



Department for
Communities and
Local Government

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Your ref: MD/LO0043.07047
Our ref: NPCU/CPO/L5240/73807
Date: 15 September 2015

Dear Mr Damms

**The Town and Country Planning Act 1990: Sections 226 (1)(a) and 226 (3)(a)
The Local Government (Miscellaneous Provisions) Act 1976: Section 13
Acquisition of Land Act 1981**

**The London Borough of Croydon (Whitgift Centre and Surrounding Land
bounded by and including parts of Poplar Walk, Wellesley Road, George Street
and North End) Compulsory Purchase Order 2014**

- 1 We are directed by the Secretary of State for Communities and Local Government to refer to the Public Local Inquiry (“the Inquiry”) held on 3 February 2015 before Paul Griffiths BSc (Hons) BArch IHBC, an Inspector appointed by the Secretary of State for Communities and Local Government to hear objections to and representations about the above named Order submitted for confirmation. This letter conveys the Secretary of State’s decision on the published Order after considering the Inspector’s report. A copy of that report is enclosed with this letter. References in this letter to paragraphs in the Inspector’s report are indicated by the abbreviation “IR”, followed by the relevant paragraph number.
- 2 If confirmed by the Secretary of State, the Order would authorise the London Borough of Croydon, as the Acquiring Authority, to compulsorily purchase approximately 7 hectares of land and new rights included in the Order Lands, in Croydon town centre, bounded to the south by George Street, to the west by North End, to the east by Wellesley Road, and to the north by Poplar Walk. The purpose to the Order is the facilitation of the implementation of the

development, redevelopment or improvement on or in relation to the land comprising the demolition of existing buildings and the erection of new buildings and structures to provide a comprehensive retail led mixed use scheme. The scheme will comprise a mix of town centre uses including retail, leisure, residential, community facilities and other complementary uses, new and improved publicly accessible access routes, public realm, car parking and associated servicing and infrastructure likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area; and executing works to facilitate the development or use of the land.

- 3 The Inquiry, conducted to examine the Compulsory Purchase Order (the Order), also dealt with the London Borough of Croydon Stopping Up of Highway, Dingwall Avenue Stopping Up Order No. 2, 2014. The Stopping Up Order is the subject of a separate parallel report to the Council for its own determination.
- 4 During the Inquiry, Pinsent Masons (on behalf of the Acquiring Authority) requested the Inspector to recommend to the Secretary of State for Communities and Local Government that modifications be made in respect of Plot 72 in Table 1 of the Schedule to the Order. The requested modifications were set out in Inquiry document LBC 121.

OBJECTIONS

- 5 The Inspector has considered all the objections to the Order both as made in writing and presented orally at the Inquiry.
- 6 At the opening of the Inquiry, 133 relevant objections to the Order had been received. There were 3 late objections (IR 6.0-6.6) and at the time of the Secretary of State's decision 28 objections had been withdrawn, leaving 105 remaining objectors.
- 7 The Secretary of State has carefully considered the remaining objectors' grounds of objection to the Order, which the Inspector has summarised as multifarious, including that the Acquiring Authority has failed to demonstrate a compelling case in the public interest necessary to justify confirmation; disruption to existing businesses and the options available for resettlement during the course of the construction period and whether businesses will find a home in the new scheme. The cases for the objectors are at IR 5.0 – 6.6 and the Acquiring Authority's responses are at IR 3.33 -3.119 and the Acquiring Authority's conclusions at IR 3.120 - 3.130.

THE INSPECTOR'S CONCLUSIONS AND RECOMMENDATIONS

- 8 The Inspector's report summarises the submissions made at the Inquiry and his conclusions on the Order are at IR 7.1 – 7.64. The Inspector's recommendation, at IR 8.1, is that the Order be confirmed subject to the modifications set out in Inquiry document LBC 121.

POST-INQUIRY CORRESPONDENCE

- 9 The Secretary of State has given careful consideration to the correspondence received from Stephenson Harwood LLP, on behalf of Bouwfonds European Real Estate Parking Fund Croydon S.A.R.L. and Bouwfonds IM Financial Services B.V. (“Bouwfonds”), dated 23 June 2015, following the closing of the Inquiry, together with subsequent correspondence from Pinsent Masons on behalf of the London Borough of Croydon, dated 16 July 2015. Stephenson Harwood LLP sets out Bouwfonds’ continuing objection and requests the Secretary of State takes their further submissions into account which include representations on Croydon Limited Partnership (CLP)’s commitment to the Scheme; State Aid and Public Procurement and Pinsent Mason makes a response to these representations.
- 10 The Secretary of State has not referred back to the parties in relation to this correspondence since he considers it does not raise any new issues to those previously considered by the Inspector and moreover finds the issues raised not material to his decision to confirm the Order.

DECISION OF SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

- 11 The Secretary of State has given careful consideration to the Inspector’s report and the submissions of the parties. The Inspector’s report sets out the relevant compulsory purchase legislation and policy in consideration of which this decision is made at IR7.1.

Planning Framework

- 12 The Secretary of State has considered the Inspector’s conclusions on the planning framework set out at IR 7.3 – 7.12. The Secretary of State agrees with the Inspector for the reasons given that the Scheme, which is the purpose for which the land is being acquired, fits in with the adopted planning framework for the area (IR 7.12).

Economic, Social or Environmental Wellbeing

- 13 The Secretary of State has considered, and agrees with, the Inspector’s conclusions on the extent to which the proposed purpose of the Order will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area at IR 7.13 – 7.19 and IR 7.62.
- 14 Overall, the Secretary of State agrees with the Inspector that the scheme will contribute to the achievement of the economic, social or environmental well-being of the area in the manner that the policy background envisages (IR 7.19 and 7.62).

Viability

- 15 The Secretary of State has considered the Inspector's conclusions on the potential viability and deliverability of the scheme at IR 7.20 – 7.31. The Secretary of State agrees with the Inspector for the reasons given that there is a reasonable prospect that the Scheme will come forward (IR 7.31).

Alternatives

- 16 The Secretary of State has considered the Inspector's conclusions regarding whether the Order purposes can be achieved by other means (IR 7.32 – 7.50). He agrees with the Inspector's conclusions at IR7.62 that, for the reasons given, the purpose for which the Acquiring Authority is proposing to acquire the land could not, realistically, be achieved by any other means.

State Aid / Public Procurement

- 17 With regard to objections advanced to the Order in relation to State Aid and Public Procurement, evidence was presented at the Inquiry (IR 3.42-3.45, 3.87-3.101 and 5.87). The Secretary of State agrees with the Inspector (IR 7.51 - 7.52) that these issues present no obvious impediment to the CPO confirmation. Such matters are potentially relevant to the Indemnity and Land Transfer Agreement (the ILTA) dated 15 April 2014, however, the Secretary of State considers it would be inappropriate to come to any conclusions regarding these objections to the ILTA in confirming this CPO. The Secretary of State does not consider that the making and confirmation of a CPO can be a State Aid in itself as it merely empowers the local authority to acquire land. Likewise, any public procurement objection is not a relevant consideration in the context of this determination whether to confirm the Order.
- 18 The Secretary of State concludes that none of the matters raised in the letters and submissions from Stephenson Harwood LLP since the Inquiry closed are of sufficient substance to indicate that confirmation of the Order would not be in the public interest and, in conclusion, the Secretary of State sees no reason to disagree with the Inspector's conclusions at IR 7.51 and 7.52.

MODIFICATIONS

- 19 The Secretary of State agrees with the Inspector that the proposed modifications requested by the Acquiring Authority should be made (IR 7.64 and 8.1). The modifications include the record of the rebuttal presumption of ownership of subsoil of the highway adjoining Plots 69, 70 and 71 up to the midpoint of the highway by the freehold owners of the Plots identified in the Acquiring Authority's proposed modifications request to the Inquiry (Inquiry document LBC 121).

EFFORTS TO NEGOTIATE

- 20 The Secretary of State has considered the Inspector's conclusions as to how the Acquiring Authority has conducted its negotiations and agrees that there is evidence to suggest that proper negotiation is being carried out (IR 7.60).

HUMAN RIGHTS

- 21 The Secretary of State agrees with the Inspector's conclusions (7.63) that the purposes for which the Acquiring Authority seeks to make the Order sufficiently justify interfering with the human rights of those with an interest in the land affected under the provision of the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998. In particular, he has considered the provisions of Article 8 and Article 1 of the First Protocol to the (ECHR). With regard to Article 8, the Secretary of State considers that in balancing the rights of the individuals who are affected by the Order against the benefits to the community of proceeding with the Order, the making of the Order and the interference with the individuals' rights which are justified in the interests of the community. With regard to Article 1 of the First Protocol, the Secretary of State considers that the interference with the individual's property is justified by the advantage to the wider public interest of proceeding with the development. The Secretary of State notes and approves that Croydon Limited Partnership has implemented a relocation strategy and hardship scheme IR7.55 and IR7.56.

PUBLIC SECTOR EQUALITY DUTY

- 22 The Secretary of State has considered the Equality Act 2010. Section 149 of the Equality Act 2010 introduced a public sector equality duty that public bodies must, in the exercise of their functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In making this decision, the Secretary of State has had due regard to the requirements of the Public Sector Equality Duty (PSED).
- 23 The Secretary of State has had regard to the Equalities Analysis undertaken by the Acquiring Authority and referred to in the Statement of Reasons at paragraph 12.3. He does not consider that the impact of this decision is likely to have a detrimental effect or a disproportionate impact on persons who share a relevant protected characteristic and, therefore, he does not give further consideration to the PSED in making his decision whether to confirm the Order.

JUSTIFICATION IN THE PUBLIC INTEREST AND OVERALL BALANCE

- 24 The Order should only be confirmed if there is a compelling case in the public interest to justify sufficiently the interference with the human rights of those with an interest in the land affected. The Secretary of State considers that the purpose for which land is being acquired fits in with the adopted planning framework for the area. The Secretary of State considers that the proposed purpose of the Order will significantly contribute to the achievement of the promotion or improvement of the economic, social and environmental wellbeing of the area. The Secretary of State considers the potential financial viability of the scheme has been demonstrated, and that no realistic alternatives exist in terms of achieving the purpose of the proposal. Having had regard to these and to all other matters, the Secretary of State has concluded that there is a compelling case in the public interest for confirming the Order. The purposes for which the Acquiring Authority seeks to make the Order sufficiently justify interfering with the human rights of those with an interest in the land affected under the provisions of the ECHR as incorporated by the Human Rights Act .
- 25 The Secretary of State has, therefore, decided to confirm The London Borough of Croydon (Whitgift Centre and Surrounding Land bounded by and including parts of Poplar Walk, Wellesley Road, George Street and North End) Compulsory Purchase Order 2014, subject to the modifications shown on it in red ink on the Order Schedule.
- 26 I enclose the confirmed Order, the Order Schedule and the map to which it refers, as modified. Your attention is drawn to section 15 of the Acquisition of Land Act 1981 about publication and service of notices now that the Order has been confirmed. Please inform us of the date on which notice of confirmation of the Order is first published in the press.

AVAILABILITY OF DOCUMENTS

- 27 A copy of this letter together with a copy of the Inspector's report has been sent to remaining objectors. Please arrange for a copy of the Inspector's report and a copy of this letter to be made available for inspection at the offices of the Council and at all other places used to deposit the Orders for public inspection.
- 28 Any person entitled to a copy of the Inspector's report may apply to the Secretary of State for Communities and Local Government, at the relevant address, within 6 weeks of the receipt of this letter, to inspect any document, photograph or plan submitted by the Inspector with the Inspector's report. Those documents, photographs or plans are retained at each office and will be made available at a local place of inspection.

RIGHT OF CHALLENGE

- 29 Notice is to be published of confirmation of the Orders. Any person who wishes to question the validity of the confirmed Orders, or any particular provision contained therein, on the grounds that the Secretary of State has exceeded his powers or has not complied with the relevant statutory requirements in

confirming them may, under the provisions of and section 23 of the Acquisition of Land Act 1981, do so by application to the High Court. Such an application must be made within six weeks of publication of the notice that the Order has been confirmed. The High Court cannot entertain an application under Section 23.

A copy of this letter has been sent to Mr Sean Murphy - Principal Solicitor, London Borough of Croydon.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rebecca Pointon', written in a cursive style.

**Rebecca Pointon
National Planning Casework Unit**

**Authorised to sign on behalf of the
Secretary of State for Communities and
Local Government.**