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# **CPO Report to the Secretary of State for Communities and Local Government**

**by Paul K Jackson B Arch (Hons) RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Date: 8 July 2015**

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**THE TOWN AND COUNTRY PLANNING ACT 1990**

**ACQUISITION OF LAND ACT 1981**

**THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

**APPLICATION BY THE COUNCIL OF THE LONDON BOROUGH OF EALING**

**FOR CONFIRMATION OF**

**THE LONDON BOROUGH OF EALING (LAND AT NEW BROADWAY, BOND STREET AND MATTOCK LANE, W5) COMPULSORY PURCHASE ORDER 2014**

The Inquiry was held on 14-17, 21-22, 28-30 April and 22 May 2015  
A site inspection was carried out on 29 April 2015

File Ref: NPCU/CPO/A5270/74172

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**File Ref: NPCU/CPO/A5270/74172**

**THE LONDON BOROUGH OF EALING (LAND AT NEW BROADWAY, BOND STREET AND MATTOCK LANE W5) COMPULSORY PURCHASE ORDER 2014**

- The Compulsory Purchase Order was made under section 226(1)(a) of the Town and Country Planning Act 1990, Section 13 of the Local Government (Miscellaneous Provisions) Act 1976, and the Acquisition of Land Act 1981 by the Council of the London Borough of Ealing on 18 July 2014.
- The purposes of the Order are to facilitate comprehensive redevelopment of a key area in Ealing Town Centre which is intended to provide leisure uses including a modern cinema and restaurants, shops, new homes and improvements to the local environment and public realm. The application is made pursuant to Section 226(1)(a) of the TCP Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976.
- When the inquiry opened there were 3 remaining qualifying objections and 1 non-qualifying objection. No objections were subsequently withdrawn and one late objection was lodged.

**Summary of Recommendation: That the Order be confirmed with modifications.**

**Procedural Matters and Statutory Formalities**

1. The Inquiry sat for 10 days over a period of 3 weeks and was closed on 22 May 2015. I made accompanied visits to the Order lands and surrounding area on 29 April 2015.
2. The Council confirmed its compliance with the statutory formalities<sup>1</sup>. There were no submissions on legal or procedural matters. There was no suggestion that the CPO is not legally correct or is otherwise flawed.
3. Attention is drawn to 3 minor errors in table 1 of the Order: in column (3) of plot 20 the Acquiring Authority (AA) has omitted the dashes; an additional line has been added under the entry for plot 26; and incorrect wording has been used in column (2) of plot 29. None of these matters prevent understanding of the Order or impact on its meaning.
4. There were originally 13 objections, all but one of which were from qualifying objectors. Prior to the opening of the Inquiry, 9 qualifying objections had been withdrawn<sup>2</sup>. During the course of the Inquiry a letter was submitted on behalf of a landholder who later appeared at the Inquiry and this has been treated as a late objection by a qualifying person.<sup>3</sup> A schedule containing the withdrawn objections and copies of the withdrawal letters is at Document 54.
5. This report includes a description of the Order lands and their surroundings, the material points made at the Inquiry and in writing, together with my conclusions and recommendations.
6. All references with the prefix CD are references to the set of Core Documents which are listed at the end of the report.

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<sup>1</sup> Doc 1 contains copies of the notices, certificates and delivery receipts

<sup>2</sup> Letters in the Document file and at Inquiry Document 5

<sup>3</sup> Oceanlink Ltd. See Doc 27

## Proposed Modifications to the Order

7. Following further discussion and negotiations with affected interests, the AA proposes to omit acquisition of plots 5, 6, 8, 9 and 10. New rights only are sought over plots 33, 34 and 35. All these plots are owned by Walhill Ltd, whose objection has been withdrawn.

## The Order Lands and Surroundings

8. The land for which authority is sought to be purchased compulsorily under this Order is shown coloured pink and the land over which new rights are sought is coloured blue on the Order Map<sup>4</sup>. The Order Land is located within Ealing Metropolitan Town Centre between Uxbridge Road/New Broadway (the principal shopping street), Bond Street (a secondary shopping street), Barnes Pike (a pedestrian footpath), and Mattock Lane (along the northern edge of Ealing Green and Walpole Park). It has frontages onto 14-20 Bond Street, 59-63 New Broadway and Ealing Green. The principal sites within the Order Land consist of the former Empire Cinema site (the cinema having been demolished in 2008); Walpole House, an office block currently occupied by an education establishment; and Flava (a bar/restaurant) as well as smaller areas of land including parts of retail and residential premises. The Order Land lies within two Conservation Areas (CAs); Ealing Green CA and Ealing Town Centre CA. It is surrounded by a number of uses including retail with residential above; the contemporary Hotel Xanadu on the corner of Bond Street and Mattock Lane; and large Victorian properties in residential use in Mattock Lane. Opposite the southern edge of the site is Ealing Green and Walpole Park including the Grade 1 listed Pitzhanger Manor and its Grade II\* listed gateway. The Edwardian St George's Hall in the YMCA building at 14-16 Bond Street is locally listed and is included within the Order Land. It is already owned by the Council. The CA Appraisals<sup>5</sup> indicate that Edwardian shops with residential accommodation above at Nos. 2-12 and at 1-45 are also locally listed, as is the 1934 cinema facade at 59-63 New Broadway; the only remaining part of the Empire Cinema. This element is supported on a temporary steel structure.

## The Case for the London Borough of Ealing as the Acquiring Authority

### *The need for compulsory purchase powers*

9. Section 226(1)(a) of the 1990 Act (as amended by the 2004 Act) enables a local authority to exercise compulsory purchase powers if it thinks that acquiring the land in question will facilitate the carrying out of development, redevelopment, or improvement on, or in relation to, the land being acquired. Section 226(1A) of the 1990 Act (as amended by the 2004 Act) requires a local authority not to exercise its powers under section 226(1)(a) unless the local authority thinks that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of its area.

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<sup>4</sup> Ref PA-2556-CPO-01 R9, dated 10 July 2014 and labelled 'MAP REFERRED TO IN THE LONDON BOROUGH OF EALING (LAND AT NEW BROADWAY, BOND STREET AND MATTOCK LANE, W5) COMPULSORY PURCHASE ORDER 2014'

<sup>5</sup> Docs 56 & 57

10. The Council recognises that a compulsory purchase order can only be made if there is a compelling case in the public interest, as set out in paragraph 17 of ODPM Circular 06/04 (the Circular), which justifies the overriding of private rights in the land sought to be acquired. The historical background is important in understanding the reasons for the CPO. Since 2002 the Development Site has been identified in town centre strategies and planning policy as the location for cinema and leisure uses, along with the need for the site to be permeable and have connections to the town centre. This strategy has continued to be developed in planning policy from 2002 to 2013. Comprehensive redevelopment of the site enables both these objectives to be achieved. In February 2011 the Council acted on the opportunity to acquire the freehold of the YMCA Building at 14-16 Bond Street W5 in order to provide an opportunity to optimise the regeneration potential of a comprehensive scheme and to provide a direct link between the new development and Bond Street.
11. An application for the redevelopment of the largest part of the site, the cinema at 59-63 New Broadway W5, was submitted to the Council in December 2003<sup>6</sup> by UGC Cinemas and was approved by its Planning Committee on 26 May 2004 subject to completion of a section 106 Agreement (s106). This application for *'Demolition of substantially whole of existing cinema, alterations and extensions to front façade, redevelopment of cinema site and adjacent car park to provide sixteen screen cinema and ancillary uses including cafeteria/catering, public exhibition, confectionary and toilet areas with screens on two levels, and additional mezzanine levels in a building equivalent to a 4 storey building, plus basement and rooftop plant, servicing turntable with vehicular access from New Broadway, and associated improvements to Barnes Pikle and forecourt pavement area'* was finally granted planning permission on 9 October 2008 following completion of the s106. This is known as the 2008 permission.
12. The original cinema had remained in use until approximately August 2008. Following the grant of permission and the associated conservation area consent, initial works were undertaken to demolish the cinema whilst retaining the façade. The works ceased after demolition in early 2009 and the Council was subsequently unable to obtain confirmation from Empire Cinemas, the new owner, as to when work would resume. As a result the Council served a Completion Notice in July 2010 under sections 94 and 95 of the 1990 Act with the intention of prompting the owners to start construction. Empire appealed against the Notice which was subsequently withdrawn on 3 June 2011 when it was accepted that it was premature, given that there was no power to issue it under section 94 of the Act until the expiry of the 2008 permission 3 year implementation period, which had started on 8 October 2011.
13. In the meantime, on 4 November 2010, the Council granted approval for variation of condition 13 of the 2008 permission pursuant to an application under section 73 of the 1990 Act (this is known as the 2010 permission). This increased the maximum amount of the ancillary café and restaurant facilities permitted from 10% to 35% of the total gross floorspace. From 2009 onwards the Council regularly had sought information and confirmation of the owners' intentions. In the absence of any progress on site or specific details about construction proposals from the owner, the Council's Cabinet resolved on 24 July 2012 to

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<sup>6</sup> ref: P/2003/5043

- secure the comprehensive redevelopment of the whole Development Site (including the Empire Site) consistent with the Council's adopted and emerging planning policies. The Cabinet approved the principle of the acquisition of the Development Site by means of a Compulsory Purchase Order (CPO) if necessary, in conjunction with a developer partner who would redevelop the acquired site for a comprehensive mixed use scheme.
14. The owners of the Empire Site were given until 24 October 2012 to provide evidence to demonstrate that they would be proceeding with construction of the new cinema complex which had been granted permission. The evidence specified was the letting of a full construction contract. They failed to do this. Some discussions took place with a Project Manager appointed by Empire between September 2012 and December 2012 and there was some activity on the site in January 2013 but this stopped in February 2013 following the appointment of a fixed charged receiver. There have been no works on the Empire Site since then.
  15. Throughout this period the Council was progressing its planning policy proposals for the extension of the cultural quarter in Ealing Town Centre to provide a preferred land use/mix including leisure, retail, offices, community, arts, housing and improved connectivity between New Broadway, Mattock Lane and Bond Street. This culminated in the adoption of the Development Site in the Sites Development Plan Document and associated Supplementary Planning Document in December 2013. A developer selection process was started in October 2012 and resulted in the selection of Land Securities plc (LS) as a developer partner following a competitive selection process. LS, through its property holding company, has subsequently entered into a CPO Indemnity Agreement (CPOIA) with the Council (dated 17 September 2013) to enable it to redevelop the Development Site.
  16. The Council also entered into a Land Sale Agreement (LSA) with LS on 17 September 2013 to dispose of the YMCA building at 14-16 Bond Street as part of the Development Site to which the Order relates. Following selection, LS worked up a design for a cinema-led mixed use proposal consistent with adopted and (then) emerging planning policies. On 19 September 2013 a special purpose company, LS Ealing Leisure Ltd, submitted an outline planning application as follows *'Redevelopment of the site (following demolition of existing buildings Ealing is famous for its role in the growth and development of British cinema; the site previously had a cinema on it; the people of Ealing have to travel elsewhere to go the cinema; and it is a key objective of planning policy to secure a new cinema on the site except for retained cinema façade) to provide multi-screen cinema of up to 2,503 sqm, incorporating up to 900 sqm other Class D2 leisure space, between 4,509 sqm and 4,934 sqm mixed commercial floor space (Classes A1/A2/ A3/A4/ D2) at ground and part first floor level, gallery space (Class D1) and between 143 and 161 residential units (Class C3) in buildings of between 5 and 7 storeys in height. Creation of public realm including outdoor performance space. Change of use of unit to the rear of No.49 New Broadway to bicycle store and change of use of unit to the rear of No.55 New Broadway to management office suite. Alterations to and creation of new vehicular and pedestrian access routes. Associated servicing areas and disabled car parking spaces'*. This was an outline planning application for layout and access with all other matters reserved.

17. The application (and associated conservation area consent application) was considered by the Council's Planning Committee on 18 December 2013. The Committee resolved to grant permission subject to referral of the application to the Mayor of London and completion of a s106 agreement. The Mayor of London approved the scheme on the 2 July 2014 and permission was issued.
18. The proposed mixed-use development includes a multi-screen cinema, other leisure uses and retail uses all of which are consistent with and contribute to the creation of the wider cultural quarter for the Town Centre. The proposal includes plans for the comprehensive development of the site along with new pedestrian routes creating links to the town centre both north-south and east-west as set out in all the planning policies. The inclusion of Walpole House and Flava within the development site allows the cinema to occupy a central position in the scheme and anchor new restaurant, café and retail uses fronting onto a new open public square with new pedestrian linkages to New Broadway, Bond Street and Mattock Lane. Up to 161 new flats will be provided as part of the comprehensive scheme of which 29 will be affordable homes secured through the s106 Agreement. The flats will range from studios to 3 bedroom apartments.
19. In summary the Council is promoting a comprehensive mixed use leisure, retail and residential scheme on the Order Land consistent with national, London and local planning policy in conjunction with LS and LS Ealing Leisure Ltd. The primary purpose is to extend the cultural quarter of Ealing Town Centre that will provide a new cinema, cafes and restaurants, new homes including affordable housing, community use, new public space and greatly improved connectivity to and from the town centre and local neighbourhoods.
20. Ealing is famous for its role in the growth and development of British cinema; the site previously had a cinema on it; the people of Ealing have to travel elsewhere to go the cinema; and it is a key objective of planning policy to secure a new cinema on the site. Piecemeal development – that is, development which does not take place in a planned manner – is not acceptable. There must be a masterplan in the context of which either comprehensive or incremental development across the site takes place, and the masterplan must show a scheme which is capable of being, and likely to be, delivered within a reasonable timeframe. Planning – whether or not in the context of a CPO – is not about certainty or guarantees. It is about what is likely, on the evidence, to happen. If the Order is confirmed, the Scheme is likely to proceed. It has become equally plain that, if it is not confirmed, uncertainty, confusion and further delay will be the inevitable consequences.
21. The LS scheme, which falls squarely within the purposes for which the Order is being promoted, has planning permission and reserved matters approval and there are therefore no planning impediments to its implementation. It will be developed by one of the country's leading developers, which has the resources, expertise, track record and commitment to deliver the scheme. The very strong probability therefore is that it will be delivered. The only remaining impediment to this is the completion of land assembly, which will be secured through confirmation of the Order.
22. The scheme is of the highest possible quality. It makes the best use of the site by including a range of appropriate town centre uses, in accordance with policy, including an 8 screen cinema which is to be leased by Picturehouse, who are a

leading operator of art house style cinemas in the UK. It has been designed by one of the country's leading architectural firms, and more particularly responsibility for the project lies in the hands of the head of the firm's mixed use, retail and leisure sector who has been responsible for the design of many high quality major urban regeneration schemes in the UK and abroad.

23. One of the main issues is whether it is in accordance with compulsory purchase law and policy to deprive the major landowner on the site (Empire) of its land when it already has planning permission to develop a new cinema on that land, and when it says it wishes to proceed to complete the development of that cinema which it has already begun. The Council's answer is emphatically yes. The powers contained in section 226(1)(a) of the Act are available for use in precisely these circumstances. The real question is whether there is an alternative proposal which not only would be likely to proceed but which would achieve the same purpose as the Order Scheme without the need for compulsory acquisition. In answer to that:

- There is no alternative proposal for the whole of the Order Land;
- There are very serious doubts about whether Empire are capable of delivering their development – whether that for which it has planning permission or the outline proposals presented during the Inquiry;
- Neither proposal would achieve the purposes which the Order Scheme would achieve; and
- The GM Investment Trustees Ltd<sup>7</sup> alternatives, which are dependent on the Empire cinema development going ahead, propose the retention of the whole of the YMCA building (which the Empire extended scheme does not), and would place in serious doubt whether comprehensive redevelopment of anything like the same overall design quality, coherence and land use mix as the Order Scheme could be achieved either within a reasonable timeframe or indeed at all.

24. In short, the Council contends that the only means by which policy compliant development across the whole of the allocated site is going to be achieved is by confirming the Order. Not to do so would consign this key town centre site to years more wrangling and uncertainty, and would very likely result in the need to promote another CPO since site assembly and satisfactory comprehensive development of a high quality is very unlikely to be achieved, as the history shows, if matters are left to the existing landowners.

25. The requirements of section 226(1A) are also met. The Council does think, and the Secretary of State is invited to reach the same conclusion, that the redevelopment of the Order Land will contribute to the achievement of all three wellbeing objectives. These are set out in the evidence but in summary comprise:

- i) *social*: enhancement of part of town's 'cultural quarter'; new public realm including central square and other streets and public spaces; improvements to permeability and linkages; the provision of market and affordable housing; an art gallery/community space; financial contributions to education, healthcare and children's play;

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<sup>7</sup> Objection 2

- ii) *economic*: creation of new jobs; influx of expenditure into the centre from new residents and from shop, restaurant and cinema customers; employment and training initiatives;
  - iii) *environmental*: redevelopment of a part vacant, underused and brownfield site; improvements to open space on- and off-site; high quality new buildings; contributions to transport improvements.
26. The advice in the Circular positively encourages the use of compulsory powers to achieve beneficial social, economic and (in the case of planning CPOs especially) environmental change. A “compelling case in the public interest” must be shown, and there should be a reasonable prospect that the land will be used for the purposes for which it is being acquired within a reasonable timescale. There should be no legal, physical, planning or financial impediments to the scheme going ahead: there are none in the present case.
27. It is very popular amongst objectors to CPOs to refer continually to compulsory purchase being a matter of “last resort”. But this is not a legal test or requirement, but a matter of policy, which is as follows: *‘Before embarking on compulsory purchase and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail.’* The same paragraph goes on to advise that, to paraphrase, acquiring authorities cannot wait forever to bring forward schemes that are important to their area. There are two key points here:
- i) it is acceptable, and often sensible, to initiate compulsory purchase procedures in parallel with negotiations with landowners;
  - ii) the prospect of compulsory purchase can help to bring landowners to the negotiating table.
28. This paragraph does not say that all the negotiations must be carried on between the Council (or its agents) and the landowners in question. It appears in the general part of the Circular, where advice is being given to all local authorities about the exercise of their compulsory powers. The essence of the advice is that, before making a CPO, the authority should be satisfied that reasonable efforts have been made to acquire land by agreement wherever practicable. There were substantial and genuine attempts over a lengthy period by Land Securities to acquire the Empire site, both from the property receivers and from Empire; and it was entirely appropriate, given that Empire not only own the majority of the Order Land but also hold this with a view to building a new cinema on it, that Land Securities should negotiate directly with Empire about a possible acquisition by agreement.

#### *Development Plan Policy*

29. The London Plan 2011 retained the designation of Ealing Town Centre as one of London’s 12 Metropolitan town centres. Ealing is identified as having a medium potential for future growth, with moderate levels of demand for retail, leisure and office floorspace (including speculative office development) and the physical and public transport capacity to accommodate it.
30. The adopted Development Strategy Development Plan Document (DSDPD) adopted in April 2012, sets out the strategic policy direction for the revitalisation

of Ealing Metropolitan Town Centre in policy 2.5, including the need to provide for a cinema in the town centre.

31. The Development Sites DPD Final Proposals were submitted to the Secretary of State in February 2013 and included only those development sites which were considered central to delivering the policies and objectives of the DSDPD. The Development Site was included as EAL6, with the proposed allocation as 'mixed use development appropriate to the town centre, including multi-screen cinema, retail, commercial and residential'. Design principles set out here support the inclusion of additional arts and cultural uses, studios/flexible office space and community uses, and the creation of a new public space in the centre of the site. The allocation directs that achieving better integration of Ealing Green/Walpole Park should be a key outcome of proposals on the site, which should be reflected in the arrangement of new buildings. The site boundary was altered from the initial proposals to exclude the new hotel at 26-42 Bond Street, as this permission has now been fully implemented.
32. Based on responses received following a consultation exercise in June 2012 on the final proposals, and the publication of a draft Ealing Cinema Supplementary Planning Document (SPD), minor revisions were suggested to EAL6 in the version of the Development Sites DPD submitted to the Secretary of State for examination. This removed the reference to the planning permission ref P/2003/5043 in the design principles to ensure that the allocation and aspiration for comprehensive development would be deliverable. The Council considered that that permission, submitted as it was over ten years ago under a different (largely absent) policy context and within a very different town centre context, would not satisfy the design principles for the site nor realise the full potential of the site.
33. An Inspector appointed by the Secretary of State held an Examination in Public in respect of the DSDPD in June 2013. In her report issued in September 2013 she found the DSDPD to be sound and it was adopted by full Council on 12 December 2013.
34. The Ealing Cinema SPD of December 2013 notes that EAL6 is an important plot that contributes to the achievement of the policy objectives of comprehensive development, and in particular delivery of high quality leisure and cultural uses, a mix of secondary and ancillary uses and improvements to the environment and public realm in and outside the site. The support for a comprehensive approach to the site had been identified and established in policy since 2004, with only minor revisions to the site boundary as required to reflect completed development. However the permission for a multi-screen cinema was considered to address the Empire Site in isolation and to fail to fulfil the borough's wider aims for this part of the town centre.
35. The SPD therefore establishes clear design objectives for those bringing forward comprehensive proposals on the wider Development Site and demonstrates the need for connected thinking, particularly the design principles which are considered central to ensuring that the full potential of the area is realised. The draft SPD went out to consultation in October 2012 and was adopted immediately after adoption of the Development Sites DPD in December 2013. It emerged from the Council's consideration of how the development of the site should be brought forward in circumstances where the Empire scheme had stalled. In mid-

2012, the Council sought the commercial advice of Cushman & Wakefield on the options available to it; the advice received included the note of June 2012<sup>8</sup>, in which the potential for the use of compulsory powers was explained, and two key considerations were identified: the apparent lack of any real intent to complete the cinema development, and the increasing emphasis on achieving a more comprehensive development scheme, with reference being made in the latter respect to the Tibbalds SDF Review of September 2010<sup>9</sup>. The Order Scheme was then designed in the light of the SPD, which, albeit not adopted until December 2013, had been published for consultation in October 2012. There were some changes in the text between the draft and adopted versions, but the design principles remained in substance the same.

### *The merits of the scheme*

36. The proposed comprehensive redevelopment will achieve the objectives of the Ealing Cinema SPD adopted in December 2013 and, in particular, will:
- Result in social, economic and environmental improvements to Ealing Town Centre and to the London Borough of Ealing generally. In particular the development will extend and underpin the 'cultural quarter' of the Town Centre.
  - Provide a new cinema as an important part of the growing town centre economy and offer.
  - Improve connectivity and permeability to the town centre and local neighbourhoods.
  - Deliver a high quality of building and public realm design that will improve the local environment and public amenity.
  - Create new, well-designed housing including affordable homes together with leisure and retail units and public space on brownfield land, thereby also securing an improvement in the choice, quality and quantity of housing and leisure and retail facilities in this part of the Town Centre.
  - Create new jobs and training opportunities.
37. The Council has had regard to the guidance contained in the Circular before making the Order and has considered whether an Order is justified taking into account the factors to which a confirming Minister may have regard in deciding whether or not to confirm an Order.
38. In particular, the Council has ensured that there are resources available to acquire the land and implement the scheme. Following Land Securities' selection as the Council's preferred developer in December 2012 the Council and LS entered into a CPOIA in September 2013 enabling LS to redevelop the Development Site and which will indemnify the Council in respect of the costs of acquiring the relevant interests as required if LS cannot acquire the interest by agreement. In selecting LS the Council gave careful consideration to its ability to deliver a policy compliant scheme on the Development Site.

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<sup>8</sup> CDD 11

<sup>9</sup> CDB 6 & CDB 10

39. The Council is satisfied that LS has the necessary resources to undertake a redevelopment which will enable the land to be acquired via CPO and developed within a reasonable timeframe. The CPOIA requires LS to fully underwrite all costs associated with the CPO process, acquisition and compensation arising from the preparation, confirmation and implementation of the Order. The Council is also satisfied, on the basis of advice from its external consultants that the cinema led redevelopment proposal outlined in section 4 above is deliverable by LS who have already started negotiations to acquire the land by agreement. This has been secured by means of the CPOIA.
40. LS have, in turn, secured a planning approval which has been made in accordance with national, regional and local planning policies. The local plan has specifically identified the need for a cinema led comprehensive redevelopment of the Development Site.
41. In summary the Council is satisfied that there are no planning or financial impediments to the implementation of the scheme. Furthermore the Council is satisfied that in all the circumstances, there is a compelling case in the public interest. It is neither appropriate nor necessary at a CPO inquiry, where planning permission for the scheme underlying the CPO has been granted, to re-examine the planning merits. That includes design principles and architectural quality. Whilst as part of the exercise of considering whether there is a compelling case in the public interest to confirm the Order, the Secretary of State must form a view on the weight to be given to claimed benefits (and disbenefits), it would only be in an exceptional case that a decision might be taken not to confirm a CPO in order to prevent the scheme for which planning permission has been granted from being built. Plainly, this is not such a case: the scheme is in fact an outstanding piece of urban design, which consideration of outline alternatives put forward by objectors only serves to emphasise. But certain of the objections, especially those from members of the public, have come close to making that suggestion. The Secretary of State is invited to find that such an approach is the antithesis of the kind of positive approach that the Circular urges.
42. Numerous design iterations were considered before the scheme on which public consultation took place was published; and further changes took place after that both before the planning application was submitted and during the planning application. Thus, different options for the entrances to the scheme from New Broadway and Bond Street were considered, and it was decided, for sound urban design reasons, to reject options which placed the former through the old cinema frontage and for the latter which retained the YMCA building or façade. The Secretary of State does not have to agree with every design decision taken. But on the key elements he is invited to find the following:
- (i) The scheme will create a real sense of place. Key to this is the comprehensive treatment of the site and the integration of the architectural styles, streets and spaces.
- (ii) The design quality of the scheme will be very high. The architecture is modern, exciting and entirely appropriate to its location.
- (iii) Pedestrian routes will be provided that will not only create permeability across the site but will also improve linkages to and between other parts of the town centre. Those routes will take the form of wide, spacious and mainly open streets with active frontages both at ground level and above. There is also the

potential in the future to create more direct links to other parts of the town centre through the Sandringham Mews Site (EAL5 in the Ealing Development Sites DPD);

(iv) The new public square will be attractive and capable of use as a performance space. The size of this square was very carefully considered during the design, and whilst suggestions were made that this is too small these have not been pursued and are entirely misplaced.

(v) The New Broadway entrance to the scheme will be very attractive, involving as it does the restoration of the cinema façade, with a leading natural and organic foodstore operator in occupation of the shop behind this, and the creation of a broad new street next to it. There is no policy or other requirement to have the entrance to the scheme through the old cinema frontage. Indeed this would be a much less appropriate solution as it would mean that the retail units would lack depth and it would prevent the creation of a broad, open street. In order to create the requisite draw, the cinema entrance would in any event have to be in the middle of the site: a direct entrance from New Broadway into the cinema lobby would thus not be appropriate even if the main entrance were to be through the old façade.

(vi) The Bond Street entrance reflects local design cues and materials and creates an appropriate transition between the Xanadu hotel and the block comprising 2-12 Bond Street. This has been made possible by taking in a wide stretch of frontage which includes Walpole House (which makes a negative contribution to the conservation area) and the YMCA building. This also enables the inclusion of restaurant and retail units which will improve the vitality of Bond Street and a sufficiently broad and visible entrance to the Scheme. Had it been practicable or appropriate in terms of good urban design to retain the YMCA building or façade, then this would have been done; but it was not.

(vii) The Mattock Lane entrance is wide and leads to a second area of public space (that is, aside from the square) which starts to narrow as the gallery unit is reached. There is substantial separation between the new building and the houses starting at No. 2 Mattock Lane, and the rear gardens of these properties are afforded privacy at ground level and are to a degree screened from view from the new flats by the block which contains unit 12 and the gallery. The design of the main windows and balconies in the west-facing apartments in block D also mitigates any possible overlooking. Whilst the new building is on a substantially larger scale than the residential villas in Mattock Lane, the detailed design of the building reflects their architectural features and the apparent scale of the building is strongly mitigated by the open balconies and the way in which the storeys are progressively set back at first, fourth and fifth floors.

43. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in deciding whether or not to confirm the Order, the Secretary of State must "pay special attention to the desirability of preserving or enhancing the character or appearance of" the Ealing Town Centre and Ealing Green Conservation Areas. This means that any harm to the conservation area (even if less than substantial) should be given 'considerable weight and importance'. In giving "considerable weight" to the harm, the Secretary of State should give

significant weight to the consultation advice given by English Heritage (EH)<sup>10</sup> in response to the applications for planning permission and reserved matters approval, and to the conclusions reached by the Council in granting that permission and approval; both of which show that those bodies considered that the public interest was sufficiently strong to outweigh the (less than substantial) harm to the conservation area.

44. Uncertainty in the path to implementation of an alternative can be highly relevant to the Secretary of State's assessment of whether there is a compelling case in favour of the CPO scheme, and may justify a finding that the CPO is justified on the basis that the promoted scheme achieves a better scheme of development in the public interest than an alternative scheme, even where the alternative scheme has planning permission. The Secretary of State would also be entitled to take the view that the urgency of the need to proceed with a redevelopment proposal is material to demonstrating a compelling public interest in confirming a CPO, even if (unlike in the present case) there are viable, realistic and deliverable alternatives available.
45. There are two principal alternative proposals put before the Secretary of State for his consideration. Empire's scheme incorporates the YMCA building but may (or may not) include the retention of its façade; the other is that of GM, which takes two alternative forms (market or student housing, the latter not including the Flava site) and retains the YMCA building. Whilst of course it is not necessary for alternatives to have the benefit of planning permission, or even to be the subject of a planning application, they must be sufficiently understandable and realistic for the Secretary of State to be able to assess whether or not they would (if implemented) achieve the purposes for which the Order has been made.
46. Both alternatives suffer in the first instance from the fatal flaw that neither addresses the whole of the EAL6 site, but rather rely on development coming forward in a piecemeal manner according to the ambitions of the individual landowners, and/or are dependent on co-operation between landowners and those with rights over land of which there remains little real evidence. Furthermore, neither alternative has come forward in the context of an overall masterplan for the site, as required by policy EAL6.
47. There remains no reliable or convincing evidence that co-operation between landowners is likely to be forthcoming, if the Order is not confirmed, in a manner which will enable the purposes of the Order to be achieved either in accordance with policy or within any reasonable timeframe. The very late emergence of the so-called "Heads of Terms" of an agreement between Empire and GM actually serves to reinforce this. The strong likelihood is that, if the Order is not confirmed, a further CPO will have to be made following a further delay of several more years. The futility of that is self-evident.
48. It is important to appreciate that the Council's objective in promoting this Order is not to prevent the Empire development from taking place, but rather to secure something much better for Ealing. The question whether the Empire development would have continued to completion in 2013/14 had Empire been left to their own devices is actually of little real importance since it is not possible to rewrite history; what matters now is whether the Order, which will secure the

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<sup>10</sup> now Historic England

development of the Scheme, is justified in the public interest. Whether, were the Order not to be confirmed, Empire would be likely to complete its development may be of somewhat more significance, but only if it were to be concluded that there was a realistic prospect of this forming part of a policy-compliant scheme for the whole of the site which was likely to come forward within a reasonable timeframe. On the evidence, there is no such prospect.

49. The Secretary of State is invited to conclude that the alternatives proposed by Empire and GM are extremely unlikely to come forward within a reasonable timescale, and in such a way as to enable or even allow the comprehensive redevelopment of the Order Land. Even were one of the alternatives to come forward, it would be very unlikely to deliver the same level of wellbeing benefits as the Order scheme and would in any event be likely to require the preparation of a fresh CPO to resolve the land assembly issues which have already been described.
50. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail". It is also "often sensible", and indeed very common, for acquiring authorities to make a CPO and continue negotiations in parallel. That is exactly what has happened in this case. It is however obvious that, in the case of Empire, GM and the Flava interests, there is little or no prospect of reaching agreement and that the confirmation and exercise of compulsory powers is required if the Scheme is to be realised. Attempts to engage with Flava have been unsuccessful and it appears that those concerned do not wish to engage in such negotiations.
51. In relation to the other points raised by the non-statutory objectors, the Council's response is that (a) there will be no encroachment on Barnes Pikle as a result of the Scheme, and (b) it is necessary to remove the trees to the rear of 2-6 Mattock Lane and the consequences of doing so have been considered within the planning process; as has the issue concerning the retention of the Walpole Picture Theatre Arch.
52. In conclusion, there is a compelling case in the public interest for the confirmation of the Order which justifies the acquisition and overriding of private rights. It is urgently necessary to proceed with the development of the EAL6 site, much of which has been cleared and unused for well over 6 years. There are no material obstacles to the implementation of the Scheme other than the confirmation of the Order. No practicable alternatives to the Scheme exist. The requirements of s226(1) and (1A) of the 1990 Act are satisfied, because the Order will facilitate the development of the Scheme and because it will contribute very significantly to the economic, social and environmental wellbeing of the Council's area. There are no new matters which would justify a different approach to be taken to that of the Council in granting planning permission. The policy requirements in the Circular for the confirmation of the Order are satisfied. The confirmation of the Order would be consistent with, and not breach, the NPPF and development plan. The confirmation of the Order would be consistent with, and not breach, the human rights of the landowners affected. Failure to confirm the Order would have serious implications for Ealing Metropolitan Town Centre and would inevitably lead to further uncertainty and lengthy delays in achieving the Council's policy objectives for the site. Moreover, the many public benefits that are described above and in the evidence will not be realised.

53. For the reasons set out above and in the Council's evidence, the Council submits that there is a compelling case in the public interest to confirm the Order. The benefits of the Order sufficiently justify interfering with the human rights of those with interests in the Order Land. Accordingly, the Council asks that the Secretary of State confirm the Order.

### **Other submissions supporting the Acquiring Authority**

54. Letters of support<sup>11</sup> have been received from the University of West London, Ealing Studios, Questors Theatre, Ealing Broadway Business Improvement District (representing the interests of more than 400 businesses located in Ealing town centre) and 'For Arts Sake', a gallery business in Bond Street. The letters refer to the need for regeneration of the town centre providing employment opportunities and potential performance space; a vibrant new cinema synthesizing Ealing's historical relationship with film production; the contribution the scheme would make to the growth of a cultural quarter on a key town centre site; improved links through to a refurbished Pitzhanger Manor and Walpole Park; and the enhancement of Ealing's centre making it more able to compete with neighbouring centres at Richmond and Kingston.

### **The Objectors**

#### **Objection 1**

##### **Empire Cinema 2 Ltd – Legal Interest**

55. Empire Cinemas Limited own plots 2, 3, 13, 20 and 42, consisting of 59-63 New Broadway with access from Mattock Lane. These plots correspond to the site of the old Forum Cinema, now demolished except for its locally listed façade.

#### **Case for the Objector**

*The main points are:*

56. Empire Cinemas object to the confirmation of the CPO, and ask the Secretary of State to refuse to confirm it. It is their case that there is no compelling case in the public interest for the CPO. The objection can be broken down into two parts – Empire can deliver commensurate (or greater) public benefits with no need for public acquisition; and the CPO is not required to secure delivery of the public benefits on the site.

57. The Land Securities ("LS") scheme (in the reserved matters consent) has 8 cinema screens. The total space for cinema use is 2415 square metres (sqm); A3/4 space 4564 sqm and residential 13,611 sqm. Even taking into account the fact that the LS scheme extends across the whole CPO site and not just the Empire site, it is clear from these figures that the LS scheme is a residential led scheme with a leisure element.

58. In sharp contrast the Empire planning permission has a 20 screen cinema with 4277 sqm of A3/A4 space. The Empire scheme has a range of screens from a large IMAX down to small studio cinemas designed to optimise the cinema experience and accommodate specialist films with a limited or select audience.

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<sup>11</sup> At Doc 19

The Empire scheme serves the entire range of cinema goers in the catchment area, and has the size and variety to do so across the day and evening.

59. The Empire scheme is of greater benefit both to the cinema going population of Ealing and West London, and to Ealing town centre as a whole, than the CPO scheme. The approach of LS has simply been to provide the level of cinemas that the three principal cinema operators (Odeon, Vue and Cineworld) wish to operate at this location. The very limited aspiration of LS and their chosen cinema operator Picturehouse is clear from the Picturehouse letter<sup>12</sup> which refers to the Vue Cinema at Westfield White City serving "a completely different community to Ealing". It is very unclear why this should be the case when Ealing town centre is obviously losing people to the cinema at Westfield, and there is no reason why those people should not go to the cinema in Ealing if it offered the choice they wanted in a good cinema and leisure environment.
60. The Empire scheme will plainly allow screening both more films in absolute numbers, but also more films at the times that most people wish to see them. Empire is highly experienced in the cinema industry with a long history of involvement both with new cinema projects and operating cinemas. Empire operates a different model from the three principal operators in the UK. That model allows a wide range of films to be shown – mainstream, art-house, foreign language, Bollywood, repertory cinema and cinema experiences (e.g. live showings of operas, dramas etc.). This will be in a very high quality environment of cinemas ranging from an IMAX, to small auditoria suitable for much more specialist films. Empire has developed a model (including the patented technology) which allows a highly effective format, maximising both the number of screens and the cinema going experience. This format allows Empire to maximise the offer to a broad range of cinema goers, and to involve the local community, Ealing Studios and the film college students, by allowing each group access to a commercial sized cinema screen.
61. If such a wide range of films is shown, then people can be attracted to the cinema from a range of existing cinemas – the out of town multiplex at Park Royal, the large Vue at Westfield and the art house orientated cinema at the Waterman's. The Empire scheme will make Ealing a cinema destination across West London and help reinforce Ealing's status as a Metropolitan Centre in the London Plan. This is a key objective in the CS, but seems to have been put by the wayside by Ealing in this CPO. The Empire scheme will provide a leisure experience for the entire community, unlike the LS/Picturehouse scheme. There is a further opportunity for Ealing to create a leisure destination in West London, from the fact that Crossrail will open in Ealing in 2018, making the cinema easily accessible to a large area of west London. This is particularly important given that a high proportion of people going to the cinema in London will do so by public transport rather than by car.
62. There are also clear benefits to the vitality of the town centre from the Empire scheme over the LS scheme. If more people are drawn into the town centre, then that will benefit both the new and existing restaurants and the whole leisure economy of the town. Again this directly relates to reinforcing Ealing's status as a Metropolitan Centre. The opportunity to create a cinema destination in Ealing is

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<sup>12</sup> Richard Mai Appendix 2

particularly important and a particular benefit given Ealing's close association with the film industry. It is the perfect location for a cinema destination that has the number of screens which allows showing of speciality films targeted at specific audiences and not just the "usual" offer.

63. Contrast this with the LS scheme. This aspires to do no more than copy the usual 8 screen cinema of the main competitor locations. It will offer a cinema to Ealing residents but will do no more in that regard than the bare minimum. It does not appear to even aspire to claw back trade from the Westfield Vue, let alone from further afield. It will provide a local cinema, but it will not create a cinema destination. Effectively the LS scheme sacrifices cinema space for what is probably the more profitable residential elements. This is particularly surprising given that Ealing's long standing policy support has been for a cinema/leisure scheme on the site in order to regenerate Ealing town centre, and to be part of the cultural quarter. The LS scheme has no relationship to supporting, creating or reinforcing a "cultural quarter". It is no more or less than an 8 screen multiplex with some restaurants. The gallery space is a small area which fills a gap, and there is no provision for the type of studios etc. contemplated in the earlier planning policy.
64. The Empire scheme plainly meets both the needs of the town centre and cultural quarter policy support far better than the LS scheme. This is important because it undermines the case for a compelling public interest in the CPO and shows that it is the Empire scheme which in fact delivers the public interest.
65. It is interesting to note that all the local residents who attended the inquiry and spoke, many of them representing groups, spoke in favour of the Empire scheme and what it had to offer Ealing, rather than the LS scheme.
66. The Council sought to suggest the restaurant elements of the Empire scheme would be difficult to let because they included mezzanine elements, but in a scheme with a high footfall and a major cinema, restaurant operators will plainly be keen to be in the development and take space. There may be an impact on the rental levels for the mezzanine element, but there is no evidence that the Empire scheme is not viable. It is simply impossible to see why Empire would have regained control of the site and fought this CPO so hard (and to considerable cost) if their development was not viable. The ability to let is effectively shown by the fact that Empire's agents had moved to draft Heads of Terms with various restaurant operators in mid-2012.

#### *Planning policy and planning/townscape benefits*

67. The Empire scheme has planning permissions granted in 2008 and 2010, and the non material amendment application (NMA) was granted in late 2011. At none of those stages was it ever suggested by the Council that the Empire scheme did not accord with development plan policy (or any other planning policy). Whether or not the Council could have refused permission in 2010 or 2011 on the basis of changes in emerging policy is not the point. The issue is that the Council never once indicated to Empire, right up to January 2013, when the piling works started that the Empire scheme didn't meet planning policy. Ealing's position that the Empire scheme does not meet the public interest because of inconsistency with the Ealing Cinema SPD, sits very unhappily with their strong pressure on Empire to proceed with the permitted scheme from 2010 up to early 2013. Importantly if Empire had been able to carry on with the development in 2013, there would

have been no linkages to the east or the south, and only a small central area. But there is no suggestion that this troubled the Council at that date, even though they now say these issues are a fundamental objection to Empire being able to provide an alternative to the CPO scheme.

68. The Council now suggests that the Empire consents were granted in a "different and (largely absent) policy context". This simply isn't correct. At the time of the 2008 planning permission the relevant planning policies for the site were contained in the Unitary Development Plan (UDP) 2004 and the Development Site 60 Supplementary Planning Guidance (SPG). The Empire Site was identified under Schedule 10.1 of the 2004 UDP as Site 60 'Existing UGC Cinema and land to rear, Uxbridge Road/west site of Bond Street, W5', with the preferred uses being:

*'Subject to further consideration of the need for a new link road across part of this site (linked with pedestrianisation of High St) - Promote development of a café, community arts, education and residential "lanes development" linking Town Hall/ Uxbridge Road to Ealing Green/Mattock Lane/Pitshanger Manor/Ealing Studios/Walpole Park. Retain Cinema frontage and carefully consider any changes to 35-57 New Broadway, which is of facade value. Retain most of street frontage to Bond street, but with new pedestrian permeability. Improve Barnes Pikle. Create informal and safe open spaces and walkways. If new cinema is not built on an alternative site, improve existing cinema with same linkages as above. If new link road promoted, develop sites EB4 and EB7 together with Bond Street /High Street pedestrianisation. Consider large development site for mixed uses and quality public space and walkways.'*

69. The SPG identified the CPO site and promoted almost identical routes to those now in the LS scheme. The aim of the policy was said to be "to extend the cultural quarter" as part of a lanes development with the creation of new pedestrian permeability and the creation of informal and safe open spaces and walkways. These references show very clearly that the policy context was very little different when the Empire scheme was granted in 2008. At no stage, either in Officer's/ Committee Reports or in comments to Empire, was it ever suggested that the Empire scheme departed from policy, or even in a more general way did not meet the aspirations of the Council. This cannot be explained away by the suggestion that the Council were just desperate "for something to happen on the site." From 2009-11 there was plentiful opportunity for the Council to say to Empire that they would like the scheme to be slightly amended to allow linkage to the east and south, and to provide a larger public area at the cinema entrance. No such suggestions were ever made.
70. The 2008 and 2010 Tibbalds Studies<sup>13</sup> (EMCSDF and EMCSDFR) are only evidence base documents prepared to inform the preparation of the Local Development Framework (LDF) and are not planning policy themselves. In any event they were prepared before the 2010 Empire planning permission, and it was again never suggested by the Council at that stage that there was any conflict.
71. The present development plan policy for the site is contained in the DSDPD and most specifically the Development Sites DPD. The Development Sites DPD was

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<sup>13</sup> CDB6 & CDB 10

initially prepared in draft in 2010 and was adopted in December 2013. This is the development plan policy that went through independent examination. As such it must carry significantly more weight than the Ealing Cinema SPD. The site is identified under EAL6 and the proposed allocation is "mixed use development appropriate to the town centre, including multiscreen cinema, retail, commercial and residential". There are a number of important points from the Development Sites DPD;

- a. The allocation does not include public open space/public square;
- b. The Empire planning permission (of 2010) is expressly referred to in the DPD with apparent support and no suggestion that it no longer accords with policy. Justification for the EAL6 designation is given as follows:

*'The outstanding planning permission for the multi-screen cinema will provide a significant leisure development within the town centre, which Ealing currently lacks, and restore the retained façade as a key townscape element. Development of the wider site with complementary uses will support an enlivened film/cinema quarter that provides a range of cultural, leisure and entertainment uses suitable for all ages'*

- c. It says "change on this site may be achieved through comprehensive or incremental development; any proposals brought forward must be based on a master plan for the site as a whole that address the urban design objectives and realises the full potential of the site". The AA tried to suggest that this meant comprehensive or phased, but that is plainly not correct. The policy is not requiring the site to come forward in one application or in one go. It contemplates and supports incremental development so long as it is based on urban design objectives that address the whole site and realises its full potential.
- d. It is true there is as yet no masterplan for the Empire scheme, but there was no publicly consulted masterplan for the LS scheme. The Council has throughout this process chosen to be flexible, perfectly appropriately, when it suits them to do so. There is no reason why the principal landowners cannot agree design principles and put together a masterplan once the threat of CPO is lifted;
- e. The uses referred to in the supporting text are cinema and additional complementary town centre uses. Empire delivers those uses.

- 72. Therefore the Empire scheme meets the EAL6 policy allocation.
- 73. The Ealing Cinema SPD was first published in draft in October 2012 and was adopted in December 2013. It is quite obvious that it has been drawn up to support the LS scheme. This accords with the Cushman and Wakefield advice to the Council in June 2012, that they should strengthen the policy case for the CPO. Where elements are plainly beneficial but not in the LS scheme (e.g. retaining the YMCA or reusing the New Broadway façade as the cinema entrance) these have not found their way into the SPD.
- 74. When judging whether the public interest requires the Empire land to be compulsorily acquired for planning purposes, it is necessary to consider the planning/townscape merits of the Empire scheme as opposed to the LS scheme. In considering the Empire scheme regard should be had to the Empire permission

(the 2010 s73 permission) and the way that permission could be amended by minor changes to allow it to integrate into development on adjoining land<sup>14</sup>. The changes on the Empire land, and therefore to the 2010 permission are non material – they involve reconfiguring the ground floor arcade to provide a central square, providing a southern entrance and reconfiguring the internal space on the eastern side to allow full integration on the YMCA site. None of these changes should be in the least contentious because the amendments would not significantly change the quantum, scale or use of the Empire development previously accepted as being in accordance with the Ealing Development Plan; and would enable improvements to pedestrian accessibility and permeability, and provide new public space in the Ealing Cinema Site as outlined in principles 1, 2 and 3 of the Cinema SPD.

75. There are no reasons why development cannot and will not be brought forward on the YMCA site in conjunction with (or directly by) Empire. Therefore in terms of considering whether there is a compelling case to CPO Empire's land to deliver the LS scheme, it is necessary and appropriate to take into account the latest Empire proposal. The plan provided is of course only illustrative and doubtless there can be improvements, after discussion with the Council and EH, as well as local groups. The strong intention would be to retain the YMCA façade and as much of the building as possible.

#### *Planning and townscape*

76. In considering the planning/townscape issues it is appropriate to start on the New Broadway frontage. This will be the principal entrance to whatever development takes place on the land. It is the entry point from the main highway, and the main route in from the town centre. It is also the historic entry point. The Empire scheme has this principal entry to the cinema through the historic cinema entrance. This is a major benefit: the cinema is the "anchor" and "key attraction" of either scheme. The Empire scheme retains the historic relationship with the building and allows the form of the building to follow its function as a cinema. This is an important architectural principle, and gives a logic and sense to the scheme and the townscape. It will also reinstate a landmark to this part of the town centre when approaching the site along New Broadway. Its legibility will be further enhanced through the application of Empire branding similar to the branding that was in place on the original cinema (subject to advertisement consent).
77. In strong contrast the LS scheme reduces the original cinema to no more than a token façade. It will be, and will be seen to be, a façade stuck on the front of retail/residential building. That is facadism of the worst form, and breaks any architectural logic of form following function. Further, Empire has gone to great lengths to ensure the facade is restored to its former glory, which reflects Ealing's cinema heritage. The canopy will be restored, the doors and fenestration will be in their historic form, and the original tiling will be replaced with new tiles already carefully sourced from the company that made the originals. At the upper level, behind the columns the Empire scheme provides a restaurant, again replicating the cinema tea room in that position in the original cinema.

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<sup>14</sup> Set out in J McGregor Appendix T and Doc 12

78. In stark contrast, the LS scheme places a retail frontage behind the façade. The glazing is very different from the original particularly at lower level, and it will read as a generic shop front with very obviously residential flats above.
79. In terms of uses at this main entry point, the Empire scheme has the entry to the cinema as the main entrance, and then walking down a restaurant arcade or mall. The LS scheme has the main entrance point as being down the east side of the food store (with or without a café inside), with the one window return frontage of Boof Restaurant on the left. Doubtless with signage it will be possible to point people down to the LS cinema, but that is quite different from the entrance to the cinema/leisure area being directly off New Broadway.
80. In terms of active frontages the Empire scheme has them all the way down to the cinema entrance (with a small service area on the east side). It is very difficult to understand the comment that this is a mall going nowhere – it is a restaurant mall leading to a cinema as an anchor. The LS scheme does have active frontages, although at the main entry there is a food store on the right, and the return frontage of Boof on the left followed by a blank space.
81. The Empire scheme has active frontages along the northern part of Barnes Pike with glazed areas at lower level to the A3 units. Additional activity on this boundary is provided through the provision of cycle parking for the Empire scheme (approved by condition). The LS scheme does not provide active frontages along Barnes Pike as there is a fence enclosing the disabled parking area for the scheme and only passive surveillance is provided from the upper floor residential units.
82. Active frontages can be provided without difficulty through the eastern entrance through the YMCA and south across GM's land. The agreement between GM and Empire to work together to bring forward development makes it clear that development will be brought forward on the southern part of the CPO site, and a quality scheme can and will be delivered.
83. On permeability, the latest Empire scheme can provide full permeability. There are advantages and disadvantages to the fact that the Empire scheme is through a covered mall, and the LS scheme is largely open to the sky. On a nice day open air is better, but in the rain or a winter evening most people would prefer to walk under cover. The format of a covered arcade leading past restaurants to a cinema is an extremely familiar one, and with good quality finishes, lighting and management will be made very attractive. This is no different from the LS scheme where much is made of the quality of finishes and the desire to make the scheme attractive. In both schemes the quality of the end result will turn on the detailing, materials, fit out and the management. In any leisure scheme the developer has an exceptionally strong incentive to make the environment attractive because if it is not, the customers will be less willing to come. Empire as the cinema operators, will wish to make the development very attractive because the success of the cinema is closely related to the quality and success of the supporting restaurant units.
84. In terms of connectivity it is important that there remains a direct pedestrian route between New Broadway and Mattock Lane/Pitzhanger Manor down Barnes Pike. If someone from Dickens Yard just wants to get to the Park, they will walk down Barnes Pike, as the shortest route, with direct line of sight. Equally the most direct route from the Town Centre (and the main access to Dickens Yard) to

- Ealing Green will remain Bond St. It is possible in any event to put too much weight on "permeability" – this is not a huge impermeable block, which is doubtless why the Council were unbothered about the point until they wanted to promote the LS scheme. It was notable that local residents did not seem in the least concerned about permeability across the site.
85. The Empire s106 requires improvements to Barnes Pikle. The scheme shows windows looking out on the northern part of the path. On the southern section the route is actually quite wide and pleasant in any event. The LS scheme has a fence with a car park behind along Barnes Pikle, so it is difficult to see what the objection to the Empire scheme is.
  86. The suggestion that the restaurants will be unattractive and difficult to let seems rather farfetched. Empire attracted considerable interest in their scheme and had draft heads of terms with a number of restaurant operators back in 2010. It is routine for restaurant operators to operate from units with 2 floors. If the cinema offer is sufficiently attractive, which it will be, then there will be no difficulty in letting the units. If the size of the units in the Empire scheme takes into account the mezzanines then they are on average slightly larger than the LS units.
  87. On the entrance to the south there can be no doubt that an attractive route from the southern entrance of the Empire scheme to Mattock Lane can be designed and delivered. GM are plainly keen to develop their own land, and have agreed to work with Empire, and any such development will include retail/restaurant uses at ground floor along the southern route. This can include ground floor gallery space if that is what the Council wish. Flava have indicated that they wish to develop their car park, which would have similar uses.
  88. Development on the GM site and the Flava site will serve to screen the cinema box from Mattock Lane and the Park. The Council have set a clear precedent for such development in granting planning permission for buildings varying between 5-8 storeys in the LS scheme.
  89. There are benefits to the open public square in the LS scheme, and it would be foolish not to acknowledge that. However, the area itself is small, particularly once the seating reserved for the restaurants and the public walkway is taken out. The actual area of anything that could be called a public square is very small, and it is notable that the original idea in the Design and Access Statement for a tiered performance area has been dropped and in reality there will be a few benches outside the cinema entrance. It will hardly serve as a significant "gathering space" as the Council suggests given its size and location. If what Ealing needs or wants is a "town square" this area will not serve that function.
  90. The retention of the YMCA would be a major townscape benefit of the scheme. Although EH did not object to its demolition, that was on the basis that the demolition was required for the scheme. It does not mean that there is not a significant benefit in retention. It is clear from the views of all the local residents and groups that the building makes a very positive contribution to the Bond Street frontage, and they would strongly favour a scheme which retained the YMCA. It is an attractive frontage and it would plainly be better for the CA if it was retained.
  91. The LS scheme, on the other hand, replaces the YMCA with a rather bland and uninspiring modern brick building. It may preserve the CA within the statutory

test, but it certainly will not make the same positive contribution as the retention of the YMCA.

92. It can be seen from this that there are areas where the Empire scheme does not fully meet the 10 principles set out in the SPD and relies upon working with GM to meet some of them. But the fact that the LS scheme might meet the SPD principles more fully than the Empire scheme does not mean that the LS scheme itself meets the public interest;

a) The "principles" in the SPD are designed to be met by the LS scheme – they were drawn up in the light of the Cushman and Wakefield advice that there needed to be planning policy to support the CPO;

b) A number of the principles are no different from the earlier policies which the Council considered were met, or met to a sufficient degree by the Empire scheme;

c) There are pros and cons to the two schemes and townscape benefits such as retaining the YMCA and better using the locally listed cinema façade on New Broadway which are at least as important as the public square.

#### *Deliverability*

93. The other part of the Council's justification for the CPO, is that they say the Order is required in order to ensure deliverability of the comprehensive redevelopment of the site. This is not a CPO which is justified because of the multiplicity of interests; Empire owns 60% of the site, and the rest of the site is owned by GM, Flava and the Council. There are a number of subsidiary interests contained within the CPO, but these are the type of interests which would routinely be dealt with through negotiations on any city centre development and which Empire were able to acquire by agreement when progressing their scheme.

94. If the CPO is not confirmed, then the Council would in reality have no choice but to work with Empire to integrate the YMCA into the Empire scheme. It would be irrational to do otherwise, given that the YMCA land was bought for the express purpose of helping comprehensive development. The Council's refusal to accept working with Empire in those circumstances is plainly wrong and did not reflect well on the Council's genuine commitment to comprehensive development.

95. There is every reason to believe that if the CPO is not confirmed, Empire and GM would work together to fully integrate the two sites. Both parties are keen to progress development on their respective sites, and there is no inconsistency or conflict between their development aspirations. A high quality scheme can be brought forward that integrates the two sites and creates a high quality entrance to the leisure development from the south. GM and Empire have now entered into a Statement of Intent<sup>15</sup> as to how they intend to move forward with development across their respective sites to bring forward redevelopment. It is in the clear interest of both parties to do so, particularly in the light of Empire's keenness to build and operate a cinema, and GM's wish to maximise their land value for the benefits of their members.

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<sup>15</sup> Doc 60

96. The Council places reliance on the fact that there was no agreement in place between Empire and GM. However, this is merely a reflection of the fact of the CPO, and in all probability GM's expectation that LS would eventually make them an acceptable offer. It is hardly surprising that until negotiations failed with LS, presumably because their valuation of the land was materially less than GM's, the opportunity to produce a joint statement with GM arose.

### *Chronology*

97. The Council place great reliance on the history of the site, in order to try to establish that Empire have chosen to leave the site vacant for years, and cannot or will not bring forward development on the site. There is a detailed chronology of events at JR34<sup>16</sup>, which assists in understanding what was happening at each stage of the history. In order to show the fallacy of the Council's argument it is necessary to break the whole period down in order to show that at all stages Empire was acting to bring forward cinema development on the site, and that the Council have acted both inconsistently and counterproductively in relation to the site.
98. Empire bought the site in 2006, and having acquired 20 cinemas at that time pursuant to sales required by the Competition Commission, necessarily took some time to decide what they wished to do with each site. This process was not speeded by the fact that the vendors in the forced sale, did not provide any of the plans for the 2003 planning application, but also Ealing Council had apparently not got the plans. Empire then acted to try to get the 2003 application, for which there was a resolution to grant, issued by Ealing. Ealing were extremely slow completing the section 106 agreement. The only reason this matters is that those early delays meant the redevelopment of the site could not take place before the effect of the 2008 recession.
99. It seems likely that many of the concerns about the site started from the moment that the old cinema was demolished, and a large vacant site was left opposite the Town Hall. Empire had demolished the cinema with the full knowledge and agreement of the Council. The certificate of immunity against listing was about to expire, and if the cinema was listed that would stop both Ealing and Empire's aspirations for the site. From the moment that the cinema was demolished in January 2009 the Council began to seek urgent action on the site, ignoring the reality of both the then prevailing economic climate and the normal requirements of the development process.
100. The consent that was issued in 2008 was unsuitable for a modern cinema led development. The layout needed to be changed to allow for new digital technology and the quantum of restaurants to cinema space was far too low, and would not have produced an attractive scheme. It was essential for Empire to change the quantum of restaurants and the configuration of the scheme. In April 2009 Empire and Ealing agreed a strategy going forward for how to achieve these two goals without making a completely fresh planning application. It took until November 2010 for the s73 permission to be granted, and November 2011 for the NMA to be agreed.

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<sup>16</sup> Mr Ribbons' appendix JR34 (Doc 58 is annotated with references)

101. It was during this period of 2008-10 that the original developers who were working with Empire lost their funding due to the credit crunch. It was also during this period that Ealing in 2010 served a Completion Notice on Empire despite the fact that the Notice was plainly unlawful, but also utterly unreasonable in the midst of the most serious recession for 50 years. It was as if Ealing somehow thought that this one development was immune to the pressures affecting the rest of the development industry. This is perhaps one indication of the way that the Council's interaction with the site and Empire seems to have been dictated by political factors rather than proper consideration of the circumstances.
102. The inquiry has heard differing views on the impacts of the recession on schemes such as that being advanced by Empire. This is to some degree by the way, given that there is no dispute that Highland Estates, the source of Empire's funding, did as a matter of fact fall away as a consequence of the credit crunch. Secondly, it is very well known that the credit crunch had a massive impact on the UK development industry, and not just on the very large schemes. Thirdly, although cinema-going itself held up well during the recession, the Empire scheme is a mixed use scheme and depended on development funding. This is precisely the type of funding that dried up.
103. In terms of the precise chronology, it is important to have in mind that Highland did not simply lose their funding overnight. There was a period of uncertainty, but also after the funding had been withdrawn there was a further period when Highland hoped to be able to find an alternative source of credit. Therefore there was not one drop dead date by which Empire knew with certainty that Highland would not be able to proceed.
104. Much of the Council's concern seemed to rest on the fact that Empire did not explain that Highland had lost their funding. Any developer is going to be very reluctant to expose its financial affairs to the local authority, and thus inevitably to the wider public. That is something that they simply would not do, because of the reputational damage and the potential wider repercussions on the business, even though in retrospect and under the scrutiny of the inquiry, it may seem unfortunate that they did not do so.
105. It may well be right that Empire could have acted more quickly during the period April 2009 (when the planning approach was agreed with the Council) and late 2010 when there was a sequence of meetings with the Council to seek agreement on what could be submitted as a NMA application. But Empire's conduct through that period is wholly explicable by the recession and the impact it had on being able to bring the development forward at that time. Empire did keep the development going themselves despite the loss of their development partner, albeit at a slower pace.
106. In January 2011 the Council bought the YMCA site, and the Cabinet Report stated that this was to allow negotiation with Empire for a more comprehensive scheme for the cinema site. This is one of the more bizarre episodes in the Council's conduct. Despite this stated purpose the Council did not approach Empire, or have any discussions about amending the Empire scheme to allow linkage into the YMCA site. Instead Ealing left the matter to Bohola, a small and not very credible local residential developer. Bohola's "scheme" involved a 5 screen cinema, which was of no interest to Empire. Ealing then did no more

about the YMCA. Given those facts, it is simply extraordinary for the Council now to suggest that permeability through the YMCA site is of the utmost importance.

107. The NMAs were granted in November 2011. The evidence quite clearly shows that Empire then got on with the normal steps for bringing forward the development. In evidence, LS said they would take about 8 months from grant of detailed consent to getting the work started on site. Empire is not a commercial developer itself, and would not claim to have the resources of LS. It took just over a year to start the actual physical development, with the piling on site. On any analysis this is a perfectly reasonable period. During that period Empire proceeded with the letting of the A3 units; entered the party wall agreements; entered the rights of light agreements; had the detailed plans drawn up to the appropriate RIBA Stage. There is a dispute over precisely what was said at the Scrutiny Committee meeting on 28 July 2011, and in particular whether Empire ever said that the development would commence before the year end. Nothing really turns on this, given that the NMA wasn't granted until 14 November, so it is simply inconceivable that development could have started by the end of 2011.
108. All of the planning amendments had to be achieved before any development could commence. The Council's suggestion that development could have commenced before the NMAs were agreed is plainly incorrect. The internal configuration including the cinema screen spans, and the roof changes were critical to the placing of the piles and the drawing up of the final detailed drawings. The Council drew an analogy with other schemes including Dickens Yard where NMAs have been granted during the construction works, but there is an obvious difference to phased schemes with separate blocks where part of the development can proceed whilst minor design amendments are being secured on other parts.
109. On the other hand the Council's actions through this period were completely unreasonable and unrealistic. The Leader's letter of 24 January 2012<sup>17</sup> is the most obvious example of the Council's approach. Six weeks (20 working days) after the NMA was granted, the Leader was demanding to know why physical development had not commenced, and yet again threatening CPO and suggesting Empire should hand over the site. Perhaps more importantly and even more inappropriately, the Council had been publicly threatening CPO since July 2011. They did so again in July 2012 after the Scrutiny Committee. It is one thing to threaten CPO in private to seek to persuade a landowner to proceed with development. It is entirely different to do so publicly. The results of Ealing doing so in this case have been disastrous. It is entirely obvious that issuing press releases that a Council is seriously considering compulsorily acquiring a site will obviously both make it more difficult to get funding, and alarm any existing funders. Ealing have either been oblivious or uninterested in these consequences and have shown both naivety and a lack of professionalism in their approach to this site in this regard.
110. The fundamental problem that seems to have occurred through 2012, is that the Council wanted Empire to give them more information about what was happening in relation to the site. There is a series of answers to this. Firstly, and fundamentally, that is no possible ground for a CPO. All the objective evidence

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<sup>17</sup> CDD25.10

shows that through 2012 Empire were progressing with the development in a reasonably expeditious manner. Doubtless they could have acted faster and done things differently (e.g. the form of contracts that were entered into) but that was a commercial matter for Empire. Secondly, there is no obligation on a private landowner/developer to share information with the Council. Thirdly, Empire has explained why they did not communicate very much with Ealing in early 2012. Their managing director was furious about the Leader's letter of January 2012<sup>18</sup>, which was utterly unrealistic but also completely out of step with the productive discussions with the planning officers through 2011 on the NMA. Further, he knew by that time that any information he gave to the Council was likely to be given to the press and would simply lead to even more pressure being imposed upon Empire. In these circumstances it is hardly surprising that Empire were not particularly forthcoming with information in the first half of 2012.

111. Empire appointed Clarkebond in June 2012 as project managers, to procure the building. Clarkebond are experienced Project Managers and have taken both building and civil engineering projects through design and construction phases. Neil Kerridge was appointed as project manager and is extremely experienced in that role and plainly progressed the development effectively. The Council appear to be trying to cast some doubt over Clarkebond because they are a company now owned by Empire. But this is misconceived, they are a well-established engineering and project management company, who Empire knew through work at Leicester Square and acquired when Clarkebond were in difficulties in the recession.
112. After Clarkebond's appointment there were regular monthly meetings with the Council with full information on where the project had got to, what steps were being taken and a full timeline. The Council's actions from July 2012 onwards seem to have entirely ignored the steps Empire were actually taking and have been fixated upon seeing physical work on the site. On 25 July 2012 there was a Cabinet meeting to which Empire were not invited. That meeting issued some form of edict to Empire but the Council was very unclear about what it was that Empire was actually required to do. The letter to Empire dated 26 July set out the Council's intention to proceed with a CPO if Empire had not "wholly recommenced works in order to be demonstrably committed to completing the development" by 24 October 2012.
113. The minutes of the meeting say something different and more specific, but these were not drawn to Empire's attention, and the link in the letter was to the wrong minutes. Certainly Empire's understanding was that what the Council wanted was sufficient evidence of commitment to completing the development, and it was not being told that this had to be in any specific form. Its response was simply to press ahead as hard as possible with the development. However, issues including rights of light and party wall agreements had to be sorted out before development could commence and this only happened in November/December 2012.
114. In October 2012 Empire contracted with Avalon Built Environment Limited for a construction management contract, but that did not satisfy the Council. So in January 2013 Empire signed a building contract with John Paul Construction. In

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18 CDD 25.10

December 2012 the piling actually started on the site. This was physical development on the site, which the Council agree implemented the 2010 planning permission. However, even this action does not appear to have satisfied the Council that Empire intended to proceed with the scheme. It is very difficult to understand at this stage what the Council did want, given that physical activity had started on site. Throughout this time the Council just proceeded with the steps towards CPO. The Leader issued a wholly inappropriate press release in September 2012 saying the site was "for sale". In September 2012 the Council published the Development Note marketing the site to potential development partners. In October 2012 it commenced the developer selection process and shortlisted potential developers in November. This was all in the face of the fact that Empire were doing all they could to proceed with the development.

115. Empire's work ground to a sudden halt in late January 2013 when the Irish Bank Resolution Corporation (IBRC) appointed fixed charge receivers over the site. There are a number of critical points to make at this point. The sole reason for the appointment of the receiver was the threat of CPO. This threat had two legal consequences as far as the loan was concerned – firstly, the security was "in jeopardy" and this was sufficient to allow IBRC to appoint the receiver, but secondly, as a result of the threat of CPO, IBRC chose to demand the repayment of the entire loan. Cushman and Wakefield acknowledge that it was the CPO which led to the appointment of the receivers. Secondly, the appointment of the receivers had nothing whatsoever to do with Empire's financial health or the viability of the development. Empire were not in default on any periodic loan payment and were not in default of any other term of the loan.
116. If the receivers had not been appointed there is every reason to believe that the Empire scheme would have been built out and probably would be open by now. The reason why there is no cinema on this site lies entirely at the Council's door by effectively pushing IBRC to appoint receivers. The other critical point is that in January 2013 Ealing had made no mention to Empire of the need for permeability across the site, the public square or the need for "comprehensive" development across the whole site. It is exceedingly odd that if these factors were indeed of compelling public interest they were never raised with Empire in late 2012/Jan 2013 and the Council continued to press Empire to proceed with the 2010 permission. These factors simply cannot be "compelling" if they were not worthy of any comment by the Council at that time, and without the receivership Empire would simply have proceeded with the implementation of the permitted development.
117. Empire were incapable of bringing forward the development on the site between February 2013 and 29 May 2014, when they regained control of the site. During that period the solicitors appointed by the receivers asked Ealing to lift the threat of CPO to allow the sale of the site at unconstrained open market value but Ealing refused to do so. This is further indication that Ealing were set on the CPO course whatever the circumstances. There can be no doubt that having the threat of CPO hanging over the site made it more difficult to sell the site, and therefore more difficult for a commercial developer to come forward to deliver the development without the need for CPO.

*Empire's commitment*

118. The next issue is Empire's commitment and ability to bringing forward development now:

a. Empire went to very great efforts to regain control of the site, for the sole reason that they want to bring forward and operate a major cinema complex on the site.

b. They have made entirely clear that they are not interested in compensation for their land interest. Their sole and overwhelming interest is in operating the cinema.

c. Empire are successful cinema operators across the UK, with 20 cinemas. Since the acquisition in 2006 Empire have expanded a number of these cinemas to increase the number of screens. They have also been parties to two entirely new cinema developments. They are therefore experienced in not just operating cinemas, but in planning and developing new and expanded cinemas.

d. They are very successful cinema operators and developers in Ireland, with a history of successful leisure development.

e. They have worked with a large number of major funders and developers in the UK – including Tesco Pension Fund (Hemel Hempstead ); Capital and Regional (Ipswich); Land Securities (Poole); Church Commissioners (Newcastle); London and Regional (Leicester Square); and Kier (Catterick).

f. It was Empire's evidence that there would be no difficulty in involving a development partner with the Ealing Empire scheme, if the CPO is defeated. Indeed Empire is already closely working with Tesco Pension Fund in Hemel Hempstead and Capital & Regional in Ipswich on current developments and either of these would be suitable partners. This evidence is entirely supported by the marketing undertaken by both Ealing and DTZ where it was clear that there was developer interest in this site.

119. Finally, there are issues over the delivery of the scheme by LS. The delivery of the LS scheme will ultimately turn on a viability appraisal. There is no Development Agreement (DA) between Ealing and LS. This is somewhat surprising given that Cushman and Wakefield gave express advice to the Council that there should be a DA. Doubtless it is correct that any DA will be subject to conditions as to the satisfaction of viability assessments but a DA does at least give some contractual control to the local authority, and it can ensure the completion of the scheme and its component parts once it is commenced. It is therefore very surprising that the Council's planning witness did not realise that there was no DA until the start of the Inquiry, and indeed said in her proof that there was. Her evidence on this issue was wildly inconsistent.

120. Empire owns its land and does not have to submit any land value into a decision as to whether to proceed with the development. In contrast LS will carry out a full viability assessment which will necessarily have to include the cost of acquisition of the Empire and GM land. It is quite clear from the failure of negotiations with GM that there is a material disparity between LS's valuation of this land and GM's. Otherwise agreement would have been reached. This fact of itself must cast some doubt over the ultimate viability assessment, because GM plainly put a materially greater value on their land than does LS, and both will

know that if no agreement is reached the Lands Tribunal (now Land Chamber) is the ultimate arbiter of value. Equally in respect of the Empire land we know that LS put an unrealistically low value on it, because their bid to the receivers was less than half that of the highest bid. LS are not going to go ahead with a scheme if there is a serious risk of loss on the site.

121. There is no reason to doubt that LS's intention at the current time is to proceed with the development, but the development industry, and residential development in particular, is very susceptible to economic change. Given the obviously high land values concerned here, there must be a greater concern over deliverability of the LS scheme than the Empire scheme. Many CPO schemes have not gone ahead because a development partner has decided they are no longer viable, and there would be no great reputational damage to LS if this is what happened.
122. On the other hand Empire need and want to operate a cinema on the land, have planning permission and the funds to do so, and do not have to engage with the valuation issues around the GM land. There is considerably more certainty that Empire will proceed with their development, than that LS will do so.

#### *The CPO Circular tests*

123. In summary, Empire's position is as follows:
124. Firstly, there is no "compelling case in the public interest". The latest Empire scheme including the YMCA site<sup>19</sup>, which the Council will in reality have to provide either directly or indirectly, can fully meet the public interest. There can be no doubt that in the absence of the CPO GM and Empire will cooperate to bring forward a fully integrated site to the south, which meets the appropriate planning policy.
125. The public interest is much better served by the Empire scheme which provides a far better cinema offer, and will therefore have much greater benefits to Ealing town centre. Therefore there can be no compelling case when there is a willing landowner who wishes to develop his land for the use required by planning policy, and who is an experienced cinema operator and developer of new and expanded cinemas.
126. Secondly, the CPO here is not a last resort. Empire went to very great lengths to bring forward a cinema on the site. They were eventually prevented from doing so by the receivership, which was entirely caused by Ealing's own actions. Empire are cinema operators and are not interested in selling the site, whatever the compensation offered. Once LS entered into the agreement with Picturehouse it appears that in reality there was no opportunity for an agreement to be struck between LS and Empire. If there had been absolutely no choice Empire would have agreed to operate the small LS cinema (8 screens) because they want to operate a cinema on this site, although that would clearly not have been their chosen format.
127. Ealing have not treated CPO as a last resort, and indeed have been publicly threatening CPO since 2011 in a wholly inappropriate manner which comes very close to an abuse of their statutory powers. They should not now be supported in

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<sup>19</sup> Ms McGregor's Appendix T

compulsorily acquiring this land because of what seemed at times to be little more than a personal falling out. Ealing have acted through the history of this site as though Empire had deliberately left a vacant eyesore opposite the Town Hall. Ealing agreed that the cinema should be demolished; they have systematically ignored the effect of the worse recession for 50 years; and they single-handedly caused the site to be placed into receivership thereby stopping the development going ahead.

128. LS have not sought to reach agreement for the land because they entered into agreement with Picturehouse which made it impossible to agree with Empire; and failed to acquire the site on the open market when they could have done so from the receivers. LS's offer was less than half that of the higher bidder.

### **Response by the Council**

129. The Council provides a summary of the history of the failure to provide a cinema on the site<sup>20</sup> and submits that:

(i) Whilst the Council has given Empire ample time and opportunity to deliver their development, they have never in reality been in a position to do so, and that remains the case;

(ii) Prevarication, excuses, delay and excessive optimism have been the hallmarks of Empire's approach to this site over the last 7 years;

(iii) Empire is a successful and competent cinema operator but has never built a scheme of this kind or on this scale; the impression left by their evidence was that they are out of their depth here;

(v) The Council's approach has been both fair and proportionate in the circumstances;

(vi) Once the deadline of 24 October 2012 was reached and the process began of securing a development partner, progressing a comprehensive scheme for the whole of the EAL6 site and making a CPO should it not be possible to acquire the land required by agreement, it would have been very difficult to go back – but in any event there was no reason to do so;

(vii) The Order will deliver a scheme that has much greater benefits for the wellbeing of the Council's area than reverting to the Empire development;

(viii) There would be huge and unjustified risks and uncertainties were the Order not to be confirmed, since both the delivery of the Empire development and (even more so) the delivery of a comprehensive scheme for the whole of the Order Land, which would depend on landowner co-operation of which there is remains no convincing evidence, are unlikely to take place either at all or within any reasonable timeframe.

130. Empire contend that a 20-screen cinema will be better for Ealing than an 8-screen cinema because it will bring more people into the centre; but Empire's ambitions to compete with the likes of Westfield are not only unrealistic but also

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<sup>20</sup> Council's closing submissions paras 135-197

not supported by any policy requirement or ambition. Westfield exerts a massive draw in its own right, even competing with the West End; Ealing does not compare. If it were ever built, this would be Empire's largest cinema – in a location where there is substantial competition close by, and which will have no on-site car parking (unlike for example the Vue at Park Royale). What is more, the scale of a 20-screen cinema would overwhelm the site, resulting in a massive cinema 'box', excluding the possibility of providing new flats and requiring an enclosed mall configuration (about which more will be said later), rather than open streets and an open public square, all with active frontages.

131. 8 screens are not, in themselves, any better or worse than 20. More screens do not however guarantee the showing of a wider range of films – this depends on operator choice. Nor does the evidence support a conclusion that 20 screens in Ealing are "better" than 8. Empire currently operate 17 cinemas (including Catterick, which is not yet open), with a range of 4-18 screens. Of these, around half (9) have 6-10 screens, which is of the same order of size as the cinema which Picturehouse will operate in the Scheme. And information about new multiplex cinema openings between 2011-2015 shows a range of 3-15 screens, with an average size of between 8 and 9 screens. It is nevertheless significant that Empire have indicated their willingness to operate a 7 (or presumably 8) screen cinema in Ealing. Whilst their stated preference remains to operate a 20 screen cinema, this seriously undermines the argument that "the major public benefit of the Empire scheme over the CPO scheme" is that it has 20 cinema screens.
132. The ability to let the restaurant units is critical to development viability, and is one of the reasons why the section 73 application was made. Some restaurant operator interest is claimed for the Empire development, but only one (Prezzo) is said to have signed heads of terms, and there is no direct evidence from any of those mentioned confirming their interest or the terms (including as to rent) on which they might be prepared to sign up. There is insufficient floorspace at ground level to meet operator requirements, and it is agreed that operators prefer to avoid having to use mezzanines. The retail units in the LS Scheme have substantially larger ground floors and do meet current operator requirements. There is therefore material doubt about whether the restaurant units in the Empire development could actually be let, either at all or on terms which enabled it to be viable.
133. Much has been made of the fact that there is no "development agreement" between LS and the Council which obliges it to construct the scheme through to completion, come what may. However the advice of Cushman & Wakefield was given to the Council throughout the process of negotiation and agreement of the CPOIA and Land Sale Agreement with LS, and these arrangements are entirely satisfactory. It is also clear that Council members who approved the terms of the (then draft) CPOIA and LSA were advised, in unambiguous terms, that no legal obligation was to be imposed on LS to complete the scheme. In any event an unconditional agreement of the kind suggested would be very unusual, if not unique. Certainly no examples of such an agreement have been brought to the Secretary of State's attention, and LS, one of the country's most experienced and largest developers, have never committed and would not commit themselves to such an obligation. It would effectively be unenforceable, and it is very difficult to see what damages (other than possibly professional expenses and fees) the Council would suffer as a result of such an obligation being breached.

134. Nor, critically, is such an obligation necessary in the present case. Aside from the clear and effectively unchallenged evidence that the scheme is viable and likely to be delivered, the provision made in the LSA that the YMCA site, which is owned by the Council, will not be transferred to LS until the remainder of the scheme has been completed is a hugely significant incentive for LS to complete the development. The commitment to underwrite the Council's land acquisition and CPO process costs, which is more usual, is also significant in this context.

## **Objection 2**

### **Name of Objector – Legal Interest**

135. GM Investment Trustees Ltd (GMITL) and GM (UK) Pension Trustees Ltd (henceforth referred to as GM) own plots 15, 18, 21, 22, and 23, fronting onto Bond Street with access from Mattock Lane.

### **Case for the Objector**

*The main points are:*

136. Aberdeen Asset Management is the appointed Fund Manager for the GM (General Motors) 4 UK pension funds, which invest through GMITL. The Fund, along with GMITL, has a strong track record of commercial investment, development and management.
137. Walpole House is owned by GMITL. It will be vacated by the University of West London in either late 2015 or early 2016, due to the University having decided in the past 18 months not to renew its lease. It is a valuable long term asset for GMITL. Its future could include refurbishment or redevelopment, either on its own, or as part of a wider redevelopment of the area. GMITL has no in-principle objection to redevelopment of the wider area, and would be keen to play its part, partnering with the Council, LS or others. LS has not engaged adequately in discussions with GMITL. What has been said has been too late in the day, and for that reason has perhaps been hobbled by earlier development appraisal decisions. GMITL has entered into discussions to see whether, even at this late stage, it might be possible to withdraw its objection to the CPO on receipt of an acceptable offer from LS, but regrettably none has been forthcoming.
138. There are only three main land interests required as part of the LS site, and indeed perhaps only two (plus the Council) required for a comprehensive scheme delivering a cinema, restaurants, open space and through routes. This is a situation in which the scheme's benefits are doubtful to say the least, and no proper consideration has been given to alternatives. The Council's corporate pursuit of a cinema on the Empire site has led to a situation where the entire CPO site has been promised to LS, to be delivered via the CPO. Cushman & Wakefield advised that the case for acquiring the Empire interest might be stronger as part of a comprehensive development, subject to the right deal being done with the private sector. Unfortunately, its advice on contractual terms was not followed by the Council as landowner, which entered into contract with LS in late 2013 and thereby found itself precluding any re-development by those interested in the non-cinema parts of the site. The following submissions set out the main points of what has become a classic case of the tail wagging the dog.

*The scheme and CPO purposes*

139. It is best not to make too many assumptions about the final form of the development which might be enabled by a confirmed CPO. Uncertainty over the deliverability of the LS scheme as consented by the Council may not prevent its exercise of vesting powers, but it inevitably casts doubt over the benefits case advanced at this inquiry to justify confirming the CPO, (which focuses almost exclusively on an analysis of the LS permission).
140. The legal parameters are clear. Subsequent vesting of title in the acquiring authority must be undertaken for a purpose or purposes which lie within the purpose of the underlying CPO. The Argos case<sup>21</sup> reiterates that the purpose for which a CPO is made or confirmed is to be gleaned from a reading of the Order itself in its statutory context. It also clarifies that a CPO is not tied to a specific permission unless it says so on its face: *"The mere fact, therefore, that a particular permission or development proposal may have been the basis for making and confirming the order does not of itself define the scope of a CPO and its purpose, and prevent acquisition for a different development proposal provided the purpose of the acquisition remains within the scope of the CPO. Where the CPO is not tied to a particular permission or a scheme defined in a particular way, it would be wrong to construe its terms or to imply some limitation to that particular effect."*
141. The written and oral evidence submitted by the Council did not present a coherent picture of what it thought was the purpose of the CPO. Different witnesses said different things; the purpose was both the comprehensive redevelopment of the site and the delivery of the LS consented scheme; delivery of 'comprehensive development' rather than piecemeal development; or the regeneration of the site that was "to all intents and purposes the same" as the delivery of the LS scheme.
142. The LS scheme and the broader redevelopment of the site are not the same thing, and the difference matters. If the Council's case is that the purpose of the CPO is to deliver the LS scheme (because that, it says, can be delivered within a certain timescale), then whether there is a compelling case for the acquisition of interests such as GM's rests on a much narrower base. If that is the way the Council eventually states its case, then the Inspector and Secretary of State are entitled to be significantly more insistent that the likely delivery of the LS scheme is demonstrated.
143. However, the CPO itself states the order has been made *"for the purpose of the carrying out of development, redevelopment or improvement of land south of New Broadway, west of Bond Street, north of Mattock Lane and east and of including part of Barnes Pikle consisting of the demolition of existing buildings and the construction of a mixed use retail leisure including a cinema and restaurants and residential development with associated infrastructure and public open space thereby achieving the promotion and/or improvement of the economic, social and environmental well-being of the area."* That definition of the CPO's purpose is not tied to the LS scheme. It could be used, within the scope of the principle in Argos, to found vesting declarations (i.e. acquisitions) of land and interests for a very different scheme than the one we have spent such

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<sup>21</sup> Doc 62

time on at the Inquiry. Specifically, the wording is wide enough for the Council to justify taking GM's interest to enable a different scheme from the current LS consented scheme, the benefits and adverse consequences of which are currently unknown.

144. Confirming this CPO would also allow the Council to take GM's interest and to pass it to LS, only for LS then to decide not to bring forward a scheme which re-developed Walpole House itself. As long as the acquisitions were made by the Council in good faith and LS called for the interests in good faith, a later change in circumstances would not invalidate that course of action. GM is not alleging anything but prudent commercial behaviour on the part of LS – but it is clearly a possible outcome here that GM's land may be removed from it only to end up within the LS portfolio as an asset rather than as part of an Ealing cinema site re-development.
145. Whether this is a hypothetical concern or a matter which should cause the Secretary of State concern depends on whether there is evidence that the current LS scheme has a reasonable prospect of being delivered.

*The viability and deliverability of the scheme*

146. The facts in the Argos case are instructive: the company objected to the CPO affecting its interests, partly on the basis that the Network Rail/Birmingham City Council scheme which underlay the CPO was unlikely to be viable and deliverable. Its objection did not succeed, but before the General vesting Declaration (GVD) was exercised, the Network Rail/Birmingham City Council scheme did indeed prove to be unviable and undeliverable, and the GVD was then used to acquire Argos' interest to facilitate a wholly different scheme. The use of the GVD was challenged – that was the subject of the Argos litigation – and survived, on the basis that the purpose of the CPO was broadly drawn. But by that stage it was far too late to object to the confirmation of the CPO, which had been justified to the Secretary of State on the basis of an unviable scheme which was then not delivered.
147. Here, the Council and LS rely on clearing what appears to be a low policy hurdle in the Circular: "*...the factors which the Secretary of State can be expected to consider include: (iii) the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitments 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.*"
148. Hence it is said that the test in the Circular is whether there is a "reasonable prospect" that the scheme will take place; the Council are entirely reliant on LS for the evidence that this is so, and given what has (not) emerged in evidence, its case suffers from a complete lack of transparency. The evidence presented at the inquiry was as follows:

(1) There is no financial viability evidence directly relating to the scheme presented as part of the Council's case. The Freedom of Information (FOI) request in relation to viability information yielded a document which had been

heavily redacted. The Council has not provided any positive quantifiable or verifiable evidence that the scheme is viable.

(2) The Secretary of State does however have some clear indications that the scheme is unlikely to be viable. As part of its planning application, LS undertook a financial viability appraisal ("FVA") of the scheme, to justify the low level of affordable housing it proposes to provide. LS confirmed that the FVA was a true reflection of the viability of the scheme as a whole at that point, and that it showed that only a certain number of units could be provided as affordable homes before the scheme became unviable – not a single unit more. It was also confirmed that the FVA appraisal at that time contained a lower figure than currently contemplated by LS for the acquisition of Walpole House. No change is being made to the affordable housing level. It is therefore a little difficult to escape the conclusion that the scheme viability is questionable.

(3) No evidence was given that revenue assumptions had increased, or that costs had gone down, in the period since the FVA. LS's witness said that he didn't "like the term 'marginally viable'", simply saying that LS's view was that the scheme was viable; but he accepted that where a 'quality design' was required, with public space and heritage assets in play, "you would have to work hard to achieve viability".

(4) Cushman and Wakefield also suggested that he had conducted – though not recently – their own assessments of viability; but they do not act for LS and accept had no access to their figures; no weight can be attached to this evidence.

149. In the end, the Council's case boils down to: (1) the fact that LS is (plainly – as GM knows and accepts) a highly successful development company, and (2) what it describes as the unlikelihood of LS progressing this far, if there was no reasonable prospect of the scheme being viable. The first of these points is in fact a point against the confirmation of the CPO here, if one looks at what is going on with a modicum of commercial common sense. The Secretary of State no doubt will do that, because the Circular and the protection of Article 1 Protocol 1 of the Human Rights Act surely require these questions to be approached with a sense of commercial realism.

150. The evidence discloses that LS has spent what is a relatively small amount of money, say £2m to £3m, to get itself to the brink of being able to call for the freehold interests to the entire site (and pay compensation for those interests according to its own valuations in the first instance – the 90% advance payment – and then only perhaps after some years to pay what the Upper Tribunal orders it to, if in due course the scheme turns out to be viable). That is a highly advantageous commercial position to be in, but it does not follow in the slightest that the scheme is viable, or has a reasonable prospect of becoming so. LS are taking a perfectly sensible commercial gamble that the scheme will, in due course, turn out to be viable. But they cannot demonstrate that there is a reasonable prospect of it being viable, nor can one infer from the actions of LS thus far, that there is such a prospect.

151. The Council has no control whatever over whether LS decides to progress the scheme. There is no DA which commits LS, either unconditionally or even conditionally, to deliver the scheme. It was confirmed that an unconditional commitment to develop would never be signed by LS; it was also said that a conditional arrangement was in effect what LS had with the Council in this case.

That was plainly incorrect – there is nothing that binds LS to proceed, if it decides the scheme is not viable (1) between the confirmation of the CPO and the GVD, (2) after the GVD and before the scheme is implemented, or even (3) after implementation. Indeed, the further along the process LS goes, the weaker the Council’s negotiating position becomes.

152. None of this is a criticism of LS. It is a criticism of the Council, who failed to secure from LS the kind of DA that Cushman and Wakefield advised it to obtain. The Cushman & Wakefield advice to the Council, reflected in the Financial Brief to the shortlisted developers in late 2012<sup>22</sup>, was that there should be a Development Agreement (“DA”); the Council – as owner of the former YMCA – should be an equity partner in the overall scheme; the DA should contain obligations to commence and complete the scheme; these should be conditions precedent in the DA; and these should include control over the letting policy for cinema and other units.
153. The Council did not explain why these key aspects of the proposed public-private deal were not achieved. LS struck a very hard bargain, which has left the Council without the kind of protections and guarantees that its commercial property adviser recommended it receive. It has also left it to promote a CPO without any reliable evidence that the LS scheme is viable, in circumstances which are more likely to lead to a GVD coming forward against the background of a re-worked LS scheme, which may or may not include Walpole House.
154. The Secretary of State should also take particular notice of the fact that LS – which was handed control of the negotiations with affected landowners – has not to this day made an offer to purchase GM’s interest in Walpole House. Empire wants to operate their cinema, and have been locked out by LS and Picturehouse – there seems no prospect of LS negotiating a purchase with them. GM is in a completely different category – it is a major fund which deals in a commercial way with its assets. If LS wished to advance the site assembly then it is obvious that a commercial arrangement with GM should be reached.
155. The best that LS offers is (even leaving the price aside) an arrangement whereby GM withdraws its opposition to the CPO confirmation and LS commits to buying Walpole House upon the implementation of the CPO. In other words, the road to the GVD would be cleared, but LS would not have to purchase GM’s interest until that point. LS of course controls whether the Council makes the GVD by signalling that it wishes the land interests under the confirmed CPO to be passed to it.
156. It was a peculiarity of this Inquiry that GM’s participation was on hold pending negotiations which did not bear fruit. It would be entirely legitimate for the Secretary of State to ask why his advice to acquiring authorities and their partners to seek negotiated solutions rather than rely on compulsory purchase has not resulted in a deal with GM, and what he can reasonably infer from the current position. LS say that GM is asking too much for its interest, despite the negotiations being undertaken on the basis of a very detailed and expert viability appraisal. Perhaps rather closer to the truth is that LS cannot afford to buy Walpole House. The obvious inference is that the viability of the LS scheme – which has already had to take on the additional burden of the elevated amount

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<sup>22</sup> CDD 13

LS does think it can pay to GM for its interest - would not bear the financial weight of the full value of the interest. The failure of the GM negotiations therefore provides further evidence that the LS scheme viability is not only uncertain or 'marginal' but entirely unproven.

157. This does not represent an adequate response to the policy requirements in the Circular. Where the evidence gives every indication that the scheme is not viable, and the developer has arranged things so that it is under no obligation to deliver the scheme even if the CPO is confirmed, then the Secretary of State should be very circumspect about confirming the CPO, and thereby interfering with GM's rights under the HRA.

*The benefits and planning merits case*

158. The LS scheme would bring about an improvement in the environment of the site and would deliver a cinema, restaurants, public space and some permeability. It would also deliver some affordable housing. Planning permission has been granted for it. However, the s38(6) test in the Planning & Compulsory Purchase Act 2004 does not equate to the test of "compelling case in the public interest" that is central to the Circular. In any event, in relation to one key component of the planning balance struck by the Council as local planning authority when it granted the LS permission, it is doubtful whether the s38(6) test would be passed today.

159. The Council's judgment on Environmental Impact Assessment provides a realistic check on the scale of impact on central Ealing which the LS scheme would provide. The Council assessed whether the LS proposals would be likely to have 'significant' environmental effect, and in so doing, was bound to assess negative and positive effects. The kind of effects which it is required to consider include those on townscape, and socio-economic matters such as the vitality of Ealing town centre. Its conclusion was that such effects were not likely. It would be inconsistent with that judgment to claim significant beneficial effects of the proposal. By contrast it would be entirely consistent to have reached the judgment that a scheme which did not have significant effects on the environment should be granted planning permission. That is what has happened here.

160. The LS scheme does not deliver, or enable in any tangible sense, a "cultural quarter". One must be realistic about the kind of scheme it is. The majority of its floorspace is residential. The cinema is an important cultural facility, but the kind of multiplex which LS are committed to should not be misidentified as the kind of cinema that Empire wishes to provide. The gallery space is very small indeed. The rest of the internal space is given over to restaurants; the value of the public space should not be overstated, either in terms of quantity or quality - no claim is made that it will provide a space large enough for 'cultural' events beyond the most modest of examples. It is therefore thoroughly misleading to suggest to the Secretary of State that the scheme will "underpin" the cultural quarter.

161. There is little or nothing to support the suggestion that the LS scheme would contribute significantly to the vitality and viability of Ealing town centre:

(1) There is no quantification of additional money spent, or Gross Value Added, as a result of the scheme.

(2) The LS scheme is not designed to, and would not, claw back the lost retail (largely in high-end fashion) that has been lost in recent years to places like Westfield Shepherds Bush. The proposal is not intended as, and would not comprise, part of a retail circuit (unlike earlier notions of how the site would fit into the town centre).

(3) There is no claim of any material spin off financial benefit for the town centre due to additional non-domestic rates, or supply chains - indeed the two pre-let restaurant units so far are nationals or international multiples with their own supply chains which are unlikely to benefit locals in Ealing.

(4) The jobs that the scheme would provide would be beneficial; however, they are substantially less than alternative schemes.

(5) There is no apparent benefit from the restaurants proposed. Ealing has done very well as far as restaurants and A3 uses are concerned, as the evidence indicated.

162. Overall, the benefits case has been overstated. Furthermore, the unsatisfactory elements of the LS scheme are also relevant to the assessment of whether there is a compelling case in the public interest for CPO purposes. The scheme would cause harm to the conservation area because of the loss of the YMCA (particularly its front elevation). This was recognised in the Heritage Statement<sup>23</sup>. Harm to the CA would result, it is accepted by LS, but that harm is put at 'less than substantial' in NPPF paragraph 134 terms. However, this was not properly dealt with. Neither the Heritage Statement nor the Report to Committee identified that harm to a CA must be given "considerable importance and weight" rather than just weighed in the NPPF paragraph 134 balance. It has been said by the Court that such harm gives rise to a "strong presumption" against the grant of planning permission. In a recent decision, the case of *Mordue*<sup>24</sup>, the Court held that the requirement to give considerable weight to any harm, even when judged to be 'negligible' needs to receive express recognition in the decision, so as to enable it to be seen whether the decision-maker has indeed applied the statutory duty in s66 or s72 correctly. There is nothing approaching compliance with these legal duties in the committee report on the LS application.

163. The Minute of the committee discussion reveals a degree of disquiet amongst the councillors about the heritage harm; however, acting on questionable advice in relation to conditions and timing, the members felt that a quick decision had to be taken which would not leave room for further consideration of the retention of the YMCA façade. EH felt that the loss of the YMCA was 'regrettable' – but they too show no signs of having employed the approach to the decision that has been clarified in cases like *Forge Field*<sup>25</sup> and *Mordue*. The upshot is that it is difficult to say how the decision on the LS application might have gone if the correct heritage approach had been taken; but even if one assumes for present purposes that permission would still have been granted, it would have been on a finer balance of considerations. The overall benefits or compelling case should be commensurately reduced.

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<sup>23</sup> As submitted with the LS application

<sup>24</sup> Part of Doc 62

<sup>25</sup> Part of Doc 62

164. The provision of affordable housing is also sub-optimal. For a scheme of this size, the affordable housing yield is very small. Plainly, the FVA which led to the affordable housing provision included the costs of assembling the site – something which underlines how very expensive the LS approach to the site, via CPO, would be. Alternatives, to which the submissions turn below, would not necessitate millions of pounds being spent on site assembly.
165. The north-south and east-west permeability incorporated into the LS scheme would bring some benefits, but since the site is not intended to form part of any retail circuit, the chief benefits prayed in aid are that there would be a high quality route from New Broadway to the Pitzhanger Manor area, and that there would be routes which would draw pedestrians past the restaurants to the front door of the cinema. However, there are already two main routes, both heavily used, between the Broadway and the Pitzhanger Manor area – Bond Street and Barnes Pike. There is no evidence that footfall will be heaviest in the region of the New Broadway entrance to the scheme – the scheme is to the west of the main town centre where the public transport hub and the majority of other shops and services are found; from that location, Bond Street is more direct and lined with shops.
166. The evidence on the cinema front door and restaurants was baffling. The Council accepted that the front door of the cinema could be positioned nearer New Broadway.
167. The LS scheme has been granted permission. But even the Council would accept that it is by no means ideal. There is a rather sad irony about the (soon-to-be-renamed) 'Ealing Filmworks' scheme that LS intend to build, evident from the visualisations – the iconic Empire frontage would just be decoration on the front of a smart apartment block. It would represent the very worst of facadism – and if anything, to the first time visitor, give the strong impression that the name simply relates to a block of flats and there is no cinema there.
168. For these reasons, the Secretary of State should be cautious about accepting the Council's asserted benefits 'package' in support of the CPO.

#### *Circular tests*

#### *Whether the purpose for which the land is being acquired fits with the adopted planning framework for the area*

169. If one defines the purpose as the LS scheme, then the consented scheme only partly fits with the adopted framework. It does not accord with the central need for affordable homes in Ealing, or with the need to protect the character and appearance of the CA. It accords with the DSDPD on land uses, provision of a cinema, permeability and comprehensive regeneration.
170. The planning policy framework does not require the kind of scheme promoted by LS, despite the heavy suggestion in the Council's evidence that it does. There is no doubt that adopted DPD policy does not require the site to be developed by one developer in a "comprehensive" way; it is also clear that up until October 2012, the Council was urging Empire to complete its cinema development, which (had it been completed in the form it took in 2012) would have been fundamentally incompatible with the way the LS scheme approaches the site – i.e., cinema in the middle, public space, permeable routes, etc. The policy in the

adopted development plan document – the one which has passed through Examination in Public – is itself not incompatible with the Empire scheme, and there are no adverse comments in the DPD about the Empire consent. It is only in the SPD (that did not pass through independent scrutiny) that we find a paragraph which suggests that the Empire consented scheme would not achieve the SPD aims.

171. Both the DPD and SPD were adopted on 10 December 2013. The evolution of policy and guidance on the site<sup>26</sup> shows how the approach changed once the Council accepted the mid- 2012 advice of Cushman & Wakefield, which echoed the earlier advice of Ardent<sup>27</sup>. The Council wanted the cinema to be re-provided and felt that Empire were not likely to deliver it. They were advised that CPO would be a possible means of breaking the logjam on the cinema, but that a CPO would need to be delivered by a commercial partner with a bigger scheme, and therefore the bringing forward of development across the wider site could do with a strengthened policy basis. GM does not suggest that the policy which emerged thereafter was inappropriately formulated – but it's plain that the focus on comprehensive development of the site was not a precursor to the LS scheme but was an integral part of the CPO strategy for the cinema site. That is abundantly clear from the Council's opening submissions to this inquiry: "*the Council ...took the necessary steps to secure the comprehensive re-development of the site by a developer who would take forward and fund a commercially viable scheme which met the Council's objectives. In parallel with this process, the Council had continued to develop their planning policy to the stage where it was no longer possible for their objectives to be met solely within Empire's site...*"(underlining added).

172. When applying the Circular test on compliance with the planning framework, it surely matters if the most directly relevant aspects of that framework were put in place to smooth the path of the CPO. There is an uncomfortable circularity in the Council's justification for the CPO, and less weight should be given to the compliance with DPD and SPD as a result.

*The extent to which the proposed purposes will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area*

173. If the "purposes" are equated with the LS scheme, then the answer is that the LS scheme will contribute to some degree, but not to the extent claimed by the Council; and there will be harms to social and environmental well-being as a result.

#### *Financial viability*

174. There is no clear evidence that the LS scheme is viable, or that there is a reasonable prospect of it coming forward. In fact, the structure LS have negotiated for themselves strongly indicates that there are major viability concerns with the scheme. LS's evidence, always very carefully phrased in terms of "no intention not to develop", or "LS intends to develop" exacerbated, rather than eased, the unease about this aspect of the Council's case.

<sup>26</sup> As outlined in Mr Barton's evidence for the Council

<sup>27</sup> Mark Henderson's Appendix 6

*Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means*

175. The Council's case is that there is no realistic prospect of a scheme which complied with the DPD and SPD, or with as many benefits as the LS scheme, coming forward in a reasonable timescale; it is said that land assembly is too complex, there is no agreement between landowners, and no 'proposals' have been produced. Often the point about complex site assembly has much force - hundreds of interests are needed and it would be quite impossible to imagine assembling them without the exercise of compulsory purchase powers. The difficulty facing the Council here is that there are only three main land interests in the site, and it is unclear whether even all three of those are needed to bring forward most if not all of the benefits of the LS scheme, or of the purposes more widely defined. Furthermore, the planning policy and guidance applicable to the site would allow it to be re-developed piecemeal. It is not necessary in order to comply with planning policy to have a CPO or a single monolithic development project.

176. As for alternative proposals, the Council was dismissive of GM's indicative drawing<sup>28</sup>, and the early efforts to amend the Empire scheme. However, it is hardly surprising that Empire, GM and Flava have not commissioned a joint planning report or design, given the events of the past few years:

1) Empire has been focused on the struggle to retain control over its site, to fight off the CPO and to put in place what it needs to complete its amended scheme. It should not be held against it, or indeed against GM, that Empire has not devoted more energy to the comprehensive redevelopment of the site as a whole. Indeed, until October 2012, the Council was sending diametrically the opposite message - that the Empire scheme alone should be completed.

2) GM has had a tenant (University of West London) whose lease expires in September 2016. Until the note to prospective developers was released in late 2012, GM had no idea that Walpole House might be taken from it compulsorily; it was entirely comfortable (and still is) with the notion that Walpole House might in due course be worked into a regeneration of the wider site in line with policy. Since the CPO committee and decision (mid 2013 to mid 2014), the Council has handed over negotiations to LS, whose interest is not in encouraging GM to bring forward another scheme. GM has thought hard about whether it would, in the next few years, be content to bring forward a scheme with Empire and the Council (and, subject to further discussion, with Flava); and it has decided it would be.

3) To that end, and in the light of the Council's unwarranted scepticism about alternatives, it has continued to discuss the matter with Empire and has produced for the Secretary of State a Memorandum setting out the basic shape of the Empire/GM thinking<sup>29</sup>. There is no evidence to suggest that, in the absence of the CPO, that the two could not reach commercial terms to bring forward an alternative scheme; the big advantage that GM and Empire have over LS is that they do not have to spend tens of millions of pounds acquiring very substantial land interests. They already own them.

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<sup>28</sup> Produced by Mr Neate, Doc 33

<sup>29</sup> Doc 60

177. The second point of detail is whether an Empire/GM proposal could meet the terms of the DPD and SPD. It could provide a major multiplex cinema, including a pedestrian connection with restaurant units through it from north to south. The cinema would be likely to have considerably more screens, and therefore potential capacity and range, than the LS 8 screen multiplex. One should be wary in addition of the way that the Picturehouse pre-let has been advanced at this inquiry – contrary to Cushman and Wakefield’s advice, the Council has no control over the letting, and LS confirmed that the likely lease with Picturehouse would give no control over the scheduling and programming of films in the multiplex. Picturehouse is now part of the Cineworld group, and there is no guarantee that its past programming policy will be maintained. Empire/GM could, with the Council’s co-operation, bring in the former YMCA, either in whole or just in terms of the façade with leisure/community use behind; Empire/GM could provide residential and an open outdoor space with active frontages.
178. Whether Flava comes into the scheme initially, or not, is unclear. However, the route to the south, and its upgrading, can be delivered by Empire and GM. The difficulty of dealing with the interests on the Flava site were overstated; there are two freeholders, and a main long lessee. The occupational interests all bearing the Flava badge are more in the nature of profit centres for Flava than different independent interests.
179. It is not, in the end, essential for GM to demonstrate that it has a viable planning permission for an alternative scheme. It is not even necessary for there to be a reasonable prospect of an alternative scheme pursuant to paragraph 16(iv) of Appendix 1 of the Circular. This is a case where the Council formed the view that it wanted to seize control of the delivery of the cinema site. If the CPO was to be confirmed just on the Empire site, the Council would be in a position to bring forward a Plan B with GM, and Flava, if necessary. Indeed, the LS architect accepted that one might fit in the 8 screen cinema within Blocks A and B without needing the part of the site currently occupied by Walpole House, and with an entrance in Block A which would draw people through the site, past restaurants, and to an entrance nearer to the retained frontage and set back from New Broadway. The cinema can go on the cinema site, in short.
180. The unjustified step too far in this case has been the way the rest of the site was sucked into the vortex of the CPO process on the basis of the need for a cinema on the Empire site.

*CPO as a 'last resort' and discussions with GM*

181. The Circular also makes it clear that CPO should be a last resort. Empire will argue its own corner on that score, but the position in relation to GM is pretty stark:
- (1) The presence of Walpole House in emerging policy for the site had been consistent since 2004, but there was no suggestion that the entire site had to be developed as a whole by one developer.
  - (2) No suggestion of CPO was made to GM or its agents before the Council reached its resolution in principle about CPO in July 2012. The first that GM knew about such a proposition was when they picked up the Development Note of September 2012 in the property press; by this stage, the Council was already

gearing up to go to the market for a developer in the expectation that Empire would not meet the October deadline the Council had imposed on them.

(3) GM then contacted Cushman and Wakefield. The Council offered a meeting and GM expressed their surprise at the turn of events. By the turn of the year LS had been appointed and the Council handed the matter over to them.

(4) A meeting was held between GM and LS on 10 April 2013 – by this time, the contractual arrangements relating to the whole site had been signed by LS and the Council. No offer to purchase Walpole House was made at that meeting.

(5) Nothing then happened for 6 months, until on 25 October 2013, a “scheme update” was provided.

(6) Another three months passed, until on 27 January 2014 in a phone call, an “informal offer” was made by LS and rejected. What this omits to make clear is that the so-called ‘informal offer’ was not an offer to purchase GM’s freehold interest outright<sup>30</sup>.

(7) In July 2014 the CPO was made. The Council and LS have no defence to the charge that they signally failed to engage properly with GM to negotiate a solution before the CPO was made.

(8) Despite an “offer” being made on 10 September 2014, and discussions much nearer and during the inquiry itself in 2015, LS has to this day only made offers contingent on the implementation of the CPO. If the CPO were to be confirmed, there is no telling when that might be, or whether in the end it would happen. For a fund like GM, to grant what is in effect an option over Walpole House is completely unacceptable.

182. All this surely cannot have been from a lack of experience or incompetence on the part of LS – it must have been intentional; and yet GM is one of the three main interests on the site. It would be open to the Secretary of State to draw an adverse inference from this pattern of behaviour – not just a failure to abide by the clear guidance in the Circular.

### *Conclusions for GM*

183. In the case concerning Clays Lane Housing Co-Operative<sup>31</sup> the Court of Appeal set out what remains good law binding on the Secretary of State when considering whether to deprive GM of its interest in Walpole House: “*I conclude that the appropriate test of proportionality requires a balancing exercise and a decision which is justified on the basis of a compelling case in the public interest and as being reasonably necessary but not obligatorily the least intrusive of Convention rights.*”

184. There is a public interest case for the acquisition of GM’s land, but it falls short of being “compelling”. The land is not needed for a cinema, which is what the Council really wants. GM can play its part in a wider re-development in line with adopted policy – if GM are treated fairly and given a chance to do it. Whilst it is understandable for LS to say that it would not countenance a joint venture with GM, it is deeply regrettable that the local authority had given no thought at

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<sup>30</sup> Mr Lawes’ Appendix GL2

<sup>31</sup> Doc 62

all to the alternatives available for Walpole House if the CPO is not confirmed for it. There is a practicable alternative way forward for the site which does not require compulsory deprivation of landowner interests.

185. The Council's last resort is to say that non-confirmation would cause delay. It might. But it should be remembered that the LS scheme, for which planning permission was granted in 2014, is not programmed (indicatively) to deliver the scheme until 2019. A substantial period has been taken up with the CPO and this Inquiry, and awaiting its result. Those who would be concerned with an alternative future for the site – certainly Empire, the Council and GM – are not on the evidence before the Inquiry incapable of bringing a scheme forward; and they would not require CPO powers to be exercised.

186. The right balance of public and private interests is to enable such a scheme to come forward by either rejecting the confirmation of the CPO as a whole, or simply decline to confirm in relation to Walpole House. For these reasons, the CPO should not be confirmed over GM's interest because there is no compelling case to do so, and it is not reasonably necessary. In summary:

- The LS scheme accords with the planning framework in some ways, but not in several important respects; the framework of DPD and (in particular) SPD in this case should also be approached with caution, given how it was developed in response to the LS scheme rather than vice versa.
- The benefits of the LS scheme have been overstated.
- It remains unproven that the LS scheme has a reasonable prospect of proceeding in the form of the outline permission. The promoter's case on viability and deliverability in CPOs often withholds certain details – here, there are none whatever. LS is not committed to deliver the scheme, and scheme viability is clearly a source of concern.
- There is an alternative view of the site(s). Empire and GM control the lion's share of the whole site. Both want to redevelop, including the provision of a cinema and restaurants as well as residential. A scheme put together by an experienced cinema operator and a fund like Aberdeen/GM is realistic and practicable, and would deliver the key gains that the Council seeks.
- Undermining the use of compulsory powers in relation to Walpole House has been a serious failure to abide by the guidance in the Circular – in the case of GM the CPO was not a "last resort". Discussions both before and since the decision to use CPO powers have fallen well below the level required to justify taking GM's interest from it forcibly.

187. For these reasons, GM submits that the Order should not be confirmed in relation to Walpole House.

### **Response by the Council**

188. The GM alternative is not even advanced as a 'proposal', let alone a scheme. It may be thought that this makes it easier to deflect detailed criticism, but in reality it means rather that the Secretary of State cannot attach significant weight to it. There has been ample time for both Empire and GM to work up an overall masterplan for the site in conjunction with others with interests in the Order Land, to develop more detailed proposals, and to bring cogent evidence

that these are feasible and deliverable. But none of this has been done. Both objectors have waited until the last possible moment (3 weeks before the inquiry opened) before revealing their hand. In the case of Empire, a proposal along the lines of the one put before the Inquiry was worked up by its architect in late 2012. In the case of GM, it seems that “the concept already existed”, but it has not been worked up in any detail and is one of a range of concept sketches which have been produced, in the Council’s view, not with a view to advancing a serious alternative to the Scheme but in order to maximise GM’s compensation payment. There is nothing wrong with that as such, but the point is that these are not serious alternatives to the Council’s scheme. This suggests at the least a lack of confidence in the alternatives, and a desire to avoid detailed examination of them. This is understandable, given their very significant flaws.

189. Consideration of the proportionality of the interference with rights under the Human Rights Act 1998 is not to be determined by treating the test to be applied in considering whether to approve the CPO (namely whether there is a compelling case in the public interest for it to be made) as requiring that the CPO scheme should be the least intrusive means of achieving the public benefit sought. GM refer to the *Clay’s Lane* case<sup>32</sup>, which was not concerned with compulsory acquisition but with a direction to a registered social landlord (RSL) to transfer land to another RSL. It did involve however consideration of interference with Article 1 of Protocol 1 human rights. The Court of Appeal decision in *Hall*<sup>33</sup> refers to the *Clay’s Lane* decision and is, in the Council’s submission, the leading authority in the compulsory purchase context on this point.
190. The compelling public interest test in effect satisfies the balancing exercise required when considering whether interference with human rights under Article 8 and/or Article 1 of the First Protocol is lawful and does not constitute a breach of the Convention.
191. Land Securities have the resources to fund the Scheme; and it would not have spent over £2m on progressing the Scheme already nor committed itself to funding the CPO process and the land acquisitions that will follow from this unless it intended, and was in a position, to deliver the Scheme.
192. It is notable that Empire accept that, if the Order is confirmed, the scheme is likely to be delivered; whereas GM do not, on the sole basis that they are not persuaded that the Scheme is viable. Empire adopted GM’s submissions on this issue (see Empire’s written closing at paragraphs 95 and 96). Empire appears however to have forgotten the evidence of its own witness<sup>34</sup>. GM produce no evidence that the scheme is not viable, and is not likely to be delivered. They could have produced their own (perhaps high-level) viability appraisal – indeed they considered this, but chose not to do so.
193. The Council’s clear evidence is that the scheme has always been and remains viable, and that LS both intend and expect to deliver the scheme – that is, to build it out to completion. GM do not question the veracity of that evidence. Nor

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<sup>32</sup> Doc 62

<sup>33</sup> Doc 63

<sup>34</sup> See Mr Henderson’s proof of evidence at 11.2(5) and 11.3, about which he was expressly asked in XX and in relation to which it was put to him that LS have the necessary resources to deliver the Scheme within a reasonable timeframe, if the Order is confirmed, to which he replied in the affirmative.

is there any reason why a firm of LS's standing, reputation and experience would have spent well over £2m bringing the scheme to this stage if it did not very firmly anticipate that, subject only to the completion of land assembly, it would proceed to implement it. GM's closing submissions refer at paragraph 24 to negotiations with GM, where it is stated that 'Perhaps rather closer to the truth is that LS cannot afford to buy Walpole House'<sup>35</sup>. From this it was drawn "The obvious inference" that "the LS scheme... would not bear the financial weight of the full value of the interest". Both submissions are wholly speculative: they were not put to the Council, there is no evidence from GM to support them, and the Secretary of State is therefore asked to give them no weight.

### **Objection 3**

#### **Name of Objector – Legal Interest**

194. Flava Enterprises Limited, plot 16

#### **Case for the Objector**

195. As holders of a long lease of the Property, Flava Enterprises acknowledge that a CPO was made on 18 July 2014 to enable the redevelopment of the site in question. They object on the basis that if the Order is implemented, they will suffer very significant financial loss, both immediate and consequent because their business will be shut down. They have relentlessly worked very hard and made substantial investment in promoting the business which is now running very profitably. Indeed, as a result of being informed last year that the Order was being sought by the Council, they abandoned plans to further enhance the business despite the considerable investment that has been made.

#### **Response by the Council**

196. The Flava site has complex ownership and occupational interests. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail". It is also "often sensible", and indeed very common, for acquiring authorities to make a CPO and continue negotiations in parallel. That is exactly what has happened in this case. It is however obvious that, in the case of Flava interests, there is little or no prospect of reaching agreement and that the confirmation and exercise of compulsory powers is required if the Scheme is to be realised. Attempts to engage with Flava have been unsuccessful and it appears that those concerned do not wish to engage in such negotiations.

197. Flava have 17 years of their lease left to run, and it appears from the so-called "Heads of Terms" that their preference remains to retain their existing building. Empire own a potential ransom strip (plot 20) in the event that GM were to redevelop Walpole House, which appears still not to have been the subject of any discussion between the parties.

### **Objection 4**

#### **Name of Objector – Legal Interest**

198. Oceanlink Investments Limited, plot 36 with rights over plots 7,11 and 12.

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<sup>35</sup> Paraphrased at paragraph 156 above

## Case for the Objector

The main points are:

199. Charles Charalambous is the Managing Director of Oceanlink Investments Limited, freehold owners of 2 Bond Street, Ealing W5 5AA (HM Land Registry Title No. MX317586).
200. The entrance to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floor flats can only be accessed from the rear of the building via the door shown on the rear elevation plan<sup>36</sup>. According to the land documents, it can be seen that there is a Right of Way leading to and from Bond Street and the rear of the building at No.2. The ground floor and basement commercial investment is subject to rent review. The next rent review is due to take place on the 5 July 2015 and notices are due to be served anytime now and this will be a severe problem in negotiating the new rent. The tenants may obviously refuse to agree a rent increase at review due to the ongoing scheme in question due to the detrimental effects on their business and free use of the tenants' premises/demise. It is uncertain who will compensate Oceanlink Investments Limited if the tenant refuses to accept the disruptions caused by the proposed development scheme. The blight affect of the overall scheme may be extended if it encounters problems and inevitably creates delays in implementation. Mr Charalambous has seen uncertain events and experiences and has been a landowner previously affected by a CPO regarding the Dickens Yard development in respect of three properties in the Broadway. This was in blight for some 7 years from 2002 (before the CPO was even finalised). It still has an effect as the development is incomplete. For instance the blight still exists on the properties backing on to Dickens Yard. The cinema land has been subject to ongoing disputes with lenders, landowners etc for at least seven years and he feels this may go on for years to come.
201. In summary, his main concerns are:
- Interference of enjoyment of the property by tenants.
  - Obstruction of the Right of Way appurtenant to 2 Bond Street. Obstruction of the adjacent access and loss of car-parking and manoeuvring facilities.
  - Interference to Rights to Light to original window openings at the rear of the building enjoyed for more than 20 years that may be caused by hoardings and other erections.
  - Trespass from overswinging crane over land at 2 Bond Street.
  - Refuse collection difficulty caused by obstructions on access and turning areas. 10 metre limit for paladin bins (Council collections).
  - Noise, vibration and dust pollution of construction vehicles and machinery.
  - General disturbance and health implications.
  - Injurious effect due to land severance. Loss of investment value due to tenants requesting compensation/concessions on rent.

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<sup>36</sup> Refer to Doc 27

202. Uncertainty causing loss of capital appreciation when properties in Ealing are rising in value at great pace.

### **Response by the Council**

203. Oceanlink Ltd is the freehold owner of 2 Bond Street and raised concerns relating to the potential impact of the Order upon the right of way which Oceanlink claims currently to enjoy over plots 7, 11 and 12. The Council has confirmed that the plots have been included within the Order so as to ensure that control can be maintained over the provision of access and egress to and from Bond Street, but there is no requirement for exclusive occupation; and it is therefore unlikely that there will be any operational impact on the occupiers of 2 Bond Street. In the unlikely event that any loss is proven, compensation will be payable under the "compensation code".<sup>37</sup>

### **The withdrawn objections**

204. The following have withdrawn their objections on the dates shown:<sup>38</sup>

- Walhill Ltd, freehold, 33-57 New Broadway, plots 4, 5, 6, 7, 8, 9, 10, 11, 32, 33, 34, 35, 13 April 2015
- Mr & Mrs Sahakian, leasehold and share of freehold, 6 Mattock Lane, plot 28, 13 April 2015
- Paul Mooney/ Carole Gibson, leasehold and share of freehold, 5 Mattock Lane, plot 28 (access across 6 Mattock Lane), 30 March 2015
- Mohammedreza Bashashdoust and Fareshteh Kozani, Boof Restaurant, leasehold, 57 New Broadway, plot 32, 13 April 2015
- Ealing Independent College, leasehold, 83 New Broadway, plot 30, 2 February 2015
- Sportsdirect.com, leasehold, 43-47 New Broadway, plots 8 and 11, 13 April 2015
- Savers Health and Beauty Ltd, freehold, 35 New Broadway, plot 11 (Rights over this plot held by Objector) 22 December 2014
- SSE, various electrical plant and lines (defined in s64(1) of the Electricity Act 1989), Statutory Undertaker, 3 October 2014
- Maggies/Food and Fuel Limited 39/41 New Broadway, plots 9 and 11 30 April 2015

### **Other objections**

*Susan Astle and Kay Burton*

The main points are:

205. Susan Astle and Kay Burton object to any change or encroachment on the alleyway known as 'Barnes Pikle' as this is a long-standing right of way and part of the heritage of Ealing. They also object to the removal of trees and other

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<sup>37</sup> See Doc 48

<sup>38</sup> See Doc 54

foliage in the gardens of Nos. 2, 3, 4, 5 and 6 Mattock Lane; traffic and pollution in the area means that as many trees as possible need to be retained. They also object to the compulsory purchase of St Georges Hall (YMCA) at 14-16 Bond Street as it is a notable old building that should be respected and preserved. Another point they make concerns the former façade of The Walpole Picture Theatre<sup>39</sup>, if after acquisition there is any plan to change or remove the façade. This is also something precious from Ealing's past that should be treasured and preserved.

### **Response by the Council**

206. Concerns about heritage impacts were raised by a number of those who made representations (including Susan Astle and Kay Burton, who are non-statutory objectors). Susan Astle and Kay Burton also raised concerns about potential encroachment onto Barnes Pikle, and loss of trees in the south of the site.
207. In short, the Secretary of State should give considerable weight to any harm caused to the Ealing Green and Ealing Town Centre Conservation Areas. It is accepted that some harm is caused to the Ealing Green Conservation Area by demolition of the locally-listed YMCA building, but it is submitted that the scheme otherwise serves to enhance the conservation areas – particularly by virtue of the demolition of Walpole House and the creation of high quality frontages and views onto Ealing Green and Bond Street. It is also submitted that the many other benefits of the scheme show that the public interest is sufficiently compelling to justify confirming the Order.

### **Other submissions opposing the Council**

208. Points made by other objectors at the Inquiry have common themes. Where the same point is made by more than one objector, it is not always repeated in the following summaries.

#### *Ealing Green and Ealing Town Centre Conservation Area Advisory Panel*

209. The Panel regretfully opposes the CPO which covers a much wider site than the Empire cinema and includes the acquisition and demolition of more properties. Some elements of the wider redevelopment proposals are damaging to the Conservation Areas and central Ealing's heritage sites. In some specific respects, the proposals do not enhance the Conservation Areas. It is therefore the view of the Panel that the CPO is not in the public interest.
210. Locally listed Cinema facade: the Panel disagrees with the developer's claim that this is to be "sensitively integrated" into their new building. By placing the cinema facade on the front of a block of flats, it loses its original context and the setting is alien to its quality and architectural expression. This is an important element in defining the character of the CA and is an important heritage asset and landmark structure. The proposed incongruity is damaging to the Ealing Town Centre CA.
211. Bond Street: the demolition of the locally listed YMCA would be less regrettable if the replacement was to enhance the Ealing Green CA. Bond Street

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<sup>39</sup> Currently attached to the gable end of No. 2 Mattock Lane, having been moved from its former site in Bond Street

is one of Ealing's best examples of a good Edwardian commercial streetscape with a coherent architectural grain. The Conservation Area Appraisal<sup>40</sup> discusses the negative factors of some recent developments on the character and quality of the earlier grain at page 31. The Panel was therefore disappointed that the proposal reflects the more recent developments rather than respecting and reflecting the fine grain of the existing Edwardian rhythm and proportions. The proposal is therefore harmful to the CA.

212. Walpole House stands on the site of an early picture theatre also designed by architect J Stanley Beard. The theatre featured a charming ornate arched facade faced in ceramic tiles, with the theatre's name inscribed. At the planning authority's insistence the facade was saved when the theatre was replaced by Walpole House in 1981 and was relocated to its existing site off Mattock Lane. The developers claimed, until their submission on reserved matters, that they intended to relocate the Walpole Picture House arch to its original home in Bond Street to form a new east/west entrance to the scheme. To achieve this would require a building to be designed around the arch, which regrettably appears not to have happened. Retaining the arch attached to a wall is out of context. It is not only a lost opportunity to enhance the CA, but ignores the heritage value of the arch and therefore harms the CA.

213. Mattock Lane: the siting and massing of the new residential building is especially important. It overlooks the Grade I listed Pitzhanger Manor and entrance gateway; is adjacent to the residences in Mattock Lane; and abuts Ealing Green. The Appraisal (page 30) identifies Ealing Green as the core of Ealing Green CA "providing the visual setting for the central part of the CA and the most significant building within the CA, Pitzhanger Manor". This requires a replacement building of the very highest quality. Despite revisions, the Panel contends that the proposal is harmful to the CA because:

- a) The design and massing is inappropriate and detrimental to the setting of Pitzhanger Manor;
- b) It would intrude upon Pitzhanger Manor and the entrance gateway;
- c) It would be an overbearing structure of commercial appearance on Ealing Green;
- d) It would not reflect the rhythm of the residences in Mattock Lane; and
- e) Its height is justified in order to mask the cinema block but this aspiration could be achieved with less height than the proposed ground and 5 storeys.

214. The Panel's position is well documented as it has previously made representations to the Cinema site SPG, Ealing Filmworks Planning Statement (the outline application) and the reserved matters (planning application). We support the principle of the CPO on the Empire site. But we consider the proposals for the enlarged site are detrimental to the CAs and that the wider CPO is not in the public interest.

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<sup>40</sup> Doc 56

*Hanwell Community Forum (HCF)*

215. The general position of HCF is that members who have made their opinions known at meetings and by email want a cinema restored to Ealing as soon as possible to meet the community's needs, whilst protecting and incorporating the retained cinema frontage, ideally on the site of the original cinema. They do not understand why additional architectural heritage such as the YMCA building needs to be lost to achieve this. Whilst they would welcome a wider choice of good restaurants in Ealing Town Centre, attendees at HCF public meetings regarded the Council's need for flats associated with the development as a separate issue from bringing back the cinema, and were very disappointed to see in the LS plans that the cinema frontage would be used for flats and a supermarket rather than for the cinema.
216. Concern has been expressed that the reason the Council is forcing the CPO is to increase the density of housing in the centre of Ealing and to meet their target of 1300 new units a year for the next four years, rather than just to achieve a cinema in the centre of Ealing on the site of the original 1930s building.
217. The proposed, so-called 'cultural quarter' would comprise only flats and retail/restaurant units, with a cinema tucked away up on the upper floors of a mall, accessed from the centre of the mall. The term 'cultural quarter' is misused here as there are no other 'cultural' activities or spaces planned...unless one counts retail therapy as a cultural activity, including such a loose definition of 'culture' as 'eating out' and 'café society'. There is no art gallery planned. No theatre/opera space is planned. There is no concert hall proposed...in fact a potential concert space in the YMCA's St George's Hall would be demolished under the LS plans.
218. The so-called 'public square' proposed would be too small and enclosed by high buildings to accommodate, in practice, the kind of open air entertainment that is staged in Covent Garden Piazza without a significant noise issue for people working in the shops and restaurants and living above the square. As such, there is little to choose between the LS plans and the Empire plans against this 'cultural quarter' objective from the Council, and the group would suggest that this is an inadequate reason to justify the CPO.
219. In defence of the admirable, locally listed, Edwardian frontage of the YMCA building in Bond Street, which needs little, mostly cosmetic, work done to bring it back to its original state, an entrance from the development onto Bond Street is not needed, and its demolition is not required. There is no obvious direct route from the proposed YMCA building egress to Ealing Broadway Station other than walking up Bond Street to join the New Broadway. People would, anyway, be accessing this route from the site egress adjacent to the existing cinema frontage.
220. The design for the replacement frontage for the YMCA approved in the LS plan is mediocre and would be unlikely in the future, in our view, to be regarded as an iconic design. An attractive, locally listed building frontage, that sits well with the adjoining locally listed Edwardian parade frontage, would be lost and replaced by a mediocre modern building. The group is aware that Empire is storing fixtures and fittings from the original cinema site and would like to ensure that these are handed over to whoever takes the development forward in order

for these valuable, characterful assets to be reused in the new designs<sup>41</sup>. In conclusion, the CPO is not in the best interests of the community.

### *The Covenant Movement*

221. In a comprehensive set of submissions including a summary of national and local planning policies, The Covenant Movement supports the submissions of Oceanlink Investments Limited and adds detail to the significance of heritage assets affected<sup>42</sup>. Points not made by others are set out here:

222. Referring to the YMCA building in Bond Street, the two Inscriptions on the 1906 foundation stone and 1907 memorial stone were carved by the famous sculptor Eric Gill - it was one of his earliest works of this type. Eric Gill was made a Royal Designer for Industry by the Royal Society of Arts and became a founder-member of the newly established Faculty of Royal Designers for Industry. The award of RDI is the highest British award for designers.

### *Save Ealing's Centre*

223. Save Ealing's Centre (SEC) established itself in 2008 as an umbrella group of around 30 Ealing Residents Associations and interest groups in the face of major changes to the Town Centre. SEC sees itself as a channel through which local communities can feed views about developments to the planning authority and through which the authority can inform groups about developments and issues. SEC think it important to offer such a perspective to this hearing where an acquiring authority needs to demonstrate there is a compelling public interest for taking land into public ownership. The Ealing public who will have to live with the consequences of what this inquiry decides must have their say. The importance of engaging with local groups about transformational changes to their neighbourhoods is reiterated in every statement of national Planning Policy and by the London Plan.

224. SEC's view is that the overriding priority of this CPO is that Ealing must once again have a cinema. Ealing has a long association with the cinema industry and the absence of a cinema today is shameful. More immediately, the large residential community living around the town centre need and expect a cinema. Other centres in London of similar size enjoy such a facility and many smaller ones too. The place to start is the demolition of the cinema in 2009. The demolition came at a time when the town centre was at its lowest ebb. In the preceding years Ealing had stood still as the Westfield Centre opened triggering an exodus of the best stores including Bentalls and the Arcadia Group. There were many shop vacancies.

225. Loss of the last cinema in Ealing felt like a final nail in the coffin. The community had held the cinema in great affection. It was a local asset enjoyed by everyone. SEC was very supportive therefore of the efforts the Council seemed to be making to press Empire to implement its scheme. It was pleasing when the Council had decided to get things moving by publishing its draft SPD. SEC supported the proposals in principle and stated its wish to work with the Council in developing the plans and proposed using the newly formed Ealing

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<sup>41</sup> In response to Inspector's question, some fittings are held by the Empire Group, but there is no condition or obligation to use them in any new scheme.

<sup>42</sup> Doc 27

Town Centre Neighbourhood Forum as the appropriate body for inputting stakeholder views. This approach was positive and constructive, and SEC received an encouraging response signed both by Ealing's Council leader and the Chief Executive.

226. It was discouraging that as the scheme developed the Council did not respond positively to SEC's approaches. The suggestion of utilising the Neighbourhood Forum to input stakeholder ideas was not followed up, and the briefings and discussions got nowhere. Eventually, when the SPD went for adoption to Ealing Council, SEC's comments were mashed up unintelligibly and effectively rejected. As the scheme passed through the planning system, first in outline and then in detail, almost all the remaining benefits of the larger scheme were dropped. Most grievous has been the erosion of the important cultural, leisure and other D2 uses envisaged in the first iterations of the LS plans. These uses were flagged in the Council's 2014 Statement of Reasons (paragraphs 1.3, 1.5) but they have disappeared almost entirely from the scheme that now has detailed planning consent.
227. We have heard at this Inquiry how many of the planning principles relating to the site, including the need for more permeability across the town centre, were established by the Tibbalds Report. We therefore suggested the SPD should reference this work. Tibbalds' report was prepared by consultants to the Council, so it needs noting that after an initial public scoping event which was packed by local people, no public feedback was ever provided by the consultants or the Council on their findings. The report is full of interesting ideas but it has never been subjected to public consultation nor has it been discussed or adopted by elected members. The idea that this report established a properly founded planning strategy cannot be sustained.
228. In SEC's response to the SPD it highlighted the need for new leisure and cultural uses in this part of the town centre which is at the heart of the area designated by the Tibbalds consultants as the 'cultural quarter'. SEC had long supported the concept of a cultural quarter serving the local community and attracting visitors. A cinema is necessary but insufficient on its own. Ealing has lost many of its central place uses over recent decades and this needs to be reversed. The growing residential community is creating an unmet demand for a much broader cultural offer.
229. This inquiry has discussed at length the benefits of improving permeability through the site. It was a matter queried by SEC in their initial response to the SPD but were unable to discuss. Residents who use the town centre every day find it hard to understand why permeability should be so important here. The urban grain is not unusually great, and the public is not greatly hindered from getting around. Barnes Pike is a historic north south link between the Uxbridge Road and Mattock Lane and people have used it quite happily for generations. If anything, introduction of a new route next door could lead to the neglect of Barnes Pike, undermining of its historic significance. There are no plans in the public domain to introduce a new east west route between High St and Bond St, so introducing one on the Cinema site has no obvious purpose. It seems significant that it was not important to Empire who one would have expected to have a commercial interest in increasing footfall into their development.

230. Nor is the role of yet another small open area in the heart of the site at all clear. There is one in Ealing, one nearing completion at Dickens Yard and one on the table at 9-42 The Broadway. These can all provide whatever activities the small open area outside the LS development would be used for.
231. With regard to heritage issues, SEC want to flag the absence of any reference to the Town Centre Conservation Area Management Plans in the SPD. These are key planning documents that reflect the statutory duty of the Council to protect and enhance heritage assets. A site SPD that ignores such a Management Plan must be deficient.
232. Turning to a comparison of the schemes, much debate has involved comparing their merits. Against SEC's yardsticks both Empire's schemes are at least as good as that from LS. Empire offers a far more compelling vision for what it is seeking to achieve. It will build on Ealing's most important brand —the film industry - so if it were to proceed, it would be a major new attraction drawing in visitors from a wide area. Empire will also locate its cinemas on the old site which is more appropriate, and very importantly it would use the locally listed cinema entrance for the purpose it was designed. Building out the consented scheme would mean the YMCA building could be returned to its original community and cultural use.
233. The LS scheme has a number of deficiencies. It will lose the locally listed YMCA, it does not utilise the opportunity to use the Walpole Picture Theatre Arch, and the consented scheme is grossly deficient in cultural and leisure activities. The retained entrance would serve no function except as a decorative detail. This would be an ironic echo of the fate of the Walpole Arch. More generally, the vision of the LS development is less bold and seems less likely to help boost the wider town centre as a metropolitan destination. LS can undoubtedly point to individual advantages of their proposal, but overall, it would be hard to argue that there is a compelling public interest in favour of the design of the LS scheme against that of Empire.
234. Ealing Council says amending the Empire scheme will create further delays. However, no amendments are required. The existing Empire scheme would deliver what Ealing most urgently needs - a new cinema. Other elements of the LS scheme appear to provide few public benefits, at least in the minds of town centre users. After all their prevarication Empire's ability to mobilise themselves must remain open to question, but having heard the evidence carefully they are clearly determined. They would not have gone to the expense and trouble of opposing the CPO if they did not intend to use the site.
235. On the other side, there are few assurances that even if the CPO succeeds, LS would give us a cinema. Elsewhere in Ealing developers have pleaded the special needs of a prospective tenant to secure an advantageous planning decision, only for the tenant to withdraw from the scene, leaving behind only the consent to develop. It is surprising in this regard that Picturehouse has not appeared at the Inquiry to explain their plans. There are no assurances that with house prices what they are, LS will not change their minds once in possession of the site and use it for housing.
236. In conclusion, perhaps the most fundamental task of this Inquiry is to clarify the nature of the public interest for which the acquiring authority must make a compelling case to acquire this land. The views of local people must be an

important consideration alongside those who see Ealing as a business opportunity. In the view of SEC, the overriding matter of public interest is that Ealing people must once again be able to visit the cinema. Also important is that Ealing town centre needs new attractions to replace the retailers who have left for White City - attractions that will help restore the vitality to the centre that it lost over the past 10 years. Amongst other things, this means introducing new social, cultural, leisure and sporting uses. Another priority is to retain the great cultural heritage about which Ealing people are very proud. Far too much has been lost in recent decades, and this makes what is left all the more precious.

237. SEC's views have not been taken on board sufficiently in this regard. Mr French's personal view is that Empire's consented scheme would best meet SEC's criteria of the public interest. It would provide the cinema, bring a major new attraction to Ealing, preserve the opportunity to retain existing community uses and it would better respect Ealing's heritage.

*Gordon Road and Surrounding Streets Residents Association (GRASS)*

238. GRASS represents several hundred households in Gordon Road and the surrounding streets. GRASS has campaigned for many years against unsuitable developments in conservation areas. The conversion of family homes into numerous flats and backland developments has increased the population density putting pressure on services. This has been compounded by the recent proliferation of high-rise blocks of flats, to enable Ealing Council to meet its target for the London Plan. This far exceeds the targets of neighbouring boroughs and not only has it put enormous pressure on the roads and local infrastructure but also it is destroying Ealing's heritage and is transforming the leafy green 'Queen of the suburbs' into an urban wasteland and attracting land dealers who care little about Ealing's Victorian and Edwardian roots.

239. What was supposed to happen in the cinema brief (EAL6<sup>43</sup>) is not what is being discussed now. Instead of the retention of the YMCA, it is now suggested that it will be demolished and the plan is for a featureless rectangular block with no visual connection with the Edwardian architecture. On the south side of the new proposals, where any new buildings were to be commensurate with the existing residential properties and observe the building line of the Victorian Mattock Lane houses, instead, there would be a monolithic block of shops and balconies well in front of the building line and looming over the adjacent houses. A 6 storey building towers over the back gardens of the Mattock Lane properties at numbers 4, 5 and 6. There must be a more acceptable alternative way to provide a cinema.

*Ealing Civic Society*

240. Ealing Civic Society is an amenity society which was formed in 1967 in response to a threat to redevelop Ealing town centre in a highly unsympathetic way. The Society supported the CPO in principle because it appeared to be the best way of delivering a new cinema to Ealing given the failure of Empire to complete their own scheme; but it has always had reservations about the detailed plans approved by the Council for the LS scheme. In this respect, the Society supports the views of the conservation area panel in particular in relation

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<sup>43</sup> CDB13

to the impact of the Bond Street and Mattock Lane elevations on the character of the conservation area. Improvements were made to the proposals to deal with criticisms from English Heritage<sup>44</sup> but they are not sufficient to meet concerns which were submitted to the Planning Committee when the reserved matters application was heard. The Society also regrets the loss of the YMCA building and the failure to incorporate the Walpole Picture Theatre arch into the scheme in a meaningful way.

241. The lack of a cinema for the last six years has been a source of great pain given Ealing's film heritage. In relation to the now demolished cinema, whilst the Society had previously unsuccessfully sought its listing on several occasions it did not press the point following the initial granting of consent (subject to completion of a s106 agreement) to the original UGC scheme in 2004. This was because it was thought that the UGC scheme had merit and English Heritage had made very clear that the building was not listable because of the internal alterations which had occurred and because its sister cinema in Kentish Town was a better surviving example of the work of its architect John Stanley Beard which was already listed. Therefore, had anyone asked in the run up to closure in 2008 about the Society's position on the building they would have found that it would not have sought its listing and the cinema could therefore have remained open for much longer.

#### *Local Residents*

242. *Frances Zammit* considers that no-one has any concept or even care for the spirit of Ealing. She considers the LS Scheme to be economically led and does not take into account what is actually needed. It is essential in any development that the spirit of the place is fully taken into account and included. Without this the soul and heart of the place is lost. It is even more than usually essential in this development because, as a result of previous economically led schemes, namely the Ealing Broadway Centre and the Arcadia Centre, Ealing has lost its soul and heart and this is felt throughout the Borough. Ealing Council should go back to the drawing board, carry out proper consultations with good will, and re-image the site as a Cultural Quarter intrinsic to, and not separate from, the other recent and intended developments in and around the two conservation areas.
243. *Dr Alan Outten* opposes the CPO as he believes the advantages of the proposed scheme do not significantly outweigh some significant issues. In particular, that the loss of the former YMCA building, a potential asset of community value, is in no clear way being replaced in the current scheme. This is a serious mistake by Ealing Council and LS. As a long-time Ealing resident, he is disappointed that Ealing Council have agreed a scheme that misses many potential benefits to the local and wider community. The scheme could have also done much more to truly connect the innovations at Ealing Studios and the skills and people in Ealing including those at the University of West London. Ealing desperately needs more housing, especially affordable housing, but it also needs much more than that. The LS scheme is a missed opportunity to help put Ealing firmly back on the map.
244. *Susan New* is a retired senior tutor at the Royal College of Art Film Department and a local resident. She questions the need for a east-west

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<sup>44</sup> Attached to Doc 23

pedestrian route, pointing out that there is no route across Bond Street at present. The north-south route does not seem to serve any purpose given that most people who will live in or visit Dickens Yard will leave the development by the square created near the church. Bond Street, New Broadway and the High Street are only a few minutes walk away from there. She has never had a problem with walking down Barnes Pike at night.

245. She considers that the cinema should still be attached to the frontage in New Broadway and thinks the cinema box proposed will not provide enough screens for future use. Ealing is a Metropolitan Centre and therefore should have the equivalent number of screens as Kingston which is also a Metropolitan Centre. In the property market review that was used for the LDF and the Tibbalds report<sup>45</sup>, GVA Grimley pointed out that even if a 16 screen multiplex was built on the Empire site there would still be a qualitative deficiency in the west of Ealing Borough. The Kingston Odeon has 14 screens and an IMAX. Kingston also has the Rose Theatre partly financed by the developer St. George plc. In her view 90% of people would want what Empire is offering, a 20 screen multiplex with an IMAX screen that will provide a broad range of films ranging from independent, Bollywood, foreign films, through to mainstream such as Fast & Furious, Far From the Madding Crowd, children's films such as Sponge Bob Square Pants & a sing-a-long Frozen plus National Theatre, ENO and Royal Opera House screenings. However the percentage figure would be far less if the type of films shown at a Picturehouse cinema had been mentioned.
246. She is an ardent believer of regeneration through what is termed Arts & Culture and her views are the same as those which appear in the London Plan, the London Plan Town Centre Supplementary Planning Guidance and a new London Plan document- Culture on the High Street<sup>46</sup>. She believed a multiplex would appear and therefore the YMCA could be used as a cinema museum as mentioned in UDP Site 55 regarding Ealing Studios, where it was suggested as a possible site for a cinema museum. The Studio site has no room for a museum.
247. *Professor Alan Gillett* is a chartered surveyor, Chairman of Parkfield Residents Association and a resident of Ealing. As a lifelong supporter of heritage, he is against the unnecessary pulling down of historic buildings where it would cause harm to Bond Street and the erection of new buildings which would harm Mattock Lane. He considers there are more than enough shops already in Ealing. He objects to the CPO. *Tony Palmer* is a film maker who has directed the Ealing Music and Film Festival and points out that the Ealing Films brand was around for 20 years before Hollywood and that rock & roll and classical music also contributes to extraordinary cultural heritage which the Council have turned a blind eye to for years. He considers that the LS scheme would fall short of celebrating heritage and that the Council should build cultural value first to encourage regeneration. It is hard to know whether the Empire scheme would achieve the right objectives but more housing will not. *Helen Kimblebrook* says that the YMCA has a large hall suitable for events and community uses and it would be a great shame to pull it down.

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<sup>45</sup> CDB6

<sup>46</sup> Doc 37 ref B

## Response by the Council

248. There has been a range of other points made by third parties at the inquiry. In general they reflect concerns which were or should have been raised at the outline and reserved matters stages, or as part of the various rounds of consultation on the planning policy documents. Insofar as they relate to the question of whether there is a compelling case in the public interest, the Council relies on arguments already made in response to the Empire and GM objections. Insofar as they do not, the Council does not respond to each in turn but submits simply that they do not go to the question before the Secretary of State and that he should therefore give them no weight.

## INSPECTOR'S CONCLUSIONS

249. Numbers in square brackets [-] refer to earlier paragraphs in this report.

### **Introduction**

250. Paragraphs 16-23 of Circular 06/2004 *Compulsory Purchase and the Criche! Down Rules*<sup>47</sup> contain advice on the justification for making a compulsory purchase order and state that an order should only be made where there is a compelling case in the public interest. Whilst each decision on a CPO will be made on its merits, the Secretary of State will consider the four specific matters set out in paragraph 16 of Appendix A.

### **Policy background**

251. For the purposes of s38(6) of the Planning and Compulsory Purchase Act 2004, the development plan consists of the strategic London Plan (Further Alterations) of March 2015, the London Borough of Ealing Development (Core) Strategy Development Plan Document (DPD) adopted in April 2012; the Development Sites DPD; and the Development Management DPD, both adopted in December 2013.<sup>48</sup>

#### *The London Plan*

252. The London Plan of 2011 retained the designation of Ealing Town Centre as one of London's 12 Metropolitan Town Centres. Ealing is identified as having a medium potential for future growth, with moderate levels of demand for retail, leisure and office floorspace (including speculative office development) and the physical and public transport capacity to accommodate it. The Further Alterations to the London Plan of March 2015 retain this designation at Map 2.6.

#### *London Borough of Ealing Development Plan*

253. A full summary of all the development plan policies that applied throughout the development history of the site is contained in the AA's written Statement of Case. The relevant objectives of the current development plan are as follows: The DSDPD<sup>49</sup> sets out the strategic policy direction for the revitalisation of Ealing Metropolitan Town Centre in policy 2.5, including the need to provide for a

<sup>47</sup> CDA4

<sup>48</sup> See Core Documents CDB series for all relevant development plan documents

<sup>49</sup> Extract at CDB12

cinema in the Ealing Green area of the town centre as part of a cultural and community quarter. These strategic policies are based on the Ealing Metropolitan Centre Spatial Development Framework (EMCSDF) of 2008, a report by Tibbalds Planning and Urban Design<sup>50</sup>. The site is identified at pages 50 and 86 as site OS6. Aims at that time included the creation of a new focus for cultural entertainment and leisure on land currently occupied in part by the cinema, linked to Walpole Park and the introduction of a commercial restaurant café and high quality gallery space into Pitzhanger Manor. A suggested pedestrian orientated retail circuit is set out in Figures 5.7 and 5.8. The EMCSDF was reviewed in 2010 as the Spatial Development Framework Review<sup>51</sup> (EMCSDFR), where the potential for a cultural quarter with a cinema (noted as undergoing redevelopment) is identified at pages 40-41.

254. The Development Sites DPD was first published in June 2012<sup>52</sup> and then adopted in December 2013<sup>53</sup> and identifies 59-63 New Broadway/14-22 Bond Street/1 Mattock Lane, Ealing W5 as site EAL6. The Development Sites DPD sets out the design principles for the site including that *'development of 59-63 New Broadway should be carried out 'deliver a multiscreen cinema, and introduce additional complementary town centre uses, with active ground floor retail, restaurant and leisure uses. The inclusion of additional arts and cultural uses, studios/flexible office space and community uses would be welcomed.*

*The heritage setting of the southern and eastern boundaries of the site will require a high quality design that sits comfortably within the surrounding area and complements the dominant Edwardian vernacular. Approaches should be based on a clear design concept that advances a vision for the site as a whole; piecemeal development based on land ownership that prejudices the ability to deliver the site's full development potential will not be supported. The Edwardian YMCA building positively reflects the original character of this part of the town centre, and would merit retention and enhancement as part of any development proposals.*

*The height and massing of new buildings should be commensurate with the surrounding built form to ensure that the amenity of existing residential properties, Ealing Green/Walpole Park, and the character and appearance of the Conservation Area are preserved. On the perimeter of the site, the building line established by adjacent properties should be continued; on Mattock Lane buildings will be expected to retain the generous setback of properties to the west with a high quality landscaping treatment to the front. The creation of a new public space in the centre of the site is supported. This space should be defined by active frontages and located such that it integrates with the existing movement patterns of the town centre. Achieving better integration of Ealing Green/Walpole Park should be a key outcome of proposals on this site, and this should be reflected in the arrangement of new buildings'*

255. Further detail including 10 Design Principles in terms of built form, massing and uses are included in the contemporaneous The Ealing Cinema Supplementary Planning Document (SPD)<sup>54</sup>. This advises that the site is important in that it

<sup>50</sup> CDB6

<sup>51</sup> CDB10

<sup>52</sup> CDB13

<sup>53</sup> CDB18

<sup>54</sup> CDB19

contributes to the achievement of the policy objectives of comprehensive development, and in particular delivery of high quality leisure and cultural uses, a mix of secondary and ancillary uses and improvements to the environment and public realm in and outside the site. The SPD establishes clear design objectives for those bringing forward comprehensive proposals on the wider development site and seeks to demonstrate the need for connected thinking in terms of the site and about the necessary requirements for redevelopment proposals, particularly 10 design principles which are considered central to ensuring that the full potential of the area is realised. The draft SPD went out to consultation in October 2012 and was adopted immediately after adoption of the Development Sites DPD in December 2013.

#### *Other policy considerations*

256. The National Planning Policy Framework of 2012 (the NPPF) includes core planning principles set out at paragraph 17 which include proactively driving and supporting sustainable development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities. Another core principle seeks to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.
257. In accordance with the statutory duty set out in s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), special regard must be paid to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they may possess. The preservation of setting is to be treated as a desired or sought-after objective, and considerable importance and weight attaches to the desirability of preserving the setting of listed buildings when weighing this factor in the balance. In this case, the settings of 4 listed buildings to the south of the Order Lands in a group at Pitzhanger Manor (Grade I) including its gateway (Grade II\*), and to the north, Ealing Town Hall (Grade II) would be potentially affected.
258. As required by s72(1) of the LBCA, special attention must also be given, with respect to any buildings or other land in a conservation area, to the desirability of preserving or enhancing the character or appearance of that area. The Order lands fall entirely with 2 CAs as set out above.
259. The 2004 *Plan for the Environment: Sites and Areas*<sup>55</sup> identified development *Site 60 Existing UGC Cinema site* as suitable for promotion of a café, community arts, education and residential 'lanes' development linking surrounding streets to Walpole Park.

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<sup>55</sup> CDB2

260. The 2008 EMCSDF sets out the Council's ambitions for a cultural quarter around Ealing Green<sup>56</sup> and the need for more new housing in the town centre<sup>57</sup>. Discussions with the cinema owners are specifically referred to and links through the cinema site to Mattock Lane and Bond Street are shown at Figure 7.13, though at that time these were no more than an aspiration. Amongst other things, the commentary remarks that the new quarter *'should exploit the cinematic offer/heritage to draw people through the town centre to Ealing Studios; a stronger arts focus could change how Ealing is perceived; the potential for an art gallery should be explored; there is potential to exploit cultural connections/places of historic interest around Ealing Green i.e. Freddie Mercury and Pete Townshend both attended London College of Music and Media here'*. This is further developed in the later 2010 EMCSDFR in the identification of a Cultural Quarter at page 41, including the potential for *'an enlivened cinema/film quarter that is a focus for a varied leisure and evening economy offer, including restaurants and cafes'*. In terms of massing, this should be of *'High Street scale with contemporary buildings relating to established streets with the opportunity for taller buildings to be set back.'*

### **Consultation and negotiation**

261. Discussions and negotiations continued with the remaining main objectors before and during the Inquiry. Agreement has been reached with Walhill Ltd, owner of plots 4, 5, 6, 7, 8, 9, 10, 11, 32, 33, 34 and 35 though it is now proposed to omit plots 5, 6, 8, 9 and 10 from the Order and acquire new rights only over plots 33, 34 and 35. No agreement has been possible with Empire Cinemas or GM Investment Trustees Ltd. No discussions have yet been possible with Flava.

### **Justification for the Compulsory Purchase Order**

262. It is important to understand the sequence of events from 2003 to 2015 to appreciate how the Council's and Empire's aspirations for improved cinema provision in Ealing have developed and how the point has been reached where the Council considers it necessary to make a CPO. A helpful chronology has been provided by Empire at Mr Ribbon's Appendix JR34, the contents of which are not disputed<sup>58</sup>. A copy annotated with references is attached at Inquiry Document 58. This must be read in conjunction with the copies of correspondence provided by the Council and other objectors which illustrate the processes and negotiations that have led to the current position.[10-19,97-117,129]

263. The Council sets out the history of policy support for a comprehensive approach to the site<sup>59</sup> and states that such an approach had been identified and established in policy since 2002, with only minor revisions to the site boundary as required to reflect completed development. It considers that the 2008 Empire permission and the later amendments for a multi-screen cinema address the Empire site in isolation and fail to fulfil the borough's wider aims for this part of the town centre. The evolution of development plan policy from 2004 onwards clearly shows the Council's aspirations for better linkages between New Broadway

<sup>56</sup> Page 128

<sup>57</sup> Page 24

<sup>58</sup> Except for outstanding 2009 invoices against Highland Estates which according to the Council, have not been paid. See Doc 18. These are not disputed by Empire, who say they are the responsibility of Highland Estates.

<sup>59</sup> In Ealing's Statement of Case CDE3

and Mattock Lane incorporating a new cinema, café, community arts, educational and residential 'lanes' type of development. However it is clear from the Planning Committee Report of 12 March 2008 which considered the UGC application of 2003 following renewed enthusiasm to sign a completed s106 Agreement<sup>60</sup>, that officers considered there had been no material change in policy in the intervening years to warrant any different determination of the application since they had last considered it in May 2004. Their recommendation was to approve the UGC scheme which by that time was being progressed by Empire and included no improved pedestrian permeability, community arts or residential elements. Formal approval followed on 9 October 2008 and demolition took place in early 2009.[68,69,92]

264. Whilst the Council's aspirations for the wider development site gradually evolved, Empire sought, in negotiations with the Council, to address what they saw as serious deficiencies in the UGC design in terms of screen provision and supporting A3 restaurant accommodation. These are not questioned by the Council or any other party and the Council does not dispute that commercial considerations of this sort are normal and were the prerogative of Empire. It is clear to me that the substantial differences in the designs meant that even preliminary site works would have been impossible until Empire had obtained planning permission by one means or another for the revised building<sup>61</sup>. The Director of the Built Environment wrote to Empire on 27 April 2009 constructively seeking a practical way forward for the amendments<sup>62</sup>, but the finally agreed non-material amendment application for a slightly higher building and revised ground floor layout was not made until early November 2011. This was approved 2 weeks later on 14 November. Although Empire was optimistic that construction works could start before Christmas 2011<sup>63</sup>, piling did not start until December 2012. Had construction started before June 2011, the prospect of a CPO would have melted away and the concerns of IBRC (the new loan provider to Empire) would not have materialised.[107,108]
265. Despite the clear impracticality of anything happening on the ground while the non-material amendments were being agreed, the Council was clearly very keen to see construction activity. In March 2010 the Council had considered a CPO, which Empire was aware of. A Completion Notice had been issued in July 2010, albeit incorrectly. In March 2011 Empire also became aware that the Council had purchased the YMCA building with a view to including it in a larger site to provide a pedestrian link to Bond Street<sup>64</sup>. All these considerations should have stimulated firm reassurance from Empire, if it was serious about construction.
266. However, in this period, Empire was still dealing with financing difficulties following the financial crisis of 2008. Empire acknowledged at the Inquiry that activity in progressing a s73 application for varying the A3 condition<sup>65</sup> had slowed because Highland, Empire's development partner, had lost the support of the supporting banks and withdrew during 2009. Highland had been paying all the

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<sup>60</sup> CDC1

<sup>61</sup> Revised 2011 plans at Ms McGregor's Appendix M and ground floor of 2008 scheme at Doc 9

<sup>62</sup> Ms Taylor's Appendix LT5

<sup>63</sup> CDD8 p1

<sup>64</sup> Without directly informing Empire. See J Ribbons Appendix 10 Vol 1

<sup>65</sup> This had the effect of limiting A3 accommodation to 10%

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professional fees, and it remains unclear what outstanding fees were paid by Empire as it maintained at the Inquiry<sup>66</sup>.

267. Whilst the aspiration for better pedestrian permeability north-south and east-west is clearly identified in early planning policy in 2004, it is unclear how the proposed link to Bond Street and Mattock Lane would be achieved whilst there was no common land ownership. The Council's main objective had been simply to push for the rapid erection of a cinema on the existing Empire site. The opportunity to purchase the YMCA building only arose in January 2011 via Bohola, and the Council's evidence shows this was critical to facilitate the policy objective of creating pedestrian linkages<sup>67</sup>. The subsequent meeting between Bohola and Empire in May 2011 was inconsequential because of differing objectives, but this was a turning point in the Council's approach to the site because of perceived delays to Empire's development proceeding and the opportunity to widen the scheme to provide the linkage to Bond Street, if not Mattock Lane. Nevertheless the Council continued to negotiate with Empire on the NMA application which was granted shortly afterwards.[75,106]
268. A crucial sequence in the deteriorating relationship with the Council is identified in correspondence from July 2011 to May 2012. The s73 conditions application had been approved in November 2010. Revisions with the proposed non material amendments were sent to the Council on 17 November 2010, but these were not agreed and approved until a year later. Despite negotiating in good faith on the amendments, requiring 3 sets of revised drawings, the Council meanwhile bought the YMCA in January 2011 and published its intention to pursue a CPO on 27 July. Empire was given an opportunity to explain its position on 28 July when a full explanation of the delays was provided to the Overview and Scrutiny Committee.
269. At this point there was no approved scheme that Empire could commit to. Empire could not attend the Overview and Scrutiny Committee meeting of the 12 January 2012. The Council continued to press Empire, an important letter of 24 January 2012 from the Council Leader being in effect, an ultimatum, just over 2 months after the final grant of planning permission<sup>68</sup>. This was received with great surprise and not very seriously by Empire, given the positive attitude of Council officers up to that point; and was only briefly acknowledged. Mr Ribbons for Empire admitted at the Inquiry that a lack of trust had developed which led to a lack of communication which, with hindsight, would have regrettable consequences.[104,105,109]
270. The period between January 2012 and the end of May 2012 is notable for poor communication; Empire was getting on with its preferred construction management procurement route but the Council was becoming increasingly frustrated. In June, Empire engaged project managers and at the same time the Council's property advisors prepared an advisory note setting out the options available including a CPO.<sup>69</sup> The parties were now progressing along divergent paths which culminated in the resolution to approve a CPO for the comprehensive redevelopment of the site in July and eventually, the appointment of receivers in

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<sup>66</sup> Doc 18 and Mr Ribbon's proof at paragraph 6.9

<sup>67</sup> Ms Taylor's proof p16 paragraph 5.8

<sup>68</sup> CDD.25/10

<sup>69</sup> CDD8

January 2013<sup>70</sup> followed by the effort made by Empire to regain its asset, which were ultimately fruitful. [116,127]

271. In my view, the three most significant events that determined the future of the cinema project were a) the credit crunch and the withdrawal of financing by Highland in 2009 leading to a serious slowing in progress on the preferred Empire scheme; b) the change in the prospects for more comprehensive development provided by the availability of the YMCA building and c) the public threat of a CPO in June 2012 leading to the appointment of receivers on behalf of the IBRC and the subsequent cessation of works. The conclusion drawn from the history of the relationship between Empire and the Council is that well-intentioned actions by both, combined with unforeseeable events and a lack of communication, have resulted in the cinema site in Ealing being vacant and unproductive for 7 years. The efforts made to agree a way forward and avoid an Inquiry, in accordance with the advice in the Circular, have been fruitless. The position now is that planning policy has moved on significantly and a wider comprehensive scheme has planning permission. The recommendation I make must be based on whether the CPO would satisfy the principles outlined in the Circular, given the situation as it exists today.

272. Firstly, there are several distinct points of difference that emerged from the Inquiry:

*Whether the CPO is inappropriate in principle*

273. Empire and GM assert that Ealing have not treated compulsory purchase as a last resort; and Empire consider that the Council has threatened the imposition of the CPO inappropriately. The evidence clearly indicates that had the CPO not been publicised in the way it was and the receivership avoided, Ealing would be well on the way to having a major cinema asset by now. The effort by Empire put into buying back the site is also indicative of sincere commitment to the project. The involvement of GM in the CPO process happened late and came as a surprise to them. I have had regard to the negotiations that Council officers had with Empire on getting approval for the NMA changes in 2011, whilst simultaneously preparing the ground for the CPO. This may now appear duplicitous to Empire but from the point of view of obtaining best value for the public and achieving a cinema on the site in the shortest possible time, I accept that officers would have considered a twin-track process to be reasonable. Having said that, the threat (for that is what it was) of CPO was unsuccessful in achieving an acceleration in construction activity. In July 2011, Empire had committed to starting before the end of the year, but did not in fact start until December 2012<sup>71</sup>. No explanation of their chosen procurement method was provided and the lack of evidence of a full construction contract, whilst not at all unusual, clearly unsettled the Council.

274. Paragraph 24 of the Circular states: *'Before embarking on compulsory purchase and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. Acquiring authorities should nevertheless*

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<sup>70</sup> J Ribbons appendix 25

<sup>71</sup> See Doc 58, July-September 2011

*consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Given the amount of time which needs to be allowed to complete the compulsory purchase process, it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations. This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations'. And at paragraph 25: 'Undertaking informal negotiations in parallel with making preparations for a compulsory purchase order can help to build up a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect. This can then help to save time at the formal objection stage by minimising the fear that can arise from misunderstandings....'* The Council had not sought to acquire Empire's interests by agreement prior to embarking on the CPO process in this case, but it is clear that any such approach would have strongly rebuffed. The way in which the prospect of compulsory purchase was introduced as a means of obtaining a cinema for Ealing was intended to provoke Empire into more positive action, at a time when it could not possibly have occurred. This was against the spirit of the Circular, which encourages co-operation.

275. The failure by Empire to properly allay the Council's clearly expressed concerns on progress after the Overview and Scrutiny Committee of 28 July 2011 is crucial in understanding the Council's subsequent actions in initiating CPO action and trying to realise the long sought revitalisation of the wider area. It should have been straightforward to report on the progress with the NMA application and the very real preparations for procurement to the Council directly but this opportunity was not effectively taken. The failure of Empire to respond to the purchase of the YMCA was unhelpful, the failure of the Council to explain its wider ambitions to Empire after purchasing the YMCA whilst continuing to negotiate the details of Empire's permission was misleading. The failure in the working relationship between the parties is the reason that the Council lost patience; but none of this invalidates the steps taken to initiate the CPO or mean it was improperly made on 18 July 2014.[35,107-115,127,181,186,189]

*Principle of the LS planning permission*

276. Third party objectors raise many matters which were considered in full when the LS planning application was considered by the Council, principally design principles and architectural quality, the loss of the YMCA building, the failure to reinstate the Walpole Arch, the erection of a much higher building facing Walpole Park in Mattock Lane, the potential for overlooking and the prospects of the existing cinema frontage in New Broadway not providing direct access to a cinema. Some of these matters also form part of the arguments put forward by the statutory objectors and are further considered below, but nothing was put forward at the inquiry to suggest that they were not properly assessed when planning permission was granted. The Secretary of State should have regard to these concerns, but they do not carry significant weight. There are therefore no planning impediments to the LS scheme going ahead if the CPO is confirmed. [41,205-248]

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*The development of plan policy*

277. It is suggested by Empire and GM that planning policy was adopted to suit the LS scheme specifically; particularly the SPD of December 2013. I find that the evolution of development plan policy is consistent in seeking a comprehensive development of the whole site as a cultural quarter since at least 2004. It is hardly surprising that the design principles set out in SPD in 2013 are reflected in the layout of the LS scheme, as the draft SPD was published in October 2012, well before the LS application was submitted. However, the failure to incorporate retention of the locally listed YMCA building in the SPD is noted, as its particular townscape merit and contribution to Bond Street had been flagged in consultation<sup>72</sup> and the Council indicated this would be included within the 10 'design principles'. Objectors strongly assert that the SPD was 'beefed up' to support the LS scheme, but reading of the text does not demonstrate this in an obvious way. Removal of the requirements to retain the YMCA, the re-use of the New Broadway façade as the cinema entrance and the possibility of development being incremental (rather than the product of a masterplan) are not in themselves conclusive. Moreover, the draft SPD was similar and dated October 2012, before the developer selection process. [71,73,92,170-1]

*Permeability*

278. The improved pedestrian linkages between New Broadway, Mattock Lane and Bond Street included in the LS scheme are acknowledged by all parties. A question remains over the likelihood of a further link across Bond Street through the established and locally listed Edwardian shops on the east side through to Ealing High Street<sup>73</sup>. There is currently no prospect of fulfilment of this. Nevertheless Bond Street would benefit from access to the cinema, proposed public open space and 'lane' retail outlets through the old YMCA site. As Bond Street was the site of the former Walpole Picture House, there is some purpose to providing a cinema access from Bond Street, albeit without rebuilding the arch which it is now intended will remain affixed to the side of No. 2 Mattock Lane.

279. Empire produced a revised scheme<sup>74</sup> at the Inquiry illustrating how the existing and implemented Empire permission could be adapted to include access to Bond Street and Mattock Lane. However, the scheme does not positively indicate retention of the YMCA façade. Whilst providing permeability, the much greater size of the cinema building compared to the LS design would mean that the retail and restaurant outlets would be accessed from an internal mall. This would be double height, the A3 units including upper dining levels. I do not discount the attraction of such units to potential tenants if the cinema provides a strong draw, but it is intuitive that an internal mall would not provide the same obvious permeability to pedestrians as an open lane environment. Notwithstanding the need to provide security by means of doors, which in themselves deter movement, the constant artificial lighting and environmental control necessary would make the 'mall' environment distinctly separate from the public street and hence, less attractive to people. Moreover, the central area where those moving from Mattock Lane would enter the cinema building would be mean and cramped, compared to the open space of the LS scheme. The

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<sup>72</sup> CDB.14

<sup>73</sup> See SPD at CDB.19 and Fig 7.13 of the 2008 EMCSDF at CDB.6

<sup>74</sup> Ms McGregor's appendix T and Doc 12

perception that the New Broadway cinema entrance was in fact the entrance to a cinema and possibly not a public right of way through to something else would also deter movement, whatever merits this entrance may otherwise have. In addition, the doors providing access to the south towards Walpole Park would open onto a backland servicing environment that would not be attractive.[42,66,75,81-83,86,132,165,229]

280. The GM alternative layout<sup>75</sup> is in a very early state of concept design and depends on co-operation between GM, Empire and Flava. There have been no substantive discussions between these parties and the 'Heads of terms' produced late in the Inquiry<sup>76</sup> cannot attract any significant weight. Whilst permeability would be improved compared to the Empire scheme on its own, little weight can be attached to the prospects of such a scheme coming to fruition within a reasonable time.[47,176,188]

### *Aesthetic considerations*

281. The Design and Access Statement (DAS)<sup>77</sup> provides an insight into the design process adopted by architects for LS. Considerable time was spent at the Inquiry exploring the origins and history of the Empire proposal, which in a form acceptable to Empire on its existing land holding, obtained planning permission on 14 November 2011. The DAS scheme differs from the final submitted LS scheme in several respects, notably the lack of a public display screen in the central area<sup>78</sup>; the removal of street signage on the application drawings<sup>79</sup>, though this is a relatively minor matter; the removal of the cinema canopy; and the removal of the Walpole Arch from the scheme in Bond Street<sup>80</sup>. No plausible explanation has been provided for the replacement of the Walpole Arch reinstatement with a rather meagre and underplayed (in townscape terms) entrance shown on the approved planning drawing D7102/P7<sup>81</sup>. [42,76-79,166-7]

282. In massing terms, both the Empire and LS cinema buildings would have substantial bulk, that of the Empire scheme considerably greater and wider, especially seen from Pitzhanger Manor and Walpole Park to the south. The LS scheme includes residential in Mattock Lane which would block some existing views through to the town hall from Ealing Green<sup>82</sup>. However neither would impose significantly on the appreciation and enjoyment of those assets or on the surrounding streetscape, or harm the character or appearance of the 2 conservation areas. The Empire scheme, however, if either built as consented or developed into the more 'permeable' version outlined at the Inquiry, would impose a strong building line in the form of a relatively featureless wall appearing to block the route north to New Broadway<sup>83</sup>. This would be a detracting element of the scheme in architectural terms, reflecting the large number of screens within. However, it has planning permission and has been implemented.

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<sup>75</sup> Doc 33

<sup>76</sup> Doc 60

<sup>77</sup> Doc 11

<sup>78</sup> See page 9. Now replaced by a blank wall (response to Inspector's question)

<sup>79</sup> See page 11 and CDC13.2 page 28

<sup>80</sup> Pages 44, 46, 48, 119, 120 & 121

<sup>81</sup> CDC.13.2 page 26

<sup>82</sup> See drawings E1098/D0200 P1 and E1098/D0201 P1

<sup>83</sup> See McGregor Appendix T drawing 4618:L(0)05 and Appendix M drawing 07029 P-2708

283. In either scheme, the retained cinema entrance on New Broadway would be remote from the actual cinema reception, but the Empire scheme would be more honest in its approach and would not need additional signage and pedestrian guidance. It would retain the canopy, which would be an important signposting feature and typical of a cinema. There is also something intrinsically attractive in using a retained façade for its original purpose. The LS proposal to utilise the cinema frontage for flats and food retailing diminishes the architectural and cultural significance of the façade in the street scene. On the other hand, the LS proposal to use the alleyway alongside No. 57 New Broadway as the entrance to a lane of retail and restaurants culminating in a new public space adds a genuine layer of interest to the street layout which is likely to tempt visitors more. It is apparent from the application drawings that the side elevation of No. 57 was originally designed to be seen as the end to the symmetrical block at Nos. 33-57<sup>84</sup>. Overall, even taking into account the regrettable loss of the YMCA building (or its façade alone) and the Walpole Arch in a new location, the architectural and town planning opportunities that are provided by the comprehensive LS site layout as part of a masterplan are advantageous and demonstrable, and not equalled or surpassed by any other proposal. [42,76-79, 166,167,233]

#### *Public space*

284. This point only refers to the central area of the LS scheme<sup>85</sup> where it is suggested there would be insufficient space for public performance or art installations in any realistic sense reflecting the existence of a 'cultural quarter'. I give this little weight. The cultural quarter envisaged by the Council includes a much wider area including the Questors theatre, Ealing Studios and Pitzhanger Manor. Whilst not large, the potential audience likely to be occupying restaurant and café seating is likely to attract street activity which can take many forms. This matter does not weigh against the CPO. [42,89,218]

#### *Heritage assets*

285. No scheme put before the Inquiry in their various stages and iterations would affect the setting of the listed Town Hall, which is designed to relate to the immediate street scene in New Broadway. With regard to the setting of locally listed buildings, attractive 19<sup>th</sup> century villas in Mattock Lane, the LS scheme includes a 5/6 storey residential block on the site of Flava<sup>86</sup>. Alterations were made to this during the design process at the request of EH. This block would terminate views along the north side of Mattock Lane because it would project well forward of the established building line and the adjacent Xanadu Hotel, but whilst it would be much larger than the adjacent locally listed Mattock Lane properties by reason of its height and mass, it would have a permeable residential character and would appear part of the town centre facing Ealing Green, as envisaged in the draft and adopted SPD<sup>87</sup>. The buildings on the north side of Ealing Green are low but make little or no contribution to the setting of Pitzhanger Manor, which lies beyond trees to the south. The 6 storey part of the LS scheme would be well set back from Ealing Green. The Xanadu Hotel is an existing tall building on the adjacent site in Bond Street. The new buildings would

<sup>84</sup> See Drawing E1098/D0134 P1

<sup>85</sup> CDC13.2 pages 24, 29 and 30

<sup>86</sup> Units 1 and 2. See CDC13.2 pages 3 and 27

<sup>87</sup> See drawing No. E1098/D0203 P1

be similar in height and would not compromise the setting of the listed Pitzhanger Manor group.[43,90,213]

286. The Ealing Green Conservation Area Appraisal<sup>88</sup> does not mention the YMCA or St Georges Hall which forms part of it. This locally listed building adds texture and character to the Edwardian shops and flats in Bond Street. It appears to be in reasonable condition. The hall at the rear and the interior are of unremarkable quality, but the façade is of street value, including carved foundation and memorial stones by Eric Gill each side of the door<sup>89</sup>, which add to its heritage interest. Despite this, I have no reason to disagree with EH's assessment that the loss of the building is justified by the wider improvements to the conservation area as a whole. This includes the removal of the much larger and architecturally dull Walpole House next door, owned by GM, which makes a negative contribution to the character and appearance of the area; and its replacement with a new building that is designed to complement the Edwardian environment of Bond Street. Such a scheme is proposed by LS and has planning permission.[90,91,162,163,222]

#### *Number of screens*

287. The permitted Empire scheme would have 20 screens reflecting Empire's desired commercial model which is intended to provide an exceptional level of choice in an area traditionally famous for film production. The LS scheme has 8, reflecting the commercial model desired by the industry as a whole in general, as researched by Cushman and Wakefield. I do not regard the number of screens, on its own, to be determinative; what matters more is the way in which the screens are managed to provide what the market desires. Though 20 screens would be a strong quantitative draw, the building required to house them would restrict the options available on the site for retail and A3 activity and other uses the Council considers desirable. It is hard to see why 8 screens could not be scheduled to show minority interest films. In deciding this, I have had regard to the submissions from Picturehouse and Cushman and Wakefield that 8 screens is a proper response to the competition; and the fact that Empire does not generally operate 20 screen cinemas elsewhere<sup>90</sup> and confirmed that they would be happy to operate an 8 screen cinema in Ealing if given the opportunity. [59,62-3,130,131,245]

#### *Empire's commitment*

288. Weight must attach to Empire's determination to buy back the Ealing site from the receivers in order to continue the development. This reflects the commercial value of the site but also Empire's commitment to the project in which considerable investment has been made over almost 10 years. I also acknowledge that Empire had not defaulted on any of their commercial obligations. However the failure of communication with the Council beginning in 2011 meant that the CPO process was set in motion, has progressed and planning policy has moved on. There is no reason to doubt that if the CPO is confirmed, Empire would be fairly compensated for their financial loss in accordance with the Code.

<sup>88</sup> Doc 56

<sup>89</sup> See Mr Mishiku's submissions at Doc 27

<sup>90</sup> Mr Ribbons confirmed 18 screens at Hemel Hempstead and Basildon, 16 at Poole and Newcastle

*The GM objection*

289. Planning policy for UDP Site 60 in the 2008 EMCSDF identifies 14-42 Bond Street including Walpole House and the associated land behind it, to assemble the development site for the creation of a new cinema, residential and retail development. The Council considers that the GM site at Walpole House and the land behind is needed to create the cinema and central pedestrian environment desirable to help in the formation of the desired 'cultural quarter'. It might be possible to develop an 8 screen cinema without the GM land, but the accompanying and transformational retail, A3 and residential uses would be severely curtailed. GM have expressed the desire to redevelop in any case but this should take place in the context of an overall and co-ordinated masterplan. Even if it were viable to develop the Empire site with the Flava site, the retention of Walpole House as it stands in Bond Street would be undesirable for the reasons set out at paragraph 286.
290. It is the purpose of compulsory purchase to facilitate regeneration. The Council should have engaged more positively with GM at an earlier stage before appointing LS. Their approach to GM bears similarities to that adopted with Empire and is not in tune with the aims of the Circular, which encourages the building of a good working relationship. However GM were well aware of the Council's wider ambitions for the site in policy and became aware of the CPO through public means. It has never put forward any realistic alternative scheme. There is no 'adverse inference' to be drawn. [180-2]
291. Recognising that GM is willing to redevelop on its own or in conjunction with Empire and/or Flava, no realistic proposal was put before the Inquiry that would convincingly deliver a successful comprehensive redevelopment with or without the neighbouring parties. There are substantial uncertainties regarding detail design and the likelihood of progressing to a firm completion date. The ownership of the YMCA building by the Council does not guarantee that it would enter into negotiations with GM in the event of the Order not being confirmed, and this would seriously restrict the options available to Empire and GM. GM assert that LS are not obliged to complete the scheme they have permission for and that their proposal is not shown to be viable, but on the face of the evidence, including the track record of LS, I have no reason to doubt LS's commitment and assurance that the scheme would be viable and completed in the shortest time. The potential to withhold title to the YMCA building in the LSA provides sufficient assurance that the scheme would be completed. [44,46,71,93-4,119-21,138,142,148-151,174,191-2]
292. I give little weight to the failure of the negotiations between LS and GM, which continued during the Inquiry, and the assertion that this indicates a lack of viability for the LS scheme. It would not be at all unusual for negotiations to be protracted when other very relevant evidence is in the process of being laid on the table. [156]

**Other objectors***Flava Enterprises Ltd*

293. The Flava site forms part of the comprehensive redevelopment area identified in the EMCSDF in Figure 7.11 and in the subsequent draft and adopted SPD. No arguments other than financial ones have been put forward. I do not doubt that

Flava Enterprises would be properly and fairly compensated under the compensation code. [50,178-9, 195-6]

*Charalambous/Oceanlink Limited*

294. Recognising the concerns of Mr Charalambous, who has experienced the uncertainties that can come with the CPO process, there is nothing to suggest that the interests of his tenants at 2 Bond Street would suffer unacceptable inconvenience or that he or Oceanlink would not receive proper compensation if loss can be demonstrated. [200, 201, 203]

**Non-qualifying objectors**

*Astle/Burton*

295. Redevelopment of the cinema site by Empire or LS will inevitably affect the experience of users of Barnes Pikle, but it is unclear that there will be any significant effect on trees or that people will be deterred from using this route through. The heritage impacts of the LS scheme have been considered by EH and the Council, which granted planning permission on the basis that the advantages to the conservation area outweighed the harm caused by the demolition of the YMCA. [51, 205-7]

**Other objectors**

*Save Ealing's Centre, Ealing Green and Ealing Town Centre Conservation Area Advisory Panel, Hanwell Community Forum, The Covenant Movement, Gordon Road and Surrounding Streets Residents Association, Ealing Civic Society; and Local Residents*

296. The seriously held concerns of members of the public and local interest groups mainly relate to objections to planning policy in Ealing town centre more generally, which were properly subject to consultation and examination; and in relation to the LS proposal, to the matters considered by the Council in the light of specialist advice. The Council decided to grant planning permission. The various points made are well put but do not weigh heavily in the matters the Secretary of State needs to consider in deciding whether to confirm the CPO.[41,248]

**The Circular considerations**

***Whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area***

297. For the reasons given above, the proposed purpose is entirely in conformance with current development plan policy for the area.

***The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area***

298. Whilst there are aspects that are regrettable, namely the failure to incorporate the YMCA building and the Walpole Arch, on balance, the Council considered the overall quality of the scheme and the regeneration of the site including removal of Walpole House would enhance the character and appearance of the Ealing Green Conservation Area and add to the vitality of the Ealing Town

Centre. Planning permission was granted on this basis. Nothing was put forward at the Inquiry to indicate that that decision was wrong or that there are any new circumstances that would indicate it was improperly made. The proposed purpose will assist in creating a 'cultural quarter' which will provide a new cinema, retail and restaurant outlets and housing, thereby promoting and improving the economic, social and environmental wellbeing of the area.

***The potential financial viability of the scheme***

299. There is no evidence that the scheme will not be viable. The Council has satisfied itself that the scheme is viable and no alternative viability studies have been carried out by those who object. The Council has put in place an assurance that the benefits will be procured by means of a clause in the Land Sale Agreement, withholding the YMCA site until the rest of the scheme is completed.[148-151,156,174,191-2]

***Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means***

300. For the reasons given above, the alternative proposals put forward by Empire and GM either have significant drawbacks in terms of permeability across the site and are insufficiently advanced to give any assurance that a further CPO would not be necessary in the future to achieve the Council's objectives.[24,49]

***The quality and timescale of the regeneration proposals***

301. For the reasons given above, the design quality of the LS proposal has been established and no plausible reason has been provided to cast doubt on the achievement of a quality scheme in practice with reasonable certainty that it will take place. I give little weight to the idea that LS would not have factored in the cost of purchasing the Empire interest; the opposition of Empire to the CPO has been known for a considerable time. In these circumstances, not being able to reach agreement on a price in negotiations does not mean there is an implication for overall viability. [191]

***Other points raised***

302. For the reasons given above, I have given careful consideration to all the points raised by members of the public and local interest groups, but do not find any significant material considerations that indicate that overall, the CPO would not be in the public interest.

303. Objectors point to the lack of a Development Agreement as recommended by Cushman and Wakefield and this issue was explored at the Inquiry. In practice, it is unlikely that a Development Agreement that is agreed by the parties and their legal advisors could be enforced in every circumstance. Similar practical objections apply to the procurement of alternative schemes. The withholding of the transfer of the YMCA site by the Council until the remainder of the development is completed provides sufficient reassurance that completion will occur.[119,133-4,144,151]

304. Objectors refer to the quantity of housing proposed and suggest the LS scheme is residential led. Residential constitutes a very significant proportion of the floorspace, but residential use was always an objective for the site in development plan policy and adds to the interest and vitality of the completed

development. There is no reason to suppose that alternative schemes promoted by Empire/GM/Flava and any combination thereof would not also include a proportion of residential. 29 units of affordable housing are proposed which the Council considered the maximum possible when it granted planning permission. I have no reason to consider it to be deficient as no alternative viability study is before me.[57,164,242]

### ***Human Rights and the Overall Balance***

305. Underlying the Order is a scheme, which offers in prospect a new cinema for Ealing with new restaurant, café, retail and gallery activities together with new pedestrian routes through the western part of the town centre linking New Broadway, Bond Street and Mattock Lane with Walpole Park and Pitzhanger Manor. The proposal has full planning permission and provides reasonable certainty that the scheme will be completed within a firm timescale, ending a long period of uncertainty for local residents and the wider population of Ealing. These factors constitute a strong case for confirmation of the Order.

306. Taking all of the above matters into account I consider that there is a compelling case in the public interest and that in this case it outweighs the impact on Empire Cinemas Ltd, GM Investment Trustees Ltd and GM (UK) Pension Trustees Ltd, Flava Enterprises Ltd and Oceanlink Ltd. I thus conclude that the CPO is a proportionate interference with the Human Rights of those with interests in the Order Lands and otherwise affected.

### **Recommendation**

307. I recommend that The London Borough of Ealing (Land at New Broadway, Bond Street and Mattock Lane, W5) Compulsory Purchase Order 2014 should be confirmed with the following modifications:

The exclusion of plots 5, 6, 8, 9 and 10. New rights only are sought over plots 33, 34 and 35.

*Paul Jackson*

INSPECTOR

### **Schedule of Modifications**

Walhill, 25 March 2015, Plots 5, 6, 8, 9, 10 no longer required, new rights only over plots 33, 34, 35.

**APPEARANCES**

For the Acquiring Authority, the LONDON BOROUGH OF EALING:

Neil King (Assisted by Matthew Dale-Harris)	Queens Counsel, instructed by the Head of Legal (Planning and Property) London Borough of Ealing.
He called	
Chris Wieszczycki M Arch RIBA	TP Bennett
Riccardo Mai BSc (Hons) MRICS	Land Securities
Lucy Taylor BA BTP	London Borough of Ealing
Steve Barton BSc MA MRTPI FRGS	London Borough of Ealing
Alistair Parker BA BPL MRICS MRTPI	Cushman and Wakefield
Graeme Lawes BSc (Hons) MRICS	Deloitte LLP

For Qualifying Objector 1 EMPIRE CINEMA 2 Ltd:

Nathalie Lieven	Queens Counsel, instructed by Ashursts Solicitors
She called	
Justin Ribbons	Empire Cinemas
Thomas Anderson	Empire Cinemas
Jill McGregor MTP MRTPI	Peter Brett Associates
Mark Henderson BSc (Hons) MRICS MIRR V	DTZ
John Percy BSc (Hons) MRICS	DTZ

For Qualifying Objector 2 GM INVESTMENT TRUSTEES Ltd and GM (UK) PENSION TRUSTEES Ltd:

Rupert Warren	Queens Counsel, instructed by Chelsworth Solicitors
He called	
Simon Neate BA (Hons) MRTPI	Indigo Planning
Nigel Laing BSc FRICS	Nigel Laing Associates

Qualifying Objector 3:

Charles Charalambous	Local property owner
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Others who spoke at the Inquiry:

Corinne Templer	Ealing Green and Ealing Town Centre Conservation Area Advisory Panel
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Susan New	Local resident
Carolyn Brown	Hanwell Community Forum
Victor Mishiku	The Covenant Movement
Frances Zammit	Local resident
Helen Kimblebrook	Local resident
Will French	Save Ealing's Centre
Tony Palmer	Local resident
Susan Deans	Gordon Road and Surrounding Streets Residents Association (GRASS)
Professor Alan Gillett	Local resident
Susan Astle	Local resident
Robert Gurd	Ealing Civic Society
Dr Alan Outten	Local resident

## DOCUMENTS SUBMITTED AT THE INQUIRY

(in chronological order)

Insp ref	LBE ref	Document
1		Folder of certificates of compliance
2		Copy of non-material amendment notice ref P2011/4526 (CDC16)
3		S106 Agreement dated 17 July 2014 (CDC17)
4	LBE6	Bundle of correspondence concerning Picturehouse
5		Withdrawal letters from Mohammedreza Bashashdoust and Fereshteh Kozani, Sportsdirect.com, William Terry, Walhill Ltd.
6	LBE3	Extract from Competition Commission Report on completed acquisition of City Screen Ltd by Cineworld Group plc (Mr Parker's appendix 16)
7		Extract from Design and Access Statement for Filmworks scheme proposed by Land Securities
8	EMP6	Drawing of design for 51 seat digital studio cinema at Basildon, provided by Mr Anderson
9	EMP4	Ground floor layout for Empire 2008 permission
10	EMP3	Ground floor plan ref 07029 P-2702 (Non-material amendments) approved scheme 2011
11		Design and Access Statement (complete document)
12		Clearer copy of JM Appendix T (Unick Empire proposal)
13	EMP5	Drawing no. 07029 P-2706 indicating difference between consented scheme and 2011 Empire proposals.
14	LBE5	Bundle of correspondence and meeting notes relating to the IBRC, the receivership, negotiations to purchase the site, the making of the CPO and other matters, provided by the Council
15		Statement of Community Engagement on behalf of Land Securities, provided by the Council
16	EMP2	Comparison chart of retail unit sizes, provided by Empire
17	LBE1	Chart of multiplex cinema openings 2011-2015, provided by the

		Council
18	LBE2	Copy of email from Gardiner & Theobald dated 17/4/2015 to Land Securities, alleging unpaid fees from Highland Estates, provided by the Council
19	LBE4	Bundle of letters of support for CPO scheme, provided by the Council
20	OTH5	Addendum information from Mr Mishiku including photographs and confirmation of terms of short term lease for ground floor and basement at 16 Bond Street, provided by the Council
21	OTH1	Submission from Corinne Templer
22	OTH2	Statement from Will French
23	LBE8	Council's response to statements submitted by Ealing Green and Ealing Town Centre Conservation Area Advisory Panel and Mr Mishiku
24		Copy of Save Ealing's Centre's response to consultation on Ealing Cinema, dated 30 November 2012
25		Copy of part of lease relating to the former YMCA building, provided by the Council
26	EMP7	Clearer complete copy of JM Appendix M
27	OCL1 OTH3/4	Bundles of submissions from Mr Mishiku including representations from Oceanlink
28	LBE9	Supplemental note from Mr Lawes on matters of compulsory purchase subsequent to representations by Mr Charalambous
29	OTH6	Statement by Frances Zammit
30	LBE7	Schedule of films showing on Sunday 19 April 2015 at Empire Walthamstow (9 screens) and Ritzy Picturehouse (5 screens), provided by the Council
31	LBE12	Letter of 29 April from Ealing Council seeking modification of the Order to remove plots 8, 9 and 10
32	OCL2	Letter from Barnett Alexander Conway Ingram LLP, submitted by Mr Mishiku
33		Additional copy of Simon Neate suggested layout on behalf of GM (originally supplied on 7 April 2015)
34	OTH8	Statement from Susan Deans of GRASS
35	LBE11	Copy of letter from GRASS
36	OTH7/16	Statement from Ealing Civic Society, with Annex
37	OTH9	Bundle of submissions from Susan New
38	LBE14	Copy of Appendix 1 to Alistair Parker's evidence with explanatory note
39		Planning Statement from Savills, provided by the Council
40	OTH15	Bundle of additional information from Susan New
41		Copy of email from the Victorian Society, dated 29 April 2015
42	LBE16/17	Copy of SSCLG confirmation of The London Borough of Haringey (Northumberland Development Project) (No 1) Compulsory Purchase Order 2012, and copy of 1 <sup>st</sup> sheet of planning permission ref HGY/2010/1000, provided by the Council
43	LBE18	Copy of letter from David Graham of Indigo Planning Ltd to the Council dated 7 November 2013, requesting that Walpole House be removed from the planning application site for the Land Securities scheme, provided by the Council
44	LBE20	Copy of letter from Julian Griffiths of Griffiths Eccles to Land Securities dated 29 April 2015, provided by GM

45	LBE22	Plan overlaying the Land Securities scheme on the Order Lands
46		Plan overlaying the GM scheme (Simon Neate, Doc 33) over the Order lands, supplied by GM
47	LBE21	Summary of delivery of affordable housing 2013/14 including tenure split, provided by the Council
48	LBE10	Letter from the Council to Oceanlink Investments Ltd concerning 2 Bond Street and the adjacent access
49	OTH12	Statement from Carolyn Brown
50	OCL3	Extract from Estates Gazette, submitted by Mr Mishiku
51	OTH11	Further statement from Miss Zammit
52	OTH10	Further note from Will French outlining the SEC and his role in it, together with a copy of its constitution
53	LBE19	Copy of email dated 30 April 2015 from Land Securities to the Council summarising discussions with Aberdeen Asset Management on behalf of GM, provided by the Council
54		Schedule of objections withdrawn with withdrawal letters
55	OTH13	Statement from Dr Alan Outten
56		Ealing Green Conservation Area Character Appraisal 2008
57		Ealing Town Centre Conservation Area Character Appraisal 2007
58		Copy of Justin Ribbons' appendix JR34 with references (chronology)
59		Briefing note on floor space and job creation potential of the YMCA building, submitted by Indigo Planning
60		Heads of Terms of statement of intent with the aim of confirming the principle that GM and Empire will work together to bring forward a redevelopment scheme, submitted by GM
61	LBE23	Pre-letting update from Land Securities, dated 20 May 2015
62		Bundle of case law reports submitted by GM with closing remarks
63		Bundle of case law reports submitted by the Council with closing remarks

## Core Documents

<b>CDA</b>	<b>Legislation and Guidance</b>
CDA.1	Town & Country Planning Act 1990 (Part IX)
CDA.2	Local Government (Miscellaneous Provisions) Act 1976 (section 13)
CDA.3	Planning & Compulsory Purchase Act 2004 (Part 8)
CDA.4	Circular 06/2004 Compulsory Purchase and the Crichel Down Rules (extracts)

<b>CDB</b>	<b>Planning Policy Documents</b>
	<a href="http://www.ealing.gov.uk/downloads/download/3329/statement_of_case_planning_policy_documents">http://www.ealing.gov.uk/downloads/download/3329/statement_of_case_planning_policy_documents</a>
CDB.1	The London Plan (Spatial Development Strategy for Greater London) (link only) <a href="http://www.london.gov.uk/priorities/planning/london-plan">http://www.london.gov.uk/priorities/planning/london-plan</a>
CDB.2	Ealing Council Unitary Development Plan (UDP) A Plan for the Environment (October 2004 (extract)
CDB.3	Ealing Town Centre Town Centre Strategy 2002-2012 (adopted 12 <sup>th</sup>

	October 2004 as Supplementary Planning Guidance (SPG) to UDP 2004
CDB.4	Development Sites Supplementary Planning Guidance (SPG) to UDP 2004 (Site 60)
CDB.5	New Issues and Options for Planning Your Borough :Strategy and Sites (published September 2007) (extract)
CDB.6	Ealing Metropolitan Centre Spatial Development Framework (EMCSDF) (produced May 2008)
CDB.7	Ealing Council Development (or Core) Strategy Development Plan Document (DPD) Initial Proposals (published 4 <sup>th</sup> September 2009)(extract)
CDB.8	Ealing 2026 Development Strategy (DPD) Final Proposals (published 17 <sup>th</sup> September 2010) (extract)
CDB.9	Ealing 2026 Development Sites (DPD) Initial Proposals (published 17 <sup>th</sup> September 2010) (EAL 17)(extract)
CDB.10	Ealing Metropolitan Centre Spatial Development Framework Update (published 24 <sup>th</sup> September 2010) (EMCSDFR)
CDB.11	Development (or Core) Strategy DPD (submission version published 21 <sup>st</sup> July 2011)(extract)
CDB.12	Development (or Core) Strategy DPD (adopted 3 <sup>rd</sup> April 2012) (extract)
CDB.13	Development Sites DPD Publication Version (29th June 2012) (EAL6 Cinema) (extract)
CDB.14	Responses to Development Sites DPD (EAL6 Cinema ) (extract)
CDB.15	Ealing Cinema Draft Supplementary Planning Guidance (SPD) (published 12th October 2012)
CDB.16	Responses to Ealing Cinema Draft SPD
CDB.17	Development Sites DPD Submission Version (EDS3)(February 2013) EAL6 Cinema (extract)
CDB.18	Development Sites DPD (adopted 10th December 2013) EAL6 Cinema (extract)
CDB.19	Ealing Cinema Supplementary Planning Document (adopted 10th December 2013)

CDC	Planning Application Documents
CDC.1	UGC Cinema and Car Park GC Cinema and Car Park Planning Committee report dated 12 March 2008(incorporating report dated 26 May 2004) (ref: P/2003/5043)
CDC.2	UGC Cinema and Car Park permission dated 09 October 2008 ( ref: P/2003/5043)
CDC.3	Empire Cinema Site variation of condition application Planning Committee report dated 03 November 2010 (ref: PP/2010/3704)
CDC.4	Empire Cinema variation of condition permission dated 04 November 2010(ref: PP/2010/3704)
CDC.5	Empire Cinema Site non- material amendment decision dated 14 November 2011 (ref: P/2011/4526 <a href="http://www.pam.ealing.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=138759">http://www.pam.ealing.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=138759</a> )
CDC.6	Former Ealing Cinema site/ 14-22 Bond Street/Mattock Lane Outline Planning Application ref: PP/2013/3938 (Ealing Filmworks Scheme)(link only)

	<a href="http://www.pam.ealing.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=162558">http://www.pam.ealing.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=162558</a>
CDC.7	Former Ealing Cinema site/ 14-22 Bond Street/Mattock Lane Conservation Area Consent Application ref: PP/2013/3939 (link only) <a href="http://www.pam.ealing.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=162559">http://www.pam.ealing.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=162559</a>
CDC.8	Former Ealing Cinema site/ 14-22 Bond Street/Mattock Lane Planning Committee report dated 18 December 2013 (ref: PP/2013/3938 and 3939)
CDC.9	Former Ealing Cinema site/ 14-22 Bond Street/Mattock Lane Planning Decision dated 17 July 2014 (ref: PP/2013/3938 and 3939)
CDC.10	Former Ealing Cinema site/ 14-22 Bond Street/Mattock Lane section 73 variation planning application (ref: PP/2014/5491) (link only) <a href="http://www.pam.ealing.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=174175">http://www.pam.ealing.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=174175</a>
CDC.11	Former Ealing Cinema site/ 14-22 Bond Street/Mattock Lane section 73 variation Planning Committee report dated 04 February 2015 (ref: PP/2014/5491)
CDC.12	Former Ealing Cinema site/ 14-22 Bond Street/Mattock Lane s73 variation decision dated 05 February 2015 (ref: PP/2014/5491)
CDC.13	Former Ealing Cinema site/ 14-22 Bond Street/Mattock Lane Reserved matters application (ref: PP/2014/64 89) (extracts CDC.13.1 – CDC13.2 and link) <a href="http://www.pam.ealing.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=175661">http://www.pam.ealing.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=175661</a>
CDC.13.1	Barrell Arboricultural Impact Appraisal and Method Statement
CDC.13.2	Architectural Drawings
CDC.14	Former Ealing Cinema site/ 14-22 Bond Street/Mattock Lane reserved matters Planning Committee report dated 18 March 2015 (ref: PP/2014/6489)
CDC.15	Former Ealing Cinema site/ 14-22 Bond Street/Mattock Lane Reserved matters decision notice dated 19 March 2015 (ref: PP/2014/6489)
CDC.16	Delegated report - Non-material amendment application ref P/2011/4526
CDC.17	S106 agreement – Outline Planning consent 2013/3938 dated 17 July 2014
CDC.18	Briefing Notes for Planning Committee – Reserved matters application ref PP/2014/6489 18 March 2015

CDD	Council Documents (including Cabinet reports and minutes, developer selection documents, agreements and correspondence) Link to Committee reports and minutes :- <a href="http://www.ealing.gov.uk/info/200627/committees">http://www.ealing.gov.uk/info/200627/committees</a>
CDD.1	Cabinet report 11 January 2011
CDD.2	Cabinet minutes 11 January 2011
CDD.3	Cabinet report 26 July 2011
CDD.4	Cabinet minutes 26 July 2011
CDD.5	Overview & Scrutiny Committee report 28 July 2011
CDD.6	Overview & Scrutiny Committee minutes 28 July 2011
CDD.7	Overview & Scrutiny Committee minutes 12 January 2012
CDD.8	Cushman & Wakefield Advice Note 2012

CDD.9	Cabinet report 25 July 2012
CDD.10	Cabinet minutes 25 July 2012
CDD.11	Cushman & Wakefield Ealing Cinema Site Development Note September 2012
CDD.12	Cushman & Wakefield Ealing Cinema Site Selection Process Note October 2012
CDD13	Cushman & Wakefield Ealing Cinema Site Financial Brief November 2012
CDD.14	Cabinet report 22 January 2013
CDD.15	Cabinet minutes 22 January 2013
CDD.16	Cabinet report 23 April 2013
CDD.17	Cabinet minutes 23 April 2013
CDD.18	Cabinet report dated 23 July 2013
CDD.19	Cabinet minutes 23 July 2013
CDD.20	Cabinet report 17 September 2013
CDD.21	Cabinet minutes 17 September 2013
CDD.22	Officer Decision 18 July 2014
CDD.23	Cabinet report 22 July 2014
CDD.24	Cabinet minutes 22 July 2014
CDD.25	Correspondence and notes relating to Empire Cinema Site April 2010 – May 2013

<b>CDE</b>	<b>Compulsory Purchase Order (CPO) documents</b> <a href="http://www.ealing.gov.uk/downloads/download/3142/compulsory_purchase_order_cpo_documents">http://www.ealing.gov.uk/downloads/download/3142/compulsory_purchase_order_cpo_documents</a>
CDE.1	Compulsory Purchase Order (CPO) 18 July 2014
CDE.2	CPO Plan 18 July 2014
CDE.3	Statement of Reasons
CDE.4	Statement of Case
CDE.5	Objections
CDE.5.1	Empire Cinema 2 Limited
CDE.5.1.1	Correspondence with DTZ
CDE.5.2	GM Investment Trustees Limited & GM (UK) Pension Trustees Limited
CDE.5.3	Flava Enterprises Limited
CDE.5.4	Wallhill Limited
CDE.5.5	Mr & Mrs Sahakian
CDE.5.6	Paul Mooney/Carole Gibson
CDE.5.7	Mohammedreza Bashashdoust and Fareshteh Kozani t/a Boof Restaurant
CDE.5.8	Ealing Independent College (withdrawn)
CDE.5.9	Sportsdirect.com
CDE.5.10	Savers Health and Beauty Limited (withdrawn)
CDE.5.11	SSE (withdrawn)
CDE.5.12	Maggies/Food and Fuel Limited
CDE.5.13	Susan Astle and Kay Burton
CDE.6	Glossary