have already explained above that our approach to VFM is at an organisational level. We do not have a remit to assess the VFM of individual projects. Therefore we will take no further action in relation to this matter.

Allegation 7
This is not within the remit of the Social Housing Regulator. The carrying value of a particular site on a provider's balance sheet and any write downs, such as impairment, are matters for the particular provider. It will need to satisfy its auditors that it has taken a prudent approach and complies with accounting standards and guidance in making those assessments. I would also refer you to the explanation I provided to Richard Holloway in my letter to him of 11 March 2011. In that letter I pointed out that inevitably housing associations generally have, in some instances, purchased sites where, in accordance with wider economic trends, market values of the land have since dropped. It does not

automatically follow that an association and indeed the public purse, will suffer a financial loss as the value of a scheme does not just relate to the land value. Its value will also be determined as a developed project, generating rental income from homes and possible other sources such as retail units. At an organisational level and in common with all major providers the Social Housing Regulator monitors any impairment on a provider's land holdings and other assets to ensure the financial viability of the provider and its continued compliance with its covenants with its lenders.

Allegation 8
As previously outlined the acquisition and sale of land sites is a commercial matter for L&Q. I have already outlined above our approach to VFM. This was also a point I explained in my letter of 11 March 2011 to Richard Holloway. These issues do not fall within the remit of the Social Housing Regulator and therefore we will take no further action in relation to them.

Allegation 9
As I explained in my letter of 11 March 2011 we are aware that the scheme has evoked a range of views from local residents but it is through the local and regional planning process and any public consultation where local residents should express those views. It is the role of the local authority and other planning processes to consider the planning application and any objections as part of a process of local accountability and the Social Housing Regulator has no role in that process.

Conclusion
As I have explained in this reply, we regulate providers at an organisational level, rather than in relation to their performance on specific projects or development schemes. I have also set out our approach to allegations and how we regulate, including the new VFM standard. We have considered your individual allegations and for the reasons I have outlined the matters raised are not within our remit. I have also drawn your attention to my previous explanations in my letter of 11 March 2011 to Richard Holloway which still hold true.

As a result there is no basis for us the Social Housing Regulator to conduct an inquiry into L&Q and the economic standards involved in connection with its acquisition and development management of the Walthamstow site. We therefore consider this matter closed.

Finally MP Ms Stella Creasy has requested a copy of our reply to you. As you have had already copied your letter to us to her then this reply is being sent to Ms Creasy.

Yours sincerely

Kevin Millgate
Strategic Regulation Manager