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Date: Tuesday, 17 April, 2012, 10:39

## BY E MAIL AND POST

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### Referrals and Regulatory Enquiries Team

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17 April 2012

Dear Sirs

### London and Quadrant Housing Association and the Walthamstow Greyhound Stadium site.

We are Save our Stow (SOS), a campaign group interested in the retention of greyhound racing at the above site. During our campaign we have noted many inappropriate actions by the above mentioned HA which acquired the site for development in 2008.

We were delighted to note the launch of **The regulatory framework for social housing in England from April 2012**, its stated goals and ambitions being very timely with respect to this case.

SOS note that the revised framework implements the requirements of the **Localism Act 2011** and the Secretary of State's directions and that it has been approved by the TSA Board following the completion of a statutory consultation. We are also tremendously encouraged to see that in respect of economic regulation the regulator will have a proactive role.

Given that you have stated that an important change is the introduction of a new Value for Money standard as one of the economic standards and that the regulator will continue to regulate proactively the economic standards, we formally request an urgent inquiry into the economic standards involved in connection with the acquisition and development management of the Walthamstow Stadium site by L&Q. We have set out (in two sections below) the case to answer against L&Q within the context of selected extracts from the new framework. We suspect this warrants an inquiry but will be guided by you on this, maybe an investigation is the best initial move?

We ask that you focus on the economic standards, in consideration of this request, and there are four main areas of interest:

- **Transparency**
- **Financial Viability**
- **Value for Money Standard**
- **Bringing the sector into disrepute**

**All as detailed in Chapters 2, 3 and 4 of the new document.**

We note particularly that Chapter four is about regulating the economic standards and Section 4.19 Contains the following:

*The regulator will carry out annual engagement with larger providers to enable it to achieve a minimum level of assurance that economic standards are being met, and to make public judgements on governance and financial viability.*

We request that L&Q be subject to inquiry / investigation on the basis of concerns over financial viability and value for money standards.

Below we detail briefly the areas of concern. These concerns are backed up with further information in the appendices attached to this letter.

Areas of Concern, for investigation under the above terms of reference;

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 publicly available information? If they were deliberately misled, why are the previous owners not being sued for fraud? (appendix 1 profitability of track pre-2008)

3.

L&Q bought a site without planning permission that had a viable 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? (appendix 2 correspondence from EA and historic reports)

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

contributions 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.  
(appendix 3 Viability analysis of current scheme)

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 priced 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 of £6m. L&Q claim they have not written down the value of the asset. 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 decision for L&Q. Any other action wastes publicly 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 (Note-sent under separate e mail due to size), which details some of the 'consultation' activities they engaged in over the past 4 years.

**Under the terms of the regulatory framework for social housing in England from April 2012**, this mess requires urgent and decisive inquiry and investigation.

It is quite clear that the principle of co-regulation, which emphasises that it is boards and councillors who are ultimately responsible for the effective performance of their organisations, compliance with the standards and being transparent and accountable to stakeholders, is not working in this instance.

Right to the top L&Q are engaged in a vain attempt to cover up a bad deal. Lots of developers bought badly in 2008. A strong board would recognise this, cut their losses, and get on with business. The fact that they refuse to take this sensible business route is why your regulatory body need to step in and act decisively.

Yours faithfully

Barrie Clegg

(on behalf of Saveourstow)

The following sets out SOS suggested areas of inquiry and investigation of the L&Q purchase of Walthamstow Greyhound Stadium site for residential development. This appendix is based on extracts from the regulatory framework with SOS comments in respect of the areas for investigation entered in ***bold italic***.

The first section is the framework itself the second is from Annex B 'guidance on regulators powers'.

First Section

## **The regulatory framework for social housing in England from April 2012**

**March 2012**

### **Regulating the economic standards (chapter four)**

1.1 The purpose of economic regulation is to protect historic government subsidy, promote access to private finance, and help address the lack of competitive pressures on providers, which might otherwise put pressure on service quality and efficiency.

***Inquiry should be made of L&Q's actions with respect to this development site in connection with protection of historic government subsidy and lack of competitive pressures resulting in a poorly considered land purchase.***

### **Intervention and enforcement (chapter six)**

1.2 The Localism Act retains all the regulatory, enforcement and general powers that the regulator might use to intervene to deal with poor performance. These will continue to be used in a proportionate, consistent and transparent way. The general principles underlying the way the regulator uses its powers have been updated where appropriate for the serious detriment threshold.

***Inquiry should be made into the poor performance of L&Q development team in acquisition of the Walthamstow Stadium site.***

II. Providers must meet the regulatory standards

2.3 All registered private and local authority providers are subject to the regulatory framework and must all meet the applicable regulatory standards.

2.4 Standards are classified as either:

- standards relating to economic matters, or
- standards relating to consumer matters

***It is noted that L&Q must meet the regulator's standards with respect to economic matters.***

### III. Transparency and accountability is central to co-regulation

2.8 Providers and their boards and governing bodies should be transparent with their tenants, service users and other stakeholders. Providers' approaches to co-regulation should be honest and robust, and include evidence-based self assessment, external challenge, and regular reporting to tenants.

***In matters relating to the Walthamstow stadium site L&Q have caused significant discontent in the local stakeholder groups, have displayed no transparency whatsoever and have refused to disclose any assessment of this development viability, in fact they have invoked a confidentiality clause to keep it secret.***

2.9 All providers should run their businesses with a presumption of openness and co-operation with stakeholders, including the regulator. Some of the regulatory standards rely on transparency to tenants as the means of giving explicit effect to a co-regulatory approach. This includes the reporting requirements in both the Tenant Involvement and Empowerment and Value for Money standards.

***L&Q's value for money standard with respect to this development site should be investigated. Our evidence suggests that to complete the development will crystalize a £26m loss when there is a legitimate route available to manage this down to only £9m.***

### VI. Value for money goes to the heart of how providers ensure current and future delivery of their objectives

2.13 Providers should have a strategy for optimising value for money, and systems to ensure that this strategy is delivered.

***Inquiry should be made of the Walthamstow Stadium site with respect to the above, which we note 'goes to the heart' of this framework.***

2.14 For private providers, the regulator has set a new Value for Money standard. Boards are expected to develop and deliver a strategy to achieve continuous improvement in their performance on running costs and the use of their assets. They are expected to be transparent and to enable scrutiny of their performance. The regulator will comment in regulatory judgements on the assurance it has obtained on this standard. The regulator will also carry out and publish sector and provider level analyses of the performance of the sector as a whole, with the aim of adding to the available body of contextual information that can inform boards and stakeholders.

***In connection with the Walthamstow Stadium Site L&Q's actions with respect to performance in use of their asset (this site) and factors of transparency in terms of their performance should be investigated.***

### **3. Standards for registered providers**

#### **Economic standards**

These standards apply to all registered providers except for local authorities. Providers' boards are responsible for ensuring their organisation meets the economic standards. The regulator has a proactive role in relation to economic standards and will engage with providers to obtain assurance that they are being met.

#### **Governance and Financial Viability standard**

##### **Required outcomes**

##### **1 Governance**

Registered providers shall ensure effective governance arrangements that deliver their aims, objectives and intended outcomes for tenants and potential tenants in an effective, transparent and accountable manner. Governance arrangements shall ensure they:

- adhere to all relevant legislation
- comply with their governing documents and all regulatory requirements
- are accountable to tenants, the regulator and relevant stakeholders
- **safeguard taxpayers' interests and the reputation of the sector**
- have an effective risk management and internal controls assurance framework

***In connection with the above bullet points L&Q have failed to deliver to the required standards. Full investigation against these criteria with respect to the Walthamstow Stadium Site must be made.***

##### **2 Financial viability**

Registered providers shall manage their resources effectively to ensure their viability is maintained.

***Investigation of the Walthamstow Stadium Site is required as the proposed scheme is not viable, it makes a huge loss.***

##### **Specific expectations**

##### **1 Governance**

1.1 Registered providers shall adopt and comply with an appropriate code of governance. Governance arrangements should establish and maintain clear roles, responsibilities and accountabilities for their board, chair and chief executive and ensure appropriate probity arrangements are in place. Areas of non-compliance with their chosen code of governance should be explained. Providers' boards should assess the effectiveness of their governance arrangements at least once a year.

**SOS do not have details of the L&Q code of governance but suspect it has been breached in connection with L&Q's behaviour in connection with the Walthamstow Stadium Site and this should become a matter for investigation.**

1.2 Registered providers shall ensure that they operate an appropriate strategic planning and control framework that identifies and manages risks to the delivery of their objectives and compliance with regulatory standards. Providers shall communicate in a timely manner with the regulator on material issues that relate to non-compliance with the economic standards.

**Can the regulator advise if L&Q have made any communication with them in connection with the above requirements arising from the Walthamstow Stadium Site?**

## **2 Financial viability**

2.1 Registered providers shall ensure that:

- effective controls and procedures are in place to ensure security of assets and the proper use of public funds
- effective systems are in place to monitor and accurately report delivery of their plans
- the risks to delivery of financial plans are identified and effectively managed ***In connection with the Walthamstow Stadium Site the above requirements have not been put in place by L&Q and investigation of the development proposal from pre-purchase through to present day is needed against each requirement.***

2.2 Registered providers shall ensure that they have a robust and prudent business planning and control framework. Through this framework they will ensure:

- there is access to sufficient liquidity at all times
- financial forecasts are based on appropriate and reasonable assumptions
- planning sufficiently considers the financial implications of risks to the delivery of plans
- they monitor, report on and comply with their funders' financial covenants ***SOS doubt that L&Q can demonstrate compliance with the above requirements in connection with their work on the Walthamstow Stadium Site and their performance against these criteria needs to be investigated.***

## **Value for Money standard**

### **Required outcomes**

Registered providers shall articulate and deliver a comprehensive and strategic approach to achieving value for money in meeting their organisation's objectives. Their boards must maintain a robust assessment of the performance of all their assets and resources (including for example financial, social and environmental returns). This will take into account the interests of and commitments to stakeholders, and be available to them in a way that is transparent and accessible.

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.

***In connection with the Walthamstow Stadium Site L&Q have failed to demonstrate Value for money (in fact they will make a significant loss of money). The board cannot show benefits under financial, social or environmental returns. None of the information is being presented in an accessible or transparent manner. The management of this land asset is not providing value for money. The acquisition of this land asset did not provide value for money.***

## Specific expectations

1.1 Registered providers shall:

- have a 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

***In connection with the Walthamstow Stadium Site L&Q's continued refusal to dispose of the site rather than to plough on and waste more money makes no financial sense. The reasoning behind this requires investigation.***

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

***To retain the Walthamstow Stadium Site suggests L&Q do not understand the above requirement. This needs investigation.***

- have performance management and scrutiny functions which are effective at driving and delivering improved value for money performance
- understand the costs and outcomes of delivering specific services and which underlying factors influence these costs and how they do so.

***L&Q's actions with Walthamstow Stadium Site suggest that they do not understand the above requirement, this needs investigation.***

1.2 Registered providers' boards shall demonstrate to stakeholders how they are meeting this standard. As part of that process, on an annual basis, they will publish a robust self assessment which sets out in a way that is transparent and accessible to stakeholders how they are achieving value for money in delivering their purpose and objectives. The assessment shall:

- enable stakeholders to understand the return on assets measured against the organisation's objectives
- set out the absolute and comparative costs of delivering specific services
- evidence the value for money gains that have been and will be made and how these have and will be realised over time

***Has L&Q's board explained in any annual statement since purchase of the Walthamstow Stadium Site in August 2008 the negative criteria arising from the site to the regulatory authorities? If not this situation should be investigated.***



# Neighbourhood and Community standard

## Required outcomes

### 1 Neighbourhood management

Registered providers shall keep the neighbourhood and communal areas associated with the homes that they own clean and safe. They shall work in partnership with their tenants and other providers and public bodies where it is effective to do so.

### 2 Local area co-operation

Registered providers shall co-operate with relevant partners to help promote social, environmental and economic wellbeing in the areas where they own properties.

***L&Q own many properties in the London Borough of Waltham Forest but have seriously harmed their standing with the community via aggressive development behaviour on both the Cat Hill site and the Walthamstow Stadium Site***

## 4. Regulating the economic standards

4.1 The regulator will take a proactive approach to obtaining assurance that the economic standards are being met. The economic standards apply only to private registered providers (not local authority providers). For profit making providers, regulation of the economic standards applies to the management of their affairs only so far as it relates to the provision of social housing.

4.2 The regulator's approach will recognise that boards are primarily responsible for their organisation's performance. The regulator will seek assurance that the provider is delivering its objectives effectively and properly managing its financial and other affairs. The approach will take into account the regulator's future statutory duty to minimise interference.

***Some interference is called for here. These are significant sums of money and significant failures on the part of the RSL in terms of asset and development management. The concern is that this is not an isolated incident and given the financial might of L&Q they may have made other errors like this and managed to hide the financial consequences. Also if poor practice has happened here it must be stopped for future activities.***

4.3 The regulator's approach to economic regulation is designed to give it adequate assurance that arrangements in the sector:

a) protect public investment in social housing

**In this instance public investment is being wasted.**

b) maintain confidence of private investors to invest into the sector

***L&Q have just received a large private sector injection of funds; this may be at risk in future if management as detailed in connection with the Walthamstow Stadium Site became general knowledge in the markets.***

- c) ensure that social housing<sup>[1]</sup> continues to be available to current and future tenants
  - d) enable landlords to be able to invest in new social housing, assuming other conditions are in place
  - e) are open and transparent, to allow tenants and other stakeholders to form views on and influence the services delivered by providers
- In connection with the actions of L&Q at the Walthamstow Stadium Site these have been the exact opposite of the above.***
- f) enable providers to meet the regulatory standards and statutory requirements
- Investigation is required as called for above to test these requirements we suspect L&Q will be seen to be falling short of the standards expected.***
- g) deliver value for money improvements to support providers to deliver their social housing objectives
- at the Walthamstow Stadium Site the value for money option would be to accept a reduced land receipt and move on, leaving the community with the viable leisure and employment site it quite clearly wants.***
- h) protect the reputation of the sector as a whole

## **The risk based approach to economic regulation**

4.5 Boards are expected to ensure that their organisations are well governed, understand their financial risks and remain financially viable, deliver value for money in all their activities and comply with the rent requirements for social housing properties.

***Investigation of L&Q's board is required with respect to the Walthamstow Stadium Site in connection with the following from 4.5***

***Are they well governed?***

***Did they understand the financial risks before buying this site?***

***Does this site remain financially viable?***

***Does development of this site deliver any value for money, or any money?***

4.6 These standards are so fundamental to maintaining the confidence of key stakeholders, including government, taxpayers and funders that the regulator will need to obtain assurances on compliance. Boards are primarily responsible for dealing with issues or emerging indications of regulatory concern. Where the regulator considers boards to be unable or unwilling to do this effectively, it will review its options for proportionate intervention including the use of its regulatory powers<sup>[2]</sup>.

***SOS is pleased to see these standards are so fundamental. There is enough evidence in this case to show the board is unwilling to correct the failings around the purchase and miss-management of the Walthamstow Stadium Site that an immediate intervention by the regulator be initiated.***

4.16 The requirements comprise:

- financial data to support the regulator’s routine assessments of viability and enable it to prioritise and focus work on key areas of financial risk, and

4.17 The form determined by the regulator in respect of its data requirements (as referred to in the Governance and Financial Viability standard) currently<sup>[3]</sup> includes:

- Financial forecast returns for larger providers (those that own 1,000 or more homes)
- Annual account returns for larger providers
- Quarterly financial risk survey for larger providers, which focus on key areas of financial and economic risk

***What financial risk have L&Q been reporting with respect to the Walthamstow Stadium Site?***

- Annual report on net losses from fraudulent activity
- Annual return about providers’ social housing and its use (for all providers but with a very limited data requirement for the smallest providers)
- Annual return setting out (limited) organisational and administrative detail

• **Regulating financial viability, governance and value for money**

- 
- 4.19 The regulator will carry out annual engagement with larger providers to enable it to achieve a minimum level of assurance that economic standards are being met, and to make public judgements on governance and financial viability. ***The regulator’s public judgement in this case is eagerly awaited.***

Second Section

**Guidance note 10**

**Guidance on sections 206 to 209: inquiry**

**Guidance on section 210: extraordinary audit**

**Potential triggers to the exercise of the power**

7 Sections 206 to 209 of the Act specifies that the regulator may hold an inquiry if it suspects that the affairs of a provider may have been mismanaged. The term “mismanaged” in relation to the affairs of a provider is defined in section 275 of the Act as:

- managed in contravention of a provision of part two of the Act or of anything done under part two of the Act
- otherwise conducted improperly or inappropriately

***L&Q have failed to meet these standards in relation to their management of the purchase and stalled development of the Walthamstow Stadium site.***

8 The regulator is most likely to exercise the power to hold an inquiry in circumstances where it suspects mismanagement, for example:

- there may have been a failure against one or more economic standards

***This is the reason for an inquiry as set out above and in the evidence attached herewith.***

- there may have been a failure against one or more consumer standards where there are reasonable grounds to suspect there has been or there is a risk of a serious detriment to tenants
- the provider may have failed to honour its commitments set out in a voluntary undertaking
- the provider may have failed to comply with an order or Direction made by the regulator or to resolve problems that led to previous regulatory interventions
- the provider may have been involved in activities that might endanger the security or interests of tenants or put the social housing funds or assets of the provider at risk

***The risk to funds is also a reason for inquiry***

- the provider may have been involved in the misuse or misapplication of public, charitable or other assets or funds
- there may have been a failure to operate within the provider's constitution, governing instrument or standing orders, which has been detrimental to the provider, its tenants or its operations

***SOS also suspect this is a reason for inquiry but do not have details of the standing orders etc to be able to be specific.***

- the provider may have knowingly given false information to the regulator or to other organisations

***It does appear that during the course of the public consultations on the scheme L&Q gave false information on a number of occasions, details can be provided if required.***

- the provider may have been involved in persistent unlawful discrimination or other breaches of legislation
- the provider may have been involved in unlawful or unacceptable conflicts of interest, including breaches of charity law

the shareholding membership of a non-profit private provider may have failed to act in the best interests of the provider or of its tenants

## **Guidance note 9**

### **Guidance on sections 201 to 203: inspection**

#### **Potential triggers to the exercise of the power**

3 Section 201 of the Act specifies that the regulator may arrange for a

person to inspect:

- a provider's performance of its functions in relation to the provision of social housing, or
- the financial or other affairs of a provider

***This would be reason for an inspection***