



**GERALDEVE**

## **Statement of Case**

On behalf of

**WH Smith Retail Holdings Limited**

Compulsory Purchase (Inquiries Procedure) Rules 2007

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

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## 1 Introduction

- 1.1 The London Borough of Barnet (“the Council”) has made, and submitted to the Secretary of State for Communities and Local Government for confirmation, the London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No.1) 2015, (the “Order”).
- 1.2 WH Smith Retail Holdings Limited (“WH Smith”) occupies the property known as Store 1, Brent Cross Shopping Centre, Hendon, London NW4 with associated car parking spaces (“the Property”) as leaseholder.
- 1.3 WH Smith has been served with notice that the Property is subject to the powers of compulsory purchase provided for in the Order. The Order provides, inter alia for powers to acquire interests in land to facilitate the development, redevelopment or improvement of the area known as Brent Cross Cricklewood (“the Site”) to deliver a mixed use scheme (the “Scheme”).
- 1.4 The Order provides for the acquisition of the whole of the interest known as Store 1, Brent Cross Shopping Centre, except those interests owned by the Acquiring Authority, leased and occupied by WH Smith together with car parking spaces 8 & 9 and rights over other parts of the Service Yard V, car park and external space.
- 1.5 WH Smith objected to the Order by way of a letter on its behalf dated 27 May 2015 from Gerald Eve LLP.
- 1.6 This Statement of Case on behalf of WH Smith summarises the impact, on the Property and on the business, of the acquisition of its land and the carrying out of proposed works under the powers contained in the Order.

## 2 Acquisition of WH Smith's interest

- 2.1 Guidance on the use of compulsory purchase powers, formerly set out in Circular 06/2004, is now contained in the *Department for Communities and Local Government Guidance on Compulsory purchase process...* ("the Guidance") published in May 2015. This states, at section 12, that "*a compulsory purchase order should only be made where there is a compelling case in the public interest*".
- 2.2 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 development ("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 Section 73 Permission"). The original planning permission for the Scheme was granted on 28 October 2010.
- 2.3 As the Section 73 Permission is in outline, such plans as are approved are parameter plans only, and do not show any detail of the final development permitted by the Section 73 Permission and therefore of the Scheme. Details of access (apart from one particular external vehicular access), appearance, landscaping, layout and scale are all reserved matters to be dealt with under future reserved matters applications.
- 2.4 Accordingly there is no documentary evidence that compulsory acquisition of WH Smith's interest in the Property is necessary in order for the Scheme to proceed. In the absence of such evidence regarding the Scheme proposals the Council has not made a clear and compelling case in the public interest to acquire WH Smith's interest.

### **3 Impact of the works on the Property**

- 3.1 WH Smith operates at the Property a well-known high street retail business selling stationary, books and games. The Property benefits from a prominent retail frontage to The Mall with rear servicing access. Customers use a variety of means of access to the centre including bus and cars.
- 3.2 During the works the property would be highly susceptible to any works in the vicinity, whether outside or adjacent to the Property, which would impact physically or visually on the amenity of the Property. However, insufficient information has been provided as to the detail of the works and alterations to be carried out to both the Property and the Centre and thus it is not possible to predict precisely how the property will be affected.
- 3.3 It is likely that there will be some obstructions to circulation both within and outside the Centre and obscuring of the visibility of the Property consequently affecting the shopping experience of the customers and their ability to access the Property.
- 3.4 It is understood from the Council that the work proposed in the car park and surrounding area will involve the temporary closure of parts of the car park and bus station, which may have a detrimental effect on the ability of customers to access the Property. There is potential for interruption to deliveries and other essential servicing to the Property and the necessary means of escape – without which the business would not be able to operate – during and after the work. It is anticipated also that the work will cause noise and dust to the detriment of the Property.

## 4 Grounds of objection

- 4.1 WH Smith objects to the Order on the grounds it does not wish to be deprived of its leasehold interest in the Property and that, if it retains its interest, the works to be carried out in the vicinity will affect the use of the Property with a consequent detrimental effect on trade and on the ability to operate the business.
- 4.2 Specifically, WH Smith objects to the Order on the following grounds:
- (i) WH Smith does not wish to be deprived of its interest in, and occupation of, the Property;
  - (ii) The Council has not demonstrated that the acquisition of WH Smith's interest is necessary for the proposed alterations, refurbishment and extension to the existing shopping centre; it is not possible to say that the whole of WH Smith's interest is required on the basis of a broad outline planning permission based on parameter plans alone. If it is unclear whether or not the Property will be required, the Order is premature. The power to acquire the interest compulsorily should not be given unless it is demonstrated that the interest will be required for the scheme for which the Order has been made;
  - (iii) The Council has not demonstrated how WH Smith's servicing and access arrangements to the Property will be affected if the Property is to be retained nor provided an undertaking for alternative provision to be made; WH Smith does not wish to be deprived of its essential right of access to, and means of escape from, the rear of the Property, even if only temporarily;

- (iv) WH Smith operates a profitable business from the Property and is dependent upon unobstructed pedestrian flow past and to the Property;
- (v) No undertakings have been given regarding the means by which access and pedestrian flow will be maintained, nor details of suitable alternatives provided;
- (vi) The proposed acquisition of land will result in the temporary loss of car parking available for the Property and in the vicinity, which WH Smith anticipates will have a negative impact on the number of shoppers visiting the centre and may result in a reduction in trade to its store;
- (vii) No undertakings have been given regarding the means by which alternative parking will be provided during the period of the works, generally or to WH Smith, nor details of suitable alternatives provided;
- (viii) The proposed works may impede WH Smith's ability to make goods deliveries to the store. No undertakings have been given for the continuation of the availability of the delivery access;
- (ix) The Council has not demonstrated that there is a sufficiently compelling case in the public interest to justify interfering with WH Smith's rights under the European Convention on Human Rights;
- (x) Insufficient efforts have been made to reach agreement with WH Smith regarding the grounds of its objection, contrary to the requirement in paragraph 2 of the Guidance. Accordingly it cannot be said that compulsory purchase powers are required on the

grounds that it is not possible to acquire the interest  
or rights required by agreement;

## 5 Conclusion

- 5.1 There are no compelling grounds for the acquisition of WH Smith's interest in the property. Accordingly it is requested that the Order is not confirmed in relation to the interest.
- 5.2 WH Smith does not object in principle to the Order, but has had to submit a formal objection as the powers contained in the Order do not provide appropriate safeguards for tenants and occupiers. Its objection is accordingly on the particular grounds set out above.
- 5.3 Discussions have taken place between WH Smith and the Council which have resulted in draft heads of terms being prepared for an agreement between the parties on provisions to mitigate the impact of the Order and the Scheme on the Property and WH Smith's business. These have not yet however been finally agreed, and if they are subsequently agreed they will need to be incorporated into a formal legal agreement.
- 5.4 It is requested that the Order should not be confirmed until or unless a satisfactory legal undertaking is in place which will provide that WH Smith's interest is not to be acquired and that agreed measures will be taken to ensure that the store will continue with uninterrupted access, servicing and means of escape, and otherwise that the impact of the proposed works on the Property will be mitigated, during and after the carrying out of the development.

**Gerald Eve LLP**

**7 April 2016**