



Department for  
Communities and  
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**Your ref:**

**Our ref:** PCU/CPO/N5090/75474 and  
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**Date:** 7 December 2017

Dear Mr Robinson

**The Town and Country Planning Act 1990: Section 226(1)(a)**  
**The Local Government (Miscellaneous Provisions) Act 1976: Section 13**  
**The Acquisition of Land Act 1981**  
**The London Borough of Barnet (Brent Cross Cricklewood) Compulsory**  
**Purchase Orders (No. 1 & 2) 2015 ('Orders')**

- 1 The report of the Inspector, Richard Clegg BA(Hons) DMS MRTPI dated 6 July 2017 who held a public local inquiry into the above Orders between 17 May and 27 July 2016 has been considered. A copy of the Inspector's report is enclosed. References in this letter to paragraphs in the Inspector's report are indicated by the abbreviation IR, followed by the relevant paragraph number. Cross references to other paragraphs in this decision letter are indicated by the abbreviation DL, followed by the relevant paragraph number.
- 2 The Orders concern the Cricklewood, Brent Cross and West Hendon Regeneration Area ('RA'). The cases for and against the confirmation of the Orders were presented together at inquiry and considered together in the Inspector's Report. Therefore, the Secretary of State has adopted the same approach in this decision letter.
- 3 The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No. 1) 2015 ('CPO 1') was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by the London Borough of Barnet ('the Council') on 20 April 2015. If confirmed, CPO 1 would authorise the compulsory purchase of the Order lands summarised at IR 2.4-2.11. The purposes of CPO 1 are to facilitate the development, redevelopment, or improvement of the Order lands by way of a

mixed-use scheme comprising retail, leisure and office development; hotel development; industrial, storage and distribution development; community facilities; residential development; car parking; public transport infrastructure and facilities; major infrastructure and highway works; and public realm and environmental improvement works; thereby contributing towards the promotion and/or the improvement of the economic, social and environmental wellbeing of the area.

- 3 When the Inquiry opened, there were 68 remaining objections to CPO 1, and 1 non-statutory additional objection. During the course of the inquiry, 3 objections were withdrawn and 4 late non-statutory objections were lodged to CPO 1. The main grounds of objection to CPO 1 cover a range of matters, but, in simple terms, it is said by the objectors that the Council have failed to demonstrate a compelling case in the public interest necessary to justify confirmation of CPO 1.
- 4 The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No. 2) 2015 ('CPO 2') was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by the Council on 20 April 2015. If confirmed, CPO 2 would authorise the compulsory purchase of the Order lands summarised at IR 2.12-2.14. The purposes of CPO 2 are to facilitate the development, redevelopment or improvement of the Order lands by way of a mixed- use scheme comprising retail development; community facilities; residential development; leisure development; car parking; infrastructure and highway works; and public realm and environmental improvement works thereby contributing towards the promotion and/or the improvement of the economic, social and environmental wellbeing of the area.
- 5 When the Inquiry opened, there were 38 remaining objections to CPO 2, and 5 non-statutory additional objections. During the course of the inquiry, 1 late objection was received from a qualifying person and 3 late non-statutory objections were lodged to CPO 2. The main grounds of objection to CPO 2 cover a range of matters, but, in simple terms, it is said by the objectors that the Council have failed to demonstrate a compelling case in the public interest necessary to justify confirmation of CPO 2

#### Inspector's recommendations and summary of the decisions

- 6 The Inspector has recommended that CPO 1 be confirmed subject to the modifications set out at IR 13.1. The Secretary of State agrees with the Inspector's conclusions concerning CPO 1, except where stated, and agrees with his recommendation, and has decided to confirm CPO 1 with the modifications set out at IR 13.1 and, in addition, with the further modifications requested by the Council in their letters of 5 October 2017 and 29 November 2017.
- 7 The Inspector has recommended that CPO 2 be confirmed without modification. The Secretary of State agrees with the Inspector's conclusions as to CPO 2,

except where stated, and agrees with his recommendation, and has decided to confirm CPO 2 without modification.

- 8 The Inspector's Report contains a description of the Order lands for CPOs 1 & 2 (IR 2.1-2.14), an analysis of the adopted planning framework (IR 3.1-3.9) and planning permissions (IR 4.1-4.4). The Inspector's Report summarises the parties submissions made at the local inquiry at IR 5.1-11.15. The Inspector's overall conclusions on the Orders are set out in IR12.91-12.95, and his recommendations are at IR 13.1.

#### Matters arising since the close of the inquiry

- 9 On 13 November 2017 the Secretary of State wrote to remaining objectors to afford them an opportunity to comment on the following matters
- a. The publication in December 2016 of the DCLG Estate Regeneration National Strategy (<https://www.gov.uk/guidance/estate-regeneration-national-strategy>)
  - b. The potential Public Sector Equality Duty impacts arising under section 149 of the Equalities Act 2010 (<https://www.legislation.gov.uk/ukpga/2010/15/section/149>); and
  - c. The London Borough of Barnet's letter of 5<sup>th</sup> October 2017 requesting modifications to the made to the London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No. 1) 2015 in the event that the Secretary of State modifies CPO 1 to remove parts of plot 236, 236a and 237 and part of plot 108 (MAN\_003-#3223120-v1-Letter\_to\_Edward\_Chapman\_National\_Planning\_Casework....pdf)
- 10 The Secretary of State received responses from Helen Pitsillis and Michael Mangi, Helen Pitsillis, Marek and Ewa Dec and three identical responses from Pria Lad, Sachin Mevada and Raschid Jaffrey. In summary, these responses object to the removal of plot 108 from the Order and raise concerns regarding: the consultation process; the loss of social housing; the resident engagement and relocation arrangements not according with the DCLG Estate Regeneration National Strategy ('National Strategy'); and a lack of detail being provided about the proposed modifications to CPO 1.
- 11 The Secretary of State has also received a response from Eversheds Sutherland on behalf of the Council. The Council consider that the Brent Cross Cricklewood ('BXC') scheme is not a scheme of estate regeneration to which the National Strategy is aimed at. However, insofar as the National Strategy raises considerations that are of general relevance to the protection and engagement of residents, the Council consider that the approach it has taken accords with the objectives of the National Strategy. As to the potential equalities impacts, the Council consider that the evidence they submitted to the public inquiry and the contents of their letter of 20 December 2016 address equalities impacts. As to the modifications proposed in their letter of 5<sup>th</sup>

October 2017, the Council reiterated their position that if the Secretary of State is minded to modify CPO 1 to remove parts of plots 236, 236a, 237 and 108, that the proposed modifications remain necessary.

- 12 The Secretary of State has carefully considered all the responses received from the reference back exercise and has taken account of the matters raised by parties in the representations when making his decision on the Orders.

#### Post Inquiry Correspondence

- 13 Following the close of the public inquiry, the Secretary of State received correspondence from Ms N Choudhury, representing the Whitefield Estate Residents which included a petition objecting to related planning applications, raising concerns regarding the Council's processing of the Orders and related planning applications, and, on 11 September 2017, requesting a further CPO inquiry. The Secretary of State has also received correspondence from Eversheds Sutherland dated 12 September 2017 and 27 September 2017 acting on behalf of the Council, which responded in detail to Ms Choudhury's correspondence. A list of all the representations which have been received since the close of the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of the letter. The Secretary of State has taken all post inquiry representations into account in reaching his decision on the Orders

#### Request to reopen the Inquiry

- 14 The letter from Ms N Choudhury requested that the inquiry be reopened to allow the Whitefield Estate residents the opportunity to challenge the proposed loss of the Whitefield Estate, and for further consideration to be given to remove the Whitefield Estate from the Orders. The Secretary of State has given careful consideration to the request to exercise his discretionary power to reopen the inquiry pursuant to rule 18(6) of the Compulsory Purchase (Inquiries Procedure) Rules 2007, but considers that it is unnecessary to do so. He has carefully considered the contents of the post inquiry correspondence received from Ms Choudhury and has taken account of the concerns raised and her request to modify the Orders when making his decision. He notes that the Whitefield Estate residents had the opportunity during the 20 day public inquiry to put forward objections to the Orders being confirmed and to test the Council's justification for the Orders. They have also been given the opportunity to make representations on the matters set out at paragraph 9, above.

#### Policy considerations

- 15 IR 12.2 refers to certain factors in paragraphs 74 and 76 of the *Guidance on Compulsory Purchase process and The Crichton Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion* ('the Guidance') in consideration of which the Secretary of State's decision on the Orders is made.

#### Planning Framework

- 16 The Secretary of State agrees with the Inspector that the relevant planning policies are those summarised at IR 3.1-3.9. He agrees with the Inspector that

the decision whether or not to confirm the Orders is not an opportunity to revisit the planning merits of the scheme for the regeneration of the Brent Cross Cricklewood area ('BXC'), which received outline permission in 2014 (IR 12.2) . For the reasons given by the Inspector at IR 12.4-12.8, the Secretary of State agrees with the Inspector's analysis concerning the adopted planning framework and his conclusion that the particular purposes for which the Order lands would be acquired are consistent with the policy objectives in the Development Plan and the Development Framework (IR 12.9).

#### Well-being

17 The Secretary of State has carefully considered the Inspector's analysis as to the extent to which the proposed purpose of the Orders will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area at IR12.10-12.37.

#### Economic wellbeing

18 The Secretary of State agrees with the Inspector's analysis concerning economic wellbeing at IR12.10-12.20. The Secretary of State agrees with the Inspector for the reasons given that the redevelopment proposals on the Order lands are expected to provide a substantial number of new jobs in retail, leisure and business uses, and significantly that the construction of key infrastructure would be fundamental to the establishment of other employment uses elsewhere in the area (IR 12.21). Overall, and for the reasons given by the Inspector, the Secretary of State agrees that the proposed redevelopment would make a significant contribution to the economic wellbeing of the area (IR 12.21).

#### Social wellbeing

19 As to social well-being, the Secretary of State agrees with the Inspector that there is a need for a considerable level of additional housing both in London as a whole and in Barnet. He notes the scheme is expected to provide approximately 7,500 homes overall, of which about 1,800 would be built on the Order lands and agrees with the Inspector that this provision of housing would make an important contribution to Barnet's 10 year target in the London Plan and the 15 year figure in the Core Strategy (IR 12.22). He agrees with the Inspector for the reasons given that the development on the Order lands would also bring forward a significant number of affordable dwellings and agrees that there is a clear need for these in the Borough (IR 12.24).

20 The Secretary of State notes that the scheme includes a range of community facilities, certain of which would be within the Order Lands (IR 12.29). He agrees with the Inspector for the reasons given that while the new secondary school would not represent an additional facility it may accommodate library space, and two police units are proposed (IR 12.29). He agrees with the Inspector for the reasons given that the key highways infrastructure which would be built on the Order Lands would be of importance in supporting the development of other community facilities in the wider BXC area (IR 12.29).

- 21 The Secretary of State has carefully considered the objections of the residents of the Whitefield Estate summarised by the Inspector at IR 8.55, IR 9.14-9.27, IR 10.1-10.32, IR 11.2, IR 11.6, and the Inspector's analysis at IR 12.22-12.31. He notes concerns have been raised, among other things, in respect of the move to replacement accommodation, the cost of accommodation, implications of the shared equity scheme, tenancy conditions, and the availability of information. He has also taken account of the representations received from parties concerning the implications of the National Strategy which was published in December 2016 after the Council's Residential Relocation Strategy ('RRS'). The Secretary of State considers that the Council have undertaken early engagement with residents which is ongoing. The Secretary of State considers that the Council have worked collaboratively with residents and their representatives, among other things, through the appointment of a resident independent adviser and the establishment of a steering group comprising of tenants, leaseholders and freeholders to engage with the development partners (IR 5.76). The Secretary of State considers that account has been taken by the Council in the RRS of the differing impacts of the scheme for secure tenants, freeholders and leaseholders (IR 12.25) and notes the proposed relocation arrangements and opportunities for shared ownership and equity in the RRS. Overall, for the reasons above, the Secretary of State considers that the actions of the Council and its development partners accord with the general principles of the National Strategy as to resident engagement and protection.
- 22 The Secretary of State agrees with the Inspector that the disruption caused by the demolition of the Whitefield Estate and the relocation of its residents would have an adverse effect on the community (IR 12.31). While he agrees with the Inspector for the reasons given, that the relocation arrangements in the RRS for secure tenants, freeholders, and leaseholders, are adequate (IR 12.31), he notes that private tenants will not be eligible for rehousing as part of the scheme. Overall, however, the Secretary of State agrees with the Inspector for the reasons given that these disbenefits are outweighed by the contributions which the scheme makes to housing provision in general and affordable housing in particular, together with improvements to community facilities and accessibility (IR 12.31). Accordingly, the Secretary of State agrees with the Inspector's conclusion that the scheme would contribute positively to the social well-being of the area (IR 12.31).

#### Environmental wellbeing

- 23 The Secretary of State agrees with the Inspector's analysis as to environmental wellbeing at IR 12.32-12.37 and his conclusion for the reasons given that the scheme provides an opportunity to significantly upgrade the built environment of the area, without causing undue detriment to nature conservation interests. Accordingly, the Secretary of State agrees with the Inspector for the reasons given that the scheme would make an important contribution to the environmental well-being of the area (IR12.37).

#### Conclusions on wellbeing

- 24 Overall, the Secretary of State concludes that the requirements of Section 226(1)(A) of the Town and Country Planning Act 1990 are satisfied because he considers, in agreement with the Inspector, that the Orders will significantly contribute to the economic well-being of the area, and will positively contribute to the social and environmental well-being of the area (IR 12.92).

#### Possible impediments

- 25 Having regard, among other things, to paragraphs 15 and 75 of the Guidance, the Secretary of State has carefully considered the Inspector's analysis at IR 12.38-12.47 concerning the possible impediments to the scheme going ahead

#### Planning Permission

- 26 The Secretary of State notes that outline planning permission for the scheme was granted in 2014, which provides the framework within which reserved matters applications should come forward, and an associated planning agreement contains a range of requirements and restrictions, including obligations to provide critical infrastructure in phases 1 and 2 of the redevelopment scheme (IR 12.38). He notes that reserved matters have already been approved for phases 1A (north) and 1A (south) covering key infrastructure and replacement dwellings for the Whitefield Estate residents living in the CPO 1 Order lands (IR 12.39). He notes that the Order lands primarily include development within phase 1, but some plots within phases 2, 6 and 7 are within this part of the RA. He further notes conditions 1.1-1.3 of the outline planning permission prescribe the timescales for reserved matters for all phases of the scheme (IR 12.40). Overall, and for the reasons given, the Secretary of State agrees with the Inspector that there is no obvious reason why the remaining reserved matters approvals for those parts of the Scheme within the Orders lands should not be forthcoming (IR 12.40).

#### Funding and viability

- 27 The Secretary of State has carefully considered the concerns expressed by objectors about the funding and viability of the scheme. The Secretary of State has had regard to the financial commitments that have already been entered into by the development partners, and considered the Inspector's analysis on this issue at IR 12.41-12.43. Overall, the Secretary of State agrees with the Inspector's conclusion at IR12.43 for the reasons given that funding would be available, both for the acquisition of interests covered by CPOs 1 and 2, and for carrying out the intended redevelopment, and that the scheme would be financially viable.

#### CPO 1- Retention of anchor tenants in BXSC

- 28 The Secretary of State agrees with the Inspector for the reasons given at IR 12.44-12.45 that it is unlikely any of the anchor tenants would leave due to the CPO process and the associated arrangements for extending BXCS.

#### CPO 2- Relationship to the proposed railway station

- 29 The Secretary of State notes a new railway station is proposed to the west of the Order Lands, and the Brent Cross South proposals have been developed

on the basis that the station would be provided, and delivery of the station is dependant on the confirmation of CPO 3 (IR 12.46)

#### Conclusions on possible impediments

30 Overall, the Secretary of State agrees with the Inspector that the Council have demonstrated that funding would be available to deliver the scheme and although plans for the Brent Cross South elements of the scheme are associated with the provision of a new station contingent on confirmation of CPO 3 that there is nothing before him to indicate that they would be dependent on that infrastructure (IR 12.47). Accordingly, the Secretary of State agrees with the Inspector that delivery of the scheme is unlikely to be blocked by any potential impediments to implementation (IR 12.47).

#### Achievement of purposes by other means

31 The Secretary of State notes that the purposes of both Orders are to bring about the development, redevelopment or improvement of the Order lands by way of a mixed use scheme and there are no alternative proposals for the comprehensive development of the land covered by either CPO 1 or CPO 2 (IR 12.48).

32 Having regard, among other things, to paragraph 76 of the Guidance, the Secretary of State has carefully considered the appropriateness of the alternative proposals put forward by several objectors for part of the Order lands.

#### CPO 1- Fenwick Store, BXSC

33 The Secretary of State has carefully considered the appropriateness of the alternative proposal put forward by Fenwick, summarised at IR 8.25- 8.51 and the Inspector's analysis in this regard at IR 12.49-12.67 (with which the Secretary of State agrees). He notes that Fenwick considers that the works to build the extension and to integrate it with the existing BXSC could be achieved without acquisition of its leasehold interest and considers its proposed inclusion in CPO 1 is unnecessary and disproportionate. Fenwick seeks the modification of CPO 1 to exclude its leasehold interest. It considers that the purposes for which the Council is intending to acquire its leasehold interest could be achieved by the acquisition of new rights over its land pursuant to section 13 of the Local Government (Miscellaneous Provisions) Act 1976 ('LG(MP)A'). It considers that the Council can use its powers to override easements and other rights in section 203 of the Housing and Planning Act 2016 ('HPA 2016') and/or rely on the terms of Fenwick's undertaking to cover matters that cannot be addressed through the compulsory acquisition of new rights over its land.

34 The Secretary of State agrees with the Inspectors conclusions on this issue in their entirety and makes the following observations in particular. As to whether the works affecting the Fenwick store could be carried out by the Council relying on its statutory powers in s203 HPA 2016, the Secretary of State agrees with the Inspector for the reasons given (IR 12.51) that clause 5(1) and 5(4) of Fenwick's lease do not fall within the scope of s203 HPA 2016 as a "*breach of*

*a restriction as to the user of land by virtue of a contract*” because the provisions are positive obligations rather than restrictions. As to whether the acquisition of the new rights proposed falls within the scope of s13 LG(MP)A 1976, the Secretary of State agrees with the Council (whose submissions on this point are summarised at IR 5.26) that s13 enables acquiring authorities to acquire new rights over land but does not authorise the creation of new rights that override rights or other provisions contained in a lease. As to whether the Council can rely on Fenwick’s undertaking to enable works affecting Fenwick’s interest to be carried out, the Secretary of State agrees with the Council’s submissions summarised at IR 5.29 as to the in-principle difficulty with Fenwick’s undertaking and agrees with the Inspectors concerns about reliance on the terms of the undertaking in any event (IR12.65). Concerning whether the items in schedule 1 to Fenwick’s undertaking should be required to be included in the works through an undertaking by the Council before CPO 1 is confirmed, the Secretary of State agrees with the Inspector for the reasons given that there is not a realistic prospect of a further, more onerous, undertaking being secured (IR 12.6).

- 35 Furthermore, and in any event, the Secretary of State agrees with the Council’s submission summarised at IR 5.30 that there is, at the least, material uncertainty with the alternative proposals put forward by Fenwick and considers that this is in itself a compelling consideration in the circumstances (in particular having regard to the factors highlighted by the Council at IR 5.30). Overall, therefore, the Secretary of State agrees with the Inspector that the alternative proposals put forward by Fenwick do not provide the necessary certainty that the works to deliver the extension to BXSC could proceed (IR 12.67).

#### CPO 1- Other units at Brent Cross Shopping Centre

- 36 The Secretary of State has carefully considered the appropriateness of the alternative proposal put forward by objectors in relation to the land at Cricklewood Broadway/Cricklewood Lane and the Inspector’s analysis on this issue at IR 12.69-12.77. He notes the suggestions from some objectors that it is not necessary to carry out some of the proposed highways and junction modifications. He notes alterations for 9 junctions were approved as part of the outline planning permission, and agrees with the Inspector for the reasons given that these alterations are part of a single strategic package of highways works put forward in the Consolidated Transport Assessment as mitigation measures necessary to support the end-state development (IR 12.70), and also notes that condition 20.10 of the outline planning permission requires the practical completion of the A407/A5 junction works to be completed before the occupation of any part of the development to the south of the North Circular Road (IR12.70). While suggestions have been made that alterations to the A5/A407 junction are not necessary, the Secretary of State agrees with the Inspector for the reason given, that no detailed evidence has been put forward of the likely impact elsewhere on the network as a consequence of the omission of one part of the package of highway works (IR 12.70).

- 37 As to the A5/407 junction itself, the Secretary of State agrees with the Inspector's conclusion at IR 12.77 for the reasons given (IR 12.71- 12.77) that there is evidence that the junction performs unsatisfactorily at present, and that implementation of the proposed works would result in a marked improvement. Overall, and for the reasons given by the Inspector, the Secretary considers that omitting the realignment of the A5/407 junction from the scheme would not represent an appropriate alternative proposal, even disregarding the need for a further planning application and variation of the planning agreement (IR 12.77)

#### CPO 2- Whitefield Estate

- 38 The Inspector has carefully considered the Inspector's analysis at IR 12.78-12.82 concerning the Whitefield Residents objections to the acquisition and demolition of the Whitefield Estate and has had regard to the appropriateness of the alternative proposals put forward by them. The Secretary of State agrees with the Inspector for the reasons given that the Whitefield Estate occupies a key position in the RA (IR 12.78) and that retention of all or part of the Whitefield Estate would impede connectivity and would be an obstacle to the establishment of a town centre embracing this central position on the south side of the A406 (IR 12.79). He agrees with the Inspector for the reasons given that the retention of the Whitefield Estate would disrupt and fragment the redevelopment, in contrast to the coherent urban structure envisaged and such a variation of the scheme would require a further planning permission with the inevitable attendant delay (IR 12.79). He also agrees with the Inspector that the removal of Whitefield Estate from the Order lands would represent a significant change to the basis on which Argent Related became involved in Brent Cross South and could, therefore, affect the successful delivery of regeneration in this area (IR12.79).
- 39 As to Ms Choudhury's alternative proposal, the Secretary of State agrees with the Inspector that in practical terms the implications of this alternative would not be materially different from the Residents Group's proposal to exclude the Whitefield Estate as a whole and agrees that the Choudhury alternative would still threaten connectivity and the creation of a coherent urban structure and adjustments to the intended layout would not overcome these fundamental problems (IR 12.80)
- 40 As to Ms Choudhury's suggestion that development of the estate be undertaken by a community group the Secretary of State agrees with the Inspector for the reasons given that this approach would lead to potential disruption, and that there is no evidence before him to demonstrate that this approach would be a practical option, or that there is a community group willing to take such a proposal forward (IR 12.81).
- 41 Concerning the opposition from the Whitefield Estate residents and others to the proposed position of the living bridge, the Secretary of State agrees with the Inspector for the reasons given that construction of the living bridge catering specifically for pedestrians and cyclists, and designed to mitigate the intrusive effects of the main road, would play an important role in ensuring good

connectivity between BXSC and other development zones, and it is fundamental to achieving a unified town centre (IR 12.82). The Secretary of State also agrees with the Inspector, for the reasons given that the position of the living bridge is tightly constrained, and having regard to other infrastructure, does not consider that there is the opportunity to construct this facility clear of the CPO 1 Order lands (IR 12.82).

#### Other matters

- 42 As to the effect on the forecourt at 111 Highfield Avenue, the Secretary of State agrees with the Inspector for the reasons given that the improvement of the A41/A406 junction, as part of a package of gateway junction works, is fundamental to delivering the regeneration scheme, and the environmental improvement due to the removal of strategic road traffic justify the retention on plot 244 in CPO 1 (IR 12.83). Concerning the effect on the forecourt at 1 Claremont Road, the Secretary of State agrees with the Inspector for the reasons given that the proposed acquisition of land and rights would not adversely affect parking provision at the property (IR 12.84).
- 43 Concerning the outstanding objection in respect of the Brent Cross bus station and associated rest room in respect of CPO 1, the Secretary of State notes that an agreement has been reached that compulsory purchase powers in respect of these plots would not be exercised if agreements for the relocation of the bus station had concluded and notes the joint statement confirming that an agreement in relation to the bus station has been completed and once the necessary property agreements have been settled and exchanged that these objections will be withdrawn (IR 12.85).
- 44 Concerning the adequacy of consultation and negotiations, the Secretary of State has considered the details of the Council's consultation programme concerning the relocation of residents from the Whitefield Estate (IR 5.76). The Secretary of State notes that the Council can demonstrate a long history of consultation with residents, and that this is acknowledged in the responses from some of the residential objectors. As to Mr and Mrs Barker's objection, he notes there have been negotiations with the Council with the parties a long way apart on value and agrees with the Council that absent the inclusion of their interest in CPO 2 that there is a significant risk that it will not be possible to acquire their land by agreement before the land is required (IR 5.85). As to Hope Construction Materials objection to CPO 2, he notes the company have entered into negotiations with the Council in respect of an alternative site (IR 12.89).
- 45 Overall, and having regard to paragraph 2 of the Guidance, the Secretary of State considers that the Council have demonstrated that they have taken reasonable steps to acquire the Order lands by agreement.

#### State aid

- 46 Concerning Mr Cox's objection, the Secretary of State agrees with the Inspector for the reasons given that as the Orders would simply empower the

Council to acquire the Order Lands that they cannot themselves constitute state aid (IR 12.90).

#### Modifications to CPO 1

- 47 The Secretary of State agrees with the Inspector's conclusion at IR12.94 that the whole of plots 108, 236, 236a and 237 for CPO 1 are not required for the development, for the reasons given in IR12.17 and IR12.20. Accordingly, and having regard to paragraph 40 of the Guidance, the Secretary of State has decided to exercise his power to modify CPO 1 to remove those parts of these plots as recommended by the Inspector at IR 13.1.
- 48 The Secretary of State has carefully considered the Council's request for further modifications to be made to CPO 1 as particularised in their letter of 5 October 2017 and parties representations on the proposed modifications sought as part of the reference back exercise. Having regard to the Council's request, parties representations, and paragraph 40 of the Guidance, the Secretary of State considers these modifications are necessary to give effect to the commitments in the Undertakings and has therefore decided to exercise his power to further modify CPO 1 as requested by the Council.
- 49 The Secretary of State has also carefully considered the Council's request dated 29 November 2017 to further modify CPO 1 to remove part of plot 198, part of plot 242, and the entirety of plot 243 as they are no longer required in whole or part for the purposes of the delivery of the CPO 1 development as part of the BXC scheme.. Having had regard to the Council's request and paragraph 40 of the Guidance, the Secretary of State considers these modifications are necessary and appropriate and has decided to exercise his power to further modify CPO 1, as requested by the Council.

#### Human Rights

- 49 The Secretary of State has carefully considered whether the purposes for which the Orders were made sufficiently justify interfering with the human rights of those with an interest in the land affected by the Orders. In particular he has considered the provisions of Article 1 of the First Protocol to, and Article 8 of, the European Convention on Human Rights. With regard to Article 8, the Secretary of State considers that in balancing the rights of individuals who are affected by the Orders against the benefits to the community of proceeding with the Orders, that the making of the Orders and the interference with the individuals' rights are justified in the interest of the community in order to effect the scheme. With regard to Article 1 of the First Protocol, the Secretary of State considers that the interference with the individuals' property is justified by the advantages to the wider public interests by proceeding with the development which the Orders will facilitate. Overall, the Secretary of State considers that the Orders strike a fair balance between the public benefits of the scheme and the interference with the human rights of those with an interest in the land affected by the Orders.

#### Public Sector Equality Duty

- 50 The Secretary of State has considered the Equality Act 2010. Section 149 of the Equality Act 2010 introduced a public sector equality duty, that public bodies must, in the exercise of their functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In making this decision, the Secretary of State has had due regard to the requirements of the Public Sector Equality Duty and has sought representations from parties as to the potential equalities impacts arising.
- 51 In this regard and in coming to his decision, the Secretary of State considers that the confirmation of the Orders may have negative and positive impacts on protected groups and, in particular, persons with the protected characteristic of age and disability. The potential negative impacts on protected groups include the displacement of existing residents and the disruption caused to the existing community (IR 12.28) and the impacts of the scheme on remaining objectors who suffer from disability or ill-health (IR 12.95). The potential positive impacts on protected groups include the provision of affordable housing (IR 12.24), the improvements to community facilities (IR 12.29), and accessibility (IR 12.30). The Secretary of State has carefully considered mitigation measures in relation to the potential negative impacts on protected groups. The Secretary of State considers that measures have been put in place by the Council in the RRS to seek to mitigate some of the effects of displacement on existing residents (IR 12.25-12.27). However, the Secretary of State does not consider it is, in practice, possible to mitigate the potential negative impacts on existing residents by modifying the Orders to exclude the whole or part of the estate as he agrees with the Inspector that this would threaten connectivity and the creation of a coherent urban structure (IR 12.79) and would not enable the benefits of the comprehensive regeneration of the area to be achieved (IR 12.94).

#### Justification in the public interest and overall balance

- 52 The Orders should be confirmed only if there is a compelling case in the public interest to justify sufficiently the interference with the human rights of those with an interest in the land affected. The Secretary of State agrees with the Inspector and considers that the proposed purpose of the Orders will significantly contribute to improvement of the economic, social and environmental well-being of the area (IR 12.92). The Secretary of State agrees with the Inspector that the purposes for which the land is being acquired is supported by the adopted planning framework for the area (IR 12.91). The Secretary of State agrees with the Inspector that the potential viability of the scheme has been demonstrated and that there is a reasonable prospect that the scheme will proceed (IR 12.93). The Secretary of State agrees with the Inspector and considers that the proposed alternatives would not enable the benefits of the comprehensive regeneration of the area to take place (IR

12.94). The Secretary of State considers that reasonable steps have been taken by the Council to acquire the Order lands by agreement (DL 45). The Secretary of State agrees with the Inspector that the purposes for which the Order Lands would be acquired and the benefits of the scheme justify interfering with the human rights of those with an interest in the land affected (IR 12.95). The Secretary of State has also had due regard to the Public Sector Equality Duty in considering whether to confirm the Orders (DL 50-51) Overall, the Secretary of State agrees with the Inspector and concludes, in his judgment, that the public benefits of the scheme significantly outweigh the interference with private rights and consequently that there is a compelling case in the public interest for the confirmation of both Orders (IR 12.95).

- 53 The Secretary of State has therefore decided to confirm CPOs 1 and 2 with the modifications to CPO 1 recommended by the Inspector at IR 13.1 and with the further modifications to CPO 1 requested by the Council in their letters of 5 October 2017 and 29 November 2017.
- 54 I enclose the confirmed orders and the maps to which it refers. Your attention is drawn to section 15 of the Acquisition of Land Act 1981 as amended by section 34 of the Neighbourhood Planning Act 2017 about publication and service of confirmation notices now that the orders have been confirmed. Please inform us of the date on which notice of confirmation of the Orders is first published in the press.
- 55 Copies of this letter and the Inspector's report are being sent to remaining objectors. Copies of this letter are also being sent to other persons who made submission at the local inquiry.
- 56 This letter does not convey any other consent or approval in respect of the land to which the order relates.

Yours sincerely

Signed by authority of the Secretary of State for Communities and Local Government

*Stephen Jewell*

**Stephen Jewell**  
**Team Leader Planning Casework Unit**