

**KING & WOOD
MALLESONS**

King & Wood Mallesons LLP

10 Queen Street Place
London EC4R 1BE

T +44 (0)20 7111 2222
F +44 (0)20 7111 2000
DX 255 London

www.kwm.com

28 MAY 2015

27 May 2015

Partner
Stephen Webb

Secretary of State
National Planning Casework Unit
5 St Phillips Place
Colmore Row
Birmingham
B3 2PW

Associate
Meeta Kaur
T +44 (0)20 7111 2019

Dear Sirs

The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No.1) 2015 (the "Order")

We act for Marks and Spencer p.l.c. in respect of the Order, which was made by the London Borough of Barnet (the "Council") on 20 April 2015. This letter is written in response to a letter received by our client dated 29 April 2015 notifying it of the making of the Order and of the Council's intention to acquire our client's interests in the land subject to the Order (the "Order Land"). This letter constitutes our client's objection to the Order.

Our client owns various leasehold interests within plots 300, 329, 349, 442, 461 and 462, as shown on the plan accompanying the Order, and it has the benefit of various rights over other parts of the Brent Cross Shopping Centre (the "Centre"), within which our client's interests are located, including rights over access roads, landscaped areas, vehicular ways, loading and unloading bays, pedestrian areas, service corridors, stairways, lifts, escalators, car parks and service yards. The nature of our client's rights include rights of support and passage of services, and rights of way for pedestrian access through the Centre, rights of access for vehicles over the vehicular ways and car parks as well as rights of access for servicing and delivery purposes.

The Order Land includes the Centre, a large shopping centre to the North of the A406 North Circular Road. Marks and Spencer p.l.c. operates a Marks and Spencer retail store (the "Store") from plots 300, 349, 442, 461 and 462 within the Centre. Our client's rights in relation to the wider Centre, as referred to in the paragraph above, are essential to the proper functioning of the Store. The Order proposes permanent acquisition of all our client's interests in the Order Land although, as we set out in more detail below, the Council's intentions as regards our client's interests, as set out in the Order and the statement of reasons, are insufficiently clear such as to justify interference with them.

Marks and Spencer is a long established national retailer and household name that operates hundreds of

King & Wood Mallesons LLP is an English limited liability partnership registered in England under no OC313176. Authorised and regulated by the Solicitors Regulation Authority. A list of the members of King & Wood Mallesons LLP is open to inspection at 10 Queen Street Place, London EC4R 1BE, its principal place of business and registered office.

Member firm of the King & Wood Mallesons network. See www.kwm.com for more information.

Asia Pacific | Europe | North America | Middle East

1469/M37.1060/LIVE:93860573.4/JUAM

retail stores throughout the country, including many anchor stores in a significant number of shopping centres such as the Centre. Our client has held a lease of the Store since 1979, when the Centre was first opened.

Our client objects to the Order on the grounds set out below.

The statement of reasons accompanying the Order makes clear that the Council is promoting the Order to facilitate the development, re-development and improvement of the Order Land by way of a major mixed use scheme ("the Scheme"), which was granted outline planning permission on 23 July 2014 pursuant to an application made under Section 73 of the Town and Country Planning Act 1990 (the "S.73 Permission"). The original planning permission for the Scheme was granted on 28 October 2010 (the "2010 Permission"). The S. 73 Permission authorises the following development and, according to the planning documents submitted with the application, does not significantly amend the 2010 Permission, but proposes amendments to its planning conditions to reflect evolution in scheme design and a revised delivery strategy:

"A comprehensive mixed use redevelopment of the Brent Cross Cricklewood Regeneration Area comprising residential uses (Use Class C2, C3 and student/special needs/sheltered housing), a full range of town centre uses including Use Classes A1 – A5, offices, industrial and other business uses with Use Classes B1 – B8, leisure uses, rail based freight facilities, waste handling facility and treatment technology, petrol filling station, hotel and conference facilities, community, health and education facilities, private hospital, open space and public realm, landscaping and recreation facilities, new rail and bus stations, vehicular and pedestrian bridges, underground and multi-storey parking, works to the River Brent and Clitterhouse Stream and associated infrastructure, demolition and alterations of existing building structures, CHP/CCHP, relocation electricity substation, free standing or building mounted wind turbines, alterations to existing railway including Cricklewood railway track and station and Brent Cross London Underground station, creation of new strategic accesses and internal road layout, at grade or underground conveyor from waste handling facility to CHP/CCHP, infrastructure and associated facilities together with any required temporary works or structures and associated utilities/services required by the Development."

The S.73 Permission is granted in outline, so there are no detailed plans showing the proposed Scheme. Although the Statement of Reasons which accompanies the Order refers to an extension of the Centre, the principal planning documents refer to the "remodelled Brent Cross Shopping Centre", but offer no more detailed explanation or description as to the form that such "remodelling" is proposed to take. The approved parameter plans associated with the S.73 Permission (and indeed the 2010 Permission) show that the Centre is to be retained almost in its entirety. It appears that new development is proposed to the south of the Centre, although the relevant parameter plans are not properly annotated so as to make this entirely clear. It is therefore also unclear from the parameter plans, or the planning documents submitted with the S. 73 Permission, whether that new development will take the form of an extension to the Centre or the construction of separate buildings. In either case, as referred to above, the existing structure of the Centre appears to be unchanged

The only details available relating to any internal reconfiguration of the Centre show proposed changes to the John Lewis Partnership store that lies within the western part of the Centre and an increase in retail floorspace as a result of this change. There are no details relating to any wider internal works at the Centre and certainly little indication of any proposals that would affect our client's Store in this regard.

We understand that Hammerson and Standard Life Investments will carry out the remodelling of the Centre (the "Development Partners"). Our client has been approached by Hammerson on behalf of the Development Partners to discuss Marks and Spencer's position within the remodelled Centre. Our client has

understood from these discussions that it is expected that it will continue to trade throughout the remodelling of the Centre (whatever this may in fact comprise), and may be provided with a new store within the Scheme once it is implemented. Discussions with the Development Partners are however at a very early stage and there is certainly no documented and legally binding agreement in place in this regard.

It is clear from the above that permanent acquisition of the entirety of our client's interests has not been sufficiently and adequately justified. This lack of detail in the Order and in the documents that accompany it leaves considerable doubt as to why our client's interests are in fact required, when the intention is to carry out a "remodelling" of the Centre, for which no detail appears to yet exist.

There is also a significant lack of documentary information accompanying the Planning Permission in relation to the general construction phase impacts on the Store and any resultant disruption to the operation of the Store. Hammerson has made clear to our client that the expectation is that the Store will continue to trade though a number of years of the construction phase of the Scheme, and has given an initial high level indication of some of the impacts that will occur throughout that time. These include the loss of existing servicing provision and arrangements, and a number of successive relocations and changes to such provision and arrangements over several years (although no detail has yet been provided); loss of Centre car parking; and the loss of the Store's 'collect by car' facility. It is clear that impacts will not be limited to these but cumulatively will result in compromised access to the Store, both for customers and for servicing purposes; impact on services and utilities (which could potentially result in the Store closure); creation of noise, dust and other direct physical construction impacts; and potential impact on existing fire arrangements (which could also potentially result in Store closure if not managed properly and appropriately). Due to the nature of the Scheme, including the significant changes to infrastructure and the provision of a new bus station nearby, such impacts will without doubt have a significant adverse impact on our client's ability to trade from the Store and satisfactorily service its customers.

It should also be noted that our client sells food as well as general merchandise at the Store. It has a very strong food business operating there which necessitates extra deliveries over and above that normally associated with general merchandise. Consequently any construction (or indeed adverse operational phase) impacts on servicing and deliveries, and construction phase impacts such as dust, will have an even more significant and negative effect on the food business, which is inherently a more sensitive form of retailing. For example, our client understands that if the Scheme is to include a possible extension of the Centre, or construction of new buildings, construction may take place over the Store's current service yard. This will effectively leave the Store with no direct access to a service yard. This is extremely problematic for the frozen food aspect of our client's operations which require the maintenance of a "cold chain" between lorries carrying frozen items and cold storage within the Store.

Again, our client has only received high level details as to what the Development Partners are proposing in relation to mitigating construction phase impacts, including the loss of the Store's service yard, and any discussions on this are also at a very early stage. There is no documented and legally binding agreement in place in this regard either.

Paragraph 17 of Circular 06/04 states that:

"A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention."

Paragraph 17 refers to the individual interests to be acquired as well as to the Order Land as a whole. As such, the Council must be able to demonstrate clearly its intended use of each parcel of land included in the Order if it is to be able to justify the use of compulsory purchase powers to acquire that parcel.

The lack of detail currently available setting out intentions as regards both the operational and construction phases of the Scheme is considered to be entirely insufficient so as to justify permanent acquisition of our client's interests pursuant to the Order. Indeed such detail as does exist indicates that it is not necessary to permanently and compulsorily acquire our client's interests. It is therefore our client's clear view that no compelling case in the public interest has been demonstrated for its interests to be so acquired.

Our client continues to be in discussion with the Development Partners, although such discussions have principally focussed on the provision of a new store rather than the construction phase impacts of the Scheme, and is hopeful that agreement may be reached as to resolution of our client's concerns. However no agreement on terms has yet been reached and there is no legally binding document in place to give effect to any such agreement, on which basis our client has no option but to object to the Order at this stage.

We reserve our client's right to add to or amend these objections. Please contact Meeta Kaur of this firm on 020 7111 2019 if you require any further information.

Yours faithfully

King & Wood Mallesons LLP

King & Wood Mallesons LLP