

Report for: Emma Williamson – Assistant Director, Planning

Title: Report into the review of the section 106 clause on the Market Facilitator

Report authorised by: Dean Hermitage, Head of Service, Development Management

Lead Officer: Fortune Gumbo – Interim Manager Planning Enforcement & Appeals

Ward(s) affected: Tottenham Green

**Report for Key/
Non Key Decision:** Non key decision

Structure of Report

- 1. Introduction**
- 2. Investigation and findings**
- 3. Recommendations for the AD Planning**
- 4. Planning History**
- 5. Complaints**
- 6. Future monitoring of the s106 agreement**
- 7. Legal comments**
- 8. Equality comments**
- 9. Appendix 1**

1. Introduction

- 1.1 This is a report prepared for the Assistant Director of Planning into alleged breaches of planning obligations relating to land at 227-259 High Road, 709-723 Seven Sisters Road, 1a-11 West Green Road and 8-30 Suffield Road. The investigation has been carried out by the Interim Manager – Planning Enforcement and Appeals.
- 1.2 The site, commonly known as Wards Corner is in Tottenham Green ward and contains within it a Latin American Market (“the market”). The site has an extant planning permission for its comprehensive redevelopment (“the permission”), which was granted following the Developer Seven Sisters Limited (“the Developer”) and the Council entering into an agreement dated 11 July 2012 under section 106 of the Town and Country Planning Act 1990 and other enabling statutory provisions (“s106 agreement”). The permission was granted on 12/07/2012 under reference number HGY/2012/0915. The permission was implemented on 23/02/2017 and a certificate of lawfulness confirming implementation of the permission was granted on 05/05/2017. The key planning history is addressed in section 3 below.
- 1.3 This s106 agreement was subsequently varied by way of a deed of variation (DoV) which was completed on 25 July 2017 (and references in this report to the “Principal Agreement” shall mean the s106 agreement as supplemented and varied by the DoV).
- 1.4 Since the grant of the permission, the site was the subject of Compulsory Purchase Order (CPO) to enable the development. The decision of the Secretary of State to confirm the CPO was made on 23 January 2019. The decision by the Secretary of State to confirm the CPO was judicially reviewed and the review dismissed on 10 October 2019. An application to appeal has been filed with the Court of Appeal.
- 1.5 Complaints have been made by some of the traders alleging that the Developer has breached some of the obligations, set out in clause 2 of schedule 3 of the DoV relating to the Market Facilitator (“the Market Facilitator obligations”). Furthermore, during the course of this investigation, it has come to the investigating officer’s attention that other clauses of the s106 obligations (other than the Market Facilitator obligations which triggered this investigation) may have been breached (these are identified in Section 10 of this report). The investigating officer’s report, attached at Appendix 1, explains the investigation that has been undertaken, the findings and recommendations.

2 Investigation and findings

- 2.1 The s106 agreement as amended by the deed of variation (“DoV”) is operative and complaints have been made that the Developer Seven Sisters Ltd (“the Developer”) had breached the Market Facilitator obligations at clause 2.1 of schedule 3 to the s106 agreement. The Interim Manager – Planning Enforcement and Appeals was asked to investigate those complaints, investigate whether any of the other s106 obligations had been breached and consider any enforcement action that should be taken as a result of any non-compliance.
- 2.2 The investigating officer’s report is attached at Appendix 1, but in summary the findings were that:
- i. Clause 2.1 of the s106 requires the Developer to procure that the Market Facilitator works with the traders in order to take various steps with the objective of maximising the number who elected to trade from the temporary and new market (“the Market Facilitator obligations”).
 - ii. Quarterbridge were appointed as the Market Facilitator in 2016.
 - iii. It is accepted by the Developer, that there were some difficulties in the working relationship between Quarterbridge and the traders.
 - iv. The relationship between Quarterbridge and the traders had broken down and was not working for the purpose of clause 2.1 of the s106.
 - v. Quarterbridge ceased to be the Market Facilitator in late 2018. The Developer has indicated it is willing to work with the Traders and the Council to appoint a suitable Market Facilitator.
 - vi. The Council’s enforcement powers in respect of a breach of clause 2.1 of the s106 agreement are limited to seeking a court injunction (section 106(5) of the Town and Country Planning Act 1990).
 - vii. It is unclear whether clause 24.5 of the original s106 agreement was ever fulfilled by the Developer because all the parties who were involved with this Development from both the Council and the Developer are no longer in post. However that clause is no longer in force as it was deleted at the time of entering into the DoV.
 - viii. It appears from the Council’s announcement in 2012 of the appointment Quarterbridge as the Market Facilitator that the Developer complied with the Market Facilitator clause in 2012.
 - ix. It is not considered expedient to take enforcement action to compel compliance with the s106 at this time given that Quarterbridge ceased to be Market Facilitator at the end of 2018 and the Developer is willing to procure a suitable Market Facilitator.

- x. Whilst no enforcement action is recommended, a number of steps are recommended to try to ensure that the aims and objectives of the Market Facilitator obligations are met and that the Market Facilitator holds the trust of the traders in the future.

3 Recommendations for the AD Planning

3.1 Recommendations

It is recommended that the Assistant Director of Planning writes to the Developer and traders with the following recommendations:

- i. That the Developer, with the assistance of the Council, procures a temporary Market Facilitator pending the appointment of a permanent Market Facilitator.
- ii. That the Developer widely advertises the post of the Market Facilitator.
- iii. That the Market Facilitator should be independent from the Developer and anyone connected with the running of the market.
- iv. That the Developer meets with the Council and traders bi-annually to review the progress towards meeting the obligations in the principal agreement.
- v. That the Developer randomly selects two traders, from a pool who have indicated their willingness to participate, to assist in the identification, selection and appointment of the Market Facilitator.
- vi. That before the placing of the advertisement for the post, the Developer develops shortlisting and weighting criteria to be used in the selection and appointment of the Market Facilitator. The Developer should consult the Council and traders before finalising such criteria.
- vii. That the shortlisting and interviewing be carried out by a panel comprising representatives of the traders, the Council and the Developer.
- viii. That, when appointing a Market Facilitator, the Developer takes into account the views of the traders selected to participate in the identification, selection and appointment of the Market Facilitator unless there are material considerations which outweigh the traders preferred candidate. In that case the Developer should submit a report to the Council explaining the considerations and for the Council to agree to that assessment in writing.
- ix. That the traders and any interested parties report any future alleged non-compliance with the provisions of the principal agreement to the Interim Manager – Planning Enforcement and Appeals for investigation in the first instance.
- x. That the Developer develops a set of Key Performance Indicators (“KPIs”) which will be used to measure the Developer’s progress towards the objectives of the agreement.

- xi. That the temporary Market Facilitator and the permanent Market Facilitator present progress reports to the Steering Group or its successor(s) OR, in the alternative, report progress directly to the Council. The report should be presented every 6 months.
- xii. That the Developer reconstitutes the Steering Group with clearly defined terms of reference and a democratic way of operation.
- xiii. That the Council has a formal observer role in the Steering Group (and any successor).

4 Planning History

- 4.1 A development brief for the site was adopted in January 2004. The brief sets out a number of strategic objectives for the redevelopment and regeneration of the area. The following vision is set out: “to create a landmark development that acts as a high quality gateway to Seven Sisters, providing mixed uses with improved facilities and safer underground station access”. The various stages of the planning process are set out below.
- 4.2 HGY/2008/0177 – Erection of first floor rear extensions, alterations to rear elevation. Alterations to front elevation, including new bays at first floor level and dormer windows to front roof slope, installation of new shopfront, alterations to 3 storey corner block, internal alterations to create new shops/workshops/offices/cafe (A3) use on ground / first floors and creation of 8 x one bed flats at second floor. NOT DETERMINED
- 4.3 The appeal against non-determination was not accepted by the Planning Inspectorate (“PINS”) as it was out of time.
- 4.4 HGY/2008/0303 – Demolition of existing buildings and erection of mixed use development comprising Class C3 residential and Class A1/A2/A3/A4 with access, parking and associated landscaping and public realm improvements. This application was first submitted in February 2008 and approved in December 2008. In June 2010 the decision was quashed by the Court of Appeal partially on the grounds that the Council failed to discharge its duties under section 71 of the Race Relations Act 1976. Following the submission of further information from the applicant, the Council re-determined the application with a recommendation for approval but this was overturned by the Planning Sub-Committee. REFUSED

- 4.5 HGY/2011/1275 – External alterations to front and rear elevation including new shopfronts, angled bay windows and dormers, and reinstatement of rear upper floor windows and formation of new windows. NOT DETERMINED
- 4.6 HGY/2012/0915 – Demolition of existing buildings and erection of a mixed use development comprising class C3 residential, class A1/A2/A3/A4 uses, with access, parking and associated landscaping and public realm improvements and associated Conservation area consent for demolition (HGY/2012/0921). GRANTED
- 4.7 HGY/2014/0575 – Restoration of the existing market and corner building bringing 2150m2 of derelict space into A1, A2, A3 and B1 use, installation of bay windows to the front, dormer windows to the front and rear, reinstatement of chimneys, replacement of existing shop-fronts to the front of the market with new glazed facade, improvements to the public realm to the front of the market, new glazed rear doors added to the rear, new DDA compliant access to the first and second floor, reintroduction of internal light-wells from the first to ground floor and insulation of building to increase thermal efficiency. GRANTED
- 4.8 HGY/2017/0861 – Certificate of lawfulness confirming that the permission HGY/2012/0915 has been lawfully implemented. APPROVED
- 4.9 HGY/2017/1517 – Approval of details (community engagement strategy – clause 21) in relation to the s106 agreement attached to permission HGY/2012/0915. APPROVED
- 4.10 HGY/2017/1518 – Approval of details (monitoring – clauses 13.1 and 13.3) in relation to the s106 agreement attached to permission HGY/2012/0915. APPROVED
- 4.11 HGY/2017/1551 – Deed of variation of the s106 agreement. APPROVED
- 4.12 HGY/2019/2315 - Restoration of the Wards Corner Department Store building for community uses (D2) with restaurant (A3) on the ground floor. Internal and external alterations at 229-249 to provide a refurbished market hall (A1) at ground and first floor levels, plus 642.8m2 of office space (B1) at second floor level. Associated works to remove the front canopy extensions at 231-243 and 247-249 High Road; replace existing shop fronts; install bay windows at first floor level; realign roof to rear elevation and to front elevation to form dormer windows at second floor level; and replace rear skylights with flush roof lights. APPROVED

5 Complaints

5.1 The Council received complaints from some of the traders, relating to the development of Wards Corner.

5.2 The complaints related to the conduct of a director of Quarterbridge (the Market Facilitator at the time) who was also a director of MAM (the leaseholder of the market). It was alleged that such conduct resulted in the Developer being in breach of the s106. In summary, the complaints were as follows:

- i. his management style was frustrating and humiliating, and was ‘top down’ with no consultation;
- ii. he “ruled by fear” and was abusive resulting in behaviour that could be considered as bullying, intimidating, discriminatory and harassment;
- iii. He failed to publicise the market and to work with traders;
- iv. a trader’s unit was taken away; and
- v. there were persistent unresolved maintenance, security, car parking and other problems relating to the condition of the market.

6 Future monitoring of the s106 agreement

6.1 The Council uses a s106 agreements obligations tracker to monitor all the key milestones for every development subject to such an agreement. This one is no exception. The tracker is a tabulated summary of the S106 provisions, against which submissions and discharge of obligations are tracked.

6.2 However, the tracker is just one tool at the disposal of the Council. If any interested party or member of the public has cause to believe that there has been a breach of the obligations, they can bring such information to the attention of the planning enforcement team. This can be done either by email/web form, telephone call or through councillors.

6.3 The s106 agreement has a monitoring clause, which requires the Developer to pay a monitoring fee to the Council. The fee is £8080.00. The fee has not been paid yet as the trigger point for making the payment is on commencement. Commencement is defined in the agreement as:

‘The date upon which any material operation (as defined in s56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed only) operations consisting of: site clearance; demolition works (including and demolition pursuant to any conservation area consent); archaeological investigation; investigations for the purposes of assessing ground conditions; remedial work in respect of any contamination or other adverse ground conditions; diversion and laying of services; any underground works; laying out of accesses (whether temporary or permanent); erection of any means of enclosure/site security; temporary display of site notices or advertisements; and any other preparatory works as may be agreed with the Council.’

- 6.4 To assist with future monitoring, it is considered that as part of this review that it would be in the interests of all parties to have bi-annual meetings between the Developer and the Council, to review the status and progress towards fulfilling the obligations.
- 6.5 Some of the complaints from traders relate to information not being passed onto the Council’s Planning Department by a Council officer who attended meetings of the Future of Seven Sisters Market Steering Group. The Council’s Regeneration and Planning Service accept that in this case the services must improve communication lines in order to investigate and take action earlier than it did. This has now been addressed to ensure that any issues arising at Steering Group meetings which relate to performance of the planning obligations are brought to the prompt attention of the Planning Department. This will be achieved by regular formal reports to the Planning Service from the Regeneration Service, at least quarterly.

7 Legal Comments

- 7.1 This report has been reviewed on behalf of the Assistant Director of Corporate Governance. This report explains the actions that the Council has taken to investigate allegations regarding the Developer, and sets out the findings and recommendations of the investigating officer. The decision on whether or not to seek to take action for a breach of planning obligations is a function that can be taken by the Assistant Director of Planning in accordance with the Council’s constitution and schemes of delegation.
- 7.2 The Council entered into an agreement under section 106 of the Town and Country Planning Act 1990 on 11 July 2012 with the Developer and the Northumberland & Durham Property Trust Limited (the guarantor) in connection with planning application HGY/2012/0915. This agreement

was subsequently amended under section 106 and 106A of the 1990 Act by a deed of variation dated 25 July 2017.

- 7.3 The allegations relate to clause 2.1 of schedule 3 of the deed of variation to the s106 agreement, which were inserted at paragraph 8 of schedule 4 of the original agreement (as referred to herein as the “Market Facilitator obligations”). The Market Facilitator obligations came into effect upon the grant of planning permission.
- 7.4 The Market Facilitator obligations are enforceable by the Council seeking an injunction at court pursuant to section 106(5) of the 1990 Act, or through entering onto the land to carry out the operations to which the obligations relate and recover expenses reasonably incurred doing so pursuant to section 106(6) of the 1990 Act. An injunction could include a positive order requiring the Developer to carry out and perform its obligations under the agreements. The Council could also bring a civil claim for damages, although in this circumstance it is unclear what damages the Council could claim in relation to the Market Facilitator obligations.
- 7.5 The decision on whether or how to enforce a breach of planning obligations rests solely with the Council. When exercising its discretion on whether or not to enforce a breach of the obligations, the Council should consider the public interest and comply with public law principles (e.g. act fairly, in good faith, rationally and using powers for their proper purpose). The Council must also have due regard to its public sector equality duty under section 149 of the Equality Act 2010, as set out section 8 of this report.

8 Equality comments

- 8.1 The Council has a Public Sector Equality Duty under the Equality Act 2010 to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
 - Advance equality of opportunity between people who share those protected characteristics and people who do not
 - Foster good relations between people who share those characteristics and people who do not.

- 8.2 The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty. There is a complete EQIA accompanying this report.
- 8.3 This is a report for the Assistant Director of Planning into alleged breaches of planning obligations relating to land at 227-259 High Road, 709-723 Seven Sisters Road, 1a-11 West Green Road and 8-30 Suffield Road. The site, commonly known as Wards Corner is in Seven Sisters ward and contains within it a Latin American Market. This report sets out the investigation that has been undertaken into potential breaches of obligations relating to the Market Facilitator, its findings, and recommendations.
- 8.4 Section 149 of the Equality Act 2010 provides that a public authority must have due regard to the need to achieve the three aims of the general equality duty, noted above, “in the exercise of its functions.” Dealing with compliance with section 106 obligations is one of those functions. The Public Sector Equality Duty is therefore engaged in the course of the investigation and any further action on the part of the Council arising from recommendations made in this report.
- 8.5 The traders within the Latin American Market, by virtue of their ethnicity, belong to a group with protected characteristics. The Council must therefore have due regard for the need to:
- Eliminate unlawful discrimination, harassment, and victimisation against/of the traders;
 - Advance equality of opportunity for the traders by removing or minimising disadvantages they experience due to their protected characteristics, take steps to meet the needs of the traders where these are different to the needs of other people, and encourage the traders to participate in public life;
 - Foster good relations between the traders and other people who share protected characteristics and those who do not.
- 8.6 Public authorities must be properly informed about the implications of their functions for individuals and groups who share the protected characteristics in the exercise of their functions. This investigation represents a step to acquire and analyse sufficient information so that the Assistant Director of Planning is able to have due regard to the Public Sector Equality Duty on an informed basis in the exercise of any function relating to Wards Corner and/or the Latin American market.

- 8.7 The methodology of this investigation included questionnaire interviews open to all market traders. Questionnaires were conducted in such a way as to enable all traders to participate. For example, all documents were translated into Spanish and a Spanish interpreter was present. Questionnaire documents were accompanied by an equal opportunities monitoring form so that responses could be subject to equalities analysis. This demonstrates due regard for the Public Sector Equality Duty.
- 8.8 Certain findings of the investigation have relevance to equalities. For example, some traders have indicated that they believe an effective Market Facilitator should have an understanding of Latin American culture. The Developer is requested to take steps to secure this demand by involving traders in the selection and appointment of the Market Facilitator.
- 8.9 The report recommends that all parties have a bi-annual meeting to review the status and progress towards fulfilling the obligations. If this recommendation is adopted this bi-annual meeting would represent an opportunity for all parties to assess the position and have due regard to the Public Sector Equality Duty.
- 8.10 The Council's Public Sector Equality Duty will be engaged in the exercise of all functions relating to Wards Corner and the Latin American market going forward. The Council will continue to have due regard for the need to achieve the three aims of the general duty.

Appendix 1

Investigation by the Interim Manager – Planning Enforcement and Appeals into alleged breaches of planning obligations relating to development at Wards Corner/Seven Sisters Market

This report is structured as follows:

1. Introduction
2. Scope of the Investigation
3. Methodology
4. The Market Facilitator obligations
5. The complaints
6. Investigation
 - Engagement with Traders
 - Bindmans Meeting
 - Meeting with the Developer
 - Views from Quarterbridge
 - Traders' responses to the questionnaires and interviews
7. Findings in respect of the Market Facilitator obligations
8. Consideration of enforcement
9. Next Steps
10. Other obligations in the s106
11. Conclusions
12. Recommendations
13. Background information

Appendices

1 Introduction

- 1.1 My name is Fortune Gumbo. I hold a BSc in Town and Country Planning and a MSc in Development Management and Planning from the University of Wales, Swansea. I have 17 years' experience in town planning, having worked abroad, in Wales (both private and public sector) and in England (both private and public sector). I have been working in Haringey for the last 10 years in various roles within the planning department. I currently manage the Planning Enforcement and Appeals team. I am instructed to carry out this review in my capacity as the Interim Planning Enforcement and Appeals Manager.
- 1.2 Following receipt of complaints from a firm of solicitors representing some of the traders at the Latin Market/Seven Sisters Market ("the Market"), I have been asked to investigate on behalf of the Assistant Director of Planning whether the Developer has breached any planning obligations, in particular (but not limited) to those obligations relating to the Market Facilitator .
- 1.3 The allegations relate to the planning obligations given by the Developer Seven Sisters Limited, the Developer in an agreement dated 11 July 2012 under section 106 of the Town and Country Planning Act 1990 and other enabling statutory provisions ("the s106 agreement") which was subsequently varied by way of a deed of variation (DoV) which was completed on 25 July 2017 (and references in this report to the "principal agreement" shall mean the s106 agreement as supplemented and varied by the DoV).
- 1.4 This report provides an overview of my investigation and my findings and recommendations.

2 Scope of the investigation

2.1 The purpose of the investigation was to establish:

- a) If there has been a breach of the Market Facilitator obligations by the Developer;
- b) If there has been a breach of the Market Facilitator obligations, whether it is expedient to take formal legal or any other action;
- c) Whether any other s106 obligations are in force and, if so, assess whether they have been complied with and whether it is expedient to take formal legal or any other action; and
- d) The monitoring regime of the s106 obligations by the Council going forward.

3 Methodology

3.1 The investigation took the form of

- A desktop review of planning application files and other related documents (listed in the appendix).
- Two questionnaires completed by traders; and
- Face to face interviews and or meeting with interested parties (the Developer and Market Traders and Bindmans Solicitors).
- Email and telephone exchanges with MAM / Quarterbridge

3.2 A list of the documents reviewed is at the end of this report and these have all been shared with the Assistant Director of Planning.

4 The Market Facilitator obligations

4.1 The Market Facilitator obligations are:

“2.1 To procure that the Market Facilitator works with the Traders in order to:

- a) promote the interests of non-English speaking traders on the Temporary Market and the New Market Area:*
- b) provide appropriate business support and advice to:*
 - i. all Traders;*
 - ii. all other persons working at the Market;*

- iii. *such other local independent traders who may express an interest in trading from the Temporary Market and the New Market Area)*
- c) *assist Traders in continuing to trade from the Market and Temporary Market for so long as the Market and Temporary Market respectively are open for trading purposes;*
- d) *advertise the proposed relocation from the Market to Temporary Market and from the Temporary Market to the New Market Area (as the case may be) so as to raise awareness about the proposed location and opening of the Temporary Market and the New Market Area, respectively;*
- e) *advertise the Temporary Market and the New Market Area once each facility has been open to the public; and*
- f) *assist individuals working at the Market to find suitable alternative employment in the event they decide not to relocate to the Temporary Market or the New Market Area (as the case may be),*

with the objective (in each case) of maximising the number of Traders and other independent local traders who elect to trade from the Temporary Market and the New Market Area”.

4.2 “Market Facilitator” is defined in the s106 as meaning “Quarterbridge of 2 West Stockwell Street, Colchester, Essex CO1 1HQ or such other Market Facilitator as may be appointed by the Development from time to time”. Appointing the Market Facilitator is the Developer’s sole obligation therefore and not the Council’s.

4.3 During the course of this investigation it has suggested that some of the obligations may have been breached. These are addressed separately below.

5 The Complaints

5.1 This investigation was initiated in response to complaints received from Bindmans LLP, a firm of solicitors acting for some of the traders. In particular, a letter dated 15 August 2018.

5.2 The complaints were that:

- a) Mr Owen’s (director of Quarterbridge’s) management style was frustrating and humiliating, and was ‘top down’ with no consultation;
- b) He “ruled by fear” and was abusive resulting in behaviour that could be considered as bullying, intimidating, discriminatory and harassment;
- c) He failed to publicise the market and to work with traders;

- d) A trader's unit had been taken away;
- e) There were persistent unresolved maintenance problems in communal areas (for which MAM is responsible under the lease) including in the toilets;
- f) There were, similarly, pest control problems;
- g) There had been no heating for a year and some lights were not working;
- h) Car parking arrangements had been compromised (in the past, facilities had been provided to traders for a nominal fee);
- i) No-one had been identified to deal with complaints; and
- j) He bullied, intimidated, discriminated and harassed traders.

5.3 This was alleged to breach the Market Facilitator obligations in clause 2.1 of schedule 3 to the s106.

5.4 Mr Owen was also a director of Market Asset Management (Seven Sisters) Ltd ("MAM"), who lease the market from Transport for London ("TfL") and licence units to the traders. Some of the complaints, especially those concerning Mr Owen, had previously been investigated by TfL. Therefore, there is an inevitably some overlap between TfL's investigation and this investigation. However, it was not my intention to revisit the content of the two TfL investigations.

5.5 This investigation concerns only the s106 and not MAM's role as leaseholder. Therefore, only complaints relating to the s106 rather than MAM are within its remit.

5.6 Taking each complaint in turn:

5.6.1 Mr Owen's management style was frustrating and humiliating, and was 'top down' with no consultation.

In the s106 agreement, the Market Facilitator has no formal managerial role. However Mr Owen's role at MAM (the leaseholder) and his other role at Quarterbridge are legal distinctions that would not necessarily be apparent to traders who see one individual. In addition, the complaint appears to be about Mr Owen's style of conduct generally, which would equally apply to his role at Quarterbridge as Market Facilitator. Therefore, it is most likely that that this complaint does relate to the role of the Market Facilitator.

5.6.2 He "ruled by fear" and was abusive resulting in behaviour that could be considered as bullying, intimidating, discriminatory and harassment.

The same comment applies as in 1 above. It is most likely that that this complaint does relate to the role of the Market Facilitator.

5.6.3 He failed to publicise the market and to work with traders.

The Market Facilitator obligations required Quarterbridge to work with traders in order to provide appropriate business support to traders and all other persons working at the market, and assist traders in continuing to trade from the Market. There is some overlap between this and the Action Plan that came out of the TfL investigation, which (among other things) stated that MAM should procure and deliver an improved frontage to the market by replacing the signage with new vinyl advertisements promoting the market. It seems most likely that this complaint does relate to the role of the Market Facilitator.

5.6.4 A trader's unit had been taken away.

The s106 agreement does not provide the Market Facilitator with the power to assign or demise a licence for a unit. As such, I considered that this complaint relates to MAM (the leaseholder/market operator) rather than the role of the Market Facilitator and so was outside the scope of this investigation.

5.6.5 There were persistent unresolved maintenance problems in communal areas (for which MAM is responsible under the lease) including in the toilets.

The s106 agreement does not provide the Market Facilitator with the power to carry out property maintenance functions. As such, I considered this complaint related to MAM (the leaseholder/market operator) rather than the role of the Market Facilitator and so was outside the scope of this investigation.

5.6.6 There were, similarly, pest control problems.

The s106 agreement does not require the Market Facilitator to carry out pest control functions. As such, I considered this complaint related to MAM (the leaseholder/market operator) rather than the Market Facilitator and so was outside of the scope of this investigation.

5.6.7 There had been no heating for a year and some lights were not working.

The s106 agreement does not provide for the Market Facilitator to repair the property. As such, I considered this complaint related to MAM (the leaseholder/market operator) rather than the Market Facilitator and so was outside the scope of this investigation.

5.6.8 Car parking arrangements had been compromised (in the past, facilities had been provided to traders for a nominal fee);

The s106 does not provide for the Market Facilitator to deal with the car parking fees and arrangements. As such, I consider this complaint relates to MAM (the leaseholder/market operator), the parking contractors acting on behalf of MAM and the Developer as it is my understanding that they own part or all of the parking to the rear of the site. This complaint does not relate to the Market Facilitator role and so was outside the scope of this investigation.

5.6.9 No-one had been identified to deal with complaints.

Having read the letters from Bindmans, I understand these complaints relate to the functioning of the existing market including some of the issues raised above in complaints 1 to 7. This would not be the role of the Market Facilitator as provided for in the s106 agreement, rather it is for MAM (the leaseholder/market operator). In any event, this appears to have been addressed by the appointment of market managers. They are both of Latin American descent and speak Spanish and English fluently. They are the conduit between the traders and MAM. He appears, from my impression at least, to have brought some calm to the market or reduced the palpable tension around the market.

5.6.10 He bullied, intimidated, discriminated and harassed traders.

As the role of Market Facilitator required Quarterbridge to work with the traders, this seems likely to be within the scope of this investigation.

6. Investigation

6.1 In order to investigate, I have looked not only at the background material listed at the back of this report but the questionnaire responses, interviews and the meetings referred to above.

Direct engagement with traders

6.2 My engagement with the traders took the form of the questionnaires, interviews and the meeting as detailed in appendix 3.

6.3 Copies of the first interview questionnaire, s106 clause 2, cover letter and equalities monitoring form were hand delivered on 10 May 2019 to all traders units except Unit 55 which was never open on any of the visits to the market undertaken by officers as part of this review. In addition, in relation to this unit, there was no scope of sliding the envelope under the door as had been done in similar instances.

6.4 Those traders who provided email addresses were also sent copies of the same set of documents electronically. Three (3) responses were received by email. The total number of face-to-face responses were 13.

6.5 All documents relating to the review were translated to Spanish by a company contracted by the Council. Each review pack contained the following documents (in English and Spanish).

1. The cover letter explaining the rationale and parameters of the review;
2. The s106 clause relating to the Market Facilitator ;
3. The draft job description for the Market Facilitator role;
4. The questionnaire;
5. Equal Opportunities Monitoring Form

6.6 The majority of the responses to the questionnaire were provided during face to face interviews with the traders at their units in the market or any location of their choice. A Spanish interpreter was present at all the interview sessions and also helped translate some of the Spanish text in the questionnaire responses into English.

6.7 The face to face interviews with traders took place during the following days:

Tuesday 28/05/2019

Wednesday 29/05/2019

Thursday 30/05/2019

Friday 31/05/2019

Monday 03/06/2019

Saturday 21/09/2019

Wednesday 16/10/2019

6.8 Engagement with Bindmans on behalf of some traders

6.9 As part of this investigation, I met with Bindmans on 20 September 2019. Perhaps understandably given Mr Owen's role at both Quarterbridge and MAM, some issues were raised that are outside the scope of this investigation.

6.10 Bindmans, by way of background referred me to the following documents:

- The Planning Sub-Committee Report in connection with the applications HGY/2012/0915 and HGY/2012/0921 drawing my attention especially to the summary of the report and paragraphs 8.4.3 and 8.6.2 to 8.6.11 and schedule 2 and 3 of Appendix 6 same report which deals with the summary of EqIA impacts and proposed responses. Furthermore my attention was brought to the Bindmans letter to the Council dated 15 August 2018.

6.11 My attention was also drawn to the following documents, that were sent to me following the meeting:

- Responsibilities of Market Operator dated October 2008;
- Letter to Traders from the Developer dated 31/07/2008.

6.12 I took away the following key points from the meeting as submitted by the traders present and Bindmans.

1. That the starting point for my review should be to look at what was the Council attempting to do when it imposed s106 obligations. To achieve that, there was need for me to look at both versions of the s106 agreements.
2. The officer report accompanying the 2012 planning application had an analysis of the market as it existed then and made several references to protect the interests of the existing traders by way of securing those protections through the s106 agreement.

3. The officer report for the 2012 planning application had an EqIA which identified risks and mitigations and the details of the Market Facilitator package whose aim was to ensure that the existing market and traders continue to trade.
4. There was no trader involvement in the appointment of Quarterbridge. Even though it is accepted that the appointment of the Market Facilitator is the Developer's prerogative, the whole process was opaque.
6. The traders want to know how the Council failed to foresee that the appointment of Mr Owen as a point person for both the market operator (MAM) and Market Facilitator (Quarterbridge) would result in a clear and obvious conflict of interest which was detrimental to the interests of the traders. If the traders had been consulted, then they would have pointed out that there was problem, as the Market Facilitator was meant to champion the traders causes, which was nearly impossible if the same entity was running a commercial entity.
7. Mr Owen, in whatever capacity, ultimately worked for the Developer. The assertion is borne out of the fact that he was the Developer's advisor prior to his 'opaque' appointment and subsequently had a lease underwritten by the Developer.
8. The investigation has to reach one of two conclusions: Either the s106 obligations have been breached by the Developer; or if the s106 obligations have not been breached, then the s106 agreement is not fit for purpose. If the Developer has complied with the s106 agreement, then the s106 cannot fulfil the intended purpose, namely the preservation of the market and traders.
9. At the first meeting of the Steering Group, Mr Owen said his role was to exclusively run a commercial business. Then after traders complained said that he was ready for war and had his boxing gloves.
10. The Steering Group was established to advance the aims and objectives of the s106 not to help MAM.
11. Mr Owen took away a unit from one trader and tried to take units away from others also. Mr Owen may say that he was doing that in his MAM role but that is not acceptable.
12. Mr Owen refuses to promote the market because he thinks it will close soon.
13. The traders were a united group and those who said otherwise had ulterior motives and or fearful of the consequences of speaking out.
14. Mr Owen's behaviour amplified the risks identified in the 2012 planning application officer report.
15. The previous market operator/leaseholder was better.
16. The draft job description and person specification was a helpful step in the right direction in order to address some of the shortcoming of the appointment of the previous Market

Facilitator, however there are two fundamental problems; that the Market Facilitator reports to the Developer. It is difficult to see how a Market Facilitator answerable to the Developer can avoid conflict with the traders.

17. How was the s106 monitored? Word on the street is that it was not properly monitored.
18. The new Market Facilitator needs to be independent and have the confidence and trust of the traders. The traders should not be consulted just on the appointment process but also on the appointee.
19. The Council cannot disassociate itself from the appointment of Quarterbridge due its previous (2012) public announcement to that effect.
20. What can the new Market Facilitator achieve in the limited time left?
21. The problems at the market started before 2015 when the lease was sold and the traders were not aware who the lease was sold to, followed by MAM being assigned the lease while Quarterbridge had already been the Developer's advisors.
22. The Developer controlled who sat on the Steering Group and what was reported. They controlled every aspect.
23. A Council officer sat at the Steering Group meetings and did not take any action on the traders complaints. The Council has been unhelpful to the traders.
24. Mr Owen was unhelpful and dealing with him was difficult because one moment he was the Market Facilitator and the next he was the market operator.
25. The Developer, TfL and MAM want to demolish the market and that is why they do not want to change the carpet or fix the drains.
26. The s106 agreement needs to be clear as it is being interpreted in different ways.
27. MAM made the traders pay for parking permits.
28. MAM overcharged the traders on utility bills.
29. MAM wanted to operate an open air market next to the existing market to compete with the traders.
30. Evidence to the Scrutiny Panel resulted in Quarterbridge being removed as the Market Facilitator.
31. The Council needs to look at the evidence of the unethical practices of the market operator across the country and as result of that get rid of the current market operator as the reputational risk to the Council was profound.
32. There are now two groups of traders at the market as a result of the divide and rule tactics from Mr Owen.
33. The traders do not trust the Developer or the Council. There has to be an acknowledgement from both sides that there have been mistakes and traders should not have to deal with racist abuse.

34. Who is in charge of drafting s106 agreement? The traders engagement with the Developer in 2008 and the form that the final version of the s106 agreement took are different.
 35. Rents have gone up at an unacceptable rate and the rent increases vary by trader with those who are opposed to Mr Owen having disproportionately higher increases.
 36. While the rents have gone up, they have not been matched by the improvements to the physical condition of the market. The rent increases are not in the spirit of the s106 agreement.
 37. Mr Owen sent emails about workshops which were attended by two or three traders and the rest of the traders did not attend as they do not trust Mr Owen. As a result of the non-attendance of those workshops, Mr Owen wasted the Mayor of London's money.
 38. Does the s106 agreement permit the Developer to appoint a Market Facilitator who is answerable to the Council?
- 6.13 So far as the matters raised were within the scope of this investigation, it seemed to me that they were all making the point that the traders and Quarterbridge could not work together productively to achieve the purpose of Market Facilitator obligations in the s106.

Engagement with the Developer

- 6.14 I held a meeting with the Developer's representative Mr Kiddle on 02/05/2019 at their London Bridge offices. At this meeting, we discussed the performance of Quarterbridge as the Market Facilitator and steps that the Developer was willing to undertake to ensure that the next facilitator held the trust and confidence of the traders. At the meeting, the Developer provided a copy of the draft job description and person specification which forms part of the review suite of documents referred to below provided to traders. There were a couple of subsequent telephone and email exchanges for comments or clarification of some matters that arose out of the interviews with the traders and other written documents.
- 6.15 Following the meeting with the Developer, I wrote to them to seek their view on the allegations against Quarterbridge and evidence of compliance with the s106 obligations. The questions which I put to the Developer which are reproduced below and their responses:

Q1. Do you think the previous facilitator delivered the obligations especially in respect to clause 2.1(a), (b – ii & iii), (c) and (f);

A1. The obligations in clause 2.1 are, as I see it, ongoing obligations, which the delivery of cannot ultimately be assessed until the market has been relocated to its final location. 2.1(a) is time linked to the temporary market and new market. b(ii) was happening to a degree. b(iii) – I know that Quarterbridge were receiving enquiries from people outside of the market, looking to take space in the market. They were advising them that a waiting list was in place. (c) I believe this was being delivered. (f) – it's too premature for this to be relevant. The market won't be closing for a while yet and I don't believe any traders have declared they won't be moving.

Q2. Did you have any sort of Key Performance Indicators or management framework to capture any of the Market Facilitator deliverables?

A2. No KPIs

Q3. What are your view on the allegations levelled against the previous facilitator? Do you have any report into your findings?

A3. We didn't produce any formal reports into the allegations. We monitored the situation then took action to replace the Facilitator when we deemed it appropriate.

Q4. According to your submissions, the previous facilitator was appointed in 2016, which predates the DoV. Do you have proof of this appointment as it goes into the heart of the question about the trigger point of the appointment, which is the date of the signing of the DoV.

A4. I don't have appointment documentation, but can provide, if required, invoices which show work being carried out by Quarterbridge, as Market Facilitator during this time. I would need to redact these if you wish to see them.

6.16 I have dealt with the issue of the operative clauses of the agreement and when they became effective elsewhere in this report. I have also dealt with the allegations against Quarterbridge and their appointment date. I do not intend to restate my views on those matters. What however, appears to me to be a missed opportunity is the absence of KPIs to measure progress towards achieving the obligations. I will be recommending that the Developer, in conjunction with the new Market Facilitator develops a scheme of measuring progress towards the attainment of the obligations. This will be beneficial both to all parties.

Engagement with Quarterbridge

6.17 I sought a response from Quarterbridge into the allegations against them raised in the letters from Bindmans as well as information from them on compliance with the Market Facilitator obligations and other matters of relevance to this investigation. They provided me with a

number of written responses to my questions. Furthermore, they shared with me their submissions to the Council's Scrutiny Panel who were undertaking a review into Wards Corner. Their submissions to the Scrutiny Panel deal with some of the matters raised in the complaints by the traders. In short, Quarterbridge refute that the allegations were against their role as the Market Facilitator. Their position is that the complaints were against MAM which is a different legal entity. This conflation of roles between the market operator (MAM) and facilitator (Quarterbridge) is something I have dealt with elsewhere in this report and make a recommendation on.

6.18 Turning to the point of whether up to the point when Quarterbridge ceased being the Market Facilitator they had fulfilled this obligation as envisaged in the text and spirit of the principal agreement, Quarterbridge make the following written submissions in response to my questions, which are reproduced in part below:

Q1 "What are your views on the complaints / allegations levelled against the Market Facilitator?"

21. We are not aware of the detailed complaints/allegations which have been made. If they are provided we would be happy to respond in equal detail.

There has been subsequent clarification, which in essence reiterates the point that the allegations are in relation to MAM not Quarterbridge.

Q2 "Do you think (during) your time as the Market Facilitator you met the obligations especially regarding:

1. Provide appropriate business support and advice to:

- (i) all traders**
- (ii) all other persons working at the Market"**

22. Yes - undoubtedly so. The Market Facilitator function was an excellent complement to the general discussions of the Steering Group. The SGM meetings are minuted and provide strategic progress reports for the CPO, report progress of the Wards Corner and Apex House developments and the financial provisions of the S.106 etc. This offers an opportunity for collective concerns to be addressed. The Facilitation role is complementary and gives individuals the opportunity to express personal concerns in confidence and seek tailored assistance. MF discussions between QPM and Traders were treated in confidence which enabled full and frank discussion.

23. Traders foremost concern was eligibility. How would they as an individual be treated under the S.106? Would their current informal arrangement with a business partner result in their being rejected for relocation and having no livelihood? QPM as MF gave advice on what the Trader could do in the interim to ensure they either met the S.106 provision or would be favourably considered for unallocated space which became available in the new Market.

24. The second most common query was 'approved uses'. Would a Change of Use to a new product line be accepted in the new Market? QPM as MF was able to offer an explanation of the 'balance of trades' policy central to ensuring a viable future for any Market and offer advice on what new uses would be welcome. A 'preferred user' list was produced by QPM for Traders to consider.

25. The third most common query was financial. How would the S.106 rental discount scheme and financial assistance package be applied? What was the individual value of the package and for what purposes would it be approved? The overall intention of the S.106 is clear but the devil is in the detail of its application. QPM as MF gave guidance on this topic, albeit with the caveat that it would be subject to scrutiny by the GLA / LB Haringey within the allocated budget, and that was not open-ended.

26. The fourth most common concern was allocation a.k.a. 'Selection'. Who would be the most prominent frontage stalls in the new Market - those who occupy frontage stalls or those who enjoy 'seniority' i.e. have been in occupation for longest? - Or those who the most footfall into the Market? QPM as MF explained the theory of 'comparison-shopping' attractions and how this would be applied to ensure fair allocation for the benefit of all.

27. The role of the Market Facilitator is required to act impartially and for the benefit of all Traders. The directors of QPM saw the potential for allegations of favouritism and partiality which prompted the resignation. For its part MAMSSL looks forward to working with the replacement Market Facilitator when he/she is appointed.

Q2 (b) "Assist Traders in continuing to trade from the Market and Temporary Market for so long as the Market and Temporary Market respectively are open for trading purposes"

Yes. Numerous private requests for informal advice were received from Traders unsure of their legal obligations but wishing to 'regularise' their businesses. Most would be open to investigation

for non-compliance by the HMRC, EHO, LBH licensing department etc. The confidential discussions were able to identify the priorities e.g. securing EL insurance for employees. Using its specialist knowledge QPM was able to offer assistance on issues such as@

- Registration with HMRC and preparing self-employment tax returns
- Tax allowances claimable through self-employment
- Implications of Vat registration for food and non-food businesses
- Eligibility for Small Business Rates Relief
- Health & Safety obligations
- Registration and EHO compliance for food businesses,
- Legal obligations for the employment of other persons,
- EL and PL insurance obligations and where to obtain same
- Compliance with fire safety and trading licence conditions.

Assistance was extended to providing confirmatory letters to the Home Office in support of applications for leave to remain and trade references for residential landlords.

Q2 (c) "Assist individuals working at the Market to find suitable alternative employment in the event they decide not to relocate to the temporary Market or the new Market area as the case may be) with the objective (in each case) of maximising the number of Traders and other independent local Traders who elect to trade from the Temporary Market and the New Market Area".

29. `There was never the need to address this in detail - the decision whether to relocate was too remote. Attendees were though advised to contact LB Haringey Regeneration (Enterprise Centre at 639 High Rd) and the NMTF (National Market Traders Federation) and FSB (Federation of Small Businesses) all of whom offer support for employment initiatives.

Q3 "Did your agreement with the Developer include a performance clause / agreement for measuring progress towards the achievement of objectives of the S.106 agreement?"

30. The contract between the Developer and QPM contained clauses standard to any professional appointment describing the scope and specification of the services, the fee payable and the reporting requirements. Further details are subject to commercial confidentiality.

31. We hope this information is of assistance. In your report please make it clear that Quarterbridge has not had any involvement in the Wards Corner project since November 2018.

6.19 Substantially the same information was submitted by Quarterbridge to the Scrutiny Panel via a report dated 26/03/2019, which I have had regard to.

Questionnaires responses and interviews with the traders

6.20 The questionnaire is appended to this report as appendix 3. The responses are aggregated and paraphrased for clarity.

Question 1 and 2 – Interest in taking part in the review

6.21 All but three traders who responded indicated their interest and intention to fully participate in the review.

6.22 Only three respondents explicitly stated that they were not interested in taking part in the review. Their reasons were as follows:

1. The review was similar to the one being carried out by PAG (A review by Roger Austin on the possible future market management model) as such they felt that was a better platform for them;
2. No reason given;
3. The re-development of the site was not going to be a good thing for the traders as such there was no value in participating.

6.23 Responses 1 and 3 above were verbal submissions while response 2 was made in writing.

6.24 Some of the traders who were provided with the review pack kept promising to respond in person, and despite being visited on several occasions did not take part. The reasons advanced were that it was busy, or the owner of the unit was away on holiday or just kept suggesting further dates in the future.

6.25 There was another subset of traders who did not want to participate without seeking the views (or affirmation) of another named market trader.

Question 3 – Process of appointing the Market Facilitator

6.26 The traders said they had never directly participated in the appointment of the Market Facilitator or operator before. They were generally looking forward to taking part in the process. They also suggested the traits they wanted to see from the facilitator. Those traits being;

- Mediator;
- Knowledgeable about markets and an understanding of the Latin American culture;
- Ability to stand up to bullying traders;
- That the facilitator has to be independent of both the Developer and the Council.

Questions 4 and 5 – Whether the draft Market Facilitator job description met the objectives of the s106 clause

6.27 Universally the response was that the job description met the requirements of the s106 clause. There were no material changes suggested

Questions 6 and 7 – Interest in being directly (or by proxy) involved in the shortlisting, interviewing and recommending the preferred candidate for the post of Market Facilitator

6.28 Universally, the response was that everyone wanted to be directly involved. No one wanted to use a proxy.

6.29 I sent a second questionnaire to the traders specifically to address the issue of the conduct of the Market Facilitator.

6.30 The questionnaire was hand delivered to the traders on 21 September 2019. On that day I also had an impromptu meeting with three of the traders at one of the units. The responses were supposed to be collected/sent to me by 11 October 2019. This date was shifted to 16 October 2019 at the request of the Bindmans solicitors as the traders were involved in the judicial review of the Secretary of State's decision to confirm the CPO.

6.31 I visited the market on 16 October 2019 and managed to obtain 16 responses, of which 3 were sent by email. I had an interpreter with me during my visit to the market on 16 October 2019.

6.32 The questionnaire and the aggregated responses are reproduced below:

1. Were you trading at the Market at any time between 25 July 2017 and December 2018? (25 July 2017 is the date on which the deed of variation containing clause 2.1 of the s106 was agreed)

All responses were affirmative.

2. Were you ever written to or contacted by Quarterbridge offering business support and advice, or offered any general assistance in respect of your trading from the Market? If yes, please provide details of any such contact.

Seven (7) respondents said no.

Six (6) respondents said yes.

Three (3) did not remember

The above response seems to contradict the outcome of the meeting of 20 September 2019 in which the traders stated that they had been contacted by email and offered workshops which they did not attend for various reasons, primarily lack of trust of the Market Facilitator.

I put forward this question to Quarterbridge and their response was as follows:

Yes - this was done but I need to dig out the evidence. Each licensee was advised by personal email invitation plus collective advisory notices and at the one-to-one confidential meetings and the steering group meetings and the general open management meetings with all Traders them. And also by personal encouragement of course.

3. Did you ever approach Quarterbridge to seek business support, advice, or general assistance in respect of your trading from the Market? If yes, were you provided with the support, advice and assistance that you sought?

Eleven (11) respondents said no.

Five (5) respondents said yes.

With hindsight, I could have framed this question differently as in its current format it does not provide me with an insight into why the majority of the respondents did not seek business support, advice and general support. I am aware of the three responses that qualified their reasons for not seeking the assistance primarily on lack of trust and broken down relationship with the Market Facilitator.

I put forward the findings to Quarterbridge and their response was as follows:

I cannot understand why such a large number have no recollection of the several invitations by different methods they received unless they were not legitimate licensees and therefore not included in the invitation process.

4. Do you consider that Quarterbridge have behaved towards you (or any other persons employed at the market) in a fair, cooperative and inclusive manner and in a manner that achieved the aims and objectives of the role of the Market Facilitator as set out in the legal agreement (previously provided)? If 'no', please provide examples or instances where this has not been the case.

Eleven (11) respondents said no. Of the eleven, the majority did not provide [any] defined examples that I could put forward to Quarterbridge. There was reference to broken promises and the physical condition of the market.

Other than the incidents which I was aware of at the start of my investigation, no other trader raised any complaints about Quarterbridge.

One respondent said they had a confrontation with Mr Owen. However no specifics were provided and consequently the evidential weight I can afford it is limited.

One respondent said they had been bullied, harassed and intimidated and referred to a third TfL investigation.

I was not aware of an ongoing third TfL investigation, and no details had been provided by the respondent. I put forward this to Quarterbridge and their response was as follows:

I'm at a loss to understand why the Trader should have suggested this. As far as I'm aware apart from the initial two TFL investigations which rejected allegation against QPM there has never been a third investigation. I'm sure TFL would have let us know if a third inquiry was taking place.

One response referred me to the Steering Group minutes.

I was already aware of the Steering Group minutes.

Four (4) respondents said yes.

One (1) respondent said they could not remember anything.

7 Findings in respect of the Market Facilitator obligations

- 7.2 The definition of “Market Facilitator” in the s106 explicitly allowed the Developer to appoint Quarterbridge or another facilitator of its choosing.
- 7.3 According to the Developer, Quarterbridge started working as Market Facilitator in May 2016 and continued in this role after the s106 was completed. Information provided by Quarterbridge state that the appointment was in January 2016. There was no obligation on the Developer to notify the Council of any appointment under the s106. As per section 7 above, the obligation to appoint a facilitator became effective on the 25th of July 2017. As such the different dates provided by the Developer and Quarterbridge do not affect the outcome of my investigations as both dates predate the effective date of the DoV.
- 7.4 The Market Facilitator obligations require the Developer to procure that a Market Facilitator works with the traders to in order to take various steps with the objective of maximising the number who elected to trade from the temporary and new market. This required a working relationship that could achieve the desired outcomes. The obligations at clause 2.1 clearly envisaged someone being procured by the Developer who would promote the traders’ interests. The Developer communicated to me that it recognises that it is important to have a positive relationship between the Market Facilitator and as many traders as possible.
- 7.5 It is understandable that, given the dual role of Mr Owen as director of both MAM and Quarterbridge, there would be confusion regarding his role. It is also understandable that there would be some difficulties with him working with the traders to achieve the desired outcomes whilst also acting for MAM. In some respects, the interests of MAM and the traders are at odds with each other.
- 7.6 There are also some instances where it is accepted that Mr Owen’s behaviour and language was unacceptable and apologised to the affected parties. This is evident from TfL’s investigation. For the avoidance of doubt, I accept, on the balance of probabilities, that Mr Owen’s behaviour in the incidence which were investigated by TfL was inappropriate as acknowledged in their reports. It is understandable that this would make a working relationship between the traders and Quarterbridge difficult.

- 7.7 As a result of the above, it is clear that the relationship between Quarterbridge and the traders had broken down and was not working for the purposes of the Market Facilitator obligations. The breakdown in trust compromised Quarterbridge's ability to provide support to the traders. Therefore, this clause was not complied with once the Developer became aware of the difficulties above because the Developer were not procuring that the Market Facilitator do as required.
- 7.8 The Developer announced at the Steering Group meeting in December 2018 their intention to replace Quarterbridge as Market Facilitator with a new, independent party. Quarterbridge on the other hand state in their submissions to me that they resigned. I do not think that the exact circumstances in which Quarterbridge ceased to act as Market Facilitator go to the crux of my findings.
- 7.9 There is nothing in the s106 that expressly prohibits there being an association between the Market Facilitator and operator. Information provided by the Developer states that Quarterbridge had been acting as a consultant to the Developer, advising on all things market related since 2012. Asking them to carry out the Market Facilitator role was, in the Developer's view, a natural extension of the work they were doing. However, for reasons set out below and given the complaints, I do consider that it is advisable for the facilitator to be independent. This is one of the recommendations coming out this exercise. It is important from the Council's perspective and future monitoring of the s106 agreement that we learn from the lessons and look to improve the process and ensure that the Market Facilitator has the confidence of traders.
- 7.10 In the eyes of the traders, given that both of Mr Owen's roles were carried out simultaneously, it was understandably very difficult to distinguish which role was being executed at any given point in time.
- 7.11 In addition, the Action Plan produced by MAM after the TfL investigation details publicity actions which overlap with the role of Quarterbridge as the Market Facilitator. Not only are those tasks that are listed in the Action Plan in the domain of the Market Facilitator, but Quarterbridge in their submissions to the Scrutiny Panel and to this investigation refer to them as some of the deliverables they achieved towards meeting the obligations. To a lay person, it is difficult to distinguish between the behaviours of a director representing the leaseholder or the Market

Facilitator if the companies themselves are struggling with that distinction in their submissions. The distinction between the leaseholder/operator and the Market Facilitator needs to be reiterated.

Conclusion

Although Quarterbridge had up to the point they ceased being the Market Facilitator taken steps to fulfil the role of Market Facilitator as envisaged in the agreement, the evidence suggests the obligations were breached.

8 Consideration of enforcement

- 8.1 Quarterbridge ceased to be the Market Facilitator in late 2018 and are no longer involved in the day to day operations of the market.
- 8.2 The Developer has indicated it is willing to work with the Traders and the Council to appoint a suitable Market Facilitator.
- 8.3 Therefore, steps have been taken to remedy the breach.
- 8.4 The Council's enforcement powers in respect of a breach of clause 2.1 of the s106 agreement are limited to seeking a court injunction (section 106(5) of the Town and Country Planning Act 1990). Further guidance is provided in the Council's adopted 2018 Planning Obligations Supplementary Planning Document.
- 8.5 The remedy for any breach of the obligations would be to remove the Market Facilitator and appoint another one. However, steps have already been taken towards achieving this. I therefore conclude that at this stage it would not be expedient or in the public interest to seek to take any legal action for the identified breach of the obligations.
- 8.6 Whilst no enforcement action is recommended, a number of steps are recommended to try to ensure that the aims and objectives of the Market Facilitator obligations are met and that the Market Facilitator holds the trust of the traders in the future.

9 Next Steps

- 9.1 It should be noted from the outset that the Council cannot unilaterally amend the s106 agreement, and can only do so with the Developer's agreement. Given that there was clearly a breakdown in trust and confidence between the traders and the previous Market Facilitator, I do however recommend that the Developer, on a voluntary basis, seeks to engage the traders in the appointment of the new facilitator.
- 9.2 The case for an independent Market Facilitator is obvious. It is easier for a distinction to be made between problems within the domain of the market operator to be directed to them and problems relating to the Market Facilitator to be directed to the Council for investigation if not resolved beforehand. The independence of the Market Facilitator reduces the scope of flawed decisions arising out of a conflict of interest, howsoever it arises. Furthermore, independence will help ensure that the new Market Facilitator holds the trust and confidence of not just the traders but all the stakeholders. That is one of the recommendations that I will be putting forward for the Assistant Director's consideration.
- 9.3 My recommendations which are set out in paragraph 12 are suggested as a way forward in restoring the trust and confidence of the traders in the Market Facilitator. However, legally, these recommendations are non-binding on the Developer. For clarity, these recommendations are not strictly necessary to ensure compliance with the obligations, but are suggested to avoid any scenario in the future which may give rise to the conflict between the traders and the Market Facilitator.
- 9.4 The traders have been provided with a draft of the job description and person specification which I obtained from the Developer. I have asked the traders for their opinions and comments on the content of both documents. The outcome of this exercise is dealt with elsewhere in this report.
- 9.5 The Developer has no objection in principle to the traders having a say in the selection and appointment of the Market Facilitator. The procurement and accountability of the Market Facilitator are set out in the s106, however, the Market Facilitator's accountability to the Developer is not unfettered. There are a number of clauses within the s106 agreement which either specify what should be done by the Market Facilitator including the when, why and how. There are further checks and balances built in to the agreement through the need to notify or

serve notices on the Council and or Mayor of London for instance through clause 3.5 which reads:

‘To keep the Council and the Mayor of London regularly informed about progress of both the Market Lease and satisfaction of the Market Condition’.

9.6 Overall it is considered that the wording of the agreement provides reasonable assurances about the independence and integrity of the Market Facilitator. Furthermore, the Developer has agreed to the involvement of traders in the selection and appointment process as a show of goodwill. The mechanics of doing this is yet to be finalised.

9.7 Furthermore, the Developer are open to the idea of amending the job description if this review found that there were fundamental shortcomings identified. However, the caveat to this position by the Developer was that any suggested changes would have to be within the parameters set out in the s106 agreement and not anything beyond that. Through this exercise no changes have been suggested.

10 Other obligations in the s106

10.1 In order to arrive at the decision as to whether there are other s106 obligations that should have been complied with. I had regard to the Conditionality as set out in the agreement which reads:

10.2 The Deed is conditional upon:

(a) The grant of the Planning Permission; and

(b) The Commencement of the development

Save for the Clauses 1 – 3 and Clauses 6.1 – 6.27, which shall come into effect upon completion of this Deed, and Clauses 4 and 5 and Paragraphs 1, 2, 3, 7, 8, 13, 15, 17, 20, 21, 23 and 24 of Schedule 4 to this Deed and Paragraphs 1 – 5 of the Schedule 5 to this Deed, which shall come into effect upon the grant of the Planning Permission.

10.3 The following s106 obligations should have been complied with to date:

10.4 Clause 21 – Community engagement strategy

This clause reads:

Clause 21 (Community Engagement Strategy)

“12.1 No later than twelve (12) months after the Unconditional Date or three months after the council resolves to make a compulsory purchase order to facilitate the carrying out of the Development (whichever is the later), to submit a community engagement strategy to the council for approval PROVIDED THAT such strategy shall demonstrate how the Developer will deal with the following matters:

a) Regular diversity monitoring regarding the impact of the Development on affected third parties (in concert with the approved Baseline Study and updates to it);

b) Reporting on the engagement process and how representations from third party stakeholders will be taken into account; and

c) Any further mitigation measures (including a programme for implementation) that are identified as a result of the ongoing monitoring and are both necessary and directly related to the development.

12.2 To implement the community engagement strategy as approved pursuant to Paragraph 12.1 together with any identified mitigation measures”.

10.5 This clause has been complied with through planning application HGY/2017/1517.

10.6 Clauses 13.1 and 13.2 (Schedule 4)– Monitoring

This clause reads:

“13.1 Unless otherwise agreed in writing by the Council, no later than six (6) months after the earlier of:

- i (i) the Unconditional Date;*
- ii (ii) service of the Closure Notice, to submit the Baseline Study to the Council for approval.*

13.2 To update the Baseline Study at each of the following:

- i (i) upon service of the Closure Notice (only if service of the Closure Notice occurs after the Unconditional Date);*
- ii (ii) upon Commencement of the Development (only if Commencement of the Development occurs after the Unconditional Date); and*

iii (iii) each anniversary of the date of Commencement of the Development until Practical Completion”.

2

PROVIDED THAT the Developer shall not be obliged to include within the Baseline Study (or any update of it) any business that has either ceased to trade or has confirmed that it does not intend to relocate to the New Market Area.

10.7 These clauses have been complied with through planning application HGY/2017/1518.

10.8 Community engagement strategies for 2017 and 2018 have been submitted and accepted by the Council.

10.9 A baseline study for 2017 and 2018 have been submitted and accepted by the Council.

10.10 A Baseline Study, for the purposes of the agreement is defined as a study of business owners, stall holders and other employees working at the Market which shall include –

Diversity monitoring of business owners, stall holders and other employees working at the market;

Details of the number of employees of each business;

Details of the location of each business within the site and whether it intends to relocate to the New Market Area.

10.11 All the applications and documents referred to above are available on the Council’s website.

10.12 It has come to my attention during the course of this investigation that some of the obligations in the 2012 s106 agreement, which may have been in force but then subsequently replaced by the DoV, not complied with. I deal with this below.

10.13 The relevant obligations are 24.3 and 24.5 of Schedule 4 and they are reproduced below:

10.14 I sought comments from the Developer and the following are their submissions on the two points regarding the past (non)compliance with the obligations and the following are the comments of Mr Kiddle from the Developer.

Having joined the Developer in July 2014, it is difficult for me to know what was done by my employer between the date of the s106 agreement and my employment starting. Those people who were working on the project in this time have since moved on.

Clause 24.3

I note that the s106 agreement is silent on when a Market Facilitator was to be appointed by. I cannot therefore agree that the clause was operative in 2012. Notwithstanding this, in the context of 24.3 there is no definition of 'Market Facilitator' just the following five points which they should seek to work with traders on:

- (a) identify a location for the Temporary Market with the borough of Haringey (or such other location as may be agreed in writing with the Council);*
- (b) promote the interests of Spanish-speaking Traders in the Temporary Market;*
- (c) provide appropriate business support and advice to all Traders with the objective of maximising the number of Traders who elect to return to the New Market Area;*
- (d) assist Traders in continuing to trade from the Market for so long as it is open for trading purposes; and*
- (e) assist individuals working at the Market to find suitable alternative employment in the event that they decide not to relocate to the Temporary Market and/or the New Market Area*

A press release on the Council's website

<https://www.haringey.gov.uk/news/specialist-support-seven-sisters-market> talks about Quarterbridge being appointed by the Developer and the Council in October 2012 (consistent with your assertion that the clause was operative in 2012) to (and I summarise the press release):

- 1. design the new Market Hall;*
- 2. help with the temporary relocation whilst the Seven Sisters Regeneration project is underway;*
- 3. consult with all existing stallholders to work up the layout and stall design; and;*
- 4. help current traders to move into a temporary location and retain customers and trade while the market is being revamped.*

Whilst not specifically referring to the five points (a-e in the S106) I think it can be easily understood that Quarterbridge were appointed to discharge the S106 obligation at paragraph 24.3.

In 2016 (during my time on the project) the Developer specifically confirmed Quarterbridge's appointment to the Market Facilitator role. This confirmation was made against the backdrop of the location for the Temporary Market being identified,

and work being required. I think the reality, as confirmed by the Council's own press release, was that Quarterbridge started fulfilling the role in 2012.

My belief is that the clause was not operative. However, if it was, I believe the Developer were complying with the requirements of the obligation.

Clause 24.5

Regrettably, I have no record of specific written reports being submitted to the Council every six months.

As the drafting of the s106 agreement pre-dates my involvement in the project, I cannot be sure of the exact sentiment behind this clause. I can only assume that it was drafted in order for the Developer to keep the Council informed of progress towards finding and setting up the Temporary Market. Whilst there does not appear to be record of regular written reports, it is apparent that the Council were well aware of the progress towards identifying a location for the Temporary Market, which is the first limb of the obligation. Here is a link to the [Cabinet meeting](#) of July 2014, at which the sale of Apex House to the Developer was agreed. The paper talks about Apex House becoming a home for the market.

Notwithstanding the above, you are correct to say that clause 24.5 was removed through the Deed of Variation.

In the absence of any information to the contrary to the Developer submissions, I am unable to reach a different conclusion as to whether there was a breach of the two clauses highlighted above.

11 Conclusions

- 11.1 Quarterbridge were appointed as the Market Facilitator in 2016.
- 11.2 It is accepted, and indeed it was accepted by the Developer (the Developer), that there have been difficulties with the operation of the Market Facilitator obligations when undertaken by Quarterbridge. Evidence suggests that the S106 was breached in this regard.
- 11.3 Steps have been taken by the Developer, in cooperation with the Council, to rectify these issues through the removal of Quarterbridge as the Market Facilitator.
- 11.4 The Council's enforcement powers in respect of breaches of any agreement under section 106 agreement are limited to seeking a court injunction to require compliance.
- 11.5 One of the recommendations is that the Market Facilitator should be independent from the Developer and anyone connected with the running of the market.

- 11.6 There is no evidence that clause 24.5 of the original agreement was ever fulfilled, however on the other hand I have no evidence either from the Council or the Developer that it was not as all the parties who were involved with this Developer from both sides are no longer in post. However that clause is no longer in force as it was deleted at the time of entering into the DoV.
- 11.7 There is evidence in the form of the Council's announcement in 2012 of the appointment Quarterbridge as the Market Facilitator that the Developer complied with the Market Facilitator clause in 2012.
- 11.8 There is no proposed enforcement action at this time.
- 11.9 Whilst no enforcement action is recommended, a number of steps are recommended to try to ensure that the aims and objectives of the Market Facilitator obligations are met and that the facilitator holds the trust of the traders.

12 Recommendations

- 12.1 Having carried out my investigation, based on the findings above, it is recommended that the Assistant Director of Planning writes to the Developer and traders with the following recommendations:
- i. That the Developer, with the assistance of the Council, procures a temporary Market Facilitator pending the appointment of a permanent Market Facilitator.
 - ii. That the Developer widely advertises the post of the Market Facilitator.
 - iii. That the Market Facilitator should be independent from the Developer and anyone connected with the running of the market.
 - iv. That the Developer meets with the Council and traders bi-annually to review the progress towards meeting the obligations in the principal agreement.
 - v. That the Developer randomly selects two traders, from a pool who have indicated their willingness to participate, to assist in the identification, selection and appointment of the Market Facilitator.
 - vi. That before the placing of the advertisement for the post, the Developer develops shortlisting and weighting criteria to be used in the selection and appointment of the Market Facilitator. The Developer should consult the Council and traders before finalising such criteria.
 - vii. That the shortlisting and interviewing be carried out by a panel comprising representatives of the traders, the Council and the Developer.
 - viii. That, when appointing a Market Facilitator, the Developer takes into account the views of the traders selected to participate in the identification, selection and appointment of the Market Facilitator unless there are material considerations which outweigh the traders

preferred candidate. In that case the Developer should submit a report to the Council explaining the considerations and for the Council to agree to that assessment in writing.

- ix. That the traders and any interested parties report any future alleged non-compliance with the provisions of the principal agreement to the Interim Manager – Planning Enforcement and Appeals for investigation in the first instance.
- x. That the Developer develops a set of Key Performance Indicators (“KPIs”) which will be used to measure the Developer’s progress towards the objectives of the agreement.
- xi. That the temporary Market Facilitator and the permanent Market Facilitator present progress reports to the Steering Group or its successor(s) OR, in the alternative, report progress directly to the Council. The report should be presented every 6 months.
- xii. That the Developer reconstitutes the Steering Group with clearly defined terms of reference and a democratic way of operation.
- xiii. That the Council has a formal observer role in the Steering Group (and any successor).

13 Background information that was taken into account in this review

- 1. Market Facilitator s106 agreement clause**
- 2. Cover letter to traders dated May 2019**
- 3. Questionnaire to traders in relation to the Market Facilitator role**
- 4. Draft job Market Facilitator job description**
- 5. Equalities monitoring form**
- 6. Cover letter to traders undated but hand delivered on 21/09/2019**
- 7. Questionnaire to traders in relation to the previous MF conduct**
- 8. Bindmans emails and letters to LBH and accompanying responses**
- 9. Quarterbridge submissions to this review**
- 10. Quarterbridge submissions to the Scrutiny Panel**
- 11. Latin Village submissions to the Scrutiny Panel**
- 12. Steering Group minutes**
- 13. The Developer submissions to this review**
- 14. Bindmans clients' submissions in relation to the MAM Action Plan**
- 15. TfL investigation 1 report**
- 16. TfL investigation 2 report and Action Plan**
- 17. Mayor of London letter response to the complaints**
- 18. Planning documents of the site including GLA referral reports to the applications**
- 19. Principal agreement and the DoV**
- 20. UN letter 1 and 2**
- 21. CPO inquiry report**
- 22. CPO JR submissions**
- 23. Wards Corner s106 obligations tracker**
- 24. Planning Obligations (s106) SPD**
- 25. 2008 the Developer letter to traders**
- 26. The 2008 document entitled Responsibilities of the Market Operator**
- 26. Questionnaire responses from traders**
- 27. 15 July 2014 LBH Cabinet agenda and reports**
- 28. LBH 2012 website announcement of the appointment of Quarterbridge as MF**