The Royal Borough of Greenwich (Woolwich Exchange) Compulsory Purchase Order 2022 ("the Order")

The Royal Borough of Greenwich ("the Council")

Town and Country Planning Act 1990, s226(1)(a), s226(3)(a)

Local Government (Miscellaneous Provisions) Act 1976

Acquisition of Land Act 1981

PINS Ref: APP/PCU/CPOP/E5330/3298747 – ENV/3305739

The Council's Final Submissions

The same abbreviations are used as in the Council's Opening Submissions.

Introduction

1. The Council set out in detail its justification for the confirmation for the Order by reference to its own evidence and the tests within the Guidance in its Opening Submissions. These final submissions deal only with evidential points raised at the inquiry that bear upon that justification. These submissions should be read together with the Opening Submissions as summarising the evidence providing the justification for the Order.

2. Considerable progress has been made during the course of the inquiry in addressing and overcoming relevant objections within the meaning of section 13 of the Acquisition of Land Act. As a result objections remain only from Eltham Welding Supplies Limited, BLW UK Zone 1[1], and 13 objections from owners or occupiers the majority (9) of whom are represented as the Woolwich Landlord and Tenant Association. The evidential scope of these objections is limited.

[1] This is addressed in writing insofar as it raises points relevant to the confirmation of the Order in the proof of evidence of Mr Conboy at para 5.15; Dr Beard at proof para. 3.3; M Smalley rebuttal para 4.4.

3. The tests within the Guidance are central to demonstrating that there is a compelling case in the public interest. It is through consideration of those tests that the compelling case is demonstrated. For example, demonstration that planning permission exists for the scheme, and that the scheme has been assessed through that process as according with the development plan as a whole, enables the justification to recognise the achievement of the objectives embedded into the Local Plan and supplementary planning policy.

4. It must also be recognised that the Order is being sought in order to provide for the development of the Order Land pursuant to the planning permission that is in place – the Scheme. As set out in the Council's Opening Submissions – consistent with the Guidance paragraph 13 – that is the clear and identified use that the Council intends to make of the land if the Order is confirmed, and all of the evidence combines to show that the Council is in a position to deliver the Scheme in accordance with the proposed timeframe. It is also the permitted Scheme that defines, in planning terms at least, the way in which the purpose of the Order will contribute positively to the economic, social and environmental wellbeing of the area.

5. The remaining objections do not make any material challenge to the ability of the Order to facilitate the immediate development of the Scheme which is the starting point for considering the justification of the scheme. There is absolutely nothing to suggest then any of the social, economic or environmental benefits of the Scheme and which the Order will enable <u>can be</u> - let alone <u>will be</u> - delivered if the Order is not confirmed. The stark truth is that if the Order is not made, the Scheme will founder and it is extremely unlikely that any comprehensive redevelopment of this important town centre site with all of the benefits that it would bring would ever be delivered.

6. These final submissions accordingly first re-visit the four factors identified for the Secretary of State's consideration in para. 106 of the Guidance in light of the evidence of the objectors that remains before the inquiry.

(1) Whether the purpose for which land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework.

7. It appears to be common ground that the Order purposes accord with the development plan and national policy. The Council accordingly relies on its Opening Submissions and in particular paragraphs 7 to 18 which summarises the evidence of Messrs Hartnett and Butterworth.

8. The additional and objector specific evidence on compliance with planning policy heard at the inquiry came only from Mr Butterworth who explained why the need for a comprehensive approach and development of the Order Land pursuant to the SPD (and the emerging Local Plan policy) was "fundamental" and sat "first and foremost" among the policy requirements for the Order Land[2]. It follows – that in addition to the substantive disadvantages of piecemeal development referred to below – the approach asserted by Objectors, but unsupported by any substantive evidence, that individual sites may be brought forward independently on a piecemeal basis – is contrary to the local planning policy framework.

9. None of Messrs Hartnett, Butterworth or Hudspith was cross-examined in relation to the Scheme's compliance with local and national planning policy, and no contrary planning evidence was led. It is then a matter of common ground that the Scheme complies with such policy in the way explained in the Council's evidence.

10. Eltham Welding Supplies Limited suggested in the written evidence of Ms Penson that the Council should consider the potential of some of the larger plots within the Order Land to be delivered individually or collaboratively by the market[3]. The evidence of such alternative proposals presented by the objectors is addressed under factor (3) below.

[2] Explained by reference to his proof at 9.2 and related to 8.4-8.6 and the paragraphs there referred especially 2.46-49, 2.56-57 and see rebuttal 2.56-57.
[3] Ms Penson proof of evidence para 1.4 – 1.13.

11. In planning terms, however, Ms Penson's proof[4] only states disagreement with the requirement of the Spray Street Masterplan SPD that the Order Land needs to be redeveloped comprehensively in order to overcome the problems of multiple landownerships and provide a well-designed and cohesive scheme[5]. These observations of Ms Penson are inconsistent with the local planning policy framework and are fully addressed in the evidence. Mr Butterworth pulled together the relevant references in his evidence a paragraph 5.2 of his rebuttal (and see also Mr Hartnett's evidence in his main proof paragraphs 7.56 to 7.64).

12. Put shortly, there is absolutely no evidence that an alternative planning approach to that set out in the SPD – i.e. a comprehensive approach via a single scheme alongside a programme of land assembly – could deliver the Scheme objectives. In this way, the facts speak for themselves – the SPD put in place a clear vision for the Site and means of delivering it. This has been proactively advanced by the Council together with its development partner, SSQ, and a single application has been made, permitted, and funded – and the only bar now to the Scheme – as anticipated by the SPD – is the multiplicity of landownerships that need uniting through the Order.

13. Accordingly, and for the reasons given in Opening, the Scheme and the purpose for which the land is being acquired is entirely consistent with - and facilitates the delivery of - the development plan's objectives for the area as supplemented by relevant SPDs, and is consistent with the National Planning Policy Framework.

(2) The extent to which the proposed Order will contribute to the achievement of the promotion of the economic, social or environmental well-being of the area

14. Here, too, there is no substantive evidence that challenges the many and important benefits of the scheme.

15. Accordingly, the Council relies on its evidence as summarised in its Opening Submissions, in particular from paragraph 19 to 24. This cross-refers to the assessment of benefits provided by Mr Butterworth in his evidence – which is also unchallenged.

[4] See para 1.8 and 1.11
[5] See Mr Butterworth proof of evidence at 8.5

The proof of evidence of Ms Penson does not address this factor within the Guidance or dispute any of the benefits or the weight given to them by the Council. There is no alternative planning evidence before the inquiry. The various witness statements produced under the WLTA umbrella do not dispute or challenge the benefits, let alone provide an alternative assessment of how they should be treated within the overall balance.

16. The Council accordingly asks the Inspector to accept the assessment of the benefits and the weight that they attract in the context of the borough as set out in Mr Butterworth's proof of evidence in sections 3 to 6. Mr Butterworth drew attention to the importance of the delivery of 777 net additional market and affordable homes and a new film and dining quarter, community spaces (including the nursery) and healthcare provisions to complement and improve Woolwich town centre in affording substantial weight to the contribution to the social well-being of the area; the economic well-being of the area would be advanced through the creation of jobs, and increased spending in the local community, and creating a balanced business and local resident community and enhanced vibrancy in the town centre; there would be increased footfall and active frontages and help the town centre transition to Metropolitan status, which overall attracts significant weight; the contribution to the environmental well-being is also significant – with the restoration and repurposing of the disused Grade II listed Former Woolwich Covered Market building – and the significant public realm improvements worthy of highlighting – High quality sustainable hard and soft landscaping in the form of green roofs, tree planting, flower and hedge planting, water features and permeable paving, a new town square and permeable routes - which combined with other environmental measures attract very significant weight.

17. The delivery of such benefits would result in the achievement of a series of objectives driven by the Council – and fully supported by the Mayor/GLA – as explained in the evidence of Mr Smalley.

(3) Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land.

18. As set out in the above introduction, these closing submissions address the evidence presented to the inquiry by objectors. The foremost difficulty in assessing any objection on this ground is that there is no substantive evidence of any alternative means of achieving the scheme purposes other than by compulsory acquisition of the land required to deliver the Scheme. No alternative proposals have been put forward by any landowners whatsoever .

19. There are also a number of subsidiary difficulties – for example there is no formulation of any alternative or lesser/partial scheme that would meet some or all of the Scheme purposes, and no evidence of funding or market appetite for any alternative scheme. If there were such evidence, then this would then give rise to additional necessary considerations such as, most obviously, the effect any such alternative on part only of the Order Land may have on the viability and deliverability of the rest of the Scheme, the level of risk inherent within the scheme, and the difficulties of co-ordinating component parts in terms of timing, quality, construction impacts, and control. In the absence of any such formulated alternative – even at a high level – these points simply cannot be addressed. It follows that there is no substantive evidence at all which comes close to establishing that the purposes for which the Council is acquiring the Order Land could be achieved by other means.

20. This is not at all surprising. If the Scheme objectives were easily deliverable by the market then the Council would not have taken all of the steps it has to drive through the Scheme as a corporate priority for the benefit of Woolwich. The reality is that the Order Land has long been recognised as an under-utilised area in a transitional part of the Borough but the particular characteristics of the area and the land-ownership issues have required a comprehensive solution in both design and land ownership terms to deliver the regeneration required.

21. All of the evidence supports this:

    (a) Mr Hartnett and Mr Butterworth explain the planning policy framework which identify the objectives that the Scheme seeks to deliver. These points were addressed in opening and are not repeated here, although it is relevant

to highlight the objectives for the Order Land identified in the Town Centre Masterplan[6] and the Spray Street Masterplan SPD[7] - these identify the role of the Order Land in promoting the growth and improvement of the Order Land itself and the town centre on its progress towards a Metropolitan Centre as identified in the London Plan. The objectives for the Order Land as part of this include the promotion of a high quality mixed use development helping to integrate the Royal Arsenal and Elizabeth Line station into the town centre; to increase and diversify housing development; to expand and improve the cultural and leisure offer to create a destination; to increase permeability and connections to the town centre; and to attract and retain people within the Town Centre. The SPD recognises that to deliver these objectives across the Order Land given its fragmented ownership requires a comprehensive approach[8]. This has been done by SSQ who have obtained a planning permission which accords with – and meets the objectives of - the Local Plan and the supplementary policy framework.

(b) Mr Butterworth explained in response to Dr Emuh's suggestion that a lesser area may be capable of independent development that this – whether of Dr Emuh's land ownership (14 Parry Place – plot 52) or that in combination with some other plots – is entirely unrealistic[9]. No such scheme can reasonably be conceived in the context of the existing land uses in the area – so it would have to form part of a wider redevelopment. Within such a wider redevelopment, it is essential to take a comprehensive approach to secure the appropriate balance of uses and development across the wider site, to ensure a cohesive approach, a high quality proposal, and to optimise the potential of the wider site identified in the SPD as required by the London Plan (policy D3). It is also significant that no such lesser scheme has ever been conceived or proposed. Mr Hartnett has reviewed the planning history[10] which discloses no support for any alternative redevelopment – a 2001 proposal for a training centre/office was withdrawn following negative

[6] See Butterworth proof para 2.39
[7] See Butterworth proof para 2.49
[8] See above and Butterworth rebuttal 5.2
[9] See Butterworth rebuttal para 9.1 – 9.23
[10] See Proof para 18 entry 2

pre-application advice, and a 2015 proposal for a change of use to a place of worship was refused. A key part of the reason for refusal was that it was contrary to the comprehensive redevelopment of the area[11]. Since that time there has been no evidence at all of any intention or willingness by a sub-set of landowners to promote a lesser, independent scheme or which plots such a scheme may include – and no evidence of what objectives any alternative, lesser scheme may advance.

(c) Mr Hudspith addressed in his main evidence why a comprehensive approach is required to the site to meet the SPD objectives and to optimise the development on the site. He also explains[12] why in design terms a comprehensive approach that incorporates all of the land ownerships is essential. Otherwise, the various and necessary component elements of the Scheme cannot be achieved. In his oral evidence Mr Hudspith explained by reference to his proof at 9.1.8[13] why an independent scheme of some – necessarily vague - land area either side of Parry Place including plot 52 was not at all feasible in design terms due to, among other reasons, the need to incorporate the basement with parking and servicing arrangements for the whole Scheme to the west of and with the ramp in proximity to Parry Place (for topographical reasons); the need to provide a coherent communal amenity space for that development; the need to achieve a coherent design across large scale blocks; the need to balance height as between the lower (shoulder blocks) particularly occupied by family and affordable homes and the higher blocks to the north; and the need to achieve high design quality and appropriate public realm quality along Parry Place itself.

(d) Mr Conboy sets out in his rebuttal evidence that it is only the delivery of the whole by one developer that allows the scheme viability to work as a whole, and that it is highly unlikely that any developers would be able to co-ordinate delivery of the Scheme even under the existing planning permission let alone under as yet to be identified and permitted individual component

[11] See Butterworth proof 9.12
[12] Proof section 9
[13] And by reference to the illustrations at p51, 54, 56, 59, and 62

planning permissions – that would require landowners to agree on the timescales for delivering the scheme, the equalisation of land values to reflect the different value of differing parts of the scheme, who was funding what infrastructure works etc – which is all extremely remote – and even if achievable would come with delay, risk, and a lack of overall control[14]. As a result, it is to be concluded that the only realistic route to optimise the redevelopment of the Order Land and deliver the Scheme objectives is to pursue the Scheme and the compulsory acquisition[15].

22. None of this evidence was challenged on behalf of WLTA (or indeed anyone else), and the point is not pursued in the closing submissions on behalf of the WLTA. When these points were put to Dr Emuh he simply refused to engage with them, choosing not to answer these points. The reason for his refusal to answer was that he had no answer to them. Indeed, it is fair to say that there was a degree of confusion in Dr Emuh's evidence as to his case on any alternative development proposal.

23. This confusion can – at this inquiry – only be resolved by way of evidence. There is no evidence of an alternative scheme, or what it may be. It appears from cross-examination that no alternative scheme is afoot and there is no agreement in place to promote an alternative development proposal. This makes further assessment difficult – but the position is as summarised by reference to the Council's evidence above. It is, though, inevitably the case that an alternative scheme on part of the site would thwart the permitted scheme and so *prima facie* thwart not advance the Order objectives.

24. The simple fact is that a grant of planning permission on a part of the Order Lands would also hinder the intended redevelopment of the site as a whole. That is the why the Spray Street SPD is formulated in the way that it is – requiring comprehensive redevelopment via a single application for planning permission. This is the only way in which the objectives of Policy D3 of the London Plan can be delivered – any other approach would not optimise the development of the order lands because it would operate as a constraint on the redevelopment of the remainder

[14] Conboy rebuttal 3.4-3.9
[15] Rebuttal 3.8-3.9 – and 5.15

25. The position of the objectors is then wholly unsupported by evidence. Ms Penson for Eltham Welding Supplies says only that it "would be feasible for a small number of Developers to work together"[16]. But there is absolutely no evidence of this – or any evidence as to what objectives such proposals may meet nor how they would not hinder redevelopment of the remained. Ms Penson's assertion not does come close to demonstrating that the scheme objectives will or are even likely to be delivered if the CPO is not confirmed.

(4) The potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position

26. We set this factor out in full above and in Opening in order to prevent any misunderstanding. When considering whether to confirm a CPO, the Secretary of State does not as a matter of law or policy require a guarantee that a scheme of development facilitated by compulsory acquisition will necessarily be commenced, or must actually commence at a certain date[17]. The Tier 2 Guidance relating to section 226 TCPA 1990 is consistent with – and a sub-set of – the Tier 1 guidance at paragraph 13 which emphasises that each Order is to be justified on its merits. However, if an authority cannot show that the necessary resources are likely to be available to achieve the objects of the acquisition within a reasonable timescale then it will be difficult to show conclusively that compulsory acquisition is justified at that time. For that reason,

[16] Proof para 1.9
[17] See also Chesterfield Properties PLC v SSE (1998) 76 P&CR 117

paragraph 14 of the Guidance gives clear guidance as to the level of justification and information that should be provided as to sources of funding and timing of funding.

27. The Council's evidence – principally that of Messrs Garside and Hughes – explicitly addresses the Guidance in these respects, as summarised in the Opening Submissions, in particular paragraphs 30 to 37. The Scheme is intended to be financially viable – and SSQ, Mr Hughes and Mr Garside are satisfied that it will be.

28. Since the opening of the inquiry objections have been withdrawn. As a result, there is no remaining objector who suggests that the Council cannot show that the necessary resources are likely to be available to achieve the objects of the acquisition within a reasonable timescale. The evidence relating to this factor is unchallenged. Ms Penson for Eltham Welding Supplies Limited says nothing on this topic – and WLTA do not challenge the evidence of Mr Garside or Mr Hughes.

29. As a result, the only reasonable conclusion is that the scheme is viable to an extent which is likely to be attractive to a developer. SSQ, Mr Hughes and Mr Garside in unchallenged evidence have concluded as much. The scheme is intended to be funded by SSQ which has access to the necessary funds to deliver it and those funds are immediately available upon confirmation of the CPO. In these circumstances, from a viability perspective you can be reassured that there is a reasonable prospect that the scheme will proceed. This is in any event a case where, if there were uncertainty regarding the financial viability of the scheme, the grounds for undertaking the compulsory purchase are so compelling that that uncertainty should carry little weight in the balance.

Conclusion on the Paragraph 106 Considerations

30. There is a clear and logical interface between the Tier 1 and Tier 2 Guidance. Tier 1 sets out the general guidance on when compulsory acquisition will be justified – this of course requires there to be a compelling case in the public interest. Tier 2 sets out a framework for consideration of that issue by reference to specific enabling powers which recognises the specific purposes of the enabling power. For section 226 TCPA 1990 the justification focuses on the use of powers to deliver development that meets

the expression of public interest formulated in local and national planning policy, and explicitly by reference to the economic, social and environmental well-being benefits that the Scheme will deliver for the authority's area. It also important that there is a reasonable likelihood that the Scheme will go ahead and that its benefits are highly unlikely to arise in the absence of the use of compulsory powers. The evidence to this inquiry shows comfortably very strong public interest justification for compulsory acquisition of the Order Lands in this case.

31. It is, we submit, hugely to the Council's credit that the evidence shows compellingly the substantial benefits that the Scheme will deliver for the Borough and its inhabitants in the context of the housing problems both locally and across London. This is the product of years of determined hard work by the Council to embed the Scheme in its corporate and planning policy framework and to act on it to secure the delivery of this transformational development through partnership with SSQ. At the heart of the justification is that a high quality regeneration Scheme has been designed that delivers on the policy objectives, revitalises a desperately under-utilised area, provides much needed affordable housing and remains viable. Since no-one has suggested or identified any alternative proposal which can do the same, the Scheme represents the only identified way of delivering these objectives and benefits. It is this combination of factors addressed in para. 106 of the Guidance that provides the core compelling public interest case for acquisition pursuant to section 226 TCPA 1990.

Other relevant paragraphs of the Guidance

Negotiations and Engagement (paras 1-2 and 19)

32. The Guidance begins with a reminder: "Compulsory Purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalization of communities and the promotion of business – leading to improvements in quality of life" (para 1). This, of course, recognises that compulsory acquisition is an agent of change – and can be necessary to bring about improvement in the quality of life. This is consistent with the justification for an order being the totality of the public interest benefits that it brings – which altogether should be compelling (paras 2 and 12).

33. The Guidance expects the Council to be able to show that it has taken reasonable steps to acquire all of the land and rights required by agreement (para 2) – and the evidence of Mr Conboy does just that. In this context, acquisition of interests through compulsory means is intended to be a last resort – although the Guidance recognises that the making and progressing of compulsory purchase orders will often be sensible steps alongside negotiations with those affected (para. 2).

34. Although the WLTA as a collective suggests that there has been a failure to engage this has been addressed by Mr Conboy on an objector by objector basis, as well as by reference to the general engagement approach[18]. At the end of the inquiry there is no specific allegation of how the considerable efforts of Mr Conboy and the Council in this respect were inadequate, or could be improved – other than by reference to the amount of compensation payable which is not a matter for this inquiry. For the record, however, Mr Conboy made clear that all offers made have represented an approved surveyor's professional view of the open market value of the interest in question.

35. Of the witnesses called on behalf of the WLTA who had established that they had a qualifying interest (Dr Emuh, Mr Ahmad, Mr Deol (for Mr Grewal and Ms Deol) and Mr Hurguner) all had received offers from the Council, some offers dating as far back as 2018. This fact in itself demonstrates that the Council has achieved the level of engagement required.

36. In essence, the members of the WLTA appear to be confusing a failure to engage with a failure to make offers in amount that they consider to be acceptable. The failure to reach a financial agreement with those with a qualifying interest because there is a dispute regarding the amount of compensation is not a basis for refusing to confirm a CPO.

[18] See the proof of evidence of Mr Conboy and Appendices which addresses the information available to him at the date of the proofs of evidence, and addresses general correspondence as well as responses to individual objection letters. Mr Conboy then procures a rebuttal which addressed those parties that had complied with the procedural requirement to provide evidence three weeks before the inquiry. The evidence of the WLTA was produced later than this, and necessitated specific additional responses which are provided in the amended Rebuttal Appendix F and the schedule : 'Summary responses to Witness Statements of Woolwich Landlord and Tenant Association'.

37. Indeed, the Council submits that the inquiry process itself has illustrated well the difficulties the Council has faced in relation to levels of engagement and in delivering agreements with certain parties despite making reasonable and meaningful efforts to engage. There are within the Order Land 52 freehold interests and approximately 160 leasehold/occupational interests[19]. Mr Conboy says 'approximately' 160 such interests advisedly in recognition of the particularly transient and informal nature of a number of the occupancies. This has presented particular difficulties of engagement – and as to providing a firm basis for discussions when the occupiers have been unable to confirm the basis of their occupation or how long they are likely to remain regardless of the Order[20] - as well as creating uncertainty as to the negotiations relating to the superior interest where the nature of any interests carved out has not been disclosed.

38. There are 14 outstanding objections. A number of the made objections have been resolved. Those that remain – now grouped under the umbrella of WLTA – were largely motivated by a disagreement as to the amount of compensation. Mr Deol (on behalf of Mr Grewal and Ms Deol), Mr Herguner and Mr Ahmed all accepted in cross-examination that their objection would be resolved if agreement could be reached on the level of compensation payable. It is a fair inference that Dr Emuh would be in the same position had he chosen to answer the questions put.

39. Mr Conboy also explained in his evidence in chief[21] the steps taken to ascertain all relevant interests and occupiers including a careful land referencing exercise but also on-site investigations by reference to signage and site visits. The Council confirmed in its Opening submissions that all statutory requirements have been met[22]. Where persons represented by WLTA asserted that they had not received documentation then the Council was able to provide evidence that the person had been served (for example Mr Oladapo Oyegbite of the Dubai Lounge) or that person had an informal (no-qualifying) interest and little if any indication of his presence (Mr Longe). This reflects that the Council team has carried out a diligent investigation into interests and occupancy and made all reasonable efforts to serve those known to be affected by the Order. No qualifying objector has been able to evidence any failure to serve – and indeed it was

[19] Mr Conboy proof 3.1
[20] See My Conboy proof 4.6.6 and 4.6.7
[21] By reference to proof para. 4.2.1 – 4.2.3
[22] Paragraph 3 of opening submissions.

clear from the cross-examination of objectors that where they had a qualifying interest they had been aware of the Scheme for a considerable period of time and had received offers of compensation in relation to their interests.

40. Additionally, the material provided by Mr Conboy represents a complete answer to the complaints made and provides a clear example of why the Guidance recognises that compulsory acquisition may be required as a last resort and the good sense in maintaining negotiation and management alongside the compulsory acquisition process (Guidance para. 2 and paragraph 17). Certainly, no particular criticisms of the procedures and efforts of Mr Conboy were canvassed with him in his oral evidence.

Human Rights, Public Sector Equality Duty ("PSED"), Proportionality and the Compelling Case in the Public Interest (paras 6, 12, 13-15)

PSED

41. Paragraph 6 of the Guidance provides a helpful introduction to the PSED as contained within section 149 of the Equality Act 2010. As it explains, as part of the PSED, acquiring authorities must have due regard to the need to promote equality of opportunity between persons who share a relevant protected opportunity and persons who do not share it. The PSED is a duty properly to have regard to such issues – the duty does not dictate any particular outcome, nor require the adoption of any particular form of mitigation.

42. The general principles relevant to the exercise of the PSED are set out in the decision of the Court of Appeal in ***R (Bracking) v Secretary of State for Work and Pensions*** **[2013] EWCA Civ 1345; [2014] EqLR 60** at **[26]**. These principles were endorsed by Lord Neuberger in ***Hotak v Southwark LBC*** **[2016] UKSC 30; [2016] AC 811** at **[73]**. They can be summarised as follows:

    i. The duty is a duty to have due regard to the specified matters, not a duty to achieve a specific result.

ii. The duty is personal to the decision-maker, who must consciously direct their mind to the obligations.

iii. The duty is one of substance, not form. The real issue is whether there has been a proper and conscious focus on the statutory criteria and proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them.

iv. The weight and extent of the duty are highly fact-sensitive and dependent on individual judgment.

v. If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required.

vi. The absence of a reference to the PSED will not, of itself, necessarily mean that the decision-maker failed to have regard to the relevant matters. It is, however, good practice to make reference to the duty, and is evidentially useful in demonstrating discharge of the duty.

vii. Likewise, there is no obligation to carry out an Equality Impact Assessment (EIA). If such an assessment is not carried out it may be more difficult to demonstrate compliance with the duty; that said, the mere fact an EIA has been carried out will not necessarily suffice to demonstrate compliance.

43. The Council relies on the evidence of Dr James Beard on equalities matters. This provides an up-to-date assessment as to the Council's compliance with the PSED in promoting the Order. This recognises that the duty is an ongoing one. The evidence shows that the Council placed consideration of the PSED and its consequences at the centre of its decision-making process including the planning process. For example, the conclusion of the Mayor of London in its stage II report is that "it is officers' opinion that the requirements of the Equality Act have been carefully considered and that the proposals would safeguard and promote the objectives of section 149 of the Act"[23]. Equalities considerations have been specifically taken into account at all key project

[23] CD D11, para 17.

stages as explained in the evidence of Mr Smalley, and specific Equalities Impact Assessments were prepared in 2018, 2022 and 2023. The analysis in these reports has been taken into account and has fed into the Framework Relocation Strategy, which is important mitigation that the Council relies upon to assist in reducing the adverse impacts on any persons by reference to protected characteristics. The 2022 EqIA was a comprehensive document prepared by Aecom[24], which was specifically taken into account by the Cabinet in deciding to make the CPO and progress the proposed mitigation strategies[25].

44. Having heard the evidence called at the inquiry under the WLTA grouping it appears that the objection by reference to the PSED is a narrow one. It may be summarised that: – the Council has failed to have due regard to the need to promote equality of opportunity between persons who share a relevant protected opportunity and persons who do not share it <u>because</u> it has not provided for retention of displaced retail business occupiers within the Scheme and for ensuring the continuity of their trade pending this.

45. This submission reflects a significant misunderstanding of the PSED, and ignores the very considerable efforts made to mitigate potential equalities impacts as well as the conclusions of the EqIA and Dr Beard's evidence.

46. Firstly, this is – contrary to the first principle in <u>Bracking</u> (above) – a misunderstanding of the duty in that it is entirely fixated on an outcome preferred by certain individuals (although there is actually no evidence that this is any objector's preferred mitigation measure).

47. Secondly, the submission is not based on the EqIA evidence before the inquiry. The evidence is explained by Dr Beard. This closing submission focuses on points made in relation to retail business occupiers because that is the way in which the objection was advanced. However, the broader context is important. The assessments undertaken by the Council, and which inform the mitigation proposed and the residual impacts taken into account by the Council, cover the broad spectrum of impacts and the mitigation represents an integrated and comprehensive strategy that embraces different forms of

[24] CD F1
[25] CD B5 and B6

ownership, occupation and use alongside the potential impacts on protected characteristics.

48. The particular impact on retail occupiers is addressed in Dr Beard's proof of evidence. This covers[26]:

    (a) Businesses trading on the Order Land will have to relocate due to the Scheme;
    (b) This may impact on the business and has the potential to cause business closure;
    (c) Such business closure has the potential to impact certain groups differently such as people from ethnic minority backgrounds and older people. This includes consideration as to access to finance, and through staff redundancies and the ability to secure alternative employment. It also includes potential affects on those accessing the services provide by the business.
    (d) In the case of the Scheme, impacts on businesses are disproportionately likely to be felt from ethnic minority communities, as a large proportion (93%) of the business trading from the Order Land are owned by people from ethnic minority groups.
    (e) The Council is proposing a number of measures to assist in mitigating and alleviating such measures[27]. These were reviewed by Dr Beard as part of his review of the equality considerations through which he proposed additional recommendations (set out at Dr Beard's 2.4.11).
    (f) All of these measures have been adopted by the Council and added to those measures already in place and will be taken forward through the Framework Relocation Strategy (as confirmed in David Conboy). This has led to Dr Beard's professional conclusion that nothing further could reasonably be implemented to mitigate the potential impact referred to above[28].
    (g) The Council (and Dr Beard and all EqIA's) recognise that notwithstanding the mitigation measures proposed there will be limited[29] residual adverse

[26] See Proof 2.4.4 – 2.4.12
[27] Then as set out in paragraph 2.3
[28] 2.4.12
[29] See EqIA at Dr Beard Appendix pages 37, 38, 39, 40.

effects on groups sharing protected characteristics as a result of the potential impact on businesses.

49. Indeed, Dr Emuh was asked in cross-examination what additional measures the Council should be taking that were not already identified in Dr Beard's EqiA. He refused to answer. In re-examination he was asked the same question. This elicited a response which did not identify anything additional whatsoever. So the evidence has established that the WLTA cannot identify any additional mitigation measures to support local business that the Council is not already taking. As a consequence, it is submitted that the evidence has established that the Council, through careful consideration since the Scheme's inception, has identified all reasonable mitigation measures that can be adopted.

50. Dr Beard's conclusions are based upon his up-to-date EqIA dated January 2023 – but the Council's decision-making and relocation strategy has been informed by the earlier equality impact assessments[30].

51. It is then clear from the evidence that the allegation that the Council has not paid "due regard" to the PSED is without any foundation.

52. Thirdly, the objection fails to appreciate that the Council's approach to this issue is a paradigm example of how the duty is intended to operate.

53. As in Bracking, the real issue is whether there has been a proper and conscious focus on the statutory criteria and proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them.

54. In this case, the Council identified the potential issues at the earliest stage – and this is reflected in the response. For example, the Scheme not only specifically includes 500 sq m of on-site small retail space –but this is specifically limited through the planning

[30] For the earlier EQ IA see CDF1 (Feb 2022) and CD F2 (August 2018).

obligation so that no one unit is greater than 80 sq m – in order to provide for small businesses[31]. This is built-in mitigation.

55. The planning obligation also secures the approval and implementation of the Framework Relocation Strategy. Although a requirement of the planning obligation to be approved and implemented, the Council has already been taking the measures contained within it – it remains under review, and responds specifically to the EqIA recommendations over time, and will continue to do so[32]. The position then is that a series of mitigation measures have been devised and implemented and kept under review with full awareness of the potential equalities impact such that Dr Beard is able to conclude in his professional opinion that nothing further could reasonably be implemented to reduce further the limited residual equalities impacts[33].

56. In the language of Bracking the evidence shows that there has been a proper and conscious focus on the statutory criteria that arise under section 149 of the Equalities Act 2010, and a proper appreciation of the potential impact on equality objectives, and the clear proof of this is the identification by the Council of a very detailed strategy to mitigate the impact, which has been committed to by SSQ and the Council.

57. We ask the Inspector to note the detailed provisions of the mitigation – see the Framework Relocation Strategy – and Mr Conboy proof at 4.3.27 and 4.4.2 – and to note that these steps go well beyond assistance with relocation including providing business support advice, and financial support including through agreeing compensation on a case by base basis. Inevitably, the circumstances will vary significantly from case to case – particularly where there is a range of occupancy e.g. whether a owner-occupier, leaseholder or licensee. As Mr Conboy explained there is considerable flexibility within the compensation that may be agreed which can cover a range of options from extinguishment, relocation as a reasonable business decision, or a suspension of business followed by resumption in new premises[34]. These financial support options sit alongside measures to assist businesses that wish to relocate

[31] See e.g. statement of reasons CD C3 at 8.8.10
[32] See David Conboy proof sections 4.3 and 4.4 – and in particular re timing of implementation 4.4.8 and 4.4.9 and 4.4.10
[33] Proof 2.4.12.
[34] 4.4.2 (iv) and expanded upon in cross-examination.

including temporary measures – e.g. at Mr Conboy's proof 4.4.2(iv) and within the Framework Relocation Strategy[35]. At paragraph 3.5.7. Mr Conboy also explained the rationale for the decision to offer an exclusive marketing period for existing occupiers in relation to the small retail units within the Scheme. It has always been recognised in the FRA (see para. 3.5.6) that the new scheme presented potentially suitable relocation premises for existing occupiers and that steps would be taken to promote this, and meet temporary relocation issues that may arise[36]. Mr Conboy described as an example the proactive approach the Council is taking in discussions with British Land to configure some if its larger holdings to offer smaller units to occupiers whether on a temporary or permanent basis. We also ask the Inspector to note that the question of PSED relates to the scheme as a whole – and it is on that basis that the Council has approached the issue.

58. The Council's witnesses were cross-examined on the basis that local retailers would require relocation back into the Scheme. However, in cross-examination not a single one of the WLTA witnesses gave evidence to support that point. Indeed, Dr Emuh had traded between 2014 and 2020 from a location in Catford. The retailers all agreed in cross-examination that they would be content with a location within Woolwich town centre. Mr Ahmad accepted that there was a wide catchment of south London that he and his brothers could potentially trade from without infringing other Sam's Chicken franchises. Mr Conboy explained in his evidence to the Inquiry that Woolwich Town Centre is an appropriate location and that there are further areas further afield that could be appropriate for some businesses.

59. The reality is that there is an active market in Woolwich with plenty of units becoming available from week to week resulting in a high level of churn. Taking into account that the Council does not itself own a portfolio of retail premises that it can make available, the Council can only support businesses affected by the CPO by facilitating relocation, financial and business support and advice, and leaving the ultimate choice regarding relocation premises to the business owner. The measures that the Council has put in place are entirely reasonable and appropriate.

[35] CD E1

[36] This was as part of a development of its discussions with affected business and not – as alleged in the WLTA closing submissions – a response to the reference by WLTA to Horada

60. Further, the Council has made provision for those interested in potentially occupying space within the proposed development to register their interest. For those who wish to relocate and then move back into to the scheme, Mr Conboy explained that agreement could be reached to pay compensation on the basis of extinguishment with a mechanism that would re-evaluate the compensation payable should the business then move into the scheme. That meets the WLTA allegation that the Council is doing nothing for those who wish to move back into the scheme entirely. At this stage there is nothing more that the Council can do in this regard.

61. It was further put in cross-examination to the Council's witnesses that there is no evidence that businesses will be able to find space in Woolwich Town Centre and that accordingly it should be assumed that the businesses will be lost. This submission fails to appreciate a number of factors.

62. Firstly, it is disingenuous to suggest that relocation should have been effected already. There is still at least 14 months to go until business will have to relocate and business owners want to remain as long as possible and then take advantage of what is then available.

63. Secondly, it must be recognised that many existing business occupiers do not have security of tenure sufficient to have a qualifying interest. Parliament has determined that such occupiers should not be paid compensation on compulsory acquisition. Occupiers who do not have security of tenure are already running businesses on an at risk basis in terms of their trading location. Accordingly, the loss of the ability to trade from such at risk locations is not something that should be given significant weight in the balance against the confirmation of the CPO. All the more so given that the Council has in place reasonable mitigation measures to assist traders in this position. What can be done to assist those without security of tenure is being done.

64. Thirdly, for those with qualifying interests, it has to be remembered that the is still 14 months to find alternative premises. The Cross-examination based upon a snapshot of what is available at present does not establish that existing businesses will not be able to relocate and falls very far short of establishing that they will cease to trade.

65. But, the real point, in the context of potential EQiA impacts, is that the impact is not one relating to relocation per se, but rather the risk of a business closure giving rise to potentially disproportionate impacts on those with protected characteristics by reference to ethnicity or age (see Dr Beard's rebuttal and fig 1). This point was totally lost on the WLTA in its cross-examination of Dr Beard and the suggestion put to him that the Council had not complied with its public sector equality duties. Indeed, in closing the WLTA totally mischaracterises the nature of the PSED duty (see WLTA closing submissions paragraph 2).

66. The WLTA's submissions relating to Horada v SSCLG [2016] PTSR 1271 are entirely misconceived. Horada is not authority for the proposition that in determining whether or not to confirm a CPO it is a material consideration that "the ethnically diverse character of retail offer from small independent traders that represents an important characteristic of a diverse area." (see WLTA submissions paragraph 4).

67. Further, the case has nothing to do with the PSED, proportionality or human rights. The legal issue in the case related to whether or not the Secretary of State had given adequate reasons for this decision – where he disagreed with the reasoning of the Inspector in her recommendation – on an important issue in the case (or to use the legal jargon – "on a principal controversial issue"[37]).

68. The WLTA apparently seeks to draw an analogy with the underlying justification for the CPO in the Horada case – which concerned a scheme to regenerate Shepherd's Bush Market[38]. Notwithstanding the evidential difficulty that none of the documents relating to that scheme are before this inquiry, it is evident from the summary of the background in the Court of appeal's judgment that the cases are wholly different (see in particular paras 1 -3 of the judgment). Crucially, the Shepherd's Bush Market scheme was a scheme to regenerate and retain the existing market which was part of the social fabric of the area and had been for so long it was historically important. This was reflected in the planning policy framework with the development plan policy identifying:

[37] See judgment para 41 and 44.
[38] See para. 1 of the Judgment

"regeneration of the market and other adjacent land to create a vibrant mixed use town centre development of small shops, market stalls, leisure uses, residential and possible offices; in accordance with the Shepherd's Bush Market Supplementary Planning Document. Development should encourage small independent retailers and accommodate existing market traders". The accompanying SPD emphasised: "Crucially maintains existing traders and provides them with the security to ensure that the market can continue to operate without interruption and serve existing customers and communities". The scheme there, as required by local policy, was to regenerate and re-provide the market and to do so in such a way that the existing traders were retained and on a basis that ensured continuity of their trade.

69. Thus, crucially to the issues in Horada, the planning policy framework in that case specifically required the retention of existing market traders and the continuity of their trade during redevelopment because of the local importance and long history of the market.

70. The development plan and policy framework in Woolwich are fundamentally different. As put in cross-examination to Dr Emuh, the planning policy framework here does not contain any policy which requires retention of existing businesses, nor which requires for continuity of their trade to be guaranteed during redevelopment.

71. The attempt by Mr Leigh to suggest otherwise in his submissions must be rejected.

72. The approach to the interpretation of a development plan is settled and was summarised recently by Dove J in ***R(Village Concerns v Wealden District Council*** [2022] EWHC 2039 (Admin) at paragraph 25:

"…(ii) The task of interpretation of the meaning of the planning policy should not be undertaken as if the planning policy were a statute of contract. The approach has to recognise that planning policies will contain broad statements of policy which may, superficially, conflict and require to be balanced in ultimately reaching a decision: see the Tesco Stores case [2012] PTSR 983, para 19 and the Hopkins Homes case [2017] PTSR 623, para 25 . Planning policies are designed to shape practical decision-taking, and should be interpreted with that practical purpose in mind. It should also be taken

into account in that connection that they have to be applied and understood by planning professionals and the public for whose benefit they exist, and that they are primarily addressed to that audience.

(iii) For the purposes of interpreting the meaning of the policy it is necessary for the policy to be read in context: see the Tesco Stores case, at paras 18 and 21. The context of the policy will include its subject matter and also the planning objectives which it seeks to achieve and serve. The context will also be comprised by the wider policy framework within which the policy sits and to which it relates. This framework will include, for instance, the overarching strategy within which the policy sits.

(iv) As set out above, policies will very often call for the exercise of judgment in considering how they apply in the particular factual circumstances of the decision being taken: see the Tesco Stores case, at paras 19 and 21. It is of vital importance to distinguish between the interpretation of policy (which requires judicial analysis of the meaning of the words comprised in the policy) and the application of the policy which requires an exercise of judgment within the factual context of the decision by the decision-taker: see the Hopkins Homes case at para 26." (emphasis added)"

73. No objection to the CPO has been made on the basis that the scheme conflicted with a planning policy requirement that Scheme should retain existing businesses or to ensure continuity of trade through the redevelopment period. This was not raised by any member of the WLTA nor the Gordon and Thompson submission.

74. Not a single WLTA witness identified any policy within the planning framework as creating a requirement for the Scheme to retain existing businesses or to ensure continuity of trade through the redevelopment period.

75. Further, not a single member of the WLTA had ever made any representation at any stage of the adoption of the planning framework or the determination of the application for planning permission to the effect that policy should be changed to create a requirement for the Scheme to retain existing businesses or to ensure continuity of trade through the redevelopment period.

76. It is in essence an advocate's point raised for the first time on the day that the Council called its evidence to rebut the WLTA objection. It should be given limited weight accordingly since it is unsupported by evidence. It is also peculiar that the WLTA's submissions are almost exclusively confined to the impact upon retailers given the nature of the evidence that it called at the Inquiry. Only two retailers gave evidence (Mr Mustafa and Mr Nwakamma) neither of whom had established that they have a qualifying interest. Thus, whilst Britain may be a nation of shopkeepers, those who gave evidence on behalf of the WLTA were not; they were for the large part freehold owners who disputed the amount of compensation being offered for the acquisition of their investment properties.

77. It is to be noted that none of the parts of the planning framework now relied upon by the WLTA in closing (paragraph 8 and following) were put to either Mr Hartnett or to Mr Butterworth. Indeed, they are referred to by the WLTA for the first time in closing. At paragraph 8 of their submissions the WLTA quotes from the Core Strategy (para 4.2.6):

> *"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…"*

78. This part of the Development Plan is in explanatory text and cannot be read as requiring retention of all businesses nor ensuring continuity of trade during redevelopment. It refers to protection of existing business <u>wherever possible</u>. It therefore recognises that protection may not be possible. As has been explained to the inquiry, the Scheme cannot be delivered with the retention of businesses on site due to the need to excavate a very large basement for servicing and other reasons. Further, no additional mitigation measures can be identified by the Council nor indeed the WLTA. The measures

identified in the EQiA and the Framework Relocation Strategy achieve precisely what the Core Strategy requires by supporting existing businesses to relocate and by providing direct resources into appropriate support for those relocating.

79. The Scheme when it is completed will be open to all. There is nothing to stop any ethnically diverse trader from operating from the completed scheme. Given the diversity of Woolwich town centre at present, there is no evidence before the Inquiry which establishes that the retail and business occupiers within the scheme will not reflect the ethnic diversity of this area. There is no evidence whatsoever that gentrification will be the result of the Scheme; rather the evidence establishes that it will deliver a diverse range of housing, leisure, retail and business occupiers reflective of that within the town centre already.

80. The SPD does not contain any express objective that those currently trading with the Order Lands must be retained and/or must have their continuity of trade guaranteed. Objective 7 states:

"Objective 7 : ATTRACT AND RETAIN PEOPLE WITHIN WOOLWICH

> Making a place where people want to stay and encouraging stable communities will contribute to the growth and development of Woolwich Town Centre playing an important role in ensuring that people are attracted to and retained in Woolwich. The Spray Street site provides a valuable opportunity to create a high quality environment and enhance the town centre's offer contributing to economic, social and cultural benefits, including the creation of direct and indirect employment opportunities."

81. The Scheme achieves this objective by creating precisely the high quality environment and enhance of the town centre envisaged.

82. Indeed, the SPD states in terms (p62 section 7.4):

"The Royal Borough of Greenwich expects that satisfactory provision will be made in the development proposals for the relocation of existing occupiers. The developer should expect to have to facilitate the timely relocation of businesses if required and negotiate with landowners regarding the costs of relocation."

83. The SPD thus explicitly recognises that relocation will be required and seeks to ensure that this is appropriately managed and facilitated.

84. The reality is that the Scheme fully complies with the planning framework in Woolwich as we have already explained in Opening in relation to factor (1) above. The policy framework here seeks to provide for a range of uses within the Scheme including importantly increasing and diversifying housing and expanding and improving the cultural and leisure offer – which is to be done through the creation of the new cinema and leisure quarter within the Scheme to address the existing deficiency in the town centre[39]. The Scheme was assessed as policy compliant – as Mr Hartnett explains[40] - the Scheme fully complies with the site specific policies in the local planning policy framework, as well as relevant development plan policies and national policy.

85. The Council is seeking – as Mr Smalley emphasised – to do what can be done to minimise the impact upon existing businesses and to retain them in the Borough and specifically the town centre wherever possible. The Framework Relocation Strategy very much seeks to achieve this – as explained above. Indeed, that Strategy is tied into the planning permission and will be implemented. But it is not an express policy requirement to maintain the existing retail traders within the Scheme nor to guarantee continuity of their trade.

86. No parallel can be drawn with the Shepherds Bush Market case where the planning policy framework made specific and explicit provision for the protection of existing businesses and the continuity of their trade. Horada does not them create any precedent nor establish any principle of policy or law which must be followed in the present case. It is entirely distinguishable on the basis of the fundamentally different planning policy framework which applied to protect the traders within Shepherd's Bush market.

[39] See Spray Street SPD – Mr Butterworth proof 2.49-50; Mr Hartnett proof paras. 7.59-64
[40] See Proof paras. 7.84-7.135.

87. The Council has throughout its consideration of the use of compulsory purchase powers considered very carefully the factors to which section 149 requires it to have regard. It has done so with a series of EQiAs and it will continue to do so as the Scheme moves to implementation. The suggestion that the CPO has been promulgated on a basis which has failed to apply the PSED must be rejected.

Proportionality and the Public Interest

88. Paragraph 12 of the Guidance sets out the requirement that an Order will only be justified where there is a compelling case in the public interest, and that the purposes for which the compulsory purchase order is made justify interfering within the human rights of those with an interest in the land. In cases of compulsory acquisition under section 226 TCPA 1990 the question is whether the interference with convention rights is proportionate, which it will be where the public interest case for acquisition is compelling.

89. The Government's Guidance should be read as a whole. It provides a series of highly relevant considerations which go to the strength of the public interest case. This includes the extent to which the Council has a clear idea of how it will use the land acquired, and whether the Council has shown itself to be in a position to acquire the land (13 and 14). There should be a reasonable prospect of delivering the scheme without being likely to be blocked by an impediment (para 15). As explained in paragraph 30 above there is a correlation in section 226 orders between paragraphs 12 and 102-106 given the plan-led system in England, and the objectives of the planning system to promote sustainable development. The extent to which the scheme has been assessed through the planning process to be in the public interest, and the level of detail approved is also highly relevant. These elements all form part of the public interest case.

90. In the present case the Council submits that the public interest case is entirely compelling. The proposed mixed use and comprehensive redevelopment of the Order

Land is embedded into the development plan and documents supplementary to it and has an up-to-date full planning permission for the Scheme which was assessed to comply with the development plan. The Council's corporate priorities promote the redevelopment of the Order Lands. It is a consistent theme of these policies to deliver regeneration, drive housing growth and quality, enable more infrastructure, support business and revise the town centres. The golden thread running through the corporate policy is the need for physical change and regeneration in the borough. The Scheme is a key project as consolidating Woolwich as the borough's primary town centre. It is a key part of the Council's overall vision for Woolwich. The Council has entered into processes to secure a development partner, and the delivery of the Scheme is the subject of detailed agreements. The evidence shows all of the necessary funding is available for the prompt delivery of the Scheme following confirmation. There are no likely impediments. The benefits of the scheme are hugely significant for Woolwich and represent the continuation of a programme of area improvement and regeneration elsewhere within the area that is already well underway and whose progress can be seen on the ground. All of this is consistent with the London Plan requirement for sites in as accessible locations as this one to be optimised and maximise their potential contribution to the economic, environmental and social well-being of the area. It is regrettable that interests have to be acquired by compulsion despite the Council's sincere efforts through consultation, engagement and negotiation, but the acquisition of each of those interests is necessary to secure the delivery of the Scheme.

Impediments

91. There are no likely impediments to the delivery of the Scheme if the Order is confirmed.

92. In opening submissions, the position with the Stopping Up Order[41] was highlighted due to the consultation period expiring on 28th February 2023. That consultation has now concluded and the Council has engaged with those who responded (see Appendix 1 to the Note). All parties have confirmed that the have no outstanding objection to the Order or do not have any apparatus in the area[42]. It follows that the SUP can now be

[41] Promoted under s247 TCPA 1990 to enable development to be carried out in accordance with the Scheme planning permission
[42] Note para 4.3

made, and the local highway authority has confirmed that the SUO will be made and publicised in the coming days[43]. This accordingly poses no likely impediment to the implementation of the Order if confirmed.

The Public Interest Case

93. In the present case the Council submits that the public interest case is compelling. The proposed mixed use and comprehensive redevelopment of the Order Land is embedded into the development plan and documents supplementary to it and has an up-to-date full planning permission for the Scheme which was assessed to comply with the development plan. The Council's corporate priorities promote the redevelopment of the Order Lands. It is a consistent theme of these policies to deliver regeneration, drive housing growth and quality, enable more infrastructure, support business and revise the town centres. The golden thread running through the corporate policy is the need for physical change and regeneration in the borough. The Scheme is a key project as consolidating Woolwich as the borough's primary town centre. It is a key part of the Council's overall vision for Woolwich. The Council has entered into processes to secure a development partner, and the delivery of the Scheme is the subject of detailed agreements. The evidence shows all of the necessary funding is available for the prompt delivery of the Scheme following confirmation. There are no likely impediments. The benefits of the scheme are hugely significant for Woolwich and represent the continuation of a programme of area improvement and regeneration elsewhere within the area that is already well underway and whose progress can be seen on the ground. All of this is consistent with the London Plan requirement for sites in as accessible locations as this one to be optimised and maximise their potential contribution to the economic, environmental and social well-being of the area. It is regrettable that interests have to be acquired by compulsion despite the Council's sincere efforts through consultation, engagement and negotiation, but the acquisition of each of those interests is necessary to secure the delivery of the Scheme.

[43] See Appendix 3 to the Note.

94. The Council is therefore satisfied that there is a compelling case in the public interest. In truth, no objector appears to dispute this. The concerns of the outstanding objections are only as to whether their interest (where they have one) is worth more than has been offered, or whether the interest could form the basis of an independent development proposition – as set out above this is unrealistic, unevidenced and unfeasible – but in any event does little to alter the public interest balance where compensation is payable for the open market value of the interests acquired. Concerns advanced as to negotiation are unspecific, and no party suggests an alternative outcome that a different engagement strategy may have arrived at. The acquisition and redevelopment of all identified interests is necessary to deliver the Scheme. This is not to deny that there are adverse effects through the acquisition of private property – and though the displacement of occupiers. The Council has fully recognised those effects and done its best to mitigate them.

95. Compulsory acquisition is as the Guidance says an important tool to help deliver social, environmental and economic change. The Order is a good example of the compelling public interests this tool can unlock where private acquisition has proved impossible – as it has here.

Landmark Chambers,

180 Fleet Street,

London EC4A 2HG

REUBEN TAYLOR KC

GUY WILLIAMS

24th March 2023