

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

Statement of Case for John Lewis Plc and John Lewis Properties Plc

1 Introduction

- 1.1 This Statement of Case is submitted on behalf of John Lewis Plc and John Lewis Properties Plc (collectively referred to as JL) 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 London Borough of Barnet (the Council) is working with the present owners of the Brent Cross Shopping Centre in the promotion of the Order. In this Statement, for ease, reference is made to the Developer as shorthand for the three parties (Kleinwort Benson (Channel Islands) Corporate Services Limited, Kleinwort Benson (Jersey) Trustees Limited and Hammerson (Brent Cross) Limited) who have entered into a development agreement with the Council.
- 1.3 JL 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. JL's objection to the Order remain, and are expanded in this Statement of Case.

2 Extent of JL's Interest in the Order Land

- 2.1 The Order seeks to permanently acquire JL's leasehold interests in plots 282, 334, 335, 336, 435 and 460.
- 2.2 JL was one of the retailers originally supporting the development of the Brent Cross Shopping Centre and has been a tenant for over 40 years. Alongside Marks and Spencer Plc and Fenwick, JL is a major anchor tenant and occupies the largest unit in the shopping centre.

3 Factors the Secretary of State should have regard to 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 states 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 JL's Position regarding the Order

Lack of genuine engagement

- 4.1 The Council has been notably absent in any contact or negotiations with JL to reach agreement on a commercial arrangement. There have been no efforts by the acquiring authority to agree terms with JL for a voluntary acquisition.
- 4.2 Whilst there have been discussions with the Developer regarding the Order, these have not been constructive. A joint statement was made at the pre inquiry meeting by JL, Fenwick and Marks and Spencer highlighting the concerns of the 3 anchor stores at the lack of progress of these negotiations.
- 4.3 The negotiations have been hampered by a lack of real certainty by the Developer as to how it intends to redevelop the Brent Cross Shopping Centre. The Developer has not been able to explain the detailed nature of the intended scheme in a way that allows JL to properly

understand the effect on JL, either on the existing store or on any revised store in terms of temporary disturbance and impact on operational matters.

- 4.4 There has been a failure to provide adequate and detailed information which is necessary to the commercial negotiations. Where information has been disseminated it is found to be incomplete.
- 4.5 In normal circumstances the acquiring authority or their preferred developer would provide an undertaking to cover the costs of agreeing the terms of a negotiated settlement with an anchor tenant. Despite requests, the Developer has failed to provide JL with a full undertaking for its costs in relation to such negotiations. JL has to date, at its own risk, been forced to incur legal and surveyor costs including dedicating considerable in-house resources towards such negotiations.
- 4.6 Evidence will be submitted to demonstrate that:
- (a) the acquiring authority has made limited efforts to acquire the land said to be required by negotiation;
 - (b) the Developer has made no reasonable efforts to acquire the land said to be required by negotiation and that it has, in particular, failed:
 - (i) to provide adequate information or certainty about the nature and timing of the proposals;
 - (ii) to provide adequate and/or reliable information about the anticipated future trading profile of the proposals;
 - (iii) to provide adequate and/or acceptable terms for the proposed changes in property ownerships;
 - (iv) to commit the resources necessary to settle any terms;
 - (v) to provide costs undertakings necessary for JL to commit the resources to settle terms.
- 4.7 Whilst it is acknowledged the Guidance recognises that negotiations can happen in parallel with the CPO process it is JL's position that:
- (a) this element of the Guidance should not be relied on to justify a lack of negotiation; and
 - (b) all negotiations should be undertaken in good faith; the behaviour exhibited by the Council and the Developer falls short of that expectation.

No justification for the acquisition of JL's unit

- 4.8 JL (and others) have consistently asked for a justification for the acquisition of the JL unit. No adequate justification has ever been provided.
- 4.9 The Statement of Reason indicates 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.
- 4.10 Having reviewed the Justification note (requested by the Inspector following the pre-inquiry meeting), received on 8 March 2016, there is still no adequate explanation which explains or supports the compulsory acquisition of JL's unit.
- 4.11 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;
 - (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*";
 - (c) yet 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**"*.
- 4.12 This confirms the position outlined by JL in the objection on 26th May 2015 that the CPO is excessive, potentially unnecessary and premature. It also raises the following further concerns:
- (a) the statement by the Council that when implementing its CPO powers it will only acquire what is needed, is of concern to JL. This statement suggests that the Council

may acquire only part of JL'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 now, the precise land take.

- (b) the partial acquisition of a retail unit raises significant operational issues for JL. These issues should be properly assessed by the Council and the Developer. It is prejudicial to expect JL to prepare its case for inquiry on a hypothetical partial acquisition of its unit. Operational issues will be peculiar to the extent of the land take (and which part of the unit) subject to compulsory acquisition.
- (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 significant timing and compensation consequences.
- (d) if indeed a partial acquisition is intended, JL'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 JL 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 JL's right to require acquisition of the whole.

4.13 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 meaning that CPO is not being used here as a last resort. The Statement made at paragraph 14.12 evidences that there has been a failure to properly review or explore the use of Landlord and Tenant powers.

4.14 JL will produce evidence that demonstrates the lack of any adequate justification for the acquisition of the JL land and rights in land.

The CPO is premature

4.15 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 develop the detailed design of the shopping centre proposals. The original planning permission was granted in 2010, with the S73 being granted in 2014. There is still very little evidence from the Developer or the Council as to what the detailed proposals will comprise or, when the relevant reserved matters approvals will be secured.

4.16 The Guidance is clear that the underlying scheme supporting the CPO should take place within a reasonable timescale and that 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 fail.

- 4.17 JL will produce evidence to demonstrate that the CPO is premature.

Disturbance

- 4.18 No indication is provided as to the detailed phasing of works to the Brent Cross shopping Centre nor how long the works will take place for. These are essential components to JL being able to understand how the construction works may affect servicing and customer access to and from the store, and how the loss of sales floor space will impact on the layout and operation of the remainder of the store.
- 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 JL's store nor pedestrian access to its store. JL's objection relating to disturbance and the impact the construction will have on the operation of the store therefore remains.
- 4.20 JL will produce evidence to demonstrate that the effects on JL of the proposed redevelopment have been inadequately considered to date, and have not been adequately mitigated.

Legal Issues

- 4.21 JL reserve 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

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

5 Conclusion

- 5.1 JL will demonstrate that:
- (a) the Council has failed to justify the need for JL'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 JL land and interests in land;
- (c) issues relating to disturbance, legal process and viability have not been adequately explored.

5.2 JL will demonstrate that the Secretary of State should refuse to confirm the Order.