

**Sue Foster’s advice to Elected members giving “reasons” not to support Brixton Green’s proposal** sent to us on 19<sup>th</sup> January, but based on an assessment carried out in October. These “reasons” are wrong, out of date, misleading or bogus. **We urge elected members to challenge this assessment.**

<b>Lambeth says:</b>	<b>Brixton Green response</b>
<p><b>Financial Viability</b></p> <ul style="list-style-type: none"> <li>• Funding terms for both the construction phase and operating phase are missing and we cannot make any meaningful assessment without this information</li> <li>• There is no development appraisal showing the cost of the development stage of the project, timing of payments and showing the sources of funding required at each stage</li> <li>• There is no detail about the level of funding that would be provided (loan to value), the cost (interest rate) of that funding and the security required to access that funding</li> <li>• In the absence of further details of funding terms it appears likely that the Council would need to provide guarantees for the construction and delivery stages</li> <li>• The operating model provided shows a funding gap of £10.5M with no certainty of how this can be filled</li> <li>• LBL’s commercial adviser has indicated from the information available that it will not be possible for the Somerleyton Trust to get funding for the scheme.</li> </ul>	<p><b>NOT TRUE: The scheme is financially viable</b></p> <ul style="list-style-type: none"> <li>• Our delivery agents Places for People carried out work from October to January at their own cost to produce a full financial appraisal: including funding terms for the construction phase, development appraisal, an up to date assessment of the cost of development and the cost of funding the scheme.</li> <li>• This work tested and updated Lambeth’s figures. Lambeth were invited to monthly working meetings to do this work.</li> <li>• This work has removed the £10.5m gap.</li> <li>• Places for People told the Council they were willing to fund the construction of the scheme.</li> <li>• We brought the information to the meeting with the Chief Exec on 12 Jan ready to discuss it.</li> <li>• Andrew Travers said he did not want to see it.</li> </ul>
<p><b>Legal Compliance</b></p> <ul style="list-style-type: none"> <li>• The proposal is structured as a disposal via a lease but relies on possible ‘guarantees’ and support from LBL including a proposal for ‘step in’ rights during both the development phase and the operational phase.</li> <li>• <b>State Aid</b> - Legal advice is that the proposal does not meet State Aid requirements <ul style="list-style-type: none"> <li>• Because the scheme is non-viable and as such would fail the Market Economy Investor Principle Test (“MEIP Test”). As such a rational private investor would not enter into the transaction on these terms.</li> <li>• Because of the assumption of a guarantee by Lambeth for financing. The provision of a guarantee by a public body such as the Council can only be done on the basis of the European Commission’s Notice on Guarantees or if the guarantee is provided in line with market conditions such that it meets the MEIP Test.</li> </ul> </li> </ul>	<p><b>NOT A REASON:</b></p> <ul style="list-style-type: none"> <li>• Lambeth asked for Step in Rights to protect the Council’s interests.</li> <li>• We do not need a guarantee from Lambeth.</li> </ul> <p><b>NOT TRUE: The Scheme is legally compliant</b></p> <ul style="list-style-type: none"> <li>• The proposal does meet State Aid criteria.</li> <li>• State Aid law does not prevent Council support for a public benefit, community project. It prevents anti-competitive market intervention.<sup>1</sup></li> <li>• In any case it meets the MEIP test because a private investor has said they will invest.</li> <li>• The Somerleyton Trust can get funding for the scheme, and will be able to deliver faster than Lambeth’s programme for Homes for Lambeth.</li> </ul> <p><b>WRONG:</b></p> <ul style="list-style-type: none"> <li>• There is no longer a suggestion that Lambeth might want to provide a guarantee.</li> </ul>

<sup>1</sup> There is no effective operating market for a project of this type, which means, either, the definition of State Aid will not be fulfilled, or, if the definition is thought to be fulfilled, that the Services of General Economic Interest exemption from the general prohibition of State Aid could be applied.

<ul style="list-style-type: none"> <li>• <b>Procurement</b> – Legal advice is that there are a number of procurement risks related to the proposed lease with the Somerleyton Trust – this is set out in more detail in the assessment of BG’s proposal against the specification of criteria</li> </ul>	<p><b>NOT SIGNIFICANT RISKS:</b></p> <ul style="list-style-type: none"> <li>• These risks relate to the legal status of the Trust and the procurement of contracts and can easily be managed.</li> </ul>
<p><b>Concerns about delivery/housing management</b></p> <ul style="list-style-type: none"> <li>• <b>Extra Care</b> - effectively no information has been provided on the management of the Extra Care facilities. There is nothing in the proposal to demonstrate how the facility will be managed or a contract with a CQC registered provider will be procured. The proposal does not demonstrate consideration of/alignment with Lambeth’s Older People Strategy.</li> <li>• <b>Erosion of Nomination Rights</b> - The “verification and financial checks” as set out in the Living @Somerleyton Road document could result in the Council’s nominations for eligible tenants being delayed or declined and amounts to an interference in the Council’s ability to meet housing needs through its statutory allocation policy.</li> </ul>	<p><b>NOT TRUE:</b></p> <ul style="list-style-type: none"> <li>• The proposal does deliver Lambeth’s Older People Strategy, and Lambeth’s commitment to deliver affordable Extra Care provision and to rehome residents currently at Fitch Court on the same tenancy terms. We are committed to using a CQC provider. We have asked to meet Lambeth to discuss the requirements in more detail and no one has got back to us.</li> </ul> <p><b>NOT TRUE:</b></p> <ul style="list-style-type: none"> <li>• We do not understand why Lambeth think this is the case. They have not raised this with us before. We have had no comments on our draft documents: a Local Letting Plan (2016) and Living @ Somerleyton Road. Our proposals are designed to ensure that we provide truly affordable housing for people who need it, including those on the Council waiting list.</li> </ul>