**LONDON BOROUGH OF BARNET (BRENT CROSS CRICKLEWOOD)**

**COMPULSORY PURCHASE ORDERS (NOS 1 AND 2) 2015**

# CLOSING SUBMISSIONS ON BEHALF OF

# THE ACQUIRING AUTHORITY

## Introduction

1. The justification for the two Orders has been fully set out in the Council's Opening Submissions[1] and in its main evidence.

2. In summary, the CPOs are required in order to complete the land assembly process so that the first phase of the BXC scheme can be delivered by the respective CPO1 and CPO2 developers, Hammerson/Standard Life and Argent Related. However, in fact the delivery of the entire project is dependent on the delivery of the Critical Infrastructure[2]. This falls within the CPO1 Lands. Therefore the BXC project as a whole is dependent on the confirmation of CPO1.

3. The comprehensive regeneration of the BXC area is a long-standing objective of regional (London Plan) and local planning policy. It is a project that will transform the area and bring massive well-being benefits.

4. None of this is seriously in issue. The objections have focussed rather on whether the acquisition of the particular objector's land is justified, either at all or at this time, in order to deliver the scheme.

5. There is an overarching point that it is very important to make at the outset of these submissions. The Council is obliged to show a compelling case in the public interest for making the Orders, and this obligation applies to each and every interest included in them[3]. In relation to human rights, the Guidance then advises that an acquiring authority "should be sure that the purposes for which the compulsory purchase order

[1] AA/INQ/1 paras 35-82
[2] As defined in s.73 Permission (CD/C3) p.173 *et seq*; s.106 Agreement (CD/C6) Sched 1 p.62
[3] CD/A17 para 12

is made justify interfering with the human rights of those with an interest in the land affected". Thus the focus is on the purposes for which the order has been made.

6. The purpose of both CPOs in this case is to facilitate the development, redevelopment or improvement of the land affected through the implementation of a mixed-use scheme comprising the (numerous) elements set out in paragraph 1 of each Order, thereby contributing to the economic, social and environmental well-being of the area. This purpose reflects both key London-wide and local policy objectives[4] and, more specifically, the development permitted by the s.73 Permission, which is itself compliant with those objectives.

7. It follows in the Council's submission that it is sufficient, in order to justify the Orders, that they are required to enable their stated purpose to be achieved. Subject to consideration of site-specific objections, that is not substantially in issue. Therefore, there is on the face of it a compelling case in the public interest to confirm them.

8. The advice in the Guidance on the factors that the Secretary of State will consider when deciding whether to confirm a s.226 order[5] is entirely consistent with that submission.

9. So far as the first of these is concerned, the purpose for which the land is being acquired fits in very well with the adopted Local Plan for the area. Second, that purpose will contribute in a very significant and substantial way to the well-being not only of the Council's area but also of London as a whole.

10. The third factor is the "whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means". Again, it is important to note that it is the purpose for which the land is being acquired to which attention must be directed. As will be submitted in more detail below, that purpose – the comprehensive regeneration of the BXC policy area, in accordance with policy and as currently exemplified by the s.73 Permission – cannot be achieved without (for example) the Barker land, the Whitefield Estate properties or the Swishbrook property. It is possible that some other scheme of regeneration may be achievable, but what form this might take, whether it would achieve comprehensiveness, and the timescale

[4] AA/CS/1 sect 3
[5] CD/A17 para 76

within which it might happen, are wholly uncertain. The only certainty is that at the very least there would be many years' delay whilst there is a review of the Local Plan, an alternative viable proposal is worked up and submitted for planning approval, and new CPOs are promoted.

11. Critically, there is no alternative proposal before the inquiry for the Secretary of State to consider.

12. Furthermore, it is not sufficient to justify non-confirmation of the Orders in respect of any particular interest for the Secretary of State to conclude that there is doubt about whether that interest is required in order for the scheme to proceed, or whether the scheme might be able to proceed without it. One of the principal purposes of the CPO process is to achieve certainty that all the interests and rights required to achieve that objective have been assembled. If he were to exclude any particular interest from either of the Orders, or modify them in any substantial way, the Secretary of State would need to be convinced, on the evidence presented at the inquiry, that the scheme was still likely to proceed.

13. In respect of none of the objections[6] is there any such convincing evidence. Both CPOs should therefore be confirmed without modification.

**Objection by Fenwick Ltd (objector 22)**

14. The objectors have consistently maintained that it is not necessary, in order to deliver the scheme, for the Council to acquire their existing leasehold interest. The Council maintains that it is necessary to be able to exercise compulsory powers as a last resort.

15. The Guidance states[7] that compulsory purchase is "intended as a last resort to secure the assembly of all the land needed for the implementation of projects". It is plain from the language used, and from the context in which this advice appears, that negotiations with landowners do not have to have broken down entirely before a CPO is made. In relation to the Fenwick objection, the Council submits that the power to acquire Fenwick's leasehold interest needs to remain in CPO1 so that, as a last resort, that power can be exercised.

[6] Save for the Vauxhall dealership, KWCT and Holiday Inn: see further below
[7] CD/A17 para 2

16. What, then, has to happen if the power is not to be exercised?

17. Fenwick and the CPO1 Development Partners have for many months been engaged in negotiations with a view to reaching agreement about how the existing Fenwick store can best be integrated into the scheme, and how the impacts of the construction phase on the store's ability to trade successfully can be appropriately mitigated. These negotiations are close to being concluded; and submissions will be made below about the outstanding items that Fenwick maintain are relevant to the Secretary of State's decision.

18. It is obvious that it is in both Fenwick's and the DPs' commercial interests that good integration with the existing centre, and satisfactory mitigation of construction impacts, should be achieved. It is also in the Council's interests, as planning authority, to ensure that the expanded shopping centre is as attractive to the public as possible, and that both the centre as a whole and the stores within it are as easily accessible as possible. These are therefore objectives that all the parties share.

19. The objectors' concern about arrangements during the construction phase can be dealt with quite shortly. Fenwick accept that the Mace proposals[8] provide the basis for the satisfactory management of the potential impacts of the scheme on their servicing and delivery arrangements and other matters such as emergency means of escape from the store during the construction phase. There is no need therefore for the Secretary of State to concern himself with the detail of those proposals. The Council and DPs' Undertaking includes these matters in substantially the same terms as Fenwick themselves included in the draft Agreement that they had proposed[9].

20. So far as the impacts during the construction phase are concerned, Fenwick's closing submissions[10] indicate that the undertakings in clause 2.2 of the Council and DPs' Undertaking, "so far as they go, are acceptable"[11]; and that clause 2.2.4 (which concerns the provision and implementation of a servicing and delivery/collection plan)

[8] FEN/INQ/3
[9] AA/INQ/34 cls 2.2, 2.3; *cf* FEN/INQ/17 draft Agreement cl 3.3. Note however that the Council/DPs' Undertaking excludes the obligation to include the Schedule 1 works in the scheme, and the obligation (Ag't cl 2.3) relating to the E pedestrian link; and includes in addition a covenant to procure that the scheme works are carried out in a good and workmanlike manner, etc.
[10] P.79 para 8
[11] The reason why the Sched 1 works have been excluded from the Undertaking is addressed below

is accepted "as sufficient protection in respect of the construction period so far as [Fenwick's] interests are concerned".

21. The Secretary of State's attention is also invited in this respect to the exchange of correspondence between Mr Wyld, on behalf of the Council, and Mr Murphy, on behalf of the DPs, in which Mr Murphy confirms that details of servicing, collection and delivery arrangements, access and egress arrangements for staff and visitors, and car parking arrangements during the construction phase will be included in applications to discharge conditions 8.1 (CoCP), 8.3/28.1 (CEMP), and/or 12.1 (CTMP)[12].

22. So far as integration with the existing centre is concerned, the Secretary of State will want to be satisfied that the Fenwick store, being one of the 3 anchor stores in the scheme and there being no proposal on the part of the DPs to alter that position once the scheme has been developed – nor any planning permission to remove the Fenwick store and replace it with a different one – will be properly integrated into the new centre. On the basis of the evidence he can be so satisfied. Not only is this a shared objective of Fenwick, the Council and the DPs; the s.73 Permission also plainly contemplates a scheme of high quality in which RMAs will bring forward the details of how that objective is to be achieved.

23. It is also relevant for the Secretary of State to appreciate that, although the content of these discussions is commercially confidential and they are being conducted on a without prejudice basis, other matters are being discussed which have to be resolved if the scheme is to go ahead[13]. Fenwick are also seeking assurances that the DPs will include certain features in the detailed scheme all of which have cost, design, feasibility and programme implications that have not yet been resolved in detail.

24. It is somewhat disingenuous of Fenwick[14] to criticise the Council for not telling them "openly" what these commercial confidential matters are. They are of course very well aware of what these are, since they are the subject of longstanding and ongoing discussions between themselves and the DPs which both parties know must be resolved before the scheme can proceed.

[12] AA/INQ/25, 26. **NB** that (as Mr Wyld's letter indicates) this commitment is relevant to the objections that have been made by all 3 principal traders.
[13] Agreed M Fenwick XX. Dentons letter on behalf of JLP dated 14 June 2016 makes a similar point (p.1 para (b)): "there is no reasonable prospect of scheme deliverability absent a commercial arrangement with JLP"
[14] Closing submissions p.18 para 23; p.65 para 1; p.77 para 3

25. However, the Secretary of State has not been told what these are for two simple reasons. The first is that the parties have agreed that these discussions are being conducted on a without prejudice basis, and that it would therefore be inappropriate, and potentially damaging to the parties' commercial interests, to reveal the content of those discussions publically. The second is that the Council are not relying on these matters to justify CPO1, and have never done so. The point rather is that the Council and DPs are not prepared to enter into an agreement with Fenwick which would enable their leasehold interest to be withdrawn from CPO1 and their objection to be withdrawn unless and until all matters, including the commercially confidential ones, have been resolved. That, it is submitted, is an entirely reasonable position to take.

26. We now turn to explain the justification for the inclusion of Fenwick's lease in CPO1.

27. When CPO1 was made it is plain that it was necessary to include Fenwick's lease in it. The details of how the store was to be integrated into the expanded centre were at a very preliminary stage; in fact until January this year Fenwick wanted to make quite a significant addition to their store[15] which would certainly have required a change to their demise[16].

28. However, matters have moved on considerably since April of last year, thanks to a co-operative process of discussion between the parties[17], and the question for the Secretary of State is whether the acquisition of Fenwick's leasehold interest is justified now.

29. The Council contends that it is. However, before dealing with the reasons for this it is necessary to identify the many areas of agreement that now exist between the parties. The most important of these are as follows:

    (i) the existing shopping centre is very dated in terms of its layout and appearance, and badly needs refurbishment;
    (ii) the existing centre would also benefit from substantial enlargement, so as to maintain and strengthen its position amongst London's major centres.

[15] Bird fig 4; with the option of adding similar extensions at the 2 upper floors at a later date
[16] Agreed M Fenwick XX
[17] Agreed Leonard and Bullock XX. It is not really correct to suggest that Fenwick have led this process (Fenwick closing submissions p.19 para 24), but nothing turns on this.

Competition from newer centres such as Westfield London has damaged BXSC's standing and trading performance[18];

(iii) the car parking and bus station need renewing and rationalising, and pedestrian linkages within BXC and from the surrounding areas (including public transport facilities) need to be greatly improved;

(iv) those improvements include the new Thameslink station, which will make BXSC more accessible and bring new customers to it;

(v) the creation of a new town centre that will straddle the A406 and include the extended BXSC – something which is a fundamental requirement of planning policy – is from Fenwick's point of view a very welcome facet of the BXC regeneration project;

(vi) the same applies to the phased construction of around 7500 new homes in and around the new town centre and the (approximately) 4m sqft of office floorspace, which will provide new customers for Fenwick (and other stores in BXSC);

(vii) in short, BXC is a highly beneficial project that ought to proceed as soon as possible;

(viii) in detail, the scheme needs to achieve excellence in design, and the quality of the materials used and of the new buildings needs to be of a very high standard;

(ix) it is important that the extension to the centre is properly integrated into the existing centre, with seamless linkages and high quality finishes and design throughout.

30. Fenwick do not doubt that the Development Partners are genuinely committed to achieving all of these things, as are Fenwick themselves.

31. Fenwick accept that they are likely to derive benefit from the BXC project, but are concerned to ensure that they derive the maximum possible benefit from it, particularly in terms of its appearance within the shopping centre and the links to it from the car parks and the malls.

[18] FEN/INQ/1 shows that, whilst Fenwick may have out-performed the centre as a whole, sales growth has still be negative and underlines that there is an urgent need for change

32. The discussions that have been taking place between the parties have ranged over a number of topics, but the evidence is now clear: the works which Fenwick say the Council and DPs must commit to providing if their objection is to be met are set out in the Schedule to the draft Undertaking and draft Agreement that they have submitted to the inquiry[19]. Mr Fenwick confirmed[20] that this is a complete list which will not change again. Thus, whilst other matters have been raised in the evidence, such as future proofing the new car park so that it can accommodate a further floor of parking in the future if required, and ensuring that bridge 4 when it comes forward can be accommodated within the shopping centre[21], these are not relevant to the outcome of Fenwick's objection and so the Secretary of State does not need to consider them.

33. As to that list of works, the Council's first submission is that even these are not matters in respect of which the Secretary of State needs to receive any assurance or undertaking from the Council or the DPs that they will be included in the detailed scheme. Whilst it is no doubt in the public interest, as well as Fenwick's and the DPs' commercial interests, that the Fenwick store should enjoy good linkages to the rest of the shopping centre, to state that is a very long way from demonstrating (as Fenwick also assert) that these particular items must be provided in order that a compelling case in the public interest for confirming CPO1 can be shown.

34. The Council submits that Fenwick's position is untenable. None of these works, either individually or collectively, could possibly tip the balance between confirmation of CPO powers being in the public interest, and being compellingly in the public interest. Whilst achieving good connections between the Fenwick store and the rest of the scheme is in Fenwick's, the Council's, the DPs' and the public interest, when compared with the well-being and other benefits of the scheme as a whole these pale into relative insignificance. It is not that these should not be secured – indeed, on the evidence, given the importance of securing such connections to both landlord and tenant and the level of agreement reached about what is appropriate in this regard, it is highly likely that they will be; but that resolving the detail of these at this stage and in the context of the CPO is not necessary, and furthermore the Schedule 1 works cannot

[19] FEN/INQ/17
[20] XX
[21] See list at Bullock proof para 10.13; Fenwick proof at para 7.2. In relation to the future proofing of the car park, Mr Fenwick (XX) has expressly disavowed any purpose other than to accommodate a further floor of parking; and as to bridge 4 there is agreement that the scheme does provide for this.

realistically make the difference between a strong case and a compelling case in the public interest for confirming CPO1.

35. Furthermore, whilst the scheme as a whole accords with the adopted planning policy framework, and whilst the works may well be consistent with the objectives of the framework[22], they do not emerge from an application of the principles of that framework, nor is there anything in the framework that requires them to be included in the scheme[23].

36. The works are therefore not necessary to ensure that the scheme complies with planning policy, nor in order to upgrade the scheme's many well-being benefits to the status of "compelling" within the meaning of the Guidance.

37. Turning to Fenwick's Undertaking[24], it is to be noted that the coming into effect of their undertakings in relation to the grant of rights and other matters concerning the provisions of their Lease, as set out in clause 2.1, are conditional on the Council and DPs including in the development the works as set out in Schedule 1. This is in the Council's submission a fatal flaw since the Undertaking needs to be unconditional if the Secretary of State is to give any weight to it. For reasons given elsewhere in these submissions, the Council and DPs are not prepared at this stage to commit to including the Schedule 1 works in the scheme; there is no obligation whatever on them to do so; and therefore Fenwick's submission[25] that "it is entirely open to and reasonable for the Council and the DPs to give the undertaking" is not accepted; nor can the Secretary of State require them to give it.

38. The Council's and DPs' undertakings in relation to the construction phase of the scheme are given on an unconditional basis[26]. Their undertaking not to implement the Order in relation to Fenwick's interest is however conditional on Fenwick having first entered into "appropriately documented legally binding commitments" which grant to the Council and DPs the rights required to undertake the scheme and waive the rights enjoyed by the tenants under sub-clauses 5(1) and 5(4)(a). That is because (as will be submitted) the Council does not accept that either Fenwick's proposed modification

[22] Murphy Fenwick Reb para 2.28
[23] Agreed Bullock XX
[24] FEN/INQ/17A p.21 cl 2.2(b)
[25] Closing submissions p.39 para 54
[26] AA/INQ/34 cls 2.2, 2.3

to CPO1 or their Undertaking would give the requisite degree of certainty that the scheme could be undertaken, in the absence of such agreement, without acquiring Fenwick's lease.

39. The Council's and DPs' Undertaking also omits any commitment to deliver the list of works set out in Schedule 1 to Fenwick's draft Agreement and Undertaking. That is because these are not seen by the Council and DPs as necessary in order for the Secretary of State to confirm CPO1, for the reasons already given.

40. There is however also a further reason. The Schedule 1 works, together with the other works previously mentioned and a number of other matters, are part of the wider commercial negotiation already mentioned that is taking place on a without prejudice, confidential basis. Whilst the DPs have agreed in principle to the majority of these works, the commercial terms of the wider deal that will include the DPs' commitment to undertake the works remain to be agreed. Therefore the DPs are not, as things stand, willing to commit to including the works in the scheme without having first agreed the wider commercial deal. This too is an entirely reasonable position to take.

41. This factor is relevant in another sense too. Whilst the Secretary of State does not need to know the details of the negotiation, he does need to know that, without such agreement, the project cannot proceed – unless Fenwick's leasehold interest remains in CPO1. At present, whilst a great deal of progress has been made since CPO1 was made, there remains too many uncertainties to justify modifying the CPO and replacing the acquisition of Fenwick's lease with s.13 rights and relying on TCPA s.237 to cover matters that cannot be addressed through the acquisition of rights.

42. It is very clear that, at the time CPO1 was made, there was ample justification for the inclusion of not just Fenwick's but also the other retailers' leasehold interests in it. The context for this is that the very objective of making a CPO under s.226 is to enable the completion of land assembly so that the planning authority and (where applicable) the developer can ensure that this potential impediment to scheme delivery is removed, and there is therefore the requisite degree of certainty that the scheme can proceed. Therefore it is, in general terms, sufficient justification for acquiring interests in land in a CPO that (a) those interests are required in order to facilitate the proposed development, redevelopment or improvement, and (b) there is material risk that, if those interests were not included, potential alternative means of securing the same

end, such the acquisition of rights and/or reliance on other legislation (e.g. TCPA s.237 and the Landlord and Tenant Act 1954) would not be successful.

43. In those circumstances, the certainty that the confirmation and (if necessary) the exercise of CPO powers brings would not be achieved.

44. The justification for the inclusion of the BXSC retailers' interests at the time CPO1 was made was this:

(i) the details of how those existing traders who are to remain at BXSC are, in physical terms, to be integrated into the enhanced and extended centre were not known. This is explained more fully in the Council's Note appended to its Statements of Case[27];

(ii) the leases contain a multiplicity of interests and rights and obligations enjoyed by tenants across BXSC, and the tenants' lease obligations and covenants differ significantly between the leases. Some of these may be capable of being addressed through procedures under the Landlord and Tenant Act 1954, and others may be overriden by TCPA s.237.

45. Returning now to the specifics of the position as regards Fenwick, it is of course understood and accepted that its Lease represents a valuable asset on the basis of which it has invested, and intends to continue to invest, in its store. The DPs have also made it abundantly clear that they have no intention of redeveloping the store (indeed it is agreed that the s.73 Permission would not authorise this), nor do they intend to dispossess Fenwick of their store. In fact, Fenwick are one of the key retailers whom the DPs intend should continue trading during the construction phase, and whose refurbished store they intend to integrate successfully into the 'new' centre.

46. The DPs and the Council also accept that, whatever the justification for the inclusion of Fenwick's lease in the CPO may have been at the time it was made, it is necessary for the Secretary of State to consider the position in the light of current circumstances, given the progress that has been made the discussions that have taken place, and are continuing, between Fenwick and the DPs.

[27] Paras 2.10-2.15

47. The Council submits that clear and sufficient justification does remain for the inclusion of Fenwick's lease in CPO1. That is because there are still significant uncertainties about whether the scheme could be delivered if CPO1 were modified and rights included in the CPO instead, and/or reliance were placed on s.237 to enable the scheme to be constructed. These uncertainties are as follows:

(i) (as mentioned) the fact that a commercial deal has not yet been completed;

(ii) whether the 'bull-nose' feature[28] will or will not require a change to Fenwick's demise. Certainly the extension that Fenwick had wanted until January of this year[29] would have done. As for the current proposal, which was in fact drawn up partly for the purpose of showing that no change to the demise was required[30], confusingly Mr Fenwick said it may or may not require a change to the demise[31], but Mr Leonard suggested that was not the intention. The drawings are not clear, nor has agreement been reached either about the design of the extension or about whether it might be included in the common parts or within the store demise. Thus evident doubt remains about this;

(iii) there are potential interventions in the structure of the existing store that may require consents under or variations to the terms of the existing Lease, notably:

(a) the removal of many of the precast concrete panels in order to form the new shopfront;

(b) the retention and recladding of those panels that are not to be removed, which may require drilling through the panels (depending on their condition, which is not known at present) in order to secure support for the new over-cladding from the structure behind;

(c) the removal of the two porticos, including cutting away the roof slab which appears to extend into the structure of the building[32];

(d) the removal of the ground underneath the existing surface car park from the retaining wall at LG level, and the cutting of a substantial new opening in the wall in order to achieve access from the new MSCP into

[28] As illustrated on FEN/INQ/13
[29] See Bird Figs/Appces fig 4
[30] Leonard XX
[31] XX
[32] This was only raised in XX of Leonard (Fenwick closing submissions p.24 para 29(f)) because his plans purporting to show Fenwick's demise line (FEN/INQ/13 pp.4-7) wrongly excluded the porticos from it (*cf* Chase Appx GFC6)

the store at that level, which may necessitate structural strengthening of the wall;

(e) the proposed walkway at second floor level[33], which is likely to require support from the structure of the Fenwick store;

(f) the new roof over the extended centre[34] will land on top of the Fenwick store. Again, the structural implications of this remain to be considered once the details are known;

(iv) the matters concerning sub-clause 5(4)(a) in the Lease, which are addressed below.

48. The point about the potential structural interventions is not that there is any disagreement in principle about the desirability (as opposed to the necessity) of doing these works, but rather that the extent to which they will require interventions in the Fenwick store is not known.

49. This is of significance because of the definition of the store demise in the Lease[35], which includes "the boundary walls and structures thereof" (save for party walls). Therefore any intervention into the structure of the store would be a direct interference with Fenwick's demise.

50. The Council and DPs do not of course doubt that Fenwick genuinely intend to grant the rights that are necessary to achieve all of these things, together with the other works that they wish to see undertaken in order to integrate their store into the scheme. However it is important to reiterate that the Council's and the DPs' position remains that Fenwick's Undertaking can be given no weight because of its conditionality, and that agreement cannot be reached on the proposed works in isolation from all the other matters on which agreement must be reached before the scheme can proceed.

51. Fenwick have suggested that the position could be secured for the Council and the DPs by means of a combination of a modification to CPO1[36] and reliance on TCPA

[33] FEN/INQ/13 p.6
[34] AA/INQ/17
[35] G Chase Appx GFC 5, cl 1(a) and First Schedule, First Part (p.20)
[36] FEN/INQ/17, 17A

s.237. The latter has been addressed by the Council through a Note[37] on which it continues to rely and therefore wishes to incorporate into these submissions. However it is necessary to make the following further submissions in the light of the closing submissions made on behalf of Fenwick in this regard.

52. The lease provisions which the Council and DPs consider are not, or may not be, covered by s.237 are the provisions are found in sub-clauses 5(1) and 5(4)[38], namely:

    (i) the covenant for quiet enjoyment;
    (ii) the proviso that the bus station must remain in its present location;
    (iii) the proviso that the existing car parking ratio must be maintained if the centre is extended;
    (iv) the proviso that the Common Facilities[39] cannot be substantially modified or varied if the centre is extended.

53. It is inevitable that all of these matters, which operate in favour of Fenwick, will be interfered with as a result of the scheme works.

54. Fenwick submit[40] first that these provisions are negative in nature, and second that the provisos (i.e. (ii)-(iv) above) are not separate from the first part of the sub-clause, so that Fenwick may not unreasonably withhold their consent to the bus station being moved, the car parking ratio not being maintained, or the Common Facilities being substantially modified or varied. Whilst it is accepted that this is largely a matter of law rather than expert opinion, the Council notes that expert evidence was in fact called by Fenwick in relation to the interpretation of the lease in the form of Mr Chase, and their closing submissions in this regard are entirely contrary to what Mr Chase accepted was the position[41].

55. These two points can be taken together because Fenwick's submission that "the effect in substance of subclause [5(4)(a)] is restrictive" is dependent in each case on the restriction in the first part of the sub-clause being engaged[42].

[37] AA/INQ/14
[38] Chase Appx GFC5 pp.11-12
[39] As defined in cl. 9 p.19
[40] Closing submissions p.59 para 19
[41] In XX
[42] Fenwick closing submissions p.60 para 19(5), (6); p.59 para 19(1)

56. First, the Council submits that all four of the lease provisions mentioned above are clearly worded positively rather than negatively, and that in substance they constitute positive obligations on the Lessor to do, or not to do, certain things rather than prohibitions or restrictions on doing certain things.

57. Second, Mr Chase was right to accept that that provision in the first part of sub-clause 5(4)(a), that the Lessor may not make any substantial variation, modification or addition to the approved Plans (including the bus station) without Fenwick's written approval (not to be unreasonably withheld), does not apply in relation to the provisos mentioned above. This indeed is the interpretation that at least appears to have been given to sub-clause 5(4)(a) by Fenwick's solicitors in their Lease Summary appended to Mr Chase's evidence[43], with which Mr Chase agreed; and is inconsistent with the further document produced by Fenwick at the start of their appearance at the inquiry[44].

58. If that is right, then on its own terms Fenwick's submission that the substantive effect of clause 5(4)(a) is restrictive cannot be sustained.

59. Fenwick's submissions in relation to the scope of s.237[45] cite certain well-known authorities with the principles of which the Council takes no issue. Beyond those matters already addressed in these submissions, however, they do not give rise to any further issues that require a response.

60. The Council therefore maintains its submission that s.237 does not provide the requisite certainty that interference with the provisions in sub-clause 5(4)(a) identified above will be authorised[46].

61. We now turn to deal with Fenwick's proposed modification(s) to CPO1.

62. The Council responded to this in a Note from Nabarro dated 24 June 2016[47] on which it continues to rely and which is therefore incorporated by reference into these submissions.

[43] Appx GFC 7 p.9 para 15
[44] FEN/INQ/4 para 17; Chase agreed (XX day 10) that this was wrong. It is therefore not correct to say (Fenwick closing submissions p.20 para 27) that "there was no challenge to GC's review of the lease or to the spreadsheet".
[45] Fenwick closing submissions p.51 Annex 2
[46] AA/INQ/14 para 10
[47] Included in FEN/INQ/17A

63. In summary, the Council submits that:

    (i) Fenwick's 'preferred' version (i.e. without the addition) is patently insufficient to address all of the matters which need to be addressed, as referred to above;
    (ii) the addition simply serves to underline the difficulties that the Council and DPs face in terms of the inevitable conflict that will arise when the scheme is built with provisions of the lease that do not, or at least may not, fall within the matters covered by TCPA s.237.

64. The Council and DPs do not accept that rights to carry out, use, repair and maintain the permitted works "notwithstanding that the [works] may conflict or interfere with any provision or right contained in or granted under" the Lease fall within the scope of s.13. The very fact that the word "provision" is included indicates the problem. S.13(1) enables authorities to purchase compulsorily "new rights over … land"; in the Council's submission this does not, on the face of it, authorise the creation of new rights that override rights or other provisions contained in a lease, nor is there any legal authority to the effect that it does.

65. So far as Fenwick's submissions in response to Nabarro's Note are concerned[48], much of what is said is not in issue but does not go to question of whether the Secretary of State has the power to make a modification (or modifications) of the kind proposed in this case. Criticism is made of the "selective quotation" from paragraph B-0957 of the Encyclopaedia of Compulsory Purchase and Compensation[49], but in fact reading that sentence in context makes no difference: it is the view of the Editors, albeit untested by the Courts, that "modifications would seem to be limited to excluding from the order land included in the order as made, or adding land with the consent of the interested parties under s.14".

66. Fenwick's submissions make extensive references to paragraph 40 of the CPO Guidance. Whist the Council of course agrees that these will need to be considered by the Secretary of State in this case, they too do not directly address the point at issue. Whilst it is true that the Guidance refers to the prospect of substantial amendments to an order being made by way of modification, the nature of such amendments is not

[48] Fenwick closing submissions p.65 Annex 3
[49] P.66 para 3(a); Fenwick authorities bundle tab 29, last page

specified and may merely refer to the exclusion of land and not, for example, to the substitution of rights for land acquisition. The exclusion of land may well in many cases amount to a substantial modification, but what is proposed here has to go beyond that because, as all parties accept, implementation of the scheme cannot be achieved without direct physical intervention in Fenwick's demise.

67. The fact is that no authority has been cited by Fenwick, and the Council is not aware of any such authority, to show that modifications of the kind proposed would be lawful. It is surely significant that neither Mr Chase nor Mr Bullock, both of whom have extensive experience in CPO matters, was able to cite any other case either where s.237 has been successfully relied on to override provisions of the kind found in clauses 5.1 or 5.4 of Fenwick's lease, or where s.13 rights have been acquired with that effect.

68. The Council therefore continues to maintain that there is genuine and significant doubt about whether the Secretary of State has the power to modify CPO1 in the manner proposed. But even if he has, as previously submitted the Council and DPs do not accept that the modification(s) would provide certainty that the scheme could be implemented.

69. Nor do the Council and the DPs accept that Fenwick's Undertaking, even setting aside the difficulty that it has been given on a conditional basis, is sufficient to ensure that the scheme can be undertaken without the need to include Fenwick's lease in CPO1.

70. In particular, the Undertaking purports unilaterally to confer rights on the Council and DPs to "carry out use repair and maintain any works" authorised by RMAs given under the s.73 Permission (or by a further permission) "notwithstanding any provisions in the Lease with which they might otherwise conflict", including sub-clauses 5(1) and 5(4)(a)[50]. The Council and the DPs are unaware of any other case (whether concerning a CPO or otherwise) in which such an Undertaking has been accepted by the parties as being binding on and enforceable against a lessee of property, or has been found to be effective in overriding rights and privileges granted by a lease; nor have Fenwick cited any such example, whether in the form of a decision of the courts, the Secretary of State or otherwise.

[50] FEN/INQ/17A pp.20-21 cl 2.1

71. The submissions made by Fenwick[51] do not grapple with what the Council submit is a fundamental uncertainty in relation to the legal interaction between both the proposed modification(s) and Undertaking on the one hand, and the provisions of the Lease on the other. The proposed rights in the Undertaking provide that these "shall have effect as if the Works were authorised under clause 5(4)(a) of the Lease"[52], but in the Council's submission in order to give legal effect to such an outcome the Lease would normally require variation, and there is no authority of which the Council is aware that decides that this can be lawfully achieved in this way.

72. The Council's position therefore remains, as reflected in the Undertaking that it has entered into in relation Fenwick's objection, that the necessary rights could only be granted by way of agreement between the parties which incorporated "appropriately documented legally binding commitments" to grant the necessary rights and to waive the application of the provisions contained in sub-clauses 5(1) and 5(4)(a) of the Lease. There is at the least material uncertainty about the lawfulness of what is proposed, and it is surely unrealistic to expect the Secretary of State to decide this kind of legal issue in the CPO context (or probably at all).

73. Therefore, the only way to achieve the resolution of these uncertainties, absent agreement, is to confirm CPO1 without modification.

74. The Secretary of State may think that the sheer length and at times complexity of Fenwick's closing submissions tends to underline rather than to remove those uncertainties. But this is not merely an academic argument. The CPO1 development is a massive project that will cost around £1.4bn in total, and will require new third party investment to be secured[53]. One key objective therefore is to de-risk the project as far as possible, and whilst in general terms the project represents a prime development opportunity any uncertainties about whether it can be delivered will introduce risks about which potential investors will be bound to have concerns. The DPs will also need to be certain that its building contractor will be able to secure access to the existing centre in order to carry out the works.

[51] Fenwick closing submissions Annex 1
[52] FEN/INQ/17A p.21 cl 2.1(d)
[53] AA/MM/1 paras 4.6-4.9

75. We now return to deal in more detail with the Schedule 1 works and the position of the Council and the DPs in relation to these. These are the only works which Fenwick require the DPs to commit to provide at this stage.

76. (a) Connections at each trading level to the new eastern multi-storey car park: this is something which the DPs have agreed in principle; but the Council submits that (a) this is not a necessary part of showing a "compelling case in the public interest" for confirmation of CPO1, and (b) these works cannot be treated in isolation from the other matters that are under discussion and need to be resolved before the scheme can proceed.

77. (b) Accessibility between the LG parking level and the floor above to include an escalator and provision for valet parking: the same submissions apply as in (a) above, save in relation to the escalator link. Whilst the DPs are prepared to continue to discuss this, the practicality[54], necessity and commercial implications of providing an escalator all remain to be resolved.

78. (c) Subject to TfL's approval, a connection from the eastern end of the new bus station to the east end of the centre: this is not agreed in principle or in detail. This too is not (in the Council's submission) a necessary part of the scheme for the purposes of confirming compulsory powers, although again the DPs remain prepared to give this further consideration. A number of considerations[55] arise here.

79. First, on Mr Leonard's own admission[56] this has not been designed to a sufficient level of detail to be able to demonstrate that an eastern pedestrian route is technically feasible and can be provided in a manner that complies with relevant statutory requirements including the Building Regulations. Solutions may be possible, but this is not known at this stage.

80. Second, there is a genuine and legitimate concern on the part of the CPO1 DPs that Fenwick's proposed link could compromise the quality of the retailers at LG level whom they wish to attract to occupy this part of the scheme. This in turn could materially

[54] Including any consequential effect on the car park itself and/or the size of the lobby. Leonard (XX) agreed this was still under discussion and has to be taken forward as part of the detailed design about which discussions are ongoing.
[55] AA/MM/1 paras 4.6-4.4.9
[56] XX

affect its investment value. This is a matter on which advice to that effect has been received from the DP's letting agents, and a simple disagreement from a retailer (albeit an experienced one) who does not himself have responsibility for devising and putting into effect the letting strategy[57], which is a critical element in the success of the enlarged centre, is beside the point. The DPs have appointed expert letting agents and it would be irresponsible of them to dismiss the advice they have been given. This therefore is one of the factors which the DPs are entitled to take into account in deciding whether or not they are prepared to include an eastern route from the bus station into the scheme.

81. Third, an examination of the approved proposal[58] clearly shows (as one would expect on a project of this size and cost) that great care has been taken to balance pedestrian flows around the centre and from the new bus station and its 4 car parks[59].

82. The routes from the existing N car park will remain the same. From the new E car park, there will be routes through the Fenwick store at all levels and (at LG level) directly into the mall to the S; from W car park the position will be similar, with access either through the JL store or onto the mall; from the S car park above the bus station the lifts can be used to enter the S mall at both its E and W ends; and from the bus station itself there will be an attractive, signed and safe route directly into the centre from the W end of the pedestrian peninsular to the route adjacent to the new M&S store and thence into the S mall.

83. The conclusion that the balance of routes across the centre from the car parks and bus station is very good is reinforced by consideration of the internal walking distances[60]. In particular, from the bus station Fenwicks will in fact be slightly closer than JL; and if a notional shopper were to walk from the bus station into the centre the proposed W route would take them into the S mall by M&S, from where it is intended that the Fenwick store will be immediately and prominently visible at the end of the mall.

84. It is clear from these considerations alone that there is no need for an alternative primary pedestrian route from the bus station to the S mall. In fact, and quite aside

[57] M Fenwick XX
[58] McGuinness Appx 3 (Scheme L plans)
[59] Leonard (XX) agreed there is no imbalance and called the proposals in this respect "great"
[60] Leonard Appx 9.6

from the detailed design issues, the provision of such a route would positively disrupt the balance across the centre that the existing design has achieved and would be likely to be confusing for those arriving at the bus station.

85. Fourth, a secondary route from the eastern side of the bus station to the eastern part of the centre will in fact be available, around the side of the proposed hotel and thereby joining one of the main entrance routes from the E car park. Whilst this is not as attractive as the primary route, it is not intended to be but is fit for purpose.

86. Nor would Fenwick's proposed route be as attractive as the proposed primary route[61], passing as it would between the bus lanes and the wall of the southern MSCP and thence across a service area into the side of the S mall instead of past the M&S shopfront and then between the shopfronts on either side of the S mall. Indeed it would be of substantially lesser quality altogether.

87. Fifth, the primary route will be signed and will avoid any pedestrian conflict between buses and pedestrians. By contrast, the proposed E route would put pedestrians and bus traffic into potential conflict, and suffers from other difficulties. It also undermines the core means of securing both a convenient and direct pedestrian access to the malls and minimising potential conflict between pedestrian and buses so raising issues of efficiency of operation and pedestrian safety.

88. Mr Orchard explained that the key elements of the bus station and its operation were the subject of considerable discussion and agreement with TFL both in the context of the s73 Permission and the negotiations for TfL's new lease for the bus station[62].

89. Furthermore, it is not a requirement of the s.73 Permission that such a link be provided. The s.106 obligation provides for the provision of the bus station and identifies its key objectives. These include[63] that it must be a world class facility representing the best practice for bus design in London; that routes should be direct and obvious; and that the design should minimise pedestrian conflict to allow people to get where they want to without endangering themselves (all objectives that Mr Bird endorses[64]). Indicative drawings showing the layout incorporating those objectives and minimum and

[61] Agreed Leonard XX: E route would be "substantially less attractive" than W one
[62] Orchard rebuttal paras 6.1 and 6.2
[63] CD C6, Schedule 6 at p.381
[64] XX GW

maximum dimensions are provided within the s106 Agreement[65]. These plans were agreed following lengthy discussion with TfL[66] and show, as Mr Orchard explained, a clear primary route from where all bus passengers embark/disembark along a pedestrian peninsular (part covered) directly (i.e. without crossing any vehicular route) into the Main Square and accessing High Street North. This allows a direct and convenient access at a low gradient to the heart of the shopping centre and also connecting to the Living Bridge. This primary route would be clearly signed. This primary and convenient route creates and controls a principal desire line to the centre and beyond to the Living Bridge.

90. These principles were agreed with TfL against the background of TfL's duties as set out in the evidence of Mr Adams[67] which require securing the Mayor's Transport Strategy (which includes promoting sustainable transport modes and encouraging more efficient modes of transport particularly buses). Mr Adams also assesses those principles against the development plan which seeks to enhance public transport and improve the attractiveness of the future network for passengers", and explains how these policies led to the design and features of the bus station as contained within the s106 Agreement[68]. Whilst TfL have not ruled out the link now proposed by Fenwick it is clear that they have not required it or indeed sought to secure it. This is apparent from TfL's very limited correspondence on the matter, which not only makes clear that in no sense is Fenwick's proposal a preference[69], but also that it has only been given very brief consideration by TfL at one meeting[70].

91. As noted above, Mr Leonard accepts that there is insufficient detail available to confirm that the link is deliverable. Mr Bird agrees that considerably more work would have to be done and discussed with TfL before approval could be contained. The primary concerns will be[71] impact on safety and the efficiency of the bus station operationally. The currently proposed layout avoids significant conflict between bus and pedestrian through the pedestrian peninsular. The eastern route will not be signed and will be very much a secondary route and not a direct route into the shopping centre. By

[65] Schedule 8, plans 13 and 14
[66] See Rebuttal 6.2, 6.7; evidence in chief and XX
[67] See proof section 3, in particular paras 3.1, 3.2, 3.5, 3.8
[68] Proof 6.4 to 6.9
[69] As tentatively suggested by Mr Bird
[70] See Bird Appx C and AA/INQ/16
[71] See AA/INQ/16

contrast, the proposed route would, it is anticipated by Mr Bird, be signed[72]. It would involve the direction of many (Mr Bird refers to a capacity of up to 2750 per hour[73], and refers to a potential demand of 2,500 passengers per hour) pedestrians across the exitway for buses from the station. Mr Orchard confirmed than on average 141 buses will use that exitway per hour giving rise to potential conflict. Either buses will be held up while pedestrians cross, or vice versa. The direction of pedestrians to take a primary route across the main bus exit route gives rise to potential safety and efficiency issues, and is at odds with the design objective of providing routes that are direct, obvious and minimise pedestrian conflict. This conflict would be exacerbated if the route came to be used by users additional to bus passengers (e.g. persons from/to B4 towards M&S). This is at a very sensitive corner of the bus station where efficient movement of vehicles is vital and the tracking identifies tight manoeuvring[74].

92. Once across the bus lane pedestrians would then enter into a relatively narrow corridor. Mr Bird's proposals (which require considerably more detailed design) show[75] a pedestrian link of a maximum of 3m, containing a pinch point of approximately 1.6m. It is agreed that subject to further consideration of likely pedestrian flow, detailed design and checking, an access provision as shown by Mr Bird is likely to be feasible[76]. It remains to be seen whether or how the column presenting the pinch point can be removed. If not, then this will reduce the convenience and capacity of the route. Common sense and guidance identifies the potential disadvantages of narrow routes[77]. It is not possible or necessary at this stage to resolve the precise capacity of comfort levels. Some form of link is likely to feasible[78], however its final form and convenience will be a matter for detailed design, and will have shortcomings which are highlighted by comparison with the convenient, safe, commodious and direct western route which gives direct access to the centre and provides Fenwick with a direct route that is in fact slightly shorter than that to John Lewis[79]. Rather than arriving in a main square, it passes through a relatively narrow corridor, through rear service areas (which will have to be resolved), past fire escapes and access to the bus driver's facilities.

[72] XX GW
[73] FEN/INQ/15
[74] See Orchard App 4.5.7
[75] Figs 6 and 7
[76] FEN/INQ/19
[77] See FEN12, min width of 2m; FEN18 App. B.
[78] See FEN/INQ/19 and agreement that target of C+ using the Pedestrian Comfort Guidance is reasonable design aim
[79] See Leonard App 9.7 plan 4

93. As a result of the above there are a number of uncertainties and disadvantages associated with the provision of the eastern link as a primary route to the shopping centre, particularly when compared to the carefully conceived pedestrian peninsular and western access, with minor secondary route to the east to serve the hotel.

94. It is therefore not accepted that there would be any actual benefit in the public interest through the provision of the eastern link let alone an advantage that could be seen as determinative of a compelling case in the public interest.

95. Indeed, the claimed public interest benefit from the link is opaque. Mr Bird in his evidence appears to justify the proposed link due to the benefits it would bring to the attractiveness of the use of the buses. However, Mr Bird accepts[80] that he presents no evidence on any quantified basis of what sort of increase in public transport accessibility may be expected. Rather he says the point is a qualitative one. In effect it is a design preference. Secondly, as a means of increasing the use of public transport the eastern link as a measure is entirely insignificant when seen in the context of the scheme – which Mr Bird failed to do in his evidence. The scheme involves the investment of £300m in highways infrastructure, the delivery of a world class bus station, enhanced bus services, enhanced cycle and pedestrian connectivity from the local area (which links are currently very poor). Mr Bird accepts that the underlying scheme brings substantial transport benefits in the absence of the link. Further, there is a wealth of measures within the s.106 Agreement to promote sustainable transport including individual travel plans (which the NPPF sees as a key tool to facilitate the use of sustainable transport modes); and a robust monitoring scheme and the availability of a consolidated transport fund of £15m for Phase 1 including a £2m contingency fund available to promote appropriate measures to incentivise sustainable transport[81]. Mr Bird confirmed that the Travel Plan contained the measures he would like to see and did not omit anything he would like to see within it[82].

[80] XX GW
[81] As discussed with DB in XX – see CD C6 Sched 12 – Transport Advisory Group (2.4.2, 2.5.2, 2.5.3, 5.12, 6.2; Travel Plan Schedule 15, 3.13, 3,16, 4.7; Sched 19 Consolidated Transport Fund (payable on commencement of Phase 1A North – see Schedule 3 para 1)
[82] XX

96. The absence of any substantive evidence in support of the link from a transport accessibility perspective is unsurprising. The shopping centre is already very well-served by buses and will be even better served in the future. People will arrive from a range of destinations, to different stops within the station, and with an aim to visiting many shops. It is hard to see how providing the link would make any difference to how many people chose to come by bus.

97. Against this background, the provision of an eastern link of doubtful value at all but at best of very marginal value is of no material consequence in the decision whether or not to confirm the CPO. It is a design preference identified and promoted by Fenwick to bring about benefits primarily in its own commercial interest (consistent with the brief to Mr Bird[83]). It is a design preference that does not have the support of the DPs or TfL at this stage, and was not promoted or required by those bodies despite both seeking to design the shopping centre and bus station to be of the highest quality and maximise use of sustainable transport and the attractiveness of the centre.

98. Finally, it is very difficult to see how the provision of the link can be considered to be tipping point in the public interest in transportation terms when the ability to deliver it is unknown. This depends upon the agreement of TfL as well as on further assessment of its feasibility, and so the Secretary of State can only strike the balance on the basis that it may or not be deliverable.

99. There remains the question (raised by the Inspector) of what will happen in the unlikely event that agreement is not reached with Fenwick before the Secretary of State makes his decision, and if CPO1 is confirmed without modification and the powers in it are exercised such that Fenwick's leasehold interest is acquired by the Council.

100. It is important to remember here that it is clear from the evidence that all parties consider it to be strongly in their interests that Fenwick should remain as a principal trader and anchor tenant in the refurbished and extended shopping centre. Therefore, as evidenced by the draft Agreement that the Council and DPs submitted to the inquiry (but which has not been completed)[84], if Fenwick's interest is acquired

[83] XX by ref to PoE para 1.8
[84] AA/INQ/13 cl 3.3(c)

compulsorily then the Council/DPs will offer Fenwick a new lease of their store on reasonable commercial terms for a term at least as long as the existing Lease[85].

101. Fenwick would also be under a duty to take reasonable steps to mitigate their loss as a result of the acquisition of their Lease, and this would include attempting to agree reasonable terms for a new lease. If they did not act reasonably, or if the Council/DPs did not offer reasonable terms, then clearly this could have very significant compensation implications.

102. It is to be anticipated therefore, although it is accepted that there can be no certainty about this, that in such circumstances the terms of a new lease would be agreed by the parties. It would also be in the interests of the parties, and the Council's/DPs' intention, to act in such a way as to ensure that Fenwick's occupation was not interrupted by the acquisition of their interest and the time taken to agree a new lease, for example by allowing them to hold over or granting an appropriate license.

103. In conclusion, the purpose of CPO1 is to facilitate the implementation of the CPO1 development (and thus the remainder of BXC as well) by acquiring those interests in land that are required to bring the certainty that this can happen. As things stand, the Council submits that it remains necessary to include Fenwick's leasehold interest in CPO1. Furthermore, it is also clear in the Council's submission that the uncertainties that would arise if that interest were to be acquired are strongly outweighed by the much greater risks to scheme delivery if the Lease were excluded from the Order.

**Objection by Swishbrook Ltd (objector 51)**

104. The highway improvements at the A5/A407 junction are a necessary and integral part of the permitted regeneration scheme. This is one of nine Gateway Junctions[86] on the strategic road network identified at an early stage as requiring improvement to accommodate the scheme[87]. The improvements have detailed planning permission[88], and their delivery is tied into the wider regeneration project

[85] Generally on this scenario refer to Astbury evidence in chief day 6
[86] Defined CD/C3 p193
[87] CD/C18 at 3.1, 3.2 and 3.12
[88] CD/C3 condition 1.29

through planning conditions, including a Grampian condition preventing any part of the development south of the A406 from being occupied until the improvements are completed[89]. The junction was one of the suite of strategic junctions identified for improvement through the SPG[90]. The notion that this document was perhaps contemplating merely pedestrian improvements[91] to this (and the other strategic gateway junctions) is untenable and derives from a very strained reading of the document itself[92].

105. The objector puts forward no alternative junction improvements. It is accepted that the proposed improvements require the objector's land, and that they are a necessary part of the proposed development as permitted[93]. Mr Axon does not put forward an assessment of how the affected part of the strategic road network would operate without the improvement. Instead, Mr Axon asserts that the consequences should be tolerated.

106. Mr Orchard has explained that the package of highway improvements at the inter-related Gateway Junctions was the product of several years of working closely with LBB, TfL and the Highways Agency. The models developed with TfL are complex and have been run, re-run and iterated to ensure the improvements are as appropriate as conceivably possible. The modelling was re-visited and considered in detail and this affirmed that the junction improvements were appropriate and required[94]. What Mr Axon proposes was unacceptable to the relevant highway authorities[95]. Mr Steward for TfL confirms in his proof of evidence that the A5/A407 proposed improvement are "necessary, relevant and directly related" to the scheme and to render it acceptable[96]. It is incorrect to suggest that these comments are a summary of AA's case[97]: reading those paragraphs make it clear that this is TfL's opinion on the works as expressed by Mr Steward. It is also entirely consistent with TfL' position as expressed by Mr Orchard throughout his evidence. A solution is proposed at A407/Claremont Road that requires a lesser land-take. That was acceptable in that location to TfL and LBB. It is not here.

[89] Condition 20.10
[90] B13 p42
[91] ME QC Closing Submissions at 5.9
[92] See B13 Fig 23 and p42
[93] XX Axon
[94] Orchard rebuttal 4.4
[95] Orchard rebuttal 2.5
[96] Proof 5.1 and 5.2
[97] ME QC at 5.14

107. There are a number of difficulties with the objector's case. Firstly, it is based on a misreading of national policy fundamental to its case. Paragraph 32 of the Framework advises that "*plans and decisions should take account of whether…improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development"*. In this case, such improvements have been identified as part of the scheme and so benefit from the support of this part of the Framework. The improvements are to be delivered by the DPs. Thus national policy supports the improvements. NPPF para 32 continues: *"Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe".* Here, the Gateway Junctions formed an integral part of the scheme. The Council was not considering refusing permission for the development in the absence of the improvements. Mr Axon ignores the word "residual". The application of this policy was and remains straightforward – through the detailed application process specific and important junction improvements were identified as part of the scheme to ensure its overall impact was acceptable. They were identified because the impact on the strategic road network would otherwise be unacceptable. The Council assessed the proposals against the Framework and considered them compliant. The Objector identifies no material change in circumstances since the s73 was granted.

108. Secondly, although critical of the modelling work undertaken Mr Axon does very little to assist the Inspector with the consequences of omitting the junction improvements, which would of course require a new series of modelling work in support of a new planning application (whether under s.73 or not); an application which would be contrary to TfL's confirmed position to the inquiry that the junction works are necessary. Mr Axon accepts[98] that to assess the benefits of the works the Secretary of State needs an understanding of how the junction will operate in their absence in the end state (i.e. when the development is delivered). Mr Axon provides no such evidence[99]. He resiles from his own table[100] and relies instead on a subjective assertion that the works are not necessary, but this is not based on any objective or

[98] XX GW
[99] Confirmed XX GW
[100] Table MA1, proof p18 – confirmed he does not rely on this – evidence in chief and Inspector's Qs

empirical assessment of how the junction will operate in their absence. The objector's case is therefore baseless.

109. Thirdly, there is a considerable amount of evidence available that assesses the operation of the junction. This was prepared in different context – the junction improvements are part of a strategic package of improvements to the network through the Gateway Junctions and have been assessed rigorously as a package as they are all inter-related. The absence of a "scenario 2" reflects this. For the s.73 Permission there was a strategic model based on Saturn which combined with a public transport and demand model, which was then combined with LINSIG analysis. The model was iterated until the results and identified improvements converged and the network operated satisfactorily. This is referred to as the BXC TM. This gave rise to the results in the Consolidated Transport Assessment[101]. It was envisaged at the date of the s73 Permission that further detailed work would be required and the A5 Corridor Study would be undertaken[102] to support the planning application. The detailed junction design process has been informed by this most recent modelling work, and a new model has been created, run and iterated – the Detailed Design Model (DDM). Mr Orchard confirms that the conclusions arising from the further work affirmed the junction improvements[103]. Each model assigned traffic through the network taking into account the capacity of the junctions, public transport choice, and to reflect congestion on the network[104].

110. Swishbrook's closing submissions oversimplify the modelling exercise in suggesting[105] that the figures from the LINSIG models could be simply fed into the strategic model. In accordance with the practice of TfL the modelling is an interaction of outputs from the strategic model that are tested by LINSIG at individual junctions to consider specific junction operation, before the outputs are fed back into the model for further consideration of potential and related impacts at other junctions and for iteration.

[101] CD C19 and 19a
[102] See C4 p145
[103] Rebuttal 4.3, 4.4
[104] Orchard rebuttal 4.11
[105] At 1.8

111. Thus although the objector's case focuses heavily on the absence of a 'Scenario 2' assessment this really misses the point. The transport work undertaken was appropriate for the development for which permission was sought. The objector fails to recognise that the development proposals comprise a series of related improvements to related gateway junctions. It is this permitted development that the CPOs are intended to enable. There is no good reason why the development partners should make their model freely available to Mr Axon. It is an enormous and strategic model. To run and iterate the model runs properly would take months. The development partners are not seeking to promote a scheme that excludes the A407/A5 junction, which has long been an identified objective and requirement of the scheme.

112. Mr Axon criticises the assumptions used. But he offers no alternative assumptions, and the assumptions used were those agreed and indeed stipulated by the relevant authorities, notably TfL[106]. Those improvements were re-considered in light of the up-to-date traffic conditions through the s73 application and the Consolidated Transport Assessment[107]. In order to assess transport impacts of a scheme such as this assumptions are necessary, and the assumptions made are appropriate[108]. No alternative analysis is put before the Secretary of State.

113. Fourthly, there is a lack of reality about Swishbrook's objection. The junction improvements are substantial. They are shown on Fig 7.2.3. In passing, we note the point raised in Swishbrook's closing at 4.1 that "presumably, this provision [i.e. the measures shown on 7.2.3] would need revision in any event." We are not aware of the basis for this presumption. The detailed junction operation (i.e. signal timing/phasing, road line markings etc) are assessed and adjusted through detailed technical design in consultation with TfL. Figure 7.2.3 shows the most up to date technical layout consistent with the permitted improvements.

114. Currently, due to the off-set arrangement of the junction the A407 signals cannot run at the same time. The proposals straighten up the junction allowing two-way simultaneous flows with a significant increase in flows through the junction. Additional capacity is also provided through the additional lane on the eastern arm,

[106] Orchard Rebuttal 3.1 and Appx B
[107] CD/C19 and 21
[108] Explained in evidence in chief – all assumptions insisted upon by TfL

and an increased radius on the north-eastern corner[109]. Mr Axon accepts[110] that the improvements will increase traffic flow for buses and private vehicles through the junction. Mr Axon refuses, however, to credit that these are carefully considered junction works planned in the knowledge that they would require the taking and demolition of property[111] and still considered by the DPs and relevant authorities to be necessary to mitigate the impacts of the scheme in the public interest. They are not in any way capricious, but rather costly and essential.

115. Fifthly, the available evidence shows both the issues faced by the junction at the end date and the effect of the improvements:

a) Consolidated Transport Assessment[112]: This[113] shows in 2026 without the development traffic but allowing for background growth (Do Minimum) that the junction is operating hugely over-capacity at peak times (note DoS's of 146.1 and 196.6). All arms are over capacity. With the improvements in place and background and development traffic (Do Something) all arms operate with DoS of 100 or less. The queues in the DM are up to 180 PCUs and delays of 958 seconds The conclusion of the CTA[114] flowing from these figures is that the "junction performs vastly better in the DS situation". This conclusion is apparent from the tables.

b) Mr Axon: Mr Axon initially relied upon his Table MA1. This too showed that in the DM scenario the junction would operate with all arms well over capacity (in am peak the lowest DoS is 115.2). Mr Axon then said[115] that he relied on the table only for a comparison. However, if a valid exercise this shows substantial worsening of congestion and saturation with the development traffic (e.g. pm peak all arms show substantial increases of DoS in order of 20%). However, a comparison is only meaningful if one also places reliance on the absolute figures because only these that show how well or otherwise the junction is operating. In the end Mr Axon confirmed that he did not rely on this work at all and presents no empirical evidence to support a case that the works are not necessary.

[109] See Orchard rebuttal 4.5
[110] XX GW
[111] CD C18 3.12
[112] CD C19a
[113] Tables 2.34-2.37
[114] 2.9.2
[115] X Inspector

c) DDM: Mr Orchard's rebuttal Appendix C shows the predicted operation in the Do Something scenario. This is the most up-to-date TfL approved modelling work. It shows that with the Gateway Junction improvements and with background and development traffic the junction is predicted to operate satisfactorily in 2031 with the busiest arm in the busiest peak showing a DoS of 92. This is the result of the improvements. It is important to recognise that the Gateway Junctions are inter-related. Changes to one impact on the flows through the others. The package of improvements reflect this, and the model has been iterated to balance these impacts and maximise the effect of the improvements across the network.

d) AA/INQ/27: Following a meeting of experts Mr Orchard produced INQ27 to assist Mr Axon by trying to present the analysis raised by Mr Axon in his proof on a consistent basis. This is explained in the note. It is different from the CD/C19A output because it has made different assumptions as to junction layout. CD C19a in the DM reflected the existing layout as validated in the 2008 work. The DS reflected the junction improvements. CD/C19A inputs the existing junction layout as it is now. The assumptions also reflect the later DDM work and also the method of control reported in the A5 Corridor Study. The introduction clarifies that the identified inconsistencies favour the DS situation but non-materially. This means that within the same model runs there was a light imbalance which made the DS operate very slightly better compared to the DM in the same run. It does not mean[116] that the figures should be compared to CD/C19A, as those figures contain a number of different inputs and assumptions. The analysis in AA/INQ/27 is not intended to be a full assessment or to present new and robust modelling to replace the detailed DDM work undertaken, but rather to try and present the evidence that Mr Axon was trying to show in his table, but on a consistent basis.

The new analysis shows three scenarios – (1) existing layout with Do Minimum flows; (2) existing layout with Do Something flows (i.e. with development traffic); and (3) the Do Something flows with the Do Something junction improvements. These results have not been iterated. The picture is clear: in (1) the junction operates with 3 out of 4 arms operating with negative practical reserve capacity (i.e. over 90%) in am and pm peaks; in (2) there is a substantial worsening of the operation of the junction in the pm peak (overall PRC of minus 25.5%), Saturday

[116] As was suggested by MEQC to Axon in evidence in chief

moves from PRC of 12.7% to minus 3.4%, and equally importantly the junction is operating well over its practical capacity in am and pm peaks; in (3) there is a substantial improvement – the PRCs are telling – am minus 9.2% becomes +15.8, pm minus 25.5% becomes +10.9, and Saturday minus 3.4% becomes +24.8% . This analysis performed on a consistent basis seeking to iron out alleged inaccuracies by Mr Axon makes clear that the junction performs badly in the DM scenario, will get worse with the development traffic, but that with the proposed Gateway Junction works the junction will operate satisfactorily.

116. It is common to assess junctions by reference to their degree of saturation to form a view about the junction's performance. This is clearly endorsed in the current TfL modelling guidelines[117]:

> *Engineers should be mindful that delays begin to increase exponentially above approximately 85% DOS. At junctions operating close to zero Practical Reserve Capacity (PRC), corresponding to approximately 90% DoS, small reductions in capacity can result in a significant increase in delay. For this reason a DoS of 90% represents an upper limit of practical capacity for signalised junctions.*

This point is then well-illustrated in Figure 8[118] which shows the exponential increase in delay as a result of reducing capacity. On any of the analyses referred to above the junction at the End Date is operating in excess of its PRC and this will be exacerbated by the increase in flows resulting from the development. It is a junction that <u>needs</u> improvement in TfL's eyes (and the DP's, and LBB), but on any analysis it is a junction that would benefit considerably from improvement, and the improvements proposed have been shown to ensure that the junction will operate satisfactorily in 2031 with all relevant traffic accounted for. The improvements bring substantial benefits.

117. The Council submits that the TfL accepted benchmark and approach should be applied. It allows a clear and consistent consideration of the junction and how it operates. By contrast, as evidenced by Mr Axon's response to the Inspector's questions, Mr Axon puts forward no means of identifying what are reasonable bounds for the assessment of the junction and how it operates. Although at one stage he offered 100% as a reasonable bound (against which test the junction would fail in every assessment – see CD19A and AA/INQ/27), he then expressed the view that there was no relevant yardstick.

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[117] *Traffic Modelling Guidelines Version 3.0*
[118] And see Orchard rebuttal 4.9

118. Taking stock at the end of Mr Axon's evidence, no analysis of the junction at any time or with any traffic flows is put forward. The most recent Linsig results tell a clear story. Mr Axon refuses to accept that the improvements deliver real benefits in the face of the evidence and the unanimous position of the relevant authorities. And yet there is nothing in his evidence to support a conclusion that the improvements are unnecessary. It is a simply assertion that in London the network ought to be allowed to remain as it is with restraints and this may encourage users to take alternative modes of transport. This, of course, is directly at odds with TfL's position who have a duty to promote sustainable transport[119].

119. In reality, as explained by Mr Orchard, the improvements will bring benefits for public transport and for pedestrian safety. The junction is well-used by buses. The A5 contains a bus lane northbound that stops short of the junction. There is a proposed bus lane southbound in the A5 Corridor Study. The A407 has no bus lanes. The junction is an all-movement junction. Buses and cars compete for the capacity within the junction. Increasing the capacity and the flows will therefore being benefits for both users. The degree of benefit can be addressed in future by balancing the arms, or by introducing bus priority measures. Mr Orchard considers Mr Axon has misunderstood how the junction will operate (referring to there being 3 signal phases when it is proposed that there will be 2[120]). The proposed improvements allow a thorough testing of how the junction operates and it how the details can be managed to promote pedestrian safety. This goes hand in hand with the increased capacity. However, if the capacity is not increased but allowed deliberately to operate as a restraint then this will hinder buses passing through the junction increasing journey times and reducing the attractiveness of the routes.

120. Mr Axon refers to a number of options where the junction operates as a restraint. These include accepting the delay, changing the time of travel, changing mode, or changing route. None of these has been assessed by Mr Axon. However, as Mr Orchard points out[121], rat-running on local roads is highly undesirable. Some evidence of this can be seen in the Do Development scenario[122] at Figure 6.4/6.5 and text at 6.4. In any event, the buses cannot divert to local roads and so must accept the delay. Mr Orchard notes that the strategic road network should be promoted, not

[119] Proof of Mr Adams section 3
[120] JO XX ME QC
[121] Rebuttal 4.10
[122] AA/INQ/23

local roads. Secondly, this is not an area that lends itself to peak-spreading. The flows along the A5 in particular are fairly constant[123]. Thirdly, the model already allows for choices based on congestion, re-timing and also for public transport choice[124].

121. Finally, although Mr Axon considers one can derive little from model results in this case, at a very late stage he puts forward an assessment of the increased capacity of the junction. In ME QC's closing[125] this is described as no more than a "sense check". This does not, however, look to assess the actual benefits of the improvements in terms of travel time but simply looks at what he considers to be the amount of tarmac created. His analysis also derives from the modelling which he decries. The outcome of this model like any other is sensitive to the assumptions and inputs made. One such output is that the junction allows an extra 176 vehicles to flow through per hour. The AA does not consider this to be a fair analysis of what benefits are brought about by the improvements which should reflect the improvement in the context of how the junction operates – its capacity and the corresponding increase or reduction in queueing or delay. None of this forms any part of Mr Axon's analysis – whereas the Do Something analyses from the BXC TM and DDM do show how well the junction operates with the improvements. Mr Axon does not assess the actual benefits. In response to the Inspector Mr Axon suggested that journey time was critical – and yet no such evidence or analysis is presented whatsoever. Mr Axon then refers to the Mayor's response to a question[126] - but he ignores that these proposals have the full support of the Mayor[127]. However, even the one snapshot (with all the caveats that much accompany it) show a material improvement. This improvement is to a junction that would otherwise be unstable and well over capacity and so the increased flows would cause exponential delays.

Conclusion, context and consequences

122. The Objector's land is required to deliver the junction improvements that are a necessary and integral part of the scheme. Without them the scheme as permitted cannot be developed out. The improvements form part of the scheme that was assessed as policy compliant in all transport respects, including through the s.73

[123] Rebuttal 4.12 and App. D
[124] Reb 4.6, 4.11 and oral evidence
[125] At 5.15(iii)
[126] Summarised in Swishbrook closing submission at para 5.14
[127] As is made clear in the next paragraph of the Mayor's response – see documents submitted by Mr Axon during evidence.

Permission which post-dates the NPPF and was taken in light of the agreed assumptions at that time. They are considered by the relevant highway authorities to be necessary to mitigate the scheme – indeed these specific works are the minimum improvement proposals that LBB and TfL were prepared to accept[128]. The conditions are imposed to reflect the necessity of the works, but also to ensure their timely delivery. TfL confirm these works are necessary[129]. These measures do not stand alone. They form part of the Integrated Transport Strategy for the entire scheme. This includes not only the physical highway improvements, but the very substantial measures to improve public transport accessibility and to promote sustainable transport modes. All the measures are inter-related and have been assessed as such.

123. If the junction is omitted then a new planning permission would be required. Mr Orchard explained that the basis of any such application would have to be an assessment of the network at the end date but without the junction improvements. This would take "many many months"[130]. It would be necessary to assess the consequences of the omission for each of the other Gateway Junctions in terms of flows. This may give rise to the need to make alterations to other junctions to reflect the revised flows, and so there may be consequences for the permission in relation to those junctions. Following any proposed improvement the model will have to be run again to allow for traffic re-assignment. There is then an iteration process. Potentially, therefore the further work will show that further amendments to the permission are necessary. Or it may produce results for this and other junctions that are unacceptable to the relevant authorities. Certainly, LBB's and TfL's current position is that these works are necessary, i.e. that the proposals are unacceptable without them.

124. The purpose of CPOs 1 and 2 is, simply stated, to secure the first phase of the comprehensive regeneration of the BXC area through the carrying out of development, redevelopment and improvement in accordance with the s.73 Permission. That Permission, and its associated s.106 Agreement, were not subject to any legal challenge, by the objectors or by anyone else. That is notwithstanding that the objectors must have been aware at the time that the project included junction improvements at the A5/A407 junction which would necessitate the taking of their

[128] Orchard Rebuttal 2.1
[129] Steward proof 5.1
[130] Orchard ReX

property (or a large part of it). Indeed it does not appear that the objectors made any objection to the planning application (or to the previous one) at all.

125. In short: the acquisition of the objectors' land is plainly and unarguably required in order to facilitate the carrying out of the development authorised by the s.73 Permission, and more particularly the carrying out of the junction improvement works that are an integral part of the Permission on that land. That being so, the only real question is whether there is an alternative means of achieving the purposes for which the Orders have been made. That means that the Secretary of State, if he is to uphold this objection, is going to have to conclude that the scheme can proceed without the improved junction, and so without the objectors' land. This is elaborated further below.

126. It has been no part of the objectors' case that the s.73 Permission was granted in error or unlawfully, nor that it should never have been granted in a form that included these junction improvements. It has, however, been suggested for example that the planning application was not properly considered in accordance with the advice in paragraph 32 of the NPPF. If that were the case, then this is a matter that could and should have been raised at the time.

127. These matters are important because there is nothing in the Guidance or in decided cases that warrants the re-opening or re-examination of the planning merits of a development scheme for which planning permission has been granted in the context of a CPO inquiry – or, more particularly in this instance, the correctness of including the junction works in the permitted scheme. Rather, in deciding whether or not there is a compelling case in the public interest for confirming a planning CPO, the question is whether the purposes for which the order has been made justify interfering with the human rights of those affected by it, and whether those purposes could be achieved by any other means[131].

128. Here, the purpose of the Orders is to complete the process of land assembly in order to enable the carrying out of regenerative development that has planning permission; in other words, to bring certainty that the development will not be impeded by lack of control over the land required to undertake and complete it. An integral part of the development is the carrying out of improvement works to the A5/A407 junction.

[131] CPO Guidance (CD/A17) paras 12, 76

Thus, in order to uphold this objection and exclude the objectors' land from CPO1, the Secretary of State has to be satisfied not only that the junction improvements are not a necessary part of the scheme but also that if the objectors' land were excluded there would be no impediment to the rest of the scheme proceeding without it.

129. The Council's position remains that the junction works are an integral and necessary part of the scheme; but that in any event the consequences of excluding the objectors' land from CPO1 would be to introduce such substantial uncertainty about whether, and when, the project might be able to proceed that the Secretary of State should not uphold the objection even if he considers that the need for the junction works has not been demonstrated.

130. In practical terms, both the s.73 Permission and the s.106 Agreement include a number of definitions that feed through into substantive conditions and obligations that relate to the Gateway Junctions and the improvements works proposed at them, including the A5/A407 junction[132]. Whilst this could clearly be done, the identification of the relevant provisions that would need to be removed or amended would in itself be a significant task.

131. However, of much greater significance would be the amount and complexity of the work that would need to be done to support an application under TCPA s.73 to undertake the development without complying with the conditions on the s.73 Permission that relate to the A5/A407 junction works, and the necessary changes, which would probably need to be effected by way of deed of variation, to the relevant provisions of the s.106 Agreement.

132. First, the s.73 application would be for EIA development. Therefore all aspects of the likely significant environmental effects of the development would have to be reviewed and updated as appropriate. This itself would be a major and time-consuming task.

133. Second, in respect of the highways and transportation implications of the omission of the objectors' land as previously mentioned the unchallenged evidence of Mr Orchard is that it would take many months to undertake and to complete the iterative modelling work that would be required in order properly to assess the

[132] The principal provisions in the Permission have been identified above; those in the s.106 Agreement (CD/C6, first part) are the definition of 'Critical Infrastructure Phase 1A(N)' which has the same meaning as 'Critical Infrastructure Pre-Phase 1A(N)' (see para (e)(iv)), and Sched 2 para 2.1.10(c): CD/C6 pp.64-65, 173-174

implications for the rest of the highway network, and more particularly for the other 8 Gateway Junctions (including the A407/Claremont Road junction, which lies very close by), of the omission of the junction improvements at Cricklewood Lane/Cricklewood Broadway.

134. But this is not merely a matter of delay to the project, significant though that would be. The most important point is that the outcome of that process is not known. In particular, it is not known whether there would need to be changes to the works proposed at any of the other Gateway Junctions, or other alterations to the network, in order to accommodate traffic that may be diverted from the Swishbrook junction onto other routes as a result of leaving it as it is. This, in turn, may require further land acquisition. Again, it is simply not known what the consequences would be.

135. The objectors say that it is for the Council to demonstrate a compelling case in the public interest for the acquisition of their land and interests, and that the necessary model runs should have been done before the CPOs were made. But this is again to misunderstand the nature of the CPO process. As has already been made clear, the Council's position is that such further work, quite aside from the amount of time and cost that it would have required, was not necessary because of the fact that the scheme for the purposes of which the Orders have been made has planning permission and includes the works at the Swishbrook junction. The public interest does not require the planning merits of the scheme as a whole, or of individual elements of it, to be re-examined in the context of a proposed compulsory acquisition of land except to the extent necessary to assess whether the purposes of the acquisition could be achieved by other means.

136. The objectors have also said that, had they been given access to the traffic models, they could have done the necessary modelling work themselves. However, the facts are that the proposal for a without prejudice meeting between the experts came not from the objectors but from the Council's solicitors Eversheds (after having received the objectors' Statement of Case) in their letter of 19 April 2016, which was one week before the objectors' evidence was due to be submitted. Eversheds then agreed to a deferral of the submission of the objectors' evidence until after the meeting had taken place, that is to 6 May, then to 9 May. The meeting in fact took place on 28 April, at which sight of the traffic models was requested for the first time. It was then

not until 26 May that the objectors' solicitors wrote to say that Vectos had "not yet received other modelling work (BSC [*sic*] TM, BXC DDM, and TRANSYT)"[133].

137. Even if it had been practicable for the models to been given to Vectos in early May, for the reasons already given the results of the modelling work would not have been available until a long time after the inquiry had closed.

138. The very significant delays to the project which would be the inevitable result of acceding to this objection, and the uncertainties about whether the project could proceed at all, are matters that the Council submits are highly material to the Secretary of State's decision whether or not to confirm CPO1.

139. Mr Fowler's evidence, which has since been withdrawn, raised a number of other matters the materiality of which was marginal at best. That is because, even if the Secretary of State were to give weight to the location of the objectors' land in the primary shopping frontage of Cricklewood town centre, and to the heritage significance of the building, and to the potential for a residential conversion of and extension to it, it is inconceivable that the need for the junction improvements as part of the overall scheme could be outweighed by these considerations. The point rather seems to be[134] that these become relevant should the Secretary of State find that the capacity benefits of the junction improvements are marginal. That is not a conclusion which the Council thinks the Secretary of State likely to reach, but the following submissions are made in the event that he does.

140. In policy terms, the site is identified in Barnet's Development Management Policies as falling within the primary shopping frontage of Cricklewood town centre[135]. However, paragraph 1.4.3 of the DMP DPD states that the policies in it "will not apply to the development of the Brent Cross Crickelwood Regeneration Scheme" unless and until further policies are adopted that change this (which they have not been). The A5/A407 junction improvements, and therefore the Swishbrook frontage, are part of the BXC scheme; therefore the policies in the DMP relating to it do not strictly apply. There is in any event no evidence that the loss of the shops along this frontage would

[133] Letters referred to are attached to Swishbrook Opening
[134] Swishbrook closing submissions para 5.23
[135] AA/INQ/47

cause any material harm to the centre; indeed the impact of the development on the vitality of the centre was expressly considered at the planning application stage[136].

141. So far as the potential conversion of the existing accommodation on the upper floors of the Swishbrook building to residential use is concerned, this may require the Council's prior approval as to the transport impacts of the development[137] since it appears that no parking provision at all in accordance with the Council's standards, notably for disabled persons' spaces[138], can be made on site. However the position is simply not known since the material that would be required under DMP policy DM17 to support an application under the GDPO for a prior approval determination is not available.

142. Similarly no information has been provided about a possible residential extension scheme. Issues that would need to be considered include the impact of traffic noise, air quality issues in relation to the ability to provide outdoor amenity space, and the townscape impact of the extension having regard to the established building line along Cricklewood Lane. Whilst residential development is not ruled out as a matter of principle, the number of units that could be provided is therefore open to question.

143. Even if a residential conversion and extension scheme could be achieved which provided 18 units, which is doubtful, this would pale into insignificance compared with the number of new units that BXC as a whole will provide. This is really just another way of saying that, if the junction works are a necessary part of the project, the loss of the prospect of providing some residential units in the Swishbrook building could carry no material weight in the decision.

144. The same goes for the claimed architectural and historic interest of the building. It was entirely clear from the s.73 application documents[139] that the building was to be demolished, and English Heritage raised no objection to this (or indeed to the application as a whole)[140]. That is unsurprising since the building is not in a conservation area, nor is statutorily or locally listed.

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[136] CD/C4 p.471
[137] Under GPDO 2015 Sched 2 Pt 3 Class O condition O.2(a)
[138] AA/INQ/29 policy DM17(g); para 18.8.3
[139] CD/C18 p.67 para 3.12; CD/C28 parameter plan 16; approved plan P/D111870/H/100/1024 Rev D (appended to Wyld Swishbrook rebuttal); CD/C4 p.63 (foot)
[140] CD/C4 p.65

145. The local list has been in existence for many years and (together with the statutory list) provides "a comprehensive inventory of the Borough's historic building fabric"[141]; but the building is not in it. The criteria for local listing include buildings of good design and those illustrative of social development and economic history; yet no application has ever been made to add the building to the list. The suggestion that the building is of interest because it is one of Burtons' few remodelling projects of its type[142] is unproven both as a matter of fact and in terms of whether (even if true) this would lend the building any real interest that would make it worth preserving. Such interest as the building may possess is in any case only above the ground floor, which possesses no apparent relics of the original shopfront.

146. Whilst Swishbrook suggest that its building should be treated as an "non-designated heritage asset" within the meaning of paragraph 135 of the NPPF[143]. However, the Glossary indicates that a heritage asset is a building, etc, "identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing)". The fact is that this building has not been identified by anyone except the objector as having any heritage significance whatever.

147. The alleged historic or architectural interest of the building should therefore be given no weight in the Secretary of State's decision on CPO1.

148. Agreement has been reached concerning Swishbrook's objection concerning the acquisition of land in Edward Close[144]. It is accordingly not necessary to deal with this in these submissions.

149. The Swishbrook objection must therefore be rejected on the grounds that the junction works are an integral and necessary part of the overall project, and that the other considerations raised do not outweigh the need to acquire Swishbrook's interest in order to deliver it.

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[141] AA/INQ/30
[142] Fowler Qs Insp
[143] Wyld XX MEQC; he agreed that it was an undesignated heritage asset, but the Council submits that this was incorrect
[144] Ashtons letter to Programme Officer 5 July 2016; AA/INQ/52

**Objection by Munawar, Mohammad Anwar and Fida Hussain (objector 24)**

150. These objectors occupy 3 of the shop units in the Swishbrook building: Phone City, which is on the corner of the junction of the A5 and A407, and the 2 adjacent units (I Love Candy and Molto Bella Barbers) in Cricklewood Lane.

151. So far as the objection on the grounds that the acquisition of the Hussains' interest is not necessary is concerned, the reason for the acquisition is the need to carry out the approved junction improvements. This has been addressed in the context of Swishbrook's objection above.

152. The Council has both offered assistance to the Hussains in finding replacement premises (through its agents Sapiens), and has (through its agents GL Hearn) made without prejudice offers of Heads of Terms on the basis explained in Mr Astbury's evidence[145]. There are 3 potential retail locations within to which the shops might relocate – Cricklewood Broadway itself, Walm Lane and Childs Hill (which lies at the E end of Cricklewood Lane). Whilst it is accepted that the availability of alternative premises (especially in a corner location) is limited, and that Childs Hill in particular is a quieter location in retail terms, if alternative premises are found and the business suffers a loss in trade then (subject to proof) compensation would be payable. If the businesses have to close down because alternative premises cannot be found, then compensation would be payable on a business extinguishment basis.

153. Therefore whilst the reasons why the Hussains do not want to move are fully understood, the circumstances are no different from any other situation where land is proposed to be compulsorily acquired in order to facilitate development which is in the public interest. If the Secretary of State is satisfied that the junction improvements are justified, therefore, this objection cannot succeed.

**Objections by Whitefield Estate residents**

154. There have been a number of objections from residents of the Whitefield Estate to both CPO1 and CPO2, which each covers different parts of the Estate. These have been presented by various different individuals, some claiming to speak on behalf of other residents. The Council believes that the objections of individual residents are

[145] Astbury PoE p.14 para 5.13

important and must be given full and serious consideration, but it is nevertheless necessary to recognise that there is no Whitefield Estate residents group or association as such, and no evidence that those who spoke were in fact speaking on behalf of anyone other than themselves.

155. These submissions will deal with the residents' objections on a topic by topic basis[146]. Before doing so however there is a more general point to be made.

156. The masterplan for BXC has undergone a process of evolution, in the hands of Mr Allies, over many years. This process started with the proposal to extend the shopping centre that was ultimately rejected by the Secretary of State in the early 2000s. The Council's view (and that of the GLA) was that comprehensive regeneration which encompassed land on both sides of the A406 had to be achieved, and that an expansion of the shopping centre was only justifiable in the context of the creation of new town centre which included not just retail but also commercial and residential development on a large scale and in a manner that created an entirely new place. And it was only with the grant of the s.73 planning permission that a scheme that was, in commercial terms, capable of being delivered, was achieved.

157. Mr Allies has himself been closely involved in the evolution of the BXC masterplan since the late 1990s and has huge and directly relevant experience of similar urban development projects[147]. The Inspector is invited to report to the Secretary of State, on the basis of Mr Allies' explanation of the project that he gave[148] in evidence in chief, that the scheme, in terms of its vision, structure, design and layout, and the nature and disposition of (and relationship between) the proposed land uses, will achieve comprehensive regeneration in a manner that will not merely meet relevant planning policy objectives but will transform this part of London into an extraordinary new neighbourhood of the highest townscape quality where many thousands of people will want to live, work and spend their leisure time.

158. That is the context in which the residents' objections must be considered. Could the masterplan principles be achieved (for example) without the Living Bridge, or if the Whitefield Estate were to be left (wholly or partly) in place? The Council say that

[146] The Council's evidence on which the submissions that follow are based is in the Council's main proofs of evidence, where the topics that are covered are addressed; in the oral evidence given on days 8 and 11 in response to the residents' case, and in AA/INQ/20 and 32 (written responses to Ms Choudhury)
[147] Allies PoE sects 1.3, 1.4 and figs 1-6
[148] By reference to the slides in his Powerpoint Presentation (AA/BA/4)

this would be impossible. Indeed without the Estate it is highly likely that regeneration would not be achieved at all.

159. The Living Bridge: the plots in the Whitefield Estate that are included in CPO1 are necessary in order to facilitate the provision of the Living Bridge. This is an integral and necessary part of not only the CPO1 Development but also the wider BXC project. Whilst it was not included in the 2010 planning permission, the inclusion of the Living Bridge in the project, which was the principal change between the 2010 and s.73 schemes, will secure far better the twin policy objectives of creating a new town centre that straddles the A406 and securing comprehensive regeneration across the whole of the BXC area.

160. The role that the Living Bridge will play has been explained fully in evidence. Its design addresses the environmental challenges involved in providing an attractive and pleasant crossing of the very busy A406 by including high sides that will protect it from views of and noise from the traffic, and by making it sufficiently wide to create a feeling of space, variety and visual interest that people living on both sides of it will want to use[149]. It is a fundamental part of the solution to the problem that the scheme has to overcome if it is to be successful: how can the areas to the north and south of the A406 be physically brought together in a way that overcomes the existing physical barriers[150] so that they can work together as a single town centre in which all the open spaces, commercial and retail uses and the new housing function as parts of an integrated whole.

161. The residents have suggested that the Living Bridge could be moved further to the west in order to avoid having to take any part of the Estate in order to construct this. It is important to appreciate that this is merely a suggestion: no evidence has been presented to show how this might be achieved.

162. There was never a choice made between taking the Holiday Inn or part of the Whitefield Estate in order to provide the Living Bridge because, in reality, moving the Bridge further to the west is not and never was feasible[151]. On its west side, and on the south side of the A406, the location of the Bridge is constrained by the location of

[149] See e.g. illustration in Allies presentation at Fig I; also drawings in Orchard Appx 4.5.3
[150] Not just the A406 but also the river
[151] The reference in MM/16 p.8 (now a historic document dating to ?2001, which was prepared by Railtrack and Pillar) to the plans including "a 20 storey hotel replacing the existing Holiday Inn hotel" does not imply that the replacement would be on a different site

the link road to Tempelhof Bridge and its junction with Tilling Road and Claremont Avenue[152], and by the start of the gradient of the A406 Staples Corner flyover which means that enough headroom has to be left for vehicles to pass under the Living Bridge. The Bridge supports also need to be as far north as possible due to the change in levels and so as to minimise the length of the span across the A406.

163. The consequence of this is that, on the south side of the Bridge, there is sufficient space between the Bridge and Claremont Avenue and its junction with Tilling Road to achieve the important urban design objective of enabling the provision of a freestanding building immediately to the west of the Bridge. This will create a sense of enclosure and ensure that there are active frontages on both sides of the Bridge. The proposed location of the Bridge achieves these objectives by enabling the inclusion, immediately on its western side, of development plot 93[153].

164. The Living Bridge is also aligned on a strategic walking and cycling route from Clitterhouse Playing Fields and across into BXSC[154], where the Bridge lands on the west side of the new bus station. On the north side of the A406, the space between Tempelhof Bridge and the Living Bridge needs to be sufficient to accommodate the new M&S store, which will be one of the three main anchor stores in the enlarged centre and which must, in terms of the functioning of the retail centre, be located here.

165. It has been suggested that the Living Bridge will necessitate the loss of part of a SLINC. Whether that impact is because of the Living Bridge or as a result of the wider development of which the Bridge forms part, this was a matter that was addressed at the planning application stage[155].

166. It is therefore not feasible to move the Living Bridge further to the west so as to avoid the acquisition of the CPO1 Whitefield Estate properties.

167. <u>Comprehensive regeneration and alternatives</u>: But the point goes far wider than this. The Whitefield Estate forms an integral and necessary part of the masterplan for the comprehensive regeneration of the BXC area, as envisaged by the adopted

[152] Orchard Appx 4.5.1
[153] CD/C28, parameter plan 029; Orchard Appx 4.5.3, 1st drawing
[154] Orchard Appx 4.3.3
[155] CD/C4 pp.485-6; generally on ecology and nature conservation, see pp.111-113

Local Plan and the Regeneration Area Development Framework[156]. In this context, it is to be remembered that the 2010 planning permission, which did not include the Living Bridge, did also necessitate the removal of the Whitefield Estate buildings. If the Estate were to remain, therefore, this key policy objective would not be achieved. The delivery of the new east-west route from the proposed new Thameslink station to Brent Cross underground station would not be achievable; plots 27 and 28 (as identified in the s.73 Permission) could not be delivered as proposed, that is (plot 27) for the provision of around 400 new homes and a new foodstore at ground level, and (plot 28) for the relocated Whitefield Secondary School which will benefit from being sited adjacent to the improved facilities in Clitterhouse Playing Fields.

168. If the Whitefield Estate were left in place, Mr Allies has said that this would have a "devastating effect" on the integrity of the new town centre. It lies at the critical intersection of the two main routes (east/west, north/south) across the site where it is vital to establish a strong sense of identity and character. The topography across the site would also make it very difficult to achieve connectivity between the 3 broad zones into which the Eastern Lands are divided[157]. Moving the school means that space is created for the provision of housing on plots 65, 80 and 69, and parts of plots 68, 71 and 72; and the new school will occupy a smaller site than at present as the buildings can be taller.

169. In short, if the Whitefield Estate were to be left in place, it would not be possible to establish the new urban structure of streets, buildings and spaces that the masterplan envisages[158]. Furthermore the inclusion of the remainder of the Eastern Lands in the regeneration project would be very difficult, perhaps impossible, to achieve. And even if a different (and unknown) regeneration project that excluded the Whitefield Estate were to be drawn up, tested, and found to be deliverable, it would fall very far short of achieving the key policy objective of securing comprehensive regeneration through a single coherent development project, and would not achieve the level of social, economic and environmental benefits that the s.73 scheme achieves. Furthermore, a new planning policy framework would have to be put in place, and thereafter planning permission secured (and in all likelihood a new joint

[156] See e.g. CD/B13 p.27 fig 16 (Strategic Principles); p.29 fig 17 (Proposed land uses); p.35 fig 20 (Residential type and density)
[157] Allies Appces fig 22: Whitefield Estate, the 2 schools, and the retail park (as explained by him in chief on day 11)
[158] Insp's Qs Allies day 11

venture partner found) for a different scheme. This would inevitably delay the delivery of much needed new homes (as well as the regeneration of the area in a broader sense) by a number of years.

170. This goes to the very heart of the argument. As Mr Gibbs explained[159], Argent Related's successful bid was for the opportunity to deliver the whole of the BXS development, over a period of around 20 years; and that bid was based on the s.73 Permission "which is deliverable". He explained how the long planning history of BXC has many parallels to Kings Cross, in that there was a series of unviable schemes, none of which was deliverable, until Argent in collaboration with Allies & Morrison were able to devise a scheme that could be delivered. He said that the division of the new town centre from the rest of the Eastern Lands by the retention of the Whitefield Estate would be "disastrous", and that in those circumstances Argent Related would have to consider whether they were able to take any further part in the project.

171. The residents' submissions, including those from Ms Choudhury and Ms Emmanuel, have advanced various possible alternative scenarios, from the exclusion of the Whitefield Estate entirely from both CPOs (addressed above) to the potential exclusion of part, and a transfer of the responsibility for providing the Whitefield Estate replacement units to the residents themselves.

172. It is important to reiterate that these proposals must be considered in the context of the CPO Guidance in relation to alternatives, which is as follows[160]:

> *whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. …*

173. There is simply no question but that the purpose for which the Council proposes to acquire the Whitefield Estate properties could not be achieved by any other means. A different purpose might be achieved, but not the one for which the Orders have been made.

174. It is true[161] that, over the course of the evolution of the masterplan for BXC, a scheme that included the retention of the Whitefield Estate was not expressly considered. But it would be quite wrong to draw the conclusion from this that it should

[159] Evidence in chief day 11
[160] CD/A17
[161] Insp's Qs Allies day 11

have been. It is clear from Mr Allies' evidence, which is that numerous alternatives were considered as the masterplan evolved and that the removal of the Estate from the current masterplan would not be compatible with the achievement of comprehensive regeneration, that if comprehensive regeneration was to be achieved that included the Eastern Lands and in a manner that was deliverable then the Estate, occupying as it does such a critical location in the BXC area, could not be retained. In other words, its retention was not considered because this was never a realistic option.

175. Nor, as already submitted, is there any evidence that a scheme that excluded the Eastern Lands would either achieve key policy objectives or be viable and deliverable.

176. The variations on the central theme (that the Estate should be left out of the Orders) that were advanced by Ms Choudhury have been addressed in the Council's written responses to her Opening Statement (as amended) and her Proposal[162], to which the Secretary of State's attention is invited. The following further observations are made on two particular aspects of Ms Choudhury's evidence.

177. First, the material in Ms Choudhury's Appendix 4[163] should not be given any weight for the reasons set out in the Council's response[164]. Mr Gibbs pointed out that her costs appeared not to take account of the "vast investment" required in infrastructure, the servicing the cost of capital, professional fees, land acquisition, design and so forth. He said that Ms Choudhury's numbers were "unrecognisable" and that he did not accept that anything in Ms Choudhury's document was correct[165].

178. Second, Ms Choudhury's Proposal, for which there is no evidence that she has any support (whether from other residents or from a housing provider/developer) or relevant professional input, was made at a very late stage in the process and, for the reasons given in the Council's response, is unrealistic and does not merit further investigation or consideration.

179. Finally, it is also relevant to note that alternatives in a broader sense were expressly considered in the Committee report for the s.73 planning application[166]. Members were advised that, in the absence of the proposed scheme, the ES had

[162] AA/INQ/20 and 32. Further matters raised in her Closing Submission will be addressed below.
[163] 'How to make the 'affordable homes' genuinely affordable'
[164] AA/INQ/20 paras 36-45
[165] Gibbs XX Choudhury day 11
[166] CD/C4 p.70

concluded that landowners would be likely to make piecemeal applications over a number of years which would neither achieve the comprehensive regeneration of the area nor the creation of a new town centre in line with planning policy, nor would it "secure the step change in infrastructure investment required to unlock the potential of the regeneration area and achieve sustainable development".

180. The Secretary of State is invited to conclude therefore that the purposes for which the Orders have been made could not be achieved by any other means, whether through the promotion of a different scheme, the exclusion of certain plots of land from the Orders, or otherwise.

181. Rehousing existing residents: The treatment of residents affected by the CPOs is a matter that the Council takes very seriously.

182. There are conditions in the s.73 Permission that will serve to mitigate the potential impacts on the residents. Condition 1.10 requires the developer of any phase or sub-phase to submit, and receive approval for, a Residential Relocation Strategy which sets out appropriate arrangements for the relocation of residents in the Whitefield Estate and the sheltered housing units in the Rosa Freedman Centre to the Replacement Whitefield Estate Units before any development of the phase/sub-phase can begin. The arrangements for relocation need to be in accordance with the parameters and principles set out in the RDSF at 2.3. Condition 1.11 requires the relevant replacement homes to be delivered prior to the demolition of those units on the existing estate. The s.106 Agreement provides detail of the principles to be contained and applied within the Residential Relocation Strategy, and provides greater detail as to the timing and management of the respective relocations.

183. The general approach to the relocation of residents is straightforward. It recognises that relocation is disruptive and seeks to minimise the disruption. At the same time it seeks to ensure that in general residents are re-located (if they so choose) to appropriate alternative homes on at least equivalent terms. This is explicit within the Council's Housing Strategy 2015-2025. A different approach is taken according to the nature of the interest being acquired.

184. CPO1 requires the demolition of 85 homes (including the disused residential care home). This includes 16 houses on Whitefield Avenue largely in freehold ownership. CPO 2 requires the demolition of the three tower blocks containing 132

homes. The freehold of the vast majority of the units is owned by the Council. The strategy is to ensure that council tenants and owner occupiers have the opportunity to be re-housed in an appropriate home within the BXC, and are not required to move until the new home is ready for occupation.

185. The Rosa Freedman Centre is included within CPO1. It contains 25 sheltered housing units. The residents are being rehoused in accommodation suitable for their individual needs elsewhere in the borough. 16 residents have already been moved, and the remaining residents are expected to be removed by September 2016. Each tenant will receive a Home Loss payment and relocation costs will be met.

186. The remainder of the CPO1 homes contain a range of secure tenants, freehold owners, and leaseholders. There are no freehold homes in CPO2; instead, there is a range of secure tenants (95) and leaseholders (40).

187. Under the RRS all secure Council tenants in residence at March 2015 will be offered a new home within BXC.

188. In respect of CPO1, a detailed housing survey assessed the needs of individual households identified that in order best to meet those tenants needs it was preferable to provide larger units than those being replaced. This (together with the requirement to rehouse resident freeholders and leaseholders) gave rise to a need for 46 units to be provided. In fact, the necessary approvals have been obtained to provide 47 units on the triangles adjacent to Brent terrace, containing at least the same floor area of those being replaced.

189. In respect of CPO2 an initial housing needs survey was undertaken in July 2013, and a detailed survey undertaken in March 2016. This will inform the application for reserved matters approval for the replacement homes. Since their appointment as the Council's joint venture partners for BXS Argent Related have identified the area where the replacement housing is proposed. The mix and size of the units will be developed to meet the requirements of the RRS and ensure that all relocated residents are offered accommodation appropriate to their needs. Those secure tenants who under-occupy their current accommodation by one bedroom will be offered the choice of an equivalent property rather than a smaller one in line with their needs.

190. Secure tenants will be offered accommodation which at least meets their needs (whether their current accommodation does or not), available before they are required

to move (so avoiding any double moves), and the accommodation will be offered on terms at least equivalent to their existing tenancy to be managed by the relevant Registered Provider. The rents will be 'Barnet rents', that is rents set initially at the same level as existing, and then linked to the CPI until the rent converges with the RP's rents (subject to any legislation controlling the rents that RPs and local authorities charge). There is also protection in relation to service charges for the first five years, after which these will be assessed and managed by the Registered Provider In addition, all council tenants will receive a Home Loss payment (currently £5,300), as well as disturbance payments to meet the costs of relocation. Tenants will be allocated units approximately 9 months prior to their move so that they can be involved in the decoration and fitting of their homes.

*Leaseholders and freeholders*

191. The RRS[167] provides in detail for those freeholders and leaseholders who occupy their units. Investment owners will receive full compensation but give rise to no re-housing needs. Non-resident homeowners are entitled to a Basic Loss payment calculated as 7.5% of the market value subject to a maximum of £75,000 (as of October 2014 and this is subject to statutory changes).

192. The key principles of the strategy are set out on p.12 of the RRS (paragraph 3.12). In summary:

(i) Resident leaseholders and freeholders will be offered a new property in BXC either to buy outright or through shared equity;

(ii) Full, open market value in the absence of the scheme will be paid for existing interests;

(iii) This can be rolled into the new property. In addition, resident owners will be entitled to a statutory Home Loss payment, calculated as 10% of the market value up to a maximum of £53,000, which could be put towards a new flat;

(iv) Disturbance compensation will be paid to address all reasonable relocation costs;

(v) No rent will be paid on the part of the property which the resident does not own. The homeowner will have the potential to purchase the remainder of the home over time although they are not obliged to do so. So (for example) if the

[167] CD/C14

owner of a home worth £250,000 rolled that amount plus their Home Loss payment = £275,000 into the shared equity scheme and acquired a £500,000 home, they would own 55% of their home, and in effect be entitled to occupy 45% of the value rent free, with the option of buying the remainder if and when that became convenient. When the property was sold, the homeowner would be entitled to 55% of the sale proceeds. Thus it is wrong to suggest that the shared equity scheme will put residents in debt, although of course residents will have the choice of borrowing money in order to own their new property outright if they prefer to do so;

(vi) The RRS provides for a "minimum entry requirement" to be established. The RRS controls this so that it cannot be greater than 50% of the value of the new home. Argent Related has confirmed that it will impose no minimum requirement. The CPO1 DPs will approach this issue on a case by case basis and is considering a request by the Council to assess proposals by reference to a 50% average threshold to promote greater flexibility, and the details will have to be resolved through discussion with Catalyst – the appointed Registered Provider. Mr Shipway explained that a 50% minimum requirement is fairly standard on such schemes and it has shown itself to work in practice. In each case, the final terms and management of the shared equity scheme will be for Catalyst and the CPO2 RP, in discussion with the development partners, within the parameters set by the RRS;

(vii) All of the above points are to be addressed in individual cases through consultation and discussion with the residents involved;

(viii) To support this process the Council has appointed a resident independent adviser (RIA) – appointed as long ago as 2011. The RIA is instructed to provide impartial advice to all Whitefield Estate residents, to establish an equitable service in direct response to the diverse needs of the residents, to establish a consultation framework, and to assist residents engage in planning the decanting programme.

193. Mr Shipway described the efforts and measures the Council has taken to engage with and inform residents. In addition to the RIA (above), a steering group was established in 2011 comprising tenants, leaseholders and freeholders to engage with the CPO1 development partners. It is envisaged that this group will develop into

a Housing Partnership Board as the development progresses. Mr Astbury explains the attempts made to engage with residents on the acquisition of their interests.

194. Other particular points raised by residents relate to elements of the shared equity scheme described above (and see the Response to Ms Choudhury). The 'rollover' provisions are set out above. In relation to succession rights the strategy is intended to permit a family home to be passed on to direct relatives who actually reside at the property. The strategy is to protect the family home, rather than an investment. The final precise detail will be put in place by the Registered Provider. Mr Shipway explained that this provision normally works by enabling the shared equity arrangement to be passed on to close relative who lives at the home or who has done so in the recent past for a substantial period of time.

195. Ms Choudhury suggests[168] that offers made to existing residents have been "derisory". That is not correct. Offers have been made on the basis of current market value, which is likely generally to be less than the purchase price of new properties in the development, for obvious reasons[169]. It is wholly unrealistic to suggest that the developers should simply to offer the new properties to existing leaseholders at no cost[170]. The shared equity arrangements proposed are well-established, appropriate for the circumstances and entirely fair.

196. Mr Shipway also explained that he was closely involved in the recent regeneration scheme at West Hendon, which involved a substantial relocation exercise. Mr Shipway explained that by applying very similar principles to those proposed here the Council was able to undertaken that scheme only having to implement compulsory powers to acquire one interest – which was that of an investment owner. There, as here, and as the Secretary of State concluded in that case[171], the well-being of the residents was being taken seriously by the Council.

197. Overall, the Council is satisfied that it has put in place an effective strategy to meet the needs of all the affected residents. The Council recognises that this process is disruptive and will inevitably cause anxiety for those affected. The purpose of the relocation strategy is to try and minimise the difficulties involved in the relocation process and to ensure that the homes that the residents move to are available in good

[168] Closing submission p.6 (middle)
[169] For information about offers made se Astbury PoE (AA/PA/1) sects 5.10, 5.15; Appx 1
[170] Choudhury closing p.9 (top)
[171] AA/INQ/20 (W Hendon CPO decision): DL17, IR600

time, appropriate to meet their needs, of very good quality, and on terms that are at least equivalent to those currently enjoyed. The Council does take these concerns seriously, and endeavours to ensure each resident has a good home in the area within which they have established connections.

198. Affordable housing provision: There has been a degree of confusion as to the affordable housing component of the BXC proposals[172]. The affordable housing provision is controlled through conditions[173] and the s106 Agreement[174].

199. The BXC scheme must deliver a minimum of 15% of the dwellings in each phase as 'Affordable Housing Units" [175]. Therefore, as a minimum approximately 1125 affordable units will be provided. This minimum was arrived at following a consideration of the viability of the scheme, and the level of affordable housing that it could support[176]. There are strict controls to ensure that the units offered are "affordable", and this is a defined term[177]. Further detail in relation to Ms Choudhury's concerns specifically as to the affordability of intermediate housing is set out in AA/INQ/20[178].

200. The s.106 Agreement provides for a cumulative target of 30% affordable housing across the whole development[179], which would deliver approximately 2,250 affordable homes, and phase specific indicative targets are also provided[180]. The level of affordable housing to be provided in each phase will be determined through a viability review to reflect prevailing circumstances[181], although the maximum amount of affordable housing that any phase may be required to deliver is 50%[182]. Condition 1.12 prevents commencement of any sub-phase unless the number and mix of affordable units has been identified through the viability review mechanism.

[172] See for example AA/INQ/20 in response to Ms Choudhury paras 5 and 6.
[173] Conditions 1.12-1.14
[174] CD/C6 Schedule 2A (p.245)
[175] Sched 2A para 1.1 and definition of Affordable Housing on p.34
[176] See Wyld PoE at para 10.34
[177] CD/C6 p.34 – "affordable housing", and related definitions of "Social Rented Housing, Affordable Rented Housing, and Intermediate Housing
[178] At paragraph 7
[179] CD/C6 p.86 definition of "Indicative Southern/Northern Phase Targets" and "Indicative Southern/Northern Cumulative Targets) which are then applied in the viability reviews (e.g. at 2.1.1(b)(ii)(A))
[180] CD/C6 pp.87-88
[181] Clause 1.2
[182] CD/C6 Schedule 2A p.246 para 1.3

201. The s106 Agreement also contains detailed provisions relating to the timing and delivery of the affordable units in the respective phases[183].

202. The target splits for affordable housing are set out in the evidence of Mr Wyld[184].

203. The s.73 Permission and its controls therefore delivers as a minimum a very substantial number of affordable units, and the mix and tenure will be fixed to meet the borough's specific affordable housing needs. There is also in place a detailed review system to increase the amount of affordable housing delivered based on the viability of the scheme as it progresses with a cumulative target of 30%. This seeks to maximise the provision of affordable housing whilst ensuring the delivery of the scheme and its wider benefits.

204. Brent Terrace Triangles: these two areas of land will accommodate those residents of the Whitefield Estate who are to be displaced by CPO1. Neither area is however included in either of the Orders since the Council already owns both.

205. All of the planning issues matters raised in the objections (notably by Mr Mangi and Ms Emmanuel) were all addressed in the context of both the 2009 and s.73 planning applications and the application for RMA, which was approved 9 June 2015[185]. The approved parameter plans for the s.73 Permission identify the triangles (plots 53 and 54) as proposed for residential use[186].

206. Whitefield Estate residents were consulted on the proposal[187], both at the outline application and RMA stages, and the concerns raised were very fully addressed[188]. Amongst other matters, consideration was given to the effect of the development of the triangles on open space provision[189]. It was concluded that, given the increase in the overall quantum of open space in the development and the significant improvement in its quality, the loss of these areas to housing was acceptable. Other detailed matters, including the management of construction impacts and the delivery of the new open space, the loss of the hedgerow fronting the triangles,

[183] For Southern Development see clause 2.3; for Northern Development see clause 3.
[184] See PoE (AA/TW/1) at 3.45-3.47
[185] CD/C7
[186] CD/C28 parameter plans 029; 004, 005
[187] Wyld Rebuttal (AA/TW/5) paras 4.3, 6.3
[188] For the RMA see AA/INQ/53 sects 6.2-6.10 and Appx 4 "Objections and Officer Responses" (pp.69-118)
[189] For the s.73 application, see CD/C4 pp.103-106, 483-484, 598

accessibility to bus services and the impact on parking in Brent Terrace[190], have also been addressed in evidence.

207. In short, there is no reason to depart from the conclusion reached in the context of the outline planning applications and the RM application, namely that the Brent Terrace Triangles are in planning terms appropriate for the provision of replacement dwellings for Whitefield Estate CPO1 residents, and that they can be developed for that purpose in an entirely acceptable way.

208. Consultation/fairness: this matter has been raised on a number of occasions by residents, including by Ms Choudhury in her closing submission[191]. These allegations are unsupported by any actual evidence and the Council, and DPs, reject them entirely.

209. The complaints essentially fall into 3 categories:

(i) that the shared equity/rehousing arrangements are unfair. This is covered elsewhere in these submissions;
(ii) that residents were not properly consulted about the scheme;
(iii) that the inquiry process has not been fair.

210. As to (iii), this appears to stem from a lack of understanding of the inquiry process and the respective obligations of the parties under it. Much of the objectors' evidence (including all of Ms Choudhury's) was submitted well after the date fixed for this at the Pre-Inquiry meeting (26 April). The Council's evidence was submitted (voluntarily) a week early, on 17 April; but well before then, through the publication of the CPOs themselves with their accompanying Statements of Reasons, and through the Council's Statements of Case, objectors were well aware of the Council's case and therefore of the matters they should (if they wished) cover in evidence. They then had an opportunity to respond in rebuttal evidence to the Council's evidence. This was due a week before their scheduled appearance at the inquiry but even this deadline in several cases was not met. When material from objectors was received the Council made every effort to respond to it as expeditiously as possible.

211. Ms Choudhury in particular has been given every latitude and can have no legitimate complaint whatsoever about the fairness of the inquiry process. Nor can any

[190] Wyld Rebuttal sects 5-9 (and see consultation response schedule re open space at Appx 2 and RMA plan at Appx 1); CD/C7 condition 9
[191] E.g. pp.7 (para 17), 8 (top and foot), 9 (penult para)

of the other residents or other objectors. Her allegation[192] that there have been "numerous procedural errors" in the CPO/inquiry process is therefore entirely unfounded[193].

212. As to (ii), there is no evidence whatever to suggest that any statutory consultation requirement has not been met, not merely in relation to the CPO process but also in relation to the planning applications and (before then) the Local Plan documents and other material (such as the Development Framework) relating to the BXC project. Mr Wyld has explained[194] the consultation undertaken on the planning applications, and neither these nor any of the policy documents has been subject to any legal challenge on the grounds of inadequate consultation (or otherwise).

213. In relation to the Development Framework, two substantial sets of consultation were undertaken in 2004 and 2005, the latter being when the Eastern Lands were added to the regeneration area[195]. All matters raised were fully addressed.

214. Mr Allies has also made clear in evidence[196] that local people were consulted throughout the evolution of the masterplan and that there was "a continuous sequence of consultation", including as part of the Development Framework process.

215. In conclusion, therefore, the acquisition of the Whitefield Estate is a necessary part of the project and its exclusion from the Orders would mean that the purposes for which the Orders are being promoted would not be achieved. The interests of the existing residents are very important and these have been addressed fairly and comprehensively by the Council and DPs. The Orders should therefore be confirmed as made.

**Objection by Mr and Mrs Barker (objector 32)**

216. The objections from Mr and Mrs Barker have been comprehensively addressed in the Council's rebuttal evidence[197]. In view of that, and since their professional witness is no longer instructed and his evidence was not given orally, and because

[192] Closing submission p.11
[193] See Compliance Bundles: AA/INQ/2, 3. For completeness, it should be placed on record that there is no evidence whatever that the residents have been "denied any legal representation", nor by whom it is claimed that the "denial" was made.
[194] Wyld PoE (AA/TW/1) sect 6
[195] AA/INQ/37 para 2.3, sect 7.1, Appx 1 (esp sects 1, 3), Appx 2 (key issues raised and Council response); AA/INQ/33
[196] XX Cox day 17, and contrary to Choudhury closing submission p.11, 2nd full para
[197] AA/CS/2, AA/AG/4, AA/TW/7, AA/SS/3, AA/PA/5

many of the matters raised are not relevant to the Secretary of State's consideration of the objection, it is sufficient here to respond in headline form to the main issues raised.

217. The matters that are not of relevance to the Secretary of State's decision are the allegations that have been made by the objectors about their treatment by the Council over a number of years, including a remark that is alleged to have been made by a consultant then instructed by the Council to the objectors' solicitor. The latter is now the subject of legal proceedings but in any event is not a matter on which the Secretary of State can, or needs, to reach a view[198]. The question for the Secretary of State is whether there is justification for the inclusion of the objectors' land in CPO2.

218. As to that, in summary:

(i) the objectors' land has always been within the BXC regeneration area, and within the area covered by the 2010 and s.73 planning permissions[199];

(ii) the land uses indicatively proposed for the land in the s.73 Permission are retail/leisure, "any permitted uses" and residential, plus infrastructure[200];

(iii) Argent Related's current intentions are to introduce a new garden square on and in the vicinity of the objectors' land[201], so that the land is now likely to be required for that purpose, together with parts of the buildings proposed for plots 16 and 17, part of the High St and part of the tertiary route to the south west;

(iv) there is no reason why these changes to the approved indicative material should not be given effect through the appropriate applications;

(v) it is entirely clear therefore that the objectors' land is essential to the delivery of BXS, and this appears now to be uncontested;

(vi) as a result, if the objectors' land were left out of CPO2, a gaping hole would appear in the scheme, and there is no evident, realistic and viable way in which it could be developed round this.

219. In relation to negotiations with the Barkers, the history of these has been dealt with by Mr Astbury[202]. The lack of continuity between July 2015 and February 2016 is

[198] See however Shaw Rebuttal paras 2.7-2.11 which state the Council's position clearly on this
[199] See e.g. CD/B13 figs 16,17; CD/C28 parameter plan 029 and Gibbs Rebuttal plan 09 (the objectors' land covers most of plot 16, part of 17, and part of the High St and adjacent tertiary routes)
[200] CD/C28 parameter plans 004, 005
[201] Gibbs PoE (AA/AG/1) paras 4.17, 4.18; Rebuttal para 2.19/20 and plan 10
[202] Rebuttal paras 2.5-2.13 and evidence in chief

acknowledged, but Mr Astbury has himself engaged with the Barkers' agent Mr Church and more recently with Mr Barker, and without prejudice offers have been made. Some of the information that Mr Astbury had been seeking to inform him about the value of the objectors' interest was included in Mr Barker's evidence, and GL Hearn are now considering a counter offer from Mr Barker made on 14 June. However the parties are still a long way apart on value, and it is clear therefore that there is a significant risk that it will not be possible to acquire the objectors' land by agreement before the project starts and the land is required.

220. The question of consultation on the draft Development Framework was raised during the course of the Barkers' objection. This has already been covered in these submissions. It is only necessary to add that the consultation undertaken was in line with the Council's practice and procedures for this type of document, and that whilst the Barkers may not have received a direct communication about the 2004 draft[203] the document was widely publicised in the local area, online and in the media[204].

221. It had been suggested that the Barkers might undertake the development of their land through some kind of joint venture arrangement with the Council, but this appears no longer to be pursued. In any event the reasons why this would not be practicable or acceptable were fully explained in Ms Shaw's rebuttal evidence[205].

222. The Council submits therefore that CPO2 should be confirmed as made in respect of the objectors' land.

223. **Objection by Mr Welby**: this non-statutory objection was made very late in the day but in the event raised few matters of relevance to the Secretary of State's decision and contained several misapprehensions[206]. In so far as relevant matters were raised, concerning traffic impacts, bus routes and the environment on the Living Bridge, these have been comprehensively addressed in the Council's evidence.

224. It is also to be noted that Mr Welby's claim to represent the Barnet Transport Users' Association should be treated with some caution. The Association has no constitution but it seems has around 12 members, and neither Mr Welby's evidence

[203] Had they been objectors to the UDP they would have been: AA/INQ/37 Appx 1 p.123 para 1.1
[204] AA/INQ/37 p.123 paras 1.2, 1.3
[205] AA/CS/2 paras 3.15-3.25
[206] Viz that the Holiday Inn was to be demolished, and that Toys R Us (and possibly Tesco) were to be removed as part of the current CPO development proposals. Mr Welby was also unaware that a new bridge is proposed (later in the project) from the A5 across the railway into the regeneration area.

nor his appearance at the inquiry had been authorised by them. Mr Welby can therefore only be taken to have been expressing his own views.

225. **Objection by Mr Cox**: this is another non-statutory objection made at a late stage in the CPO process. He lives some distance from BXC and appears to have no direct interest in the Secretary of State's decision on the Orders.

226. Mr Cox's statement included a number of allegations about various matters to which it is not necessary to respond in these submissions, partly because they were entirely unsubstantiated and partly because they are not in any event relevant to the Secretary of State's decision. Those matters that may be relevant to the decision were addressed in the Council's written and oral evidence provided in response to Mr Cox's statement[207].

227. In his Expanded Proof Mr Cox referred[208] to the decision of the Supreme Court in *R (Moseley) v LB Haringey* [2014] UKSC 56. That case concerned consultation by the London Borough of Haringey on its proposed Council Tax Reduction Scheme, which on the facts of that case was found to be inadequate. By contrast, as previously submitted, there is no evidence in the present case that statutory (or common law) requirements concerning consultation on any of the processes that have led to the CPOs being made were inadequate, nor has any cogent submission (as opposed to generalised assertion) been made to that effect to which it would be possible to respond.

228. In closing his objection Mr Cox conceded that confirmation of the CPOs would be unfair not because of recent actions[209], but claimed that this was because of earlier unfair behaviour, from 2001 to the mid-2000s, relating to the preparation of the UDP and Development Framework.

229. The Council rejects this claim, but in any event also submits that, so far as the preparation and adoption of the Local Plan and Development Framework is concerned, any allegation that the consultation carried out in relation to these had been unlawful would have had have been made at the time, by way of statutory challenge or application for judicial review; but no such challenge was ever made.

[207] AA/RESP/01; oral evidence of Allies, Orchard, Mc Guinness, Wyld and Shaw on day 17
[208] JC200 p.1
[209] He conceded that (even his view of the world) "things are far better than they were"

230. The same applies to the Council's consideration of and grant of permission for the two planning applications. Whether (as Mr Cox claims) in November 2009 Council officers had said at a meeting that Brent Council had no objection to the planning application, when in fact they had, is for this reason not relevant to the Secretary of State's decision on the CPOs. Brent could have made a legal challenge to the 2010 permission had they had arguable grounds, but did not do so.

231. In summary, therefore, Mr Cox's objection does not reveal any grounds on which either CPO should not be confirmed.

232. **Written objections**: these have been addressed in the Council's Statements of Case and evidence. The relevant references in respect of each objection have been identified in Schedules prepared for the purposes of the inquiry session on written representations which took place on day 18[210].

233. John Lewis, Marks & Spencer and Waitrose have not appeared at the inquiry and instead continue to rely on their written evidence and objections pending final agreement being reached with the DPs about the terms under which they will occupy their stores during and following the construction of the scheme.

234. Agreement on the terms of an undertaking has been reached with M&S, and this includes heads of terms which remain, over the next months, to be worked up into a full agreement which, when signed, will enable their objection to be withdrawn. There are therefore no outstanding substantive issues, and the Secretary of State can be satisfied in particular that during the construction phase M&S will be able to continue trading from their existing store until their new store is ready for occupation.

235. Unilateral undertakings have been provided in respect of Waitrose and John Lewis[211] which also include undertakings (a) not to implement the powers in CPO1 if and when agreement is reached that will enable the scheme to be undertaken without breaching the traders' rights under their leases, and (b) to undertake the scheme works in a manner that will enable them to continue to trade during the construction phase.

236. The Council notes that in their letter on behalf of John Lewis dated 14 June 2016 Dentons summarised the second ground of objection as being that "there is no

[210] AA/INQ/38 & 39
[211] AA/INQ/42, 43

reasonable prospect of scheme deliverability absent a commercial arrangement with JLP". Similarly, their letter of 30 June states that "a continued presence in the Centre is entirely dependent on a commercial arrangement being reached". This is in essence the point that Fenwick do not accept. The reality is that the parties will have to reach agreement at some point if the scheme is to be delivered; agreement with JLP (and Waitrose and M&S) appears likely to take place before the decision on the CPOs is made, but without the ability to acquire these retailers' leasehold interests as a last resort there would be a significant risk that one or more of them could delay the scheme by holding out for terms that were not commercially reasonable.

237. In relation to other written objections that were remaining when the inquiry adjourned on 1 July, as of today the position is as follows:

(i) Transport for London: joint statement between the Council, TfL, London Bus Services Ltd, SLI and Hammerson submitted by letter dated 30 June 2016 from Berwin Leighton Paisner to the Inspector. This confirms that an Agreement in relation to the bus station has been completed, and that once the necessary property agreements (on which discussions are ongoing) have been settled and exchanged TfL and LBS will withdraw their outstanding objection;

(ii) Network Rail: NR's objections to both CPOs, to the SUO and their s.16 representation have been withdrawn by letters dated 5 July 2016 from Addleshaws to PINS and DfT;

(iii) Eastern Power Networks plc: EPN's objections to both CPOs and their s.16 representation have been withdrawn by letters dated 5 July 2016 from UK Power Networks to DECC and NPCU;

(iv) National Grid: NG Electricity Transmission plc and NG Gas plc have withdrawn their objections to both CPOs and to the SUO by letter from DLA Piper dated 5 July 2016;

(v) NLWA: are not a qualifying objector but an Undertaking has been given[212] which guarantees continued access to and egress from their property off Tilling Road;

(vi) National Westminster Bank plc: Undertaking given[213] which contains assurances about mitigating the effects of the proposed works at the adjoining

[212] AA/INQ/36
[213] AA/INQ/41

property (160/162 Cricklewood Broadway), and undertakes to grant a right of way on foot along Edward Close;

(vii) Holiday Inn: Undertaking given[214] in relation to maintenance of adequate car parking for the hotel and provision of access for coaches and deliveries to the hotel during the construction phase and thereafter. The Council has also provided a written response to this objection[215] which explains why, at the time the Order was made, it was necessary to include the whole of the hotel premises in it, and that since then further work has been undertaken and Heads of Terms agreed with the objector[216]. An agreement based on these is being drafted and once agreed will lead to the withdrawal of the objection;

(viii) Kingsley Way Charitable Trust: Undertaking given[217] in relation to impact of the roadworks on the objectors' land. Agreement leading to withdrawal of the objection is likely to be reached shortly;

(ix) Motor Properties/General Motors/Now Motor Retailing (Vauxhall dealership): agreement has been reached on a Memorandum of Understanding which, once executed, will result in the withdrawal of the objections both to CPO1 and the SUO;

(x) Shopping centre tenants: the justification for the inclusion of these interests remains that the many differences between the tenants' leases in terms of the rights and other provisions they contain, combined with the fact that RMAs for the shopping centre works still have to be worked up and submitted, means that unless the tenants' leases remain in CPO1 there is a significant risk that the scheme will be delayed or prevented from proceeding by the existence of those rights and other lease provisions. The DPs have given an Undertaking to all those tenants who are not going to need to move[218], and this includes undertakings (in substantially similar form to the undertakings given to the principal traders) in relation to the construction phase of the project;

(xi) Waitrose: Undertaking given[219] in relation to the construction phase and not to implement the Order if agreement is reached enabling the scheme works to be

[214] AA/INQ/51
[215] AA/RESP/05
[216] The suggestion that the Council's approach to the Holiday Inn has been "cavalier" (Fenwick closing submissions p.13 footnote 51) is wrong, and HI's Statement of Case did not say that it was. Indeed the SoC para 3.4 states that "the detailed design of the proposals has now been worked up to a sufficient degree to enable the extent of the land reasonably required to be identified".
[217] AA/INQ/50
[218] AA/INQ/46
[219] AA/INQ/43

carried out. Substantial progress has been made in negotiations for a new lease, and when this is agreed the objection will be withdrawn

(xii) Carphone Warehouse, RAL Ltd, Pizza Express/Gourmet Burger Kitchen/ Hutchison 3G/WH Smith, Bonfili/Holingbery: the Council has provided written responses to these objections[220]. Of these, Carphone Warehouse's objection has now been withdrawn[221].

**Conclusion: overall balance**

238. The benefits of the BXC project are clearly and largely unchallenged[222]. If both CPOs are not confirmed, the project will not take place and the benefits will not be achieved.

239. In summary the benefits of BXC as a whole are[223]:

(i) a new, attractive and vibrant town centre;
(ii) thousands of new jobs;
(iii) around 7500 attractive, modern homes, many of which will be affordable;
(iv) improved education and health facilities;
(v) an extended and modernised shopping centre with new shops, restaurants, cinema and hotel;
(vi) a new bus station;
(vii) a new Thameslink station;
(viii) improved road, cycling and pedestrian infrastructure and connectivity across the entire area;
(ix) new commercial floorspace;
(x) visual and other environmental improvements through the carrying out of sustainable, high quality development.

240. Furthermore, it is clear on the evidence that both the CPO1 and CPO2 developments are likely to be delivered if both CPOs are confirmed. The evidence of Mr McGuinness and Mr Gibbs has demonstrated that both Hammerson/SLI and Argent Related have the resources, expertise, experience and commitment to deliver the

[220] AA/RESP/02-04, 06
[221] Clyde & Co letter 4 July 2016
[222] AA/INQ/36
[223] See (in more detail) Shaw PoE (AA/CS/1) sect 7; Wyld PoE (AA/TW/1) sect 8

CPO1 and CPO2 developments[224]. None of this has been subject to substantial challenge.

241. The new Property Development Agreement and Project Agreement between (respectively) the CPO1 and CPO2 development partners have been agreed and are in the process of being executed by the parties[225]. The main provisions of these agreements, which were still in draft at that time, were summarised in the solicitors' notes provided at the start of the inquiry[226]. The note relating to the JV arrangements between the Council and Argent Related does not require amendment, but some minor amendments have been made to the note relating to the PDA between the Council and Hammerson/SLI[227] so as to ensure that this accurately states the current position.

242. The conclusion of these agreements is of course very important because it means that legally binding arrangements are in place to secure the delivery of both the CPO1 and CPO2 developments.

243. Both sets of agreements, as is entirely usual for a project of this kind, contain conditions that have to be satisfied or waived by the developers before they are obliged to undertake their respective development projects. These staging conditions, or conditions precedent, have been carefully and comprehensively addressed in evidence by Mr McGuinness and Mr Gibbs[228], from which it is clear that they are both confident that the need to satisfy or waive these conditions is not likely to present any impediment to project delivery.

244. The Secretary of State is therefore invited to conclude that, should the CPOs be confirmed, the development project that underlies them, and for the purposes of which they have been made, is likely to proceed.

245. The principal disbenefits in summary are:

(i) the displacement of existing residents to new homes, most of which will be within the BXC area;
(ii) the displacement of existing businesses;
(iii) environmental and other impacts, including during construction;

[224] AA/MM/1 sects 2, 4-6; AA/AG/1 sects 3, 5 and Appces A, B
[225] Redacted versions at AA/INQ/48, 49
[226] AA/INQ/5, 6
[227] AA/INQ/5A
[228] AA/MM/1 sect 5; AA/AG/1 paras 5.4-5.10. This evidence has not been subject to substantive challenge.

246. In relation to these, measures have been and will be put in place to mitigate the effects on existing residents and businesses that are to be displaced[229]. The environmental and other impacts of the scheme have also been addressed through the s.73 planning application process and s.73 Permission[230]. The DPs have also committed through undertakings to manage the impacts of the construction phase on shopping centre tenants, and it is clear that the more detailed documentation prepared by Mace that has been provided to the principal traders demonstrates (and is accepted as demonstrating) that these impacts can be managed satisfactorily.

247. The Secretary of State is asked to note that, in addition to addressing considerations arising under the Human Rights Act, the Council has given express consideration to its duties under the Equality Act 2010[231]. The Secretary of State also needs to address these matters in his decision.

248. Returning finally to the main considerations set out in the CPO Guidance, the Council submits (in summary) as follows:

(i) Paras 2, 16: given the size of the project, the number of interests included in the Orders, and the period of time over which the project will be delivered, reasonable and proportionate efforts have been made to acquire those interests by agreement;

(ii) Para 12: the Council has given (and the Secretary of State will give) careful consideration to whether the purposes for which the Orders have been made justify the interference with the human rights of those affected by them which the exercise of the compulsory powers will bring about. That interference is justified because there is a strongly compelling case in the public interest for confirming the Orders, on the basis of the massive regenerative benefits it will bring;

(iii) Para 13: the Council has a clear idea, on the basis of the relevant planning policies and the s.73 Permission and the RMAs and s.96A approvals granted to date, of how it intends to use the land included in the Orders;

(iv) Para 14: the necessary resources (including funding) are available to secure the delivery of both the CPO1 and CPO2 developments, if the CPOs are confirmed;

[229] AA/CS/1 paras 9.30-9.54 and evidence referred to therein
[230] AA/TW/1 sect 7; CD/D1 paras 6.32-6.37; CD/E1 paras 6.31-6.36
[231] Shaw PoE (AA/CS/1) p.53 paras 9.61-9.67

(v) Para 15: there are no planning or other impediments to delivery;

(vi) Paras 74: there is a detailed planning framework in place for BXC, which comprises the London Plan, the Local Plan, the Development Framework and the s.73 Permission;

(vii) Para 76 (first factor): the purpose for which the land included in the Orders is being acquired fits closely with the Local Plan;

(viii) Para 76 (second factor, derived from TCPA s.226(1A)): the CPO1 and CPO2 developments will not only themselves provide very significant social, economic and environmental well-being benefits, but will also facilitate the delivery of the whole of BXC, including the new Thameslink station[232], which constitutes one of London's largest and most important regeneration projects and which will accordingly deliver well-being benefits of greater than local significance[233];

(ix) Para 76 (third factor): there is no alternative means of achieving the purpose for which the Orders have been made.

249. The Secretary of State is accordingly asked to confirm the Orders as made.

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NEIL KING Q.C.
GUY WILLIAMS
6th July 2016

[232] For which public funding has been allocated: Shaw PoE (AA/CS/1) paras 5.14-5.19; AA/CS/3
[233] AA/CS/1 paras 7.3-7.4