

**London Borough of Barnet (Brent Cross, Cricklewood) Compulsory Purchase Order 2015  
(No.1)**

**Statement of Case for Waitrose Limited**

## **1 Introduction**

- 1.1 This Statement of Case is submitted on behalf of Waitrose Limited (**Waitrose**) in relation to the consideration by the Secretary of State of whether to confirm the London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order 2015 (No. 1) made on 20 April 2015 (the Order).
- 1.2 The Council is working with the present owners of the Brent Cross Shopping Centre in the promotion of the Order. In this Statement reference is made to the Developer as shorthand for the three parties who have entered into a development agreement with the Council.
- 1.3 Waitrose previously submitted a written objection to the Order on 26 May 2015. The Council's Statement of Case and its justification note for the interests sought have now been received. Waitrose's objection to the Order remain and are further outlined in this Statement of Case.

## **2 Extent of Waitrose Interest in the Order Land**

- 2.1 The Order seeks to permanently acquire Waitrose's Leasehold interests in Plots 359, 360, 361, 362, 445 and 463.

## **3 Factors to which the Secretary of State should have regard when determining whether to confirm a CPO.**

- 3.1 The Government's "Guidance of Compulsory Purchase Process and The Crichton Down Rules for the disposal of land acquired by, or under the threat of, compulsion" (the Guidance) is relevant when determining whether to confirm a CPO.
- 3.2 Paragraph 13 of the Guidance confirms that the confirming minister has to take a
- "balanced view between the intentions of the acquiring authority and concerns of those with an interest in the land... and the wider public interest."*
- 3.3 Land should only be acquired if there is a compelling public interest in doing so.
- 3.4 The Guidance notes that acquiring authorities should make reasonable efforts to acquire land by private treaty.
- 3.5 The Guidance goes on to state that:

*"if an acquiring authority does not:*

- have a clear idea of how it intends to use the land which it is proposing to acquire; and

- cannot show that all necessary resources are likely to be available **to achieve that end within a reasonable timescale**

*it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest "*

(emphasis added)

3.6 Paragraph 14 of the Guidance identifies that an acquiring authority should address

- (a) sources of funding, this should include the provision of "substantive information" of funding available both for implementing the scheme and acquiring the land sought;
- (b) timing of that funding, which confirms that funding should be available now or early on in the process,

3.7 The Guidance states:

*"only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years."*

#### **4 Waitrose's Position regarding the Order**

##### ***No justification for the acquisition of Waitrose***

4.1 Having reviewed the Statement of Reasons, the Justification Note requested by the Inspector following the pre-inquiry meeting and received on 8th March 2016, and the Council's Statement of Case, there is no justification provided in any of these documents which explains or supports the compulsory acquisition of the Waitrose land and interests.

4.2 Paragraph 2.19 of the Justification Note confirms that out of 120 retail units within Brent Cross Shopping Centre, only 29 retail units have been identified as possibly requiring vacant possession in order to allow works to be carried out. Waitrose is not identified as one of these 29 units.

4.3 No further justification is provided as to why Waitrose, or the other 90 retail units, therefore need to be compulsorily acquired, given that vacant possession is not needed. The Council has failed to provide any justification for including the 75% of the retail units in Brent Cross Shopping Centre within the Order. Waitrose does not believe the Order can properly be confirmed in such circumstances.

- 4.4 The Council confirms in its statements that the detailed design for the redevelopment of the Brent Cross Shopping Centre has not yet been commenced. Neither the Council nor the Developer can therefore confirm with any certainty which units (if any) are genuinely needed in order to facilitate the scheme underlying the CPO.
- 4.5 The Council's failure to justify the extent of the Order land (insofar as it relates to Brent Cross Shopping Centre) is further evidenced by the following conflicting statements:
- (a) paragraph 14.6 of the Statement of Case acknowledges that for the Brent Cross Shopping Centre, where agreements are made, landlord and tenant powers will be used to secure relocations etc. We question therefore why CPO is being utilised;
  - (b) paragraph 14.9 of the Statement of Case states that "*consideration has been given to the **inclusion of each and every plot within the Order***" and yet those considerations have not been revealed to the affected parties, such as Waitrose, in the Council's statements;
  - (c) paragraph 14.11 goes on to state:

*"the detailed proposals for the Shopping Centre are being developed. As these evolve **the precise nature of the impacts on those with interests in the Order will become clearer** and where possible the Council and CPO1 Development Partners will seek to **mitigate the extent of any permanent acquisition.**"*
  - (d) paragraph 14.12 of the Statement of Case states that the Council will in relation to the shopping centre only seek to:

*"implement powers of compulsory **acquisition as a measure of last resort if it is not possible to rely on the provisions of the existing leases**".*
- 4.6 The above confirms the objection already outlined by Waitrose on 26th May 2015 that the CPO is excessive, potentially unnecessary and premature.
- 4.7 The approach also raises the following further issues:
- (a) the statement by the Council, that when implementing its CPO powers it will only acquire what is needed, is of concern to Waitrose. This statement suggests that the Council might seek to acquire only part of Waitrose's unit. If this is a likely scenario it is wholly unacceptable that the Order be confirmed on this basis. The Council should be able to identify the precise land take.
  - (b) the potential partial acquisition of a retail unit raises significant operational issues for Waitrose. These issues should be properly assessed by the Council and the

Developer if in fact it is an outcome in their contemplation. It is prejudicial to expect Waitrose to prepare its case for inquiry without clarity on whether all or part (and if part, which part) of its unit is required. Operational issues will be peculiar to the extent of the land take (and which part of the unit) subject to compulsory acquisition. The approach taken by the Council unfairly and unnecessarily blights the whole, which seems contrary to the public interest.

- (c) if a property holding is partially taken, that gives the owner a potential right to require the whole of the holding to be taken, with obvious and significant timing and compensation consequences.
- (d) if a partial acquisition is intended, Waitrose's position is that CPO is not an appropriate mechanism to achieve this due to the complex nature of the rights and obligations in the Waitrose lease which can only logically and effectively be altered by agreement between the parties and not through the exercise of CPO. This indicates that an attempt to acquire part would trigger Waitrose's right to require acquisition of the whole.

4.8 As a wider point the Developer is seeking to utilise the CPO ahead of fully exploring the redevelopment of Brent Cross Shopping Centre using its Landlord and Tenant powers. This means that CPO is not being used here as a last resort. The statement made at paragraph 14.12 of the Council's Statement of Case evidences that there has been a failure to properly review or explore the use of Landlord and Tenant powers.

4.9 Waitrose will produce evidence that demonstrates

- (a) the lack of any adequate justification for the acquisition of the Waitrose land and rights in land; and
- (b) the harm caused by the potential partial acquisition of the Waitrose interests.

***The CPO is premature***

4.10 No information has been provided within any of the Council's supporting statements which provide any indication of the construction timetable for the development underlying the CPO. There is clearly a significant amount of work to be undertaken to work up the detailed design of the shopping centre proposals.

4.11 The original planning permission was granted in 2010, with the S73 being granted in 2014, and yet there is still very little commitment from the Council or the Developer as to the detail of the proposals or when the relevant reserved matters approvals will be secured.

4.12 Some 6 years later little has been done by the Developer to settle the detailed design of the shopping centre.

- 4.13 As already identified, the Council has acknowledged that it may not need all of the land subject to CPO.
- 4.14 Confirming the CPO at this stage is therefore premature. The Guidance is clear that the underlying scheme supporting the CPO should take place within a reasonable timescale, and there should be certainty that the scheme is deliverable. In the absence of any certainty as to how Brent Cross Shopping Centre is proposed to be redeveloped or the timing of its delivery, the Order should not be confirmed.
- 4.15 Waitrose will produce evidence to demonstrate that the CPO is premature.

### ***Disturbance***

- 4.16 No indication is provided as to the phasing of works to the Brent Cross Shopping Centre nor how long the works will take. These are essential components to Waitrose being able to understand how the construction works might affect servicing and customer access to and from the store.
- 4.17 The impact on car parking is also crucial for Waitrose to understand given a number of its customers rely on using trolleys whilst shopping at the Waitrose store.
- 4.18 Little information is provided as to the phasing of works.
- 4.19 The suggestion that appropriate planning conditions have been put in place to deal with the effects during construction is misconceived. Planning conditions seek to control/mitigate the general construction impacts. The construction and management plans or demolition plans secured by condition will not deal with the individual servicing arrangements for Waitrose's store nor pedestrian access to its store.
- 4.20 Waitrose's objection relating to disturbance and the impact the construction will have on the operation of the store therefore remains.
- 4.21 Evidence will be produced that demonstrates the effect of those impacts and the harm that will be caused.

### ***Legal Issues***

- 4.22 Waitrose reserves the right to explore the legal processes by which the Council entered into a development agreement for the redevelopment of the Brent Cross Shopping Centre. If pursued, evidence will be provided in the form of a legal submission.

## ***Viability***

- 4.23 As noted above the lack of certainty about the form of development, timing/phasing of development and the partial/complete acquisition of the Waitrose land and interests raises real questions about the viability and deliverability of the proposals.
- 4.24 Waitrose believes that the Council and the Developer need to provide a clear appraisal and programme for the proposals. Waitrose reserves the right to examine that evidence and/or to draw conclusions from the absence of such evidence.

## **5 Conclusion**

- 5.1 Waitrose will demonstrate that:
- (a) the Council has failed to justify the need for Waitrose's land and interests in land either at this time or at all;
  - (b) the Council and the Developer have failed to negotiate adequately for the private acquisition of the Waitrose land and interests in land;
  - (c) issues relating to disturbance, legal process and viability have not been adequately explored.
- 5.2 Waitrose will demonstrate that the Secretary of State should refuse to confirm the Order.