

# **The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Orders (Nos 1 & 2) 2015**

## **Statement of Case**

For Objector 51 (Renata Altmann, Caren Ferster, Swishbrook Ltd)  
Plots 262 -268 and interests in highway sub-soil - CPO No 1

### **I. Introduction**

1.1 Swishbrook Ltd was founded in 1972 and is the main vehicle for the management of the Altmann/Ferster family property interests. The company has properties across London and elsewhere in the country. The freehold interests at Cricklewood Broadway/Cricklewood Lane are vested in Caren Ferster, one of the daughters of Jack Ferster, the surviving co-founder of the company, and his sister, Renata Altmann. Jack Ferster has over 55 years experience in property management and development. The Objectors are hereafter referred to collectively as “Swishbrook” for ease of reference.

### **2. Nos 162-168 Cricklewood Broadway**

2.1 This is a distinctive building, in an Art Deco style, which is typical of Burtons clothing retail stores. The building was previously a draper’s from 1903 and became a Burtons store in 1936, with reconstruction in the ‘Burtons style’.

2.2 The ground floor of No 162 Cricklewood Broadway has been part of a National Westminster Bank branch, with the other half of the ground floor being in a building owned by the Bank. No 162 is leased to the NatWest bank by Swishbrook. The branch has been closed, save for a functioning ATM. Although painted white, the façade of the upper floors of No 162 is of the Art Deco style of the rest of the Burtons building – Nos 164-168 (painted cream) – see attached annotated photograph in Bruton Knowles Plan 2.

2.3 The remainder of the Burtons building was leased to RAL Ltd (Objector 53 – “Rank Amusements”) with various sub-tenants - see attached annotated photograph in Bruton Knowles Plan 2. In 2015, it was agreed, on a renewal of the lease, that Swishbrook would take back the upper floors and the Rank Amusements lease is now only for the ground floor. Swishbrook has Permitted Development rights to convert the upper floors to residential use and has had preliminary design work carried out for the conversion to 9 flats. There is also the potential for 9 new build flats to the rear of the building.

2.4 The annotated photographs in Bruton Knowles Plans 1 and 2 show the striking character of the building at Nos 162-168 Cricklewood Broadway, with annotations as to the CPO landtake and the different interests, including the businesses on the ground floor of Nos 164-168 Cricklewood Broadway and at 2B & 2C Cricklewood Lane.

### **3. The Objection**

3.1 Swishbrook continue to object to both CPOs, on the basis that the compulsory acquisition of their property interests and the imposition of rights are not justified for the purposes of either or both CPOs. They are not opposed in principle to the redevelopment of the Brent Cross shopping centre as such and the related regeneration objectives nor to the redevelopment and regeneration proposals for which CPO No 2 has been made but it is not the case that the proposed A5 Cricklewood Broadway/A407 Cricklewood Lane junction alteration is necessary for any such regeneration to be able to proceed. Barnet London Borough Council (“the AA”) has set itself a very high bar in asserting that the regeneration of the land contained in CPO No 1 “*will not be achieved without the use of compulsory purchase powers*” (para 15.18 of the AA’s Statement of Case) but has failed to substantiate a case for taking land and rights in order to alter this junction (from the freeholders, Swishbrook Ltd and others). Its objectives can be achieved without doing so. No alteration of the junction is necessary, appropriate or indeed desirable.

3.2 In their original objection to the CPOs, Swishbrook raised the issue of whether the AA might alter the junction by removing buildings on the opposite corner of Cricklewood Lane. After further consideration and technical advice, they now consider that no alteration of the junction is necessary, appropriate or desirable and will not propose an alternative design which requires the demolition of buildings on the opposite corner.

3.3 On 1 April 2016 G L Hearn supplied a drawing which incorporates proposed footway provision on the 2010 design for this junction alteration. The CPO No 1 proposes the demolition of Swishbrook’s building (excluding the NatWest part of the building), following which the AA appears to be proposing that a new building be constructed on land surplus to highway requirements but it has not provided adequate detail or explanation to Swishbrook as to what is proposed for such a building. No explanation has been given to Swishbrook on how exactly the remaining part of the Burtons building (No 162) will be protected or altered so as to make good and ensure its stability and continued suitability for use. It is not possible to comment further on the use of land surplus to requirements for this junction alteration until further detail and explanation is given in proofs of evidence.

3.4 It is the responsibility of the AA to get ownership details right. In the absence of the AA demonstrating a freehold acquisition by itself or TfL or predecessor authorities, the common law rules on ownership of the sub-soil of the highway apply. Nothing of substance turns on the ownership of the sub-soil; the AA simply needs to have the Schedule to CPO No 1 correct.

### **4. Loss of a heritage asset and businesses and residential accommodation**

4.1 Nos 162-168 Cricklewood Broadway is a key building, reflecting the history of this part of Cricklewood. As a distinctive building of Art Deco style and of historic value as a former Burtons store, it is a non designated heritage asset, which should, in principle, be retained. It is evident that the Burtons reconstruction was designed so that this building makes an important statement in the street scene and it is worthy of retention in urban design terms and as demonstrating part of the history of retailing in Cricklewood and more generally. The stated purpose of the CPOs to regenerate the retail centre of Brent Cross and bring about urban regeneration should not result in unnecessary harm to the fabric and function of the secondary centre at Cricklewood Broadway.

4.2 The ground floor businesses at this location are an important part of a busy and thriving local shopping area. They are not the type of businesses that would relocate to a redeveloped Brent Cross centre but are an important part of the local scene and should be regarded as Small/Medium Enterprises to be protected, not destroyed.

4.3 Whilst past use of the upper floors has been as offices, the opportunity has now arisen to provide a new use for the upper parts of the historic building by means of additional residential accommodation. Including 9 new build at the rear, 18 new flats could be made available for residential occupation. Consequent upon the lease renewal in December 2015 which gives Swishbrook the ability to take entry to the upper floors and convert to residential accommodation, Swishbrook confirm that they are willing and financially able to do this conversion and have previous experience of such developments. The directors have actively pursued proposals to carry out this specific work. They are in the process of converting a large office building in Ipswich into 15 flats and have been informed by their surveyors that conversion and development of the upper floors at Nos 164-168 is entirely feasible. National planning policy favours the creation of new residences as a matter of principle and in town centres in particular.

4.4 Reference is made above to the lack of clarity on the AA's intentions for land surplus to its highway requirements and the failure to explain to Swishbrook how the remaining part of the Burtons building might be protected. In addition, it has not been made clear why Swishbrook (and other owners) should be deprived of access to the rear from Edward Close and in this respect in particular land take is unreasonable and excessive.

## **5. Transport Considerations**

5.1 The given reason by the AA for the junction alteration is "to allow turning movements to be better accommodated, thus freeing up additional traffic capacity".

5.2 In summary, Swishbrook's case on Transport issues will be that:

- there is no need for this "additional traffic capacity", as a result of either the Brent Cross centre scheme or wider regeneration of the Brent Cross Cricklewood area
- there is no expression of relevant planning policy that makes additional traffic capacity in this location a meaningful aim or requirement
- in undertaking the mathematical modelling that has informed the AA's desire, compound assumptions have been made, severely limiting the robustness of the results and the way in which they can be used as tools to make proper judgements
- the mathematical modelling has material errors and includes unreasonable assumptions, such that, if properly amended, it would result in a conclusion that the stated traffic capacity benefits are not as significant as claimed
- therefore, the highways proposal for alteration of this junction does not satisfy the relevant policy tests in terms of its relationship with the Brent Cross Cricklewood scheme (including the objectives for which both CPO Nos 1 & 2 have been made), it is not necessary to be carried out for the Brent Cross shopping centre redevelopment scheme or the wider regeneration proposals to be deemed acceptable, it is not an appropriate scheme in the planning

policy context, and compulsory purchase of Plots 262 – 268 and other interests is for these reasons unsound and unjustified.

5.3 The trip forecasts and traffic modelling work that underpins the design of the proposed works at the junction are complex and informed by a number of potentially changing variables and compound assumptions. The methodology is explained in '*Volume BXC05 – Consolidated Transport Assessment Appendices (Vol. 2) – Appendix III – F – K*' which includes assumptions in relation to the effect of car park capping, behavioural change and demand reassignment.

5.4 There is an inconsistency amongst the analysis, advice and proposals in the BXC documents, with the central theme of the developments pursuing a sustainable approach that can reduce car borne movements, and yet an assumption that car trips may increase, with a corresponding desire to implement highway works in the expectation that this will provide for the greater convenience of the car commuter.

5.5 Swishbrook's evidence will highlight these differences and support the conclusion that the convenience of the car commuter is not an appropriate or high priority matter in determination of the overall BXC scheme (including the CPO No 2 proposals).

5.6 The analysis work that underpins the design of the works is sensitive to a change in any of these many variables and assumptions. Furthermore, the '*BXC05 – Consolidated Transport Assessment Main Report (Vol. 1)*' reports that the analysis is based on 2005 survey data, which is now 11 years old, and traffic growth assumptions that have not been evidenced, against a background, reported in amongst other places '*Travel in London 8, December 2015*', that over the last 15 years in London there has been strong growth in public transport, walking and cycling, with a trend of falling car use, despite increasing population.

5.7 The evidence will show that congestion (inconvenience of travel by car) has remained roughly constant in London over many years, despite widespread intervention, including economic and social growth, congestion charging and roadspace changes, and demonstrate that people do take actions to minimise their inconvenience.

5.8 The evidence will explain the conclusions that the assessments leading to the proposed junction works have been based in error on the narrow field of traffic impact analysis, and that the trip forecasts that have been used as the basic building blocks for this analysis are both wrong and so crude that it would be irresponsible for judgements to be made from them.

5.9 The document '*BXC05 – Consolidated Transport Assessment Appendices (Vol. 2)*' reports that the Degree of Saturation on Cricklewood Broadway (N) arm in the PM peak will improve from 196.6% in the Do Minimum scenario to 100.0% in the Do Something scenario. The evidence will show why this is an unreasonable conclusion to draw and that this statement is misleading in that it relies on, amongst others, a crude reliance on a theoretical mathematical model which is itself in error in terms of assumptions and construction.

5.10 The evidence will show that the modelling work is out of date as it relies on a superseded version of the modelling software. The modelling algorithms which are relied upon in the assessment have since been updated in such a way that application of a modern model will give materially different answers.

5.11 The evidence will show that there is a differential between assumed saturation flows in the base case models and the future year models, and that this differential is unreasonable and skews the results in a way that exaggerates the performance benefits of the proposal. Reference will be made to the Linsig outputs included in '*BXC05 – Consolidated Transport Assessment Appendices (Vol. 2)*' and the document '*RR67 The Prediction of Saturation Flows for Road Junctions Controlled by Traffic Signals, Webster and Cobbe, TRL, 1966*'.

5.12 The proposed junction works are isolated on the highway network. They have been developed without due consideration given to the condition and constraints of the wider highway network, or the wider transport network. The proposed works will only relate to movement at this junction, and even in that respect will only add roadspace sufficient for approximately 8 cars. When considered in the context of the constraints imposed by neighbouring junctions and other activity on the local network, they will offer no material capacity benefit in any event.

5.13 The proposed junction works have been considered only in the context of the convenience of driving commuters during a commuter peak hour, a short period in the context of the day or week. The evidence will clarify the policy position that it is not the purpose of planning policy to protect the convenience of the car commuter, and so the entire rationale for the junction works are predicated on an out of date mentality and one that is not supported by modern planning policy.

5.14 It will be shown that the works do not significantly enhance the environment for other users of the public realm and that they do not improve the permanent street scene, which is important at all times of the day, not just for these assessed short periods of time. This is particularly the case in this busy community environment, which is home to a wide range of shops and services, and a central point of activity for a significant number of pedestrians. The proposed works offer no benefit to cyclists. This is despite a 63% increase in cycling on TfL-controlled main roads and a 33% increase on all roads in London between 2008 – 2014, as reported in '*Human Streets: The Mayor's Vision for Cycling Three Years On, March 2016*'.

5.15 The overall proposals for the BXC area constitute a significant development, with the potential to change travel patterns over a large area. Some of the proposed infrastructure works are significant but this proposed alteration to the Cricklewood Broadway/Cricklewood Lane junction is not one such. The proposed changes to the junction are not fairly and reasonably related in scale and kind to the overall proposals, are not directly related to the developments or overall objectives for which the CPOs have been made, and are not necessary to make the developments acceptable in planning terms. They do not accord with the requirements set out in the National Planning Policy Framework and therefore the compulsory purchase of land and rights is unsound and unjustified.

## **6. Policy Issues and Conclusion**

6.1 As with its original Statements of Reasons, the AA's Statements of Case provide insufficient explanation or justification for the junction alteration it is proposing. Accordingly, it is difficult to make more substantive comment in this Statement of Case and it is to be hoped that the AA will be more forthcoming in its proofs of evidence. In addition, Swishbrook are certainly not of the opinion that the cost of the acquisition of the building, having regard to its value and ability to provide both existing commercial accommodation and future residential accommodation, nor the additional cost of the junction alteration works themselves (having regard to the

Transport considerations in 5. above) meets the test of 'Public Benefit' which warrants the taking of the private land.

6.2 Compulsory purchase is a serious invasion of property rights. As made clear in the Supreme Court case of *R (Sainsbury's Supermarkets Ltd) v. Wolverhampton City Council* [2011] 1 A.C. 437, this particularly so when related to a "private to private" proposal. There is no proper relationship between the AA's proposal for alteration of the A5 Cricklewood Broadway/A407 Cricklewood Lane junction and the purposes for which CPOs Nos 1 & 2 have been made and even on highways/transportation grounds alone it would not be necessary, appropriate or even desirable to alter the junction.

6.3 There is no compelling case in the public interest for CPO No 1 to be confirmed in respect of the alteration of the A5 Cricklewood Broadway/A407 Cricklewood Lane. The AA's proposals for this junction alteration do not, in fact, contribute to the promotion or improvement of the economic, social and environmental well-being of the area but rather do harm. Interference with the rights and interests of Swishbrook and other parties affected is unreasonable and unjustified. There is no necessity for the junction alteration nor is it appropriate or even desirable and CPO No 1 should not be confirmed unless all plots relating to that junction alteration are excised from the order.

6.4 Swishbrook will produce evidence in support of its case but reserves the right to amend or expand upon the case in the light of the AA's proofs of evidence.

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