

**THE ROYAL BOROUGH OF GREENWICH**

**WOOLWICH EXCHANGE**

**COMPULSORY PURCHASE ORDER 2022**

**OBJECTION BY**

**WOOLWICH LANDLORDS AND TENANTS ASSOCIATION**

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**CLOSING SUBMISSIONS**

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1. Britain prides itself on being a nation of shopkeepers.<sup>1</sup> Yet our highstreets have suffered a revolution through the rise of online shopping and competition from large multiples. Nonetheless, and bucking the national trend for declining high streets in many town centres, the scheme area contains successful and thriving small independent businesses. Are they to be nurtured, protected, preserved and sustained by the planning system? Or will they be driven away or forced to close, sacrificed on the altar of planned regeneration? This is the crucial – indeed potentially life-changing – question for my clients regarding the scheme's impact.

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<sup>1</sup> Whether attributing this to Adam Smith who first used the phrase in *Wealth of Nations* in 1776 or, later whether to Bertrand Barère de Vieuzac or, questionably, to Napoleon (1794).

2. To uphold the scheme, there must be a compelling case in the public interest to confirm the CPO.<sup>2</sup> The law requires that the scheme promotes or improves the economic and social well-being of the area.<sup>3</sup> There is also an essential duty to consider the impact of the scheme on the ethnically diverse local community and the protected characteristics of existing local businesses.<sup>4</sup>
3. The balance to be struck turns on the inevitable harm to the objectors (and likely others), caused by displacement. The council accepts that the scheme will displace everyone operating from the scheme area, given the comprehensive nature of the proposals including subterranean works. The certain relocation of all businesses, temporary or permanent, is not a benefit but a consequence of the scheme which must be mitigated if the scheme is to be confirmed. For the reasoning set out herein, the scheme should not be confirmed because the mitigation is insufficient and illusory. The question is whether the scheme's admitted negative effect outweighs the claimed benefits sought.
4. The Court of Appeal in the case of *Horada*<sup>5</sup> confirms that a material consideration is the ethnically diverse character of retail offer from small independent traders that represents an important characteristic of a diverse area. In that case, the development plan specifically protected the mix and diversity of the market traders affected by the

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<sup>2</sup> Guidance on Compulsory purchase process and The Crichel Down Rules, para 12: *A compulsory purchase order should only be made where there is a compelling case in the public interest.*

<sup>3</sup> *Town and Country Planning Act 1990*, s.226(1A).

<sup>4</sup> The public sector equality duty under s.149 of the *Equality Act 2010*.

<sup>5</sup> *Horada v SSCLG* [2016] PTSR 1271, previously supplied and marked up.

development area.<sup>6</sup> The elements of the character of the scheme area and its traders in *Horada*, as found by that inspector, echo the characteristics of the objectors here.<sup>7</sup>

5. The question that arises here is whether the characteristics of the objectors and their businesses are important components of the well-being of the scheme area. We say it is. The people and area served are ethnically diverse. The council accepts that most businesses located within the scheme site are owned and operated by people from ethnic minority communities.<sup>8</sup> This majority amounts to 93% of businesses affected.<sup>9</sup> It further accepts that people from ethnic minorities will disproportionately feel the impacts on businesses.<sup>10</sup> The independent retail offer, as well as local services specifically aimed at local people<sup>11</sup>, provide affordable, diverse food and fashion to the diverse local population. These niche retailers and service-providers enhance the well-being of the area both in terms of its thriving economy and its positive impact on local people through ready access to culturally suitable shops and local training. These features are protected by statute and planning policy.
6. The planning strategy in principle is not impugned. The difference between the objectors and the council is that the council claims (and this is not accepted) that the development plan does not specifically provide for the retention of local businesses currently operating from the affected location. In any event, even if retention of

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<sup>6</sup> Ibid, paras 12 & 14.

<sup>7</sup> Ibid, para 13.

<sup>8</sup> Rebuttal evidence of Dr Beard, para 4.1.4 p8.

<sup>9</sup> Evidence of Dr Beard, para 2.4.9 p13.

<sup>10</sup> Ibid, para 2.4.9 p13.

<sup>11</sup> For example, Dr Emuh's training services to people from the local job centre.

existing businesses is outwith the development plan (which is denied), the effect on the objectors is potentially serious and thereby unacceptable.

7. The borough is ethnically diverse.<sup>12</sup> Some 93.8% out of 9,990 businesses in the borough are classified as micro businesses.<sup>13</sup> Growth and regeneration are laudable aims of the council. Economic prosperity through improved retail offer is applauded. The regeneration of the Woolwich Exchange is accepted as a necessary and important part of this process. But the council suggests – evidenced in the cross-examination of Dr Cyril Emuh – that the development plan policy does not expressly provide for the retention of existing businesses that will be displaced by improvement schemes such as this one.
8. However, in contrast to the cross-examined position, the development plan explicitly protects small businesses:

*Small and medium businesses are an important part of the local economy and will continue to be supported by the Royal Borough. The Royal Borough will seek to protect existing businesses wherever possible. Suitable premises for these businesses will be encouraged and where redevelopment is proposed the Royal Borough will support existing businesses to relocate. The Royal Borough is able to direct resources into support for people and businesses within regeneration areas...*<sup>14</sup>

9. The Core Strategy specifically recognises the need for a “strong community identity”.<sup>15</sup> This is given life through the availability of ethnically diverse independent local

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<sup>12</sup> Smalley 3.3.7.

<sup>13</sup> Ibid, 3.4.1.

<sup>14</sup> CD.D.17a Core Strategy, para 4.2.6.

<sup>15</sup> Idib, para 4.3.

businesses and service providers. There is considerable socio-economic diversity in Woolwich.<sup>16</sup> It is important, therefore, to serve those who are unemployed or on lower incomes.<sup>17</sup> It is also important to protect the recognised vibrant community, which is a strength of the SPD area.<sup>18</sup> The SPD specifically identifies, as an opportunity of redevelopment, retaining people within Woolwich, which includes its local traders and shopkeepers.<sup>19</sup> This was an express objective of the Spray Street Masterplan.<sup>20</sup> The continuity of trade for affected businesses is a recognised part of the phasing of the comprehensive redevelopment envisaged by the SPD.<sup>21</sup>

10. The council also acknowledges that avoiding gentrification is part of the challenge facing the borough. It says it will do this by:

*Ensuring that development and change benefits local people and not gentrification.*<sup>22</sup>

11. The council's Statement of Reasons deals with small retail units.<sup>23</sup> It specifically envisages that the developer will be required to provide an opportunity for parties displaced by the scheme to relocate within the redevelopment. The Statement goes on to set out the benefits of redevelopment to include creating opportunities for local people and providing retail space for existing businesses.<sup>24</sup> This language clearly

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<sup>16</sup> CD.D.21 Spray Street Masterplan SPD, para 3.2 p28.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid, para 4.5 p37.

<sup>19</sup> Ibid.

<sup>20</sup> CD.B.20 Brief for Spray Street Masterplan, para 2.3 p1.

<sup>21</sup> CD.D.21 Spray Street Masterplan SPD, para 7.4 p62.

<sup>22</sup> CD.B.17 Our Greenwich Plan 2022, p12.

<sup>23</sup> CD.C.03, para 5.9(e), p20.

<sup>24</sup> Ibid, para 5.10 p21.

suggests that the council is not turning its back on existing local traders. While not guaranteeing their return (which is not our case), the Statement of Reasons allows for and indeed encourages it.

12. Further, and consistent with this – but nonetheless late in the day and noticeably after the annotated *Horada* case was circulated on behalf of the objectors – the council enhanced its strategy for existing occupiers by offering exclusive early access to securing units in the small retail space within the scheme.<sup>25</sup> Whether coincidence or otherwise, the council thereby recognises – and importantly accepts – that existing occupiers should have an enhanced opportunity to return to the redeveloped town centre. However, this revised strategy does not commit the council to provide accommodation but only grants an exclusive marketing period to returning traders within which terms may be agreed. This leaves traders at risk of high, unaffordable rents (like the *Horada* case).
13. Hence, the Statement of Reasons and the early relocation strategy are consistent with the sensible meaning of the development plan contended by the objectors. This means that the balance when exercising planning judgment here must give sufficient weight to the continuity of the businesses that will be disturbed, including returning to the scheme area.
14. The latest timing for the delivery of the scheme shows there is almost certainly going to be well over two years between the objectors being required to vacate the area (May

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<sup>25</sup> Document dated 21<sup>st</sup> March 2023. At the time of writing this does not have a CD number. Though it is accepted that the topic was telegraphed in the Statement of Reasons, CD.C.03 at para 8.8.11 p56.

2024) and the earliest they might return (June 2026).<sup>26</sup> It is not unrealistic to suggest that there might be slippage for any number of reasons, thereby increasing this period. In any event, there will be continued disruption inevitably through ongoing construction works until the scheme is completed by October 2030 (at the earliest).

15. This means there will be a considerable delay between vacating the scheme area and returning. The council's evidence is that it has a variety of ways to help businesses relocate. The success of these strategies in practice has proved illusory to date. No one has relocated. Objectors are mistrusting or confused. Council offers are extremely low compared to market expectations.<sup>27</sup> Alternative locations are unsuitable because of cost and geographical distance from existing customers. There must be financial and physical conditions suitable to permit businesses to relocate. The reality is that there is of lack of alternative accommodation at an affordable cost sufficiently proximate to enable objectors (and those like them) to move away and survive long enough even to consider returning to the completed scheme.

16. Importantly, the FRS only offer options agreements which commit the council to pay compensation at the point the land is vested (provided the compensation is agreed upon). Many businesses at that time will be looking for relocation premises simultaneously. They will struggle to find any, given the ongoing evidence of a lack of suitable available units.<sup>28</sup> This will force businesses to close. No alternative has been provided or committed to in providing temporary relocation from the vesting date to

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<sup>26</sup> Strategy for existing occupiers to have exclusive early marketing for the small retail units, dated 21<sup>st</sup> March 2023.

<sup>27</sup> See especially the objectors' evidence of third party offers versus those from the council.

<sup>28</sup> CD.E.4, the monthly updated Relocation Schedule of Available Units.

when new units are finished to give businesses certainty. If compensation is not agreed (and given the evidence of low offers that have been refused this is highly likely) then businesses will not have funds to relocate and almost certainly have to close down. The FRS, therefore, is deficient in this regard, and the measures proposed are not comprehensive, fair or reflective of business needs.

17. The safeguards promulgated by the council are illusory or at least insufficient. Indeed, the council accepts that it will generally not be practicable for “*most businesses*” to relocate within the finished scheme.<sup>29</sup> Consequently, the scheme will impact the livelihoods of people who have created successful local businesses serving a local community that will lose out in the long run as the ethnic independent retail offer and service provision will disappear. Instead of avoiding gentrification, as the council aims to do, it will cause it. A nation of shopkeepers is not the same as a nation of shops.
18. Accordingly, the scheme fails to adequately promote or improve the well-being of the area in accordance with s.226 of the 1990 Act and to have due regard to the public sector equality duty under s.149 of the 2010 Act. Therefore, the scheme is insufficiently compelling to justify being confirmed.

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<sup>29</sup> CD.C.03 Statement of Reasons, para 8.8.11 p56.