
CPO Report to the Secretary of State for Communities and Local Government

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an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 13 July 2015

The Town and Country Planning Act 1990

The Local Government (Miscellaneous Provisions) Act 1976

The 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

Inquiry opened on 3 February 2015

Accompanied Inspection was carried out on 3 February 2015

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

File Ref: NPCU/CPO/L5240/73807

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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

- The Compulsory Purchase Order was made under section 226(1)(a) and 226(3)(a) of the Town and Country Planning Act 1990, Section 13 of the Local Government (Miscellaneous Provisions) Act 1976, and the Acquisition of Land Act 1981, by the London Borough of Croydon, on 15 April 2014.
- The purposes of the Order are (a) facilitating the carrying out of 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 comprising 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 which is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the acquiring authority's area; and (b) executing works to facilitate the development or use of the land.
- The main grounds of objection are multifarious but in simple terms, it is said that the Acquiring Authority has failed to demonstrate the compelling case in the public interest necessary to justify confirmation. Ancillary points are also made about disruption to existing businesses, the options available for resettlement during the course of the construction period, and whether existing businesses will find a home in the scheme.
- In the lead up to the Inquiry, there were one hundred and thirty three objections. Twenty-two have been withdrawn and three late objections, from local residents, were lodged.

Summary of Recommendation: The Order be confirmed subject to the modification in respect of Plot 72 in Table 1 of the Schedule, as referred to in paragraph 8.1 below.

1. Procedural Matters and Statutory Formalities

- 1.1 The Inquiry opened on 3 February 2015 and sat on 4, 5, 10, 11, 12, 24, 25 February and 3, 5, 10 March, before it was closed on 13 March 2015.
- 1.2 I carried out an accompanied site visit to the Whitgift Shopping Centre and its surroundings on the afternoon of 3 February 2015, walking a route suggested by the main parties¹. During the course of the Inquiry, I made a number of further, unaccompanied visits to the shopping centre, and also took in the Centrale Shopping Centre, and the town centre more generally, during the day, and evening. As requested by the London Borough of Croydon (the Council) and the Croydon Limited Partnership (CLP), I visited, unaccompanied, the Westfield London and Westfield Stratford City Shopping Centres, on 2 and 3 June 2015 respectively, arriving by car, and using the car parking facilities, at both².
- 1.3 Through out my report, I have referred to 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 as the CPO. The Inquiry conducted to examine the CPO also dealt with the London Borough of Croydon Stopping Up of Highway

¹ LBC 102

² LBC 118

Dingwall Avenue Stopping Up Order No.2, 2014, referred to hereafter as the SUO. The SUO is the subject of a separate, parallel Report, to the Council.

- 1.4 For the sake of convenience, and economy, a number of other abbreviations and acronyms are used throughout this report. These are set out in Annex 5. I have referred to the submitted documents which are listed as annexes to this report through the use of footnotes. References thus [---] cross-refer to other paragraphs in the report that are especially relevant to the point at issue.
- 1.5 It was confirmed by the Acquiring Authority (AA), at the Inquiry, that all the statutory formalities have been properly complied with and, helpfully, this process has been fully documented³. No points were taken to the contrary by anyone in advance of, or appearing at, the Inquiry.
- 1.6 I was assisted in the lead up to, during, and after the Inquiry by Joanna Vincent, the Programme Officer, and want to record my gratitude to her for the careful management of the voluminous documentation and the Inquiry website⁴, and to all concerned for the smooth running of the event.

2. The Order Lands and Surroundings, the Scheme, and its Background

- 2.1 The Order Lands cover a block of approximately 7 hectares 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 Walk⁵.
- 2.2 The Order Lands are currently home to a variety of town centre uses, notably the Whitgift Centre, a shopping centre that opened in stages between 1968 and 1970, and has two main trading floors, the former Alders Department Store which was once the principal anchor store in the town, a number of high-rise office buildings, now largely vacant, and a significant amount of car parking in the Wellesley Road, Bank, and Alders Car Parks⁶.
- 2.3 There have been several recent attempts to bring forward large-scale retail development in Croydon. In May 2004, planning permission was granted for the 'Park Place' scheme to the south of the existing Whitgift Centre⁷. This was widely considered to be the trigger for the wider regeneration of Croydon. An enabling CPO⁸ was confirmed by the Secretary of State (the SoS) in 2007 but due, in the main, to a lack of funding, and an inability to secure an anchor department store, the proposal was never implemented.
- 2.4 In October 2005, planning permission was refused by the SoS, following an Inquiry, for alternative proposals known as 'Bishops Court 2' which included a new two-level shopping mall with residential floor-space above existing retail uses on George Street overlapping the 'Park Place' scheme⁹. In simple terms, the conclusion drawn was that the 'Bishops Court 2' scheme would prejudice the delivery of the 'Park Place' scheme. As the conclusions drawn on the merits

³ LBC 104 sets this out in detail

⁴ Available through persona.uk.com

⁵ CD1.2 (the Sealed Map) refers

⁶ LBC 4.2 Appendix 1 refers

⁷ LBC 4.2 Appendix 8 refers

⁸ CD6.6

⁹ CD6.7

of these previous schemes suggest, there is an evident and largely uncontested need for regeneration in Croydon town centre.

- 2.5 It is against that background that the Scheme the CPO is intended to underpin¹⁰ has been brought forward by CLP, a joint venture between the Westfield and Hammerson Groups, formed in January 2013¹¹. The interface between the Council and CLP, and the workings of the CPO in relation to the Scheme, is dealt with through Indemnity Land Transfer Agreement dated 15 April 2014 (ILTA)¹² while the relationship with the Whitgift Foundation, as the ultimate freeholder, is the subject of what is termed a Development Framework or Foundation Agreement¹³.
- 2.6 The purpose of the Scheme is to comprehensively redevelop the existing Whitgift Centre, the former Alders Department Store, and surrounding land and buildings, to create what has been described as *a high-quality, mixed-use, retail-led destination supported by a full range of town centre uses to enable Croydon Town Centre to become a competitive, diverse, and vibrant London destination and better fulfil its Metropolitan Centre status*¹⁴.
- 2.7 The evolution of the Scheme, and the thinking behind it, notably in terms of improved connections and legibility, the distribution of uses, the provision and sequence of public spaces within it, the architectural approach, and the relationships with existing buildings and spaces, notably the nearby listed buildings¹⁵ and the Central Croydon Conservation Area, have been helpfully set out in the evidence of the AA¹⁶.
- 2.8 Planning permission and conservation area consent were granted for the Scheme, by the Council, subject to a number of conditions, and an Agreement under Section 106, in February 2014¹⁷. A challenge to the grant of planning permission brought by the Whitgift Trust, on various grounds, was dismissed by the High Court¹⁸, and leave to appeal has subsequently been refused¹⁹.
- 2.9 The Council made a further grant of planning permission for an improved entrance into the proposed retail mall from North End in December 2014²⁰. Design work on the Scheme has continued and the latest (illustrative) iteration is shown in the Retail Design Team Plan (RDTP)²¹.

¹⁰ CD1.22 shows the two in plan form

¹¹ The structure of the joint venture is set out in LBC 2.1 and LBC 2.2 Appendix 2

¹² CD1.20

¹³ LBC 2.2 Appendix 9 summarises

¹⁴ LBC 4.1 Paragraph 5.3

¹⁵ The Church of St Michael and All Angels (Grade I), the Hospital of the Holy Trinity Almshouses (Grade I) and Electric House (Grade II)

¹⁶ LBC 7.1 – LBC 7.4, LBC 105 and LBC 106

¹⁷ CD7.22, CD7.23 and CD7.30 refer

¹⁸ CD8.1

¹⁹ CD8.2

²⁰ CD7.38

²¹ LBC 4.2 Appendix 16

3. The Case for the Acquiring Authority

- 3.1 This is set out in full in the Opening²² and Closing²³ Statements to the Inquiry, supported by a range of Core Documents²⁴, and evidence²⁵.
- 3.2 The CPO has been made in order to secure the comprehensive redevelopment of the existing Whitgift Shopping Centre, the former Alders Store, and parts of the surrounding land. A compelling case for the confirmation of the CPO has been made. The cases put by the objectors have not detracted from that compelling case either in general, or in particular.

The Promoters' Case

- 3.3 Despite the scale of the redevelopment scheme, and the number of objections to the CPO, there has been very little opposition to the need for the regeneration of Croydon town centre that the Scheme would deliver, or to the general principle of the CPO.
- 3.4 This is indicative of several matters. First, there is a clear recognition that the scheme is critical to Croydon's future. The scheme has very strong and up-to-date policy support in the London Plan (LP), incorporating Further Alterations to the LP (FALP) consolidated into the LP in March 2015, the Croydon Local Plan (Strategic Policies) (LP(SP)), and the Opportunity Area Planning Framework (OAPF) of January 2013. The Promoters have undertaken the CPO with considerable care, to ensure that the Scheme is properly planned, understood and justified. The level of engagement by the Promoters with the current occupiers/owners of the Order Lands has reflected that, despite suggestions to the contrary.
- 3.5 None of the objectors have seriously challenged the credentials of Westfield and Hammerson to deliver the scheme. Several of the promoters' witnesses were not cross-examined at all and many of the remaining objectors did not appear at the Inquiry either to question the Promoters' witnesses, or to allow their own cases to be tested²⁶.
- 3.6 Some objectors do not dispute the principle of the CPO and some actually acknowledge the importance of confirmation. Most simply raised general concerns, or focused either on the retention of their existing property interests, or their future potential to relocate into the completed scheme²⁷.
- 3.7 There was no serious challenge to the Scheme itself, or the need for it, given the obvious decline in Croydon's position in the retail hierarchy, its role as the largest metropolitan centre in London, and the obvious importance of the transformation the Scheme will drive. Evidence that the prospect of the Scheme was already having beneficial effects in terms of generating interest in other development opportunities for Croydon was not disputed²⁸.

²² LBC 101

²³ LBC 128

²⁴ Listed in Annex 2

²⁵ Listed in Annex 3

²⁶ Including Minerva, Bouwfonds and to a large extent Sainsbury's

²⁷ Including Sainsbury's, Minerva, M&S, Rush Hairdressers, and Uncle Lim's Kitchen

²⁸ Ms Negrini in-c and see also Develop Croydon SUPP/008 and others

- 3.8 The conceptual principles of the Scheme, including the important aspects of its linking into the fabric of the centre of Croydon, the retail core, existing and new pedestrian routes, and public transport²⁹, were, in the main, accepted. No-one took serious issue with the latest iteration of the Scheme (the RDTP)³⁰ which will continue to be refined prior to submission of reserved matters.
- 3.9 There is no question that the Scheme is not only compliant with planning policy but that it is *required* by it, given the approach of the LP, the OAPF, and the LP(SP), which relies on the OAPF. Indeed, the FALP amended the LP to endorse the Scheme³¹ and was adopted during the Inquiry.
- 3.10 No objector has suggested that it is either proposing an alternative to the Scheme as a whole, or that it would be in a position to do so. At best, some have suggested that their own interests should be excluded, or that their property might be redeveloped, but these suggestions would not be acceptable, and would undermine the delivery of the Scheme.

The Scheme

- 3.11 The Scheme would address 3 key problems currently experienced in the Order Lands: orientation, fragmentation, and use. Any scheme for the Order Lands would need to address these issues³². The Scheme would introduce far greater levels of connectivity, and legibility, across the town centre³³ and by bringing together retail and leisure uses, with new residential accommodation, the Scheme will encourage more people to visit the site, and thereby overcome the difficulties with the existing 'monolithic silos' of uses³⁴.
- 3.12 The contribution the Scheme would make to the vitality of the town centre³⁵ was not substantially challenged. The scheme was characterised as a 'game changer' in the regeneration of the town centre³⁶, another important point supporting confirmation which was not contradicted by any objector. A town centre symbolizes how a place is perceived. Until its town centre is transformed, negative perceptions of Croydon will remain and it will not be able to meet its wider objectives as a result³⁷.
- 3.13 Outline planning permission has been granted, and substantial further detailed work is underway in anticipation of the submission of reserved matters applications. The RDTP³⁸ represents CLP's latest thinking on the prospective layout of the Scheme. No substantive issue was taken with that.

²⁹ Mr Allies in-c and also LBC 105 and LBC 106

³⁰ LBC 4.2 Appendix 16

³¹ Confirmed by Mr Rhodes and Mr Kiely in-c

³² LBC 7.1 Paragraphs 4.5-4.7 and 8.4

³³ LBC 7.1 Paragraphs 6.16 and 8.5

³⁴ LBC 7.1 Paragraphs 6.26 and 4.7

³⁵ Outlined by Mr Rhodes and Ms Negrini in-c

³⁶ Ms Negrini in-c

³⁷ Mr Rhodes in-c

³⁸ LBC 4.2 Appendix 16

The Planning Policy Background

- 3.14 In the absence of any challenge, the planning policy background can be taken as that presented by the AA in evidence³⁹, the only change being that FALP was adopted, and consolidated with the LP, during the Inquiry⁴⁰. It has been clearly established that the Scheme is compliant with the adopted planning framework for the area. This aspect of the Promoters' case is also accepted in the only expert planning evidence put before the Inquiry by an objector, which acknowledges that the Scheme would meet 'a range of planning policy/guidance objectives' and did not identify any way in which the Scheme failed to accord with planning policy⁴¹.
- 3.15 While their objection was withdrawn post-Inquiry⁴², the various allegations of non-compliance with planning policy pursued by the Whitgift Trust in the judicial review proceedings were rejected⁴³ and permission to appeal was refused on the papers⁴⁴, and following a hearing⁴⁵. The judicial review is now at an end.
- 3.16 In summary, there is no real disagreement over the scope of relevant planning policy, or the clear compliance of the Scheme with it

Wellbeing

- 3.17 The AA's evidence⁴⁶ that deals with the contribution the Scheme would make to the economic, social and environmental wellbeing of the area was not challenged by any of the statutory objectors. It was explained that the Scheme was already having a positive effect in terms of generating interest in the development of other sites within Croydon⁴⁷.

Reasonable Prospect the Scheme will proceed

- 3.18 Paragraph 16 of Appendix A to the ODPM Circular 06/2004: *Compulsory Purchase and the Criche Down Rules* (the CPO Circular)⁴⁸ says under (iii) that 'A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be...'
- 3.19 Contrary to the impression given by some objectors, the key to this aspect is not the provision of a detailed financial appraisal to demonstrate viability in the conventional sense, but satisfying the Inspector, and ultimately, the SoS, that there is a *reasonable prospect* that the scheme will proceed.

³⁹ LBC 3.1-3.4 and 4.1-4.4

⁴⁰ On 10 March 2015 CD4.4 refers

⁴¹ OBJ/056/2.2 Paragraph 4.1

⁴² CD12.1

⁴³ CD8.1

⁴⁴ CD8.2

⁴⁵ Held on 12 February 2015 before Sales LJ

⁴⁶ LBC 1.1-1.4 and Ms Negrini in-c

⁴⁷ Ms Negrini in-c, supported by supporters' representations

⁴⁸ CD3.1

- 3.20 There are no legal requirements either that a scheme should be viable, or that there should be a probability of it proceeding, for the CPO to be confirmed. Rather, these are matters for the judgement of the Inspector in the first instance, and then, that of the SoS.
- 3.21 Significant evidence was put forward on this issue⁴⁹. It is not necessary for commercially sensitive information to be disclosed to the SoS. Satisfying the test of the CPO Circular turns, not on the existence of an enforceable obligation to build the Scheme⁵⁰, but on the detailed evidence the Promoters have given.
- 3.22 This encompasses their commitment, financial and otherwise, their considerable expertise, the strategic importance of Croydon not only in planning policy terms, but also in commercial terms, to CLP, and the major work which is being undertaken on the development and refinement of the Scheme. Negotiations with landowners and future occupiers are well underway and conclusions have been reached, with some.
- 3.23 It was explained⁵¹ that CLP take a scientific approach to analysing development opportunities, including the potential spend in any prospective catchment. They benchmark the results of that analysis against other schemes enabling an understanding of whether a town has a sufficient retail offer, and what the opportunities may be.
- 3.24 CLP uses the CACI forecasting model that Westfield used for Westfield London and Westfield Stratford City Shopping Centres. This is a very accurate prediction tool that gives CLP a great deal of comfort in bringing forward the Scheme. The modelling shows that Croydon is capable of becoming one of the most successful shopping centres in the UK because there is considerable unmet potential⁵².
- 3.25 That nothing is certain and that plans may change is perhaps a statement of the obvious. This appears to be the reason why the SoS has a requirement that there is a *reasonable prospect* that the scheme will proceed, as opposed to a requirement for certainty or even a high degree of probability. That reasonable prospect is clearly in place.
- 3.26 The CPO Circular also states that the resource implications for the local authority must be considered, together with any third party funding commitments. Financial impediments to implementation must also be considered.
- 3.27 The Promoters' evidence established that through the provision by CLP of a complete indemnity for the costs of acquiring land pursuant to the CPO, in ILTA⁵³, including all associated costs, fees and expenses, no issue arises as to the implications of the CPO on the Council's own resources.

⁴⁹ LBC 2.2-2.4, LBC 6.1-6.4, Mr Burton in evidence, and Mr Owen in evidence

⁵⁰ A suggestion advanced by Bouwfonds

⁵¹ Mr Burton in-c and re-e

⁵² As confirmed by Mr Burton in evidence

⁵³ CD1.20

- 3.28 CLP's liability under ILTA is guaranteed by its parent companies and CLP is able to fund the Scheme, by virtue of internal funding provided by Westfield and Hammerson. There is no real suggestion in the evidence that CLP would be unable to fund the Scheme. CLP is ready, willing and able to proceed⁵⁴
- 3.29 That commitment is clearly demonstrated by the investment of some £200 million in the promotion of the Scheme, and the acquisition of property interests to date, and offers well in excess of £100 million by way of compensation. CLP continues to progress negotiations to acquire interests by agreement, including the main operating interest in the centre in the form of the Whitgift Trust's landholdings⁵⁵.
- 3.30 The very limited number of appearances by objectors at the Inquiry underlines the broad support for the Scheme and the progress being made in negotiations. The transfer of land interests by the AA, pursuant to ILTA, is dependent upon it being demonstrated that there are reasonable prospects of delivery at the time of the transfer. This serves as a further reassurance that the powers will only be exercised by the AA if there are reasonable prospects of delivery. The SoS will doubtless apply his policy requirements to the issue of confirmation of the CPO and ILTA will remain as a further control to be applied by the Council to ensure that the Scheme will proceed prior to its transferring the land. Clause 9.4 (b) of ILTA requires CLP to enforce the terms of the Foundation Agreement⁵⁶ ensuring the grant of a new headlease from the Whitgift Foundation.
- 3.31 Against the policy requirement of showing a 'general indication of funding', the evidence summarised above plainly meets the SoS's requirements in terms of scheme viability. There has been no real suggestion that CLP is unable to fund the Scheme.
- 3.32 Whilst the financial details of the Scheme are commercially confidential, the SoS can take further comfort from the most recent Deloitte Viability Review⁵⁷ which concludes that financial viability does not give rise to an impediment to the delivery of the Scheme by CLP, and that there is a reasonable prospect of the Scheme proceeding, should the CPO be confirmed.

John Lewis Partnership (JLP)

- 3.33 Some objectors⁵⁸ have suggested that the presence⁵⁸ of JLP will be critical to the success of the Scheme. While JLP is certainly the target for the new anchor store at the southern end of the Scheme⁵⁹, it was explained that it is not the only possible candidate and neither ILTA nor the Foundation Agreement required a specific retailer as the new anchor⁶⁰.

⁵⁴ As confirmed by Mr Burton in evidence

⁵⁵ A negotiation that concluded successfully hence the withdrawal of the objection – CD12.1

⁵⁶ LBC 2.2 Appendix 9

⁵⁷ LBC 6.2 Appendix RA04

⁵⁸ Minerva in particular

⁵⁹ As confirmed by Mr Burton and Ms Negrini in evidence

⁶⁰ Mr Burton in-c and LBC 2.2 Appendix 9

3.34 CLP is in advanced negotiations with JLP and these are expected to be concluded successfully⁶¹. This is consistent with the letter JLP submitted to the Inquiry⁶² and to its involvement in the Croydon Strategic Metropolitan Board which meets every 6 weeks⁶³. This can be sharply contrasted with the more general letters written in the context of the Park Place CPO used to bolster objectors' assertions⁶⁴.

Alternatives

- 3.35 Neither Minerva nor Bouwfonds appeared at the Inquiry to defend their alternative schemes which in any event only relate to limited parts of the Order Lands.
- 3.36 The Bouwfonds proposal to retain an interest in the Scheme, or to redesign the Scheme around a retained Alders Car Park, would not be commercially acceptable⁶⁵. Car parking is considered a very important part of the customer experience and it is imperative that control is exerted over it. Operation by others would not be acceptable. On top of that, the existing Alders Car Park occupies the area set aside for the main anchor store in the Scheme.
- 3.37 The Minerva alternative proposal⁶⁶ would be unacceptable in planning terms⁶⁷. Minerva's retention of an ownership interest in the Scheme would not be acceptable in terms of delivery, management and control of the Scheme. This evidence was not challenged.
- 3.38 Indeed, retaining the interests of multiple owners like Minerva, M&S, and Bouwfonds, and/or the exclusion of their interests from the CPO, would be damaging to the ability of CLP to deliver and to ultimately control and manage the Scheme. It is plain that the Scheme is an integrated and complex development which requires major investment and close oversight.
- 3.39 None of the parties (including M&S) who suggested that they might retain their interests or be excluded from the CPO without harming the delivery of the Scheme have offered any enforceable mechanism for ensuring their cooperation or how such mechanisms would or could operate to avoid disputes and delay.
- 3.40 Such retention of interests is, in fact, a recipe for dispute and delay and would be contrary to the public interest in the delivery of the Scheme, given the acknowledged urgency of the need for regeneration. The fragmentation of ownerships in the Whitgift Centre to date appears to have been one of the reasons why development has not come forward before. This underlines the need for unifying ownership and control.

⁶¹ Mr Burton in evidence

⁶² CD13.5 (SUPP/005)

⁶³ As explained by Ms Negrini in evidence

⁶⁴ LBC 109 and CD6.6

⁶⁵ Mr Burton in evidence

⁶⁶ Outlined in OBJ/056/2.2

⁶⁷ As set out by Messrs Rhodes, Kiely and Allies in evidence

Absence of impediments

- 3.41 Aside from there being no financial impediment to the Scheme, there is no other impediment to its delivery. The outline planning permission is now free from challenge, the claim raised by the Whitgift Trust's having been dismissed and its appeal rights exhausted. It was not suggested that any necessary amendments to the Scheme, for example to permit a new store for M&S rather than a refurbishment of the existing store, would raise difficulties.
- 3.42 There is no state aid. The evidence put forward by the AA on this matter⁶⁸ was not challenged by Bouwfonds. As explained in response to Bouwfonds' legal submissions⁶⁹, it appears that they have proceeded on a misunderstanding of ILTA. The primary financial mechanism in ILTA is a complete indemnity in respect of the costs of acquiring the land and rights (and all associated compulsory purchase process costs, fees and expenses). Thus CLP will pay for the land acquired whatever the AA has paid, with no cost to the public purse.
- 3.43 In addition, the 'Best Consideration Mechanism' ensures that should the independently assessed value of the development lease exceed the costs of assembling the land (which are at market value), CLP will pay to the AA, an additional amount to account for any uplift in value in a manner that reflects the respective contribution and assumption of risk by CLP and the AA in assembling the land. For similar reasons, there is no concern in respect of s.233 of the Town & Country Planning Act 1990 (TCPA 1990). ILTA secures best consideration for those purposes.
- 3.44 Bouwfonds felt it necessary to raise a further allegation of unlawfulness in terms of public procurement. However, this is too late since any allegation that ILTA was a public works contract, which should have been procured under the Public Contracts Regulations 2006, should have been made by 14 October 2014, at the latest. There has been no such challenge to ILTA. Accordingly, like the outline planning permission, ILTA is immune from challenge.
- 3.45 Accordingly, there are no other impediments to the Scheme and no basis for the SoS to decline to confirm the CPO for that reason.

M&S

- 3.46 The objection raised by M&S is a curious one. On the one hand it argues that its property interests (both freehold and leasehold) should be removed from the CPO yet both M&S and the Promoters are as one that M&S should and will remain in its current location, and that its role is very important in terms of the success of the Scheme. The importance of M&S to the Scheme was readily confirmed in the AA's evidence⁷⁰.
- 3.47 On this issue there was plainly a great deal of common ground between the parties and the expectation is that the M&S position will be resolved by agreement. That expectation was not disputed by those giving evidence to the Inquiry on M&S' behalf.

⁶⁸ Mr Owen in evidence

⁶⁹ LBC 117 and LBC 128

⁷⁰ Mr Burton re-e

- 3.48 M&S supports the principle of the CPO⁷¹ and the redevelopment of the Whitgift Centre. Even with the decline in Croydon as a centre, it was agreed that M&S still traded well from North End⁷² and it is abundantly clear that it will benefit greatly from the development of a new centre which will improve footfall and the quality and significance of Croydon as a London destination.
- 3.49 M&S did not object to the application for outline planning permission. At some stage in late 2013/early 2014⁷³ having negotiated for some time, M&S decided that it did not like the refurbishment option and began to focus on a new store. There have been lengthy negotiations, since March 2014, particularly with regard to M&S' temporary relocation to Centrale (which are well advanced and have made considerable progress⁷⁴), and a new store. Indeed, on 30 June 2014, M&S' Property Board resolved formally to pursue a new store and to temporarily relocate to Centrale. The idea that M&S would remain operational during the works is purely hypothetical, therefore.
- 3.50 The current outline planning permission assumes that the new build of the Scheme will link into the existing M&S unit and works will be carried out to facilitate that, and to expand the trading floorspace. There is plainly no objection in principle from the Council to a new-build store, subject to resolving the details (and in particular the relationship of the new store with the conservation area)⁷⁵. There is no impediment to the Scheme progressing by reason of the need for a new planning permission to build a new M&S store to form part of the Scheme.
- 3.51 It is unsurprising, therefore, that there has since been little focus on resolving the details of a refurbished store, especially as the Scheme is permitted in outline only at this stage. Even so, while details of the Scheme are still being worked up for reserved matters approval, the precise details of linking in the existing M&S have not been fully worked up.
- 3.52 A refurbished M&S store could be delivered if that were the preferred option⁷⁶. It was agreed that there have been situations in the past where M&S has continued trading while works were carried out to its stores⁷⁷. Moreover, given the decision to temporarily relocate to Centrale, and the advanced stage of negotiations on this, the question of disruption to M&S' trade during works is highly unlikely to arise since they will be relocated for the duration of the works (whether their new store is new build, or a refurbishment).
- 3.53 It follows that the difficulties of maintaining a trading presence during refurbishment works are entirely hypothetical since all parties assume an agreed temporary relocation to Centrale. Even M&S' Property Board has endorsed this on 30 July 2014 - approving the progression of a new build store option and relocation into Centrale⁷⁸. Moreover, M&S wholly ignore the

⁷¹ Mr Line x-e

⁷² Mr Line x-e

⁷³ Mr Line x-e

⁷⁴ Mr Line x-e OBJ/062/2.3 sets out the chronology

⁷⁵ Confirmed by Mr Kiely and Mr Rhodes in evidence

⁷⁶ Mr Skelton in evidence confirmed in evidence

⁷⁷ Mr Line x-e

⁷⁸ OBJ/062/2.3 Appendix 1 page 7

consequence of the point that if M&S were excluded from the CPO, and were to undertake their own refurbishment scheme to link into the Scheme, the same issues would arise in any event. However, unlike the actual circumstances where M&S is currently part of the CPO and is reaching a negotiated deal, it would on its hypothesis have to consider its own arrangements for temporary relocation. It plainly had not considered that question.

- 3.54 However, M&S does not suggest it would deliver a new store itself, the hypothesis put in evidence was only that it could deliver its own *refurbished* store to link in with the Scheme. M&S has no board resolution equivalent to the new build resolution for a refurbishment scheme and the temporary relocation arising in consequence. The point does not even appear to have been put to its board⁷⁹. M&S has not considered the feasibility of a refurbishment scheme and how it would work, nor has it estimated the costs of such (or of a new build store), still less sought authority to incur the same.
- 3.55 If M&S were to undertake its own refurbishment it would have precisely the same problems of trading in situ⁸⁰. The CPO, even if M&S' interests were excluded, would remove M&S' servicing access, any common services, and access to the rest of the existing Centre, leaving M&S with a store that could not be operated. If the negotiations with the Promoters do not succeed, and M&S undertook its own refurbishment, the issue of relocation on the hypothesis of no agreement with CLP had clearly not been considered⁸¹ and M&S has put forward no planning obligation or other agreement which would secure the delivery of its own refurbished store in a manner which would meet the necessary timescales for the Scheme, nor has it provided any binding assurance that no disputes would arise which would create uncertainty and problems with delivery.
- 3.56 These points demonstrate that the M&S objection is both theoretical and untenable since the hypothesis that its interests should be excluded to carry out its own refurbishment raises precisely the problems it complains would arise with the Scheme. These issues underline the real nature of the objection; it is a holding measure while negotiations are concluded.
- 3.57 If the hypothetical scenario promulgated arose and M&S were compulsorily acquired, they would not be removed from Croydon since the space exists for temporary relocation in Centrale, which is now agreed to be acceptable in principle and accepted by M&S' Property Board. It is therefore absurd to suggest there is any risk of M&S being displaced from Croydon, or the Scheme. The only real risks to the Scheme arise if M&S is excluded from the CPO, and decides to undertake its own works to fit in with the Scheme.
- 3.58 Moreover, although it is said that there is no reason for acquiring the M&S interests, the need for overall control for such a major and critical development for Croydon's future, to be able to undertake the Scheme (which requires major investment) in a co-ordinated and timely manner and to rationalise a mixed bag of freehold and leasehold interests plainly provides a

⁷⁹ Mr Line x-e

⁸⁰ OBJ/062/1.2 Section 3

⁸¹ Mr Chase x-e

compelling case for acquisition⁸². M&S does not require a freehold interest to trade successfully - it has a 49 year lease at the Westfield Stratford City Shopping Centre, for example⁸³. This makes clear that the acquisition of the M&S freehold would not give rise to any operational issues for M&S.

- 3.59 It is open to the SoS to confirm a CPO even when there may be an alternative, on the basis that the alternative would be subject to greater delay and uncertainty⁸⁴. While the facts there were different from the CPO at issue, since there is no rival scheme as such, and M&S does not object to the principle of the CPO, or the Scheme, it is nonetheless important to put the M&S objection in perspective. There is a lack of any written or otherwise binding assurance that M&S itself would deliver a refurbished store on a timescale which integrates with the remainder of the Scheme.
- 3.60 Moreover, there has been a failure by M&S to consider the costs, and the need for relocation, involved in them carrying out their own refurbishment. Plainly each presents scope for disagreement, uncertainty and delay. Aside from that, the Scheme will impact on M&S' access and servicing and the covenants in M&S' lease of the rear part of the premises, where it would have to link into the new shopping centre.
- 3.61 Building a new store will destroy the building currently subject to the leases and this will underscore the need for the creation of new interests to reflect the significant change in position. Were the M&S lease excluded from the CPO and to remain in place, it would not align with the covenants to be created for the new centre. This would also give rise to potential for delay, uncertainty and dispute.
- 3.62 This is a critical point⁸⁵. The suggestion that there is no need for a northern anchor and that the M&S store might be subdivided after compulsory acquisition ignores the clear evidence put forward about the retail circuit which is integral to the Scheme. The principles of circulation would be severely compromised. The exclusion of M&S's interests from the CPO can be barely contemplated due to the complexity of the Scheme⁸⁶.
- 3.63 Although M&S suggested that the compulsory acquisition was merely for CLP's convenience, or commercial advantage, it was made clear that there was a need for a single transparent investment vehicle, and that unified ownership was necessary given the construction problems, especially those involved in linking M&S into the scheme, and the operational problems involved in basement servicing, and with services⁸⁷.
- 3.64 Also M&S overlooks the fact that the commercial success of the Scheme underpins the public interest justification in the CPO and in current policy which requires transformational change focussed on the retail core and the Whitgift Centre. If M&S' interests were excluded, and agreement with them

⁸² Mr Burton and Mr Owen in evidence

⁸³ Mr Line x-e

⁸⁴ *Bexley LBC v Secretary of State* [2001] EWHC 323 Admin (included in Annex 3 to LBC 128)

⁸⁵ Confirmed by Mr Burton in evidence

⁸⁶ Mr Burton re-e

⁸⁷ Mr Burton re-e

could not be reached, CLP would be required to redesign its Scheme. This would fundamentally compromise the comprehensive approach required by planning policy⁸⁸. From a commercial perspective, it would be a significant barrier to progress⁸⁹.

- 3.65 M&S might argue that it can be excluded from the CPO and undertake its own refurbishment but there has been no evidence as to how it would meet the development timetable for the Scheme, that it would not hold up the construction of the Scheme, or its linking into the fabric of M&S premises, and still less how it would operate when its leasehold covenants will not match those applied to the new centre, or any obligation on it to co-operate and prevent disruption to that development.
- 3.66 The importance, scale and cost of the Scheme should not be put at risk for an option which is plainly no more than a hypothesis put forward while the parties conclude what are plainly advanced negotiations. If M&S does not wish to occupy their existing store during the works, the only solution is that their interests are acquired by CPO (if they cannot be negotiated) and relocation premises are made available. Without compulsory (or negotiated) acquisition, this will not be an option for them.
- 3.67 In the light of the critical importance of the Scheme to realising both the Council and the Mayor's policy ambitions for Croydon, the Promoters submit that the risk to the timely delivery and operation of the Scheme which arises from excluding M&S from the CPO is too great for the public interest to accept.
- 3.68 For these reasons, which may well no longer be live when the SoS comes to consider the question of confirmation, the M&S objection should be dismissed and its interests retained within the CPO.

Uncle Lim's Kitchen (Ms Yap)

- 3.69 Support for the Scheme was confirmed; it is needed to help boost the whole Croydon economy⁹⁰. The concern was about the future. The Promoters' position in relation to this has been set out⁹¹. In summary, the AA has been assisting in identifying premises in which trading can continue during the construction of the Scheme. The AA will continue to offer this assistance but CLP is not yet in a position to formally offer a lease of a new unit in the completed Scheme. The detailed design has not been settled, and indeed until the CPO is confirmed, such offers would be premature.
- 3.70 However, in addition to the commitments in the Land Acquisition and Relocation Strategy⁹², CLP has confirmed that it is willing to continue discussions about business needs during the construction period. No business will be excluded from the opportunity to take space in the completed Scheme. That commitment has been reflected in correspondence⁹³.

⁸⁸ Mr Kiely and Mr Rhodes in-c

⁸⁹ Mr Burton in evidence

⁹⁰ Ms Yap in evidence

⁹¹ LBC 119 and LBC 123

⁹² CD1.17

⁹³ LBC 123

Rush Hairdressers

- 3.71 Again, support was offered for the regeneration of Croydon and it was acknowledged that the CPO should be confirmed. It was agreed that matters of compensation were for the Upper Tribunal Lands Chamber⁹⁴.
- 3.72 The rights to be acquired have been clearly set out⁹⁵ and are reasonable. As was explained⁹⁶, it is not possible to be any more specific about how the rights will be exercised pending detailed designs at the reserved matters stage. That is not unusual in schemes of this sort.
- 3.73 Rush Hairdressers' properties will be subject to only minor interference during the construction period⁹⁷. The request that the Inspector encourage the service of notices to treat shortly after confirmation of the CPO is irrelevant to confirmation. There is no basis upon which such a condition might lawfully be imposed⁹⁸.
- 3.74 It is worth recording that Rush Hairdressers are the only owner/occupier to appear at the Inquiry in respect of a rights plot. It was explained that substantial progress has been made negotiating with owners/occupiers of rights plots⁹⁹.

Sainsbury's

- 3.75 Sainsbury's case, partially presented as it was, is difficult to understand. It appeared only to cross-examine on planning issues¹⁰⁰ and then declined to call any witnesses itself, or appear further, thereby denying any opportunity for its evidence to be tested in cross examination. Consequently, little weight should be given to Sainsbury's objection.
- 3.76 Sainsbury's appeared to be concerned by two issues. First, it complained that satisfactory arrangements had not been made to accommodate it; and second, it complained about changes to the phasing of the demolition and construction. Neither of Sainsbury's points provides a good reason not to confirm the CPO.
- 3.77 In terms of arrangements to accommodate Sainsbury's, it was acknowledged¹⁰¹ that Sainsbury's is an important retailer and it would be desirable for it to be accommodated during and after the implementation of the Scheme, though their relocation into the new centre would not be critical to its success.
- 3.78 There is a relocation strategy¹⁰² and Sainsbury's have been offered a modern unit in the Centrale Shopping Centre, which they can expand and continue to occupy, should they so wish, or, as an alternative, they could move back into the Scheme, once it is completed.

⁹⁴ Mr Winbourne x-e

⁹⁵ LBC 5.1 – LBC 5.4

⁹⁶ Mr Skelton in-c

⁹⁷ LBC 5.1 Paragraph 5.29.1

⁹⁸ Acknowledged by Mr Winbourne in x-e

⁹⁹ Mr Skelton in-c

¹⁰⁰ And in questioning Mr Burton rather than Mr Kiely or Mr Rhodes, chose the wrong witness

¹⁰¹ Mr Rhodes in-c

¹⁰² CD1.17

- 3.79 In any event, Sainsbury's argument that the CPO should not be confirmed unless it is entirely satisfied with the relocation premises significantly overstates their importance¹⁰³. There are 4 smaller stores in Croydon town centre and a total of 9 food stores of similar type to the existing Sainsbury's in Croydon town centre. Food retailing in Croydon town centre can continue without this branch. That shoppers might use another operator instead is not a public interest concern; it is competition.
- 3.80 Sainsbury's concerns in relation to phasing are misplaced. It is clear from the Report to the Strategic Planning Committee¹⁰⁴ that Members were told about the possibility of using Centrale to relocate existing occupiers rather than trying to retain some of them in a partially demolished Whitgift Centre. Since CLP acquired Centrale, the options for relocation have been widened significantly. It was explained¹⁰⁵ that relocations to Centrale will help to ensure continuity of trade in Croydon town centre during construction of the Scheme. It is in CLP's interest as owner of Centrale that the shops there trade well.
- 3.81 Sainsbury's queried the need for it to vacate in order to demolish the residential towers above their existing store but did not attend to question the relevant witness on that point¹⁰⁶. Clearly, it would not be safe for Sainsbury's to continue trading under a demolition site.
- 3.82 Sainsbury's point about phasing and the Environmental Statement misunderstands the basis of the permission that has been granted. In planning terms, the Environmental Impact Assessment assumptions have been 'safeguarded' by conditions 22 and 23¹⁰⁷, pending final agreement of the phasing. These conditions require the submission of an Environmental Construction Management Plan and a Construction Logistics Plan which will deal with the final phasing, in planning terms.
- 3.83 If an Environmental Impact Assessment addendum is needed as a consequence, it can be produced alongside the submission for approval of those conditions. If necessary, further environmental information can be submitted with applications for reserved matters assessing the proposed revised construction phasing for Environmental Impact Assessment purposes, to reflect the approach to relocations now being applied.
- 3.84 In summary, reasonable arrangements have been offered which would allow Sainsbury's to continue trading in the town centre. The phasing changes were explained to Members, and do not give rise to Environmental Impact Assessment problems. There is nothing in Sainsbury's objection to suggest that the CPO should not be confirmed.

Bouwfonds

- 3.85 Bouwfonds have adopted an unhelpful approach. Their expert sat through most, if not all, of the Promoters' evidence but did not put a single question to any witness. Having heard that evidence, he purported to rebut some parts of

¹⁰³ Mr Rhodes in-c

¹⁰⁴ CD 7.19 at para 8.42 and 8.341 in particular

¹⁰⁵ Mr Burton in evidence

¹⁰⁶ Mr Skelton

¹⁰⁷ CD7.22

it in writing at a later stage¹⁰⁸. However, shortly before Bouwfonds' scheduled appearance it announced that it would not attend and would rely solely on written representations. Various legal submissions were made, to which the Promoters have already responded¹⁰⁹.

- 3.86 As explained above in relation to Sainsbury's, the Promoters invite the Inspector and SoS to attach very limited weight to the evidence of objectors who did not appear, particularly when the objector in question plainly has the means and ability to be represented at the Inquiry and has been present for parts of the proceedings, and had ample opportunity to appear. In those circumstances, the Promoters invite the inference that those putting forward the evidence considered that it could not be defended under questioning, and therefore avoided giving the Promoters an opportunity to test the evidence.
- 3.87 In response to Bouwfonds' further submissions, it is suggested that the Promoters have made 'incorrect claims about the law' but go on to simply argue about the application of the law to the facts of the case. The Promoters continue to rely on the law as stated in their first response, and in Opening¹¹⁰.
- 3.88 Bouwfonds acknowledge that the normal position is that the best consideration requirements under s.233 of the TCPA 1990 will generally satisfy any concern about state aid. This is an important concession. It is particularly helpful given that unchallenged evidence has been put forward¹¹¹ that the ILTA arrangements amount to best consideration for the purposes of s.233.
- 3.89 The submissions on the remedy should state aid occur miss the point that if the ILTA arrangements were to be challenged on the grounds of illegality, such a challenge should have been made within the normal judicial review timescales. The remedy open to the European Commission is to order the recovery of the state aid, a point which was noted in earlier submissions.
- 3.90 The submissions advanced by Bouwfonds misunderstand the Promoters' earlier submissions. Advice has been taken by the AA from independent valuers as to whether the ILTA arrangements can satisfy s.233 and avoid state aid. The advice is that they can. That advice included expert advice which was repeated in evidence¹¹². However, there is a further valuation exercise after the transfer of land which may lead to a further payment being made. ILTA *does* provide for a further valuation at the time of transfer and that valuation will be carried out by an independent valuer. In the circumstances the Bouwfonds case is misconceived and should be rejected.
- 3.91 The submissions generally confirm that Bouwfonds still have not understood ILTA. The price paid is not 'at least 25% below market value', as alleged. The price paid is paid by the AA for the land (that is the complete indemnity) and then a *further* payment should the development lease have a residual value greater than that indemnity. This is not a discount on the value of the land

¹⁰⁸ OBJ/057/102 and OBJ/057/103

¹⁰⁹ LBC 128 Annex 2

¹¹⁰ LBC 117 and LBC 101

¹¹¹ By Mr Owen

¹¹² By Mr Owen

transferred, but an apportionment of any uplift in value to reflect the risks assumed by each party to ILTA.

- 3.92 The idle threat of judicial review proceedings once the CPO is confirmed ignores the fact that Bouwfonds have been aware of ILTA for at least 6 months, so if they were to challenge it after the CPO is confirmed they would have no good reason for their delay. Indeed, such proceedings would not only be long out of time but would face the argument that proceedings had been delayed causing substantial prejudice both to CLP, which in the period of delay had incurred the substantial costs of an Inquiry, and continued to negotiate agreements with landowners, and to the public interest in taking forward the Scheme.
- 3.93 Any challenge to the CPO itself could not be by way of judicial review but would be by way of statutory challenge under s.23 of the Acquisition of Land Act 1981. This would not be a challenge to ILTA. All the operative provisions of ILTA which could have a bearing on state aid allegations have been published and accordingly if there was any basis for a legal challenge it could and should have been made many months ago. Infraction proceedings against the UK would not invalidate ILTA.
- 3.94 On procurement, there could not be a challenge to the CPO on the basis that ILTA should have been subject to a public procurement exercise. The challenge must be to ILTA itself. It is quite clear from the Promoters' earlier submissions that the possibility of a judicial review challenge (as opposed to challenge under the Public Contracts Regulations 2006) was considered. Such a claim would be subject to at best a three month time limit. That time limit has also passed. There is no authority for the proposition that a late claim for judicial review can be made at the time that a scheme is implemented. Again, infraction proceedings would not invalidate ILTA.
- 3.95 The submissions on ILTA being a 'mixed agreement' confirm the point about Bouwfonds' misunderstandings of ILTA. It contains no obligation to carry out works. However, the allegation that the 'transfer is conditional on an undertaking to do the works' is plainly wrong. There is no such condition. A similar error is made in the suggestion that the developer has 'undertaken explicit obligations towards the Council to undertake works'. It has not.
- 3.96 The best Bouwfonds can do is to point to recital (B) which notes that both the AA and CLP 'wish to secure the comprehensive redevelopment of the Development Site'. On the basis of what the OAPF, LP and LP(SP) set out, that is a statement of the obvious. It does not mean that ILTA imposes a contractual obligation on CLP to carry out the development.
- 3.97 The list of obligations contains no obligation to carry out works. It is not therefore 'evident' that ILTA is an agreement with the main purpose being the execution of the works. The use of 'purpose' is revealing since it is not the purpose but the existence of a legal obligation which is critical. To repeat, there is no obligation to execute works. The fact that ILTA is 'complex' does not excuse Bouwfonds' advisors from their failure to understand its provisions.
- 3.98 Bouwfonds noted that parts of ILTA are redacted. That makes no difference. The relevant redactions are limited to certain termination provisions in clause

13. It is clear from the context of the unredacted parts of the clause that they contain no obligation to carry out works.
- 3.99 The Promoters do not suggest that ILTA contains an Obligation to carry out works. The case made is that the SoS can have the requisite degree of assurance that the Scheme will proceed from the context of the commitment of CLP to date, and from the protection given by ILTA which is within the remit of the Council prior to permitting drawdown of the acquired interests.
- 3.100 It is also suggested that there is 'nothing in Appendix 9 of ILTA' to direct the valuer to disregard the risks already assumed by CLP. This is wrong. The mechanism provides for the residual value of the lease to be calculated in accordance with industry practice; there would be no basis for having regard to earlier risks assumed by CLP (such as the risk of the CPO not being confirmed). The references to further benefits accruing for CLP is misplaced because these points will be captured in the best consideration mechanism, which values to the development lease in accordance with normal valuation practice and then apportions any uplift in value to reflect risk. This valuation will have regard to matters such as the extent of affordable housing obligations.
- 3.101 The point about the absence of an affordable housing review mechanism fails to note the unchallenged evidence that such absence is entirely in accordance with planning policy, which was confirmed by Collins J in the judicial review¹¹³ and in the unchallenged evidence of the AA¹¹⁴.
- 3.102 Apart from their misconceived objections based on allegations of breach of the rules regarding state aid and public procurement, Bouwfonds also suggest that they could become joint venturers in the Scheme without the need for their interests to be acquired.
- 3.103 That is not the case¹¹⁵. The site of the Allders Car Park is needed for one of the anchor stores¹¹⁶. Control of the Whitgift Car Park is critical to the investment in, development and management of the Scheme¹¹⁷. CLP gave detailed evidence on this¹¹⁸. Bouwfonds is unlikely to be a co-operative joint venture partner as shown by their conduct in this Inquiry, and the fact that it has not proposed any terms upon which such an arrangement would, or even might, work.
- 3.104 Overall, the objections to the CPO raised by Bouwfonds should be rejected.

Minerva

- 3.105 Minerva indicated before the start of the Inquiry that they did not intend to appear, and thus there has been no opportunity for their evidence to be tested.

¹¹³ CD8.1

¹¹⁴ Mr Kiely in evidence

¹¹⁵ JB in-c, LBC 2.2 and LBC 2.4 Section 4

¹¹⁶ As explained by Mr Allies in evidence

¹¹⁷ As confirmed by Mr Burton in evidence

¹¹⁸ Through Mr Burton

- 3.106 On viability issues, Minerva's case is that the Scheme is unlikely to be delivered unless agreement with JLP is reached¹¹⁹ but there is no suggestion that the Scheme is generally unviable or too large. Minerva's concerns as to viability would equally be answered if an alternative anchor were provided¹²⁰. It has not been assumed that JLP would be the anchor for the purposes of the viability assessments¹²¹.
- 3.107 Minerva also contends that it should retain its freehold interests and then grant a lease to CLP. This is not a realistic prospect and could give rise to a serious impediment to the delivery of the Scheme, and to its future control, management and continuing reinvestment in the Scheme as a comprehensive development.
- 3.108 Minerva's final line of argument is that *if* the Scheme did not proceed, it has its own development proposals. As noted above, there was no challenge to the evidence of the AA¹²² that those proposals would have serious planning impediments to overcome. Moreover, proposals put in this way are not genuine alternatives: they are fall back schemes for only a very limited part of the Retail Core, which on their face do not come close to achieving the planning framework's objectives (which the Scheme would deliver). Accordingly, such proposals are of no relevance to confirmation of the CPO.

Non-statutory objectors

- 3.109 The Inquiry heard from three members of the public who do not have any legal interest in the Order Lands but nonetheless express various concerns about the Scheme. Much of what was said goes to planning merits or other concerns which are not of direct relevance to the CPO process.
- 3.110 Mr Kennedy confirmed he had no objection to the CPO, but was concerned about the treatment of the George Street and North End facades in the detailed planning submission. As is clear from the evidence¹²³, this is a point of importance already acknowledged by the Promoters.
- 3.111 Treatment of facades has been thought about in detail¹²⁴ and there is no effective counter to the finding that the Scheme would enhance both the character and the appearance of the conservation area, and the setting of listed buildings, and in particular, the Almshouses.
- 3.112 It should also be noted that Part 2 of the Design Guidelines with which the reserved matters applications must accord¹²⁵, addresses, amongst other things, the treatment of the George Street and North End facades in the Scheme. Mr Kennedy will be able to make representations on the reserved matters submissions should he consider that they do not address his detailed concerns.

¹¹⁹ OBJ/056/4.2; OBJ/056/1.2 Paragraph 3.14; and in particular OBJ/056/4.2 Paragraph 7.6

¹²⁰ Confirmed by Mr Burton in-c

¹²¹ Confirmed by Mr Owen in-c

¹²² Mr Allies, Mr Kiely and Mr Rhodes in evidence

¹²³ Mr Allies, Mr Rhodes and Mr Kiely in evidence, LBC 105, LBC 106, CD7.3 and CD7.4

¹²⁴ Mr Allies in evidence

¹²⁵ CD 7.3

- 3.113 In short, much of his evidence supports the Scheme and to the extent he has concerns, these are a matter for detailed design and for resolution in the planning system in the normal way. The images Mr Kennedy showed of Allders in the 1970s were striking in showing Croydon in better times and what could be achieved by the Scheme¹²⁶.
- 3.114 Ms Oliver is a lone voice in saying there is no need for redevelopment. Her submissions are wholly at odds with policies in FALP, LP(SP) and OAPF and the results of the public consultation undertaken by CLP before submitting the planning application¹²⁷ which show strong support for the Scheme from Croydon residents. It is also at odds with the letters of support from a range of Croydon stakeholders¹²⁸.
- 3.115 A CPO inquiry is not an opportunity to challenge the planning framework, still less for one as up-to-date as that here, nor is it a forum to promote changes in the structure of local government, or CPO procedure. For the reasons explained¹²⁹, the Scheme accords with the adopted planning framework. To the extent that Ms Oliver's submissions are an attack on the outline planning permission granted, they should be rejected as irrelevant.
- 3.116 As with Ms Oliver, many of Mr Creighton's questions and issues were quite clearly outside the scope of the CPO process and incorrectly assumed that a CPO inquiry was a proper forum to discuss the yet to be submitted reserved matters application. His evidence¹³⁰ perpetuated his misunderstanding that reserved matters should be submitted prior to CPO confirmation or that somehow the public would not be consulted at the time the reserved matters applications were made.
- 3.117 Both Ms Oliver and Mr Creighton displayed a tendency to assume that because they do not agree with the Scheme that the planning and CPO decisions have not been through the proper democratic decision-making processes, which they plainly have. They ignore the extensive consultation on the Scheme, including the pre-application consultation and the Statement of Community Involvement¹³¹.
- 3.118 The decision to grant permission has been tested in the High Court. Ms Oliver and Mr Creighton conveniently overlook the fact that the Scheme does not have the high degree of objection that their submissions suggest. They also wrongly assume that the Council is acting contrary to the public interest when in fact it is seeking to give effect to public planning policy which itself has been tested and examined in public.

Other Outstanding Objectors

- 3.119 With respect to other objectors, their cases have been addressed in evidence both written and oral. Where objections have not been withdrawn (e.g. TSB, Coral) but have been the subject of Promoters' evidence, then it is repeated

¹²⁶ OBJ/AK/101

¹²⁷ CD7.9 Section 5.3

¹²⁸ CD13.1 – CD 13.20

¹²⁹ By Mr Rhodes and Mr Kiely in evidence

¹³⁰ OBJ/SC/101 - OBJ/SC/103

¹³¹ CD 7.9 Paragraph 5.3 – 91% of 1,330 residents supported the Scheme.

that the opportunity was provided to question Promoters' witnesses which was not taken up and no opportunity was provided to test those objectors' cases and that correspondingly reduced weight should be given to the points raised by them.

Conclusions

- 3.120 There is a compelling case in the public interest for the confirmation of the CPO. The acquisition of land and rights, and the overriding of private rights, has been clearly justified. There is no substantial dispute as to the pressing need for major regeneration in Croydon town centre, in order to meet the various long-term policy objectives. There have been no substantial criticisms of the Scheme itself.
- 3.121 There are no material impediments to the implementation of the scheme other than the confirmation of the Order. There is no substance to allegations in respect of state aid and best consideration, these having been addressed through ILTA, and through the receipt by the AA of independent advice from Deloitte. The suggestion that there has been a breach of public procurement rules is also without merit.
- 3.122 No alternatives to the scheme as a whole exist. The planning framework requires a comprehensive approach to be taken. The partial alternatives advanced by Minerva would face serious planning problems, but more importantly they are only put to the SoS on the basis that they could come forward if the scheme did not proceed.
- 3.123 The bids by M&S, Minerva and Bouwfonds to retain their landholdings within the Scheme would lead to serious impediments not least because the same obstacles would remain in relation to agreeing commercial terms in relation to their land interests, together with an acceptable undertaking to facilitate the Scheme.
- 3.124 The Scheme presents the only present possibility of meeting the requirements of planning policy for the Retail Core. There is no other proposal that is capable of achieving the necessary transformative change in Croydon's status and economy.
- 3.125 The legal requirements of s.226 TCPA have been satisfied. No issue on the satisfaction of these requirements has been taken by any objector.
- 3.126 There are no new material considerations which would justify a different approach to be taken to that of the Council in granting outline planning permission. The judicial review has been refused and the Court of Appeal has definitively refused permission to appeal.
- 3.127 The policy requirements in the CPO Circular for the confirmation of the Order are satisfied. In particular, there is no financial impediment to the scheme being delivered and through direct evidence of CLP's funding intentions and the assessment of confidential viability information carried out by Deloitte, the SoS can be satisfied that the proposals are financially viable.
- 3.128 The confirmation of the Order would be entirely consistent with, and not breach, the National Planning Policy Framework (NPPF) and development plan. Indeed, the development plan demands that this type of development comes

forward. FALP expressly supports the Scheme. There has been no cogent suggestion that the scheme is anything but in accordance with the development plan, and OAPF.

- 3.129 The confirmation of the Order would be consistent with, and not breach, the human rights of the landowners affected. The Promoters continue to work with objectors and other occupiers to assist them with business planning and temporary relocations during the construction of the Scheme.
- 3.130 The Council and CLP respectfully request that the SoS confirms the Order with the minor alteration sought.

4. Submissions in support of the Council and CLP

- 4.1 **The Whitgift Foundation**¹³² (SUPP/001) has confirmed complete support for the CPO and explained, in detail, their long association with Croydon and the nature of the charitable activities it undertakes. It considers that the scheme provides a substantial opportunity to reverse the decline of Croydon town centre. The relationship of the Whitgift Foundation with Westfield, and through them, CLP, is set out. These views are reiterated and amplified by Stiles Harold Williams in a supporting submission.
- 4.2 **South London YMCA**¹³³ (SUPP/002) supports the CPO, in particular because it underpins a scheme that would transform Croydon town centre and enable it to become a leading London retail attraction. This will improve the perception of Croydon and have a major catalytic impact in terms of job creation.
- 4.3 **Gavin Barwell MP for Croydon Central**¹³⁴ (SUPP/003) who, it should be made clear, is a Trustee of the Whitgift Foundation, expresses strong support for the scheme and the CPO calling it a once-in-a-generation opportunity to turn around Croydon's fortunes bringing an attraction for visitors, new jobs, new homes, and improvements in the permeability of the town centre and most importantly, reputational benefits which will encourage others to invest.
- 4.4 **Steve Connell AM, London Assembly Member for Croydon & Sutton**¹³⁵ (SUPP/004) also offers support for the scheme and as a result, the CPO for much the same reasons as Gavin Barwell MP.
- 4.5 **John Lewis Partnership**¹³⁶ (SUPP/005) set out details of their current presence in Croydon and confirm that they have been considering Croydon town centre as a potential location for over ten years. The scheme can accommodate their requirements for a new store in Croydon. Negotiations have been continuing with CLP in order to secure the delivery of a full-line department store as part of the scheme. Westfield and Hammerson are familiar to and with JLP and successful negotiations have previously been concluded with them in Stratford City, Brent Cross, Southampton, Leicester and Leeds.

¹³² CD13.1

¹³³ CD13.2

¹³⁴ CD13.3

¹³⁵ CD13.4

¹³⁶ CD13.5

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- 4.6 **ITC Concepts Ltd**¹³⁷ (SUPP/006) is a longstanding enterprise, based in Croydon which offers strong support for the scheme, and the CPO, on the basis that it will transform the town centre, and the image of Croydon, encouraging other schemes to come forward, with all the attendant benefits.
- 4.7 **Fairfield (Croydon) Ltd**¹³⁸ (SUPP/007) is a registered charity which runs the Fairfield Hall Arts Centre. It offers unequivocal support for the proposals for Croydon town centre, and the CPO required as the facilitator for them. That support is based on the uplift the scheme will bring to the town centre and the attendant environmental and economic improvements that will follow.
- 4.8 **Develop Croydon**¹³⁹ (SUPP/008) is a private sector led, local initiative, which aims to provide a collaborative approach to the promotion of Croydon and the encouragement of inward investment. The difficulties of the existing retail offer in Croydon and the urgent need for regeneration are highlighted. The proposals are said to be fundamental to achieving the significant improvement the town centre needs.
- 4.9 **Durkan**¹⁴⁰ (SUPP/009) is a family owned developer and contractor founded in 1970. Backing is offered for the scheme, and the CPO, largely on the basis of the optimism it will bring to the populace, and the beneficial impact this will have on the local economy.
- 4.10 **The Centrale Shopping Centre**¹⁴¹ (SUPP/010) lies on the opposite side of North End from the scheme. The operators are very much in favour of the proposals and the CPO on the basis of the benefits it will bring to the town centre which, after many years of decline, it says, is beginning to show signs of optimism. The improvements brought by the scheme will amplify that.
- 4.11 **Croydon Churches Housing Association**¹⁴² (SUPP/011) is a Registered Provider based in Wellesley Road, Croydon and has operated since 1967. It stands behind the CPO, and the redevelopment, because of the uplift it will bring to the town centre and the area, generally.
- 4.12 **Sinclair Clark**¹⁴³ (SUPP/012) a consultant firm of surveyors, **R J Witt Associates**¹⁴⁴ (SUPP/013) consulting civil and structural engineers, and **Hooper Naylor Friend**¹⁴⁵ (SUPP/014) a firm of surveyors laud the scheme, and the CPO, because of the improvements it will bring environmentally, and in terms of the general investor climate.
- 4.13 **Guildhouse UK Ltd**¹⁴⁶ (SUPP/015) is the joint developer of One Lansdowne Road, an iconic high-rise scheme in the centre of Croydon, while **Guildhouse-**

¹³⁷ CD13.6

¹³⁸ CD13.7

¹³⁹ CD13.8

¹⁴⁰ CD13.9

¹⁴¹ CD13.10

¹⁴² CD13.11

¹⁴³ CD13.12

¹⁴⁴ CD13.13

¹⁴⁵ CD13.14

¹⁴⁶ CD13.15

Rosepride LLP¹⁴⁷ (SUPP/016) owns property in Wellesley Road and Lansdowne Road. Both champion the redevelopment scheme, and the CPO, on the basis of the environmental and economic benefits that will ensue for Croydon. **Berkeley Homes (South East London) Ltd**¹⁴⁸ (SUPP/017) adopt a similar stance.

- 4.14 **Crystal Palace Football Club Foundation**¹⁴⁹ (SUPP/018) is a registered charity delivering a comprehensive and diverse sports and educational programme across Croydon and South London. It believes that while Croydon has a Premier League football team (Crystal Palace FC), it deserves a town centre similar in stature. CLP will deliver that, along with attendant social improvements for the populace.
- 4.15 **Croydon Conservative Councillors' Group**¹⁵⁰ (SUPP/019) supports the CPO as a driver for the regeneration of the town centre.
- 4.16 **Angel Catering (UK) Ltd**¹⁵¹ (SUPP/020) offers backing for the CPO because of the attendant regeneration benefits that will come forward.

5. The Cases for the Objectors

- 5.1 I summarise the case put by those objectors who appeared at the Inquiry, or put forward a case in writing. Others, relying on their letters of objection, are dealt with more briefly.

Whitgift One Ltd, Whitgift Two Ltd and the Whitgift Trust (Whitgift Trust) (OBJ/001)

- 5.2 The Whitgift Trust raised a series of objections to the CPO, articulated in evidence to the Inquiry¹⁵². The case presented is best summarised in the closing statement made on their behalf¹⁵³. As prefaced at the Inquiry, these objections were withdrawn shortly after it closed¹⁵⁴ following the purchase of their interest in the Whitgift Centre by CLP. On that basis, I do not deal with this objection any further.

Marks & Spencer Scottish Limited Partnership and Marks & Spencer Plc (M&S) (OBJ/062)

- 5.3 M&S currently operates a store at 114-126 North End (Plots 41 and 42) with a trading space of around 14,000 square metres, arranged over three floors. It links into the existing Whitgift Shopping Centre at basement (for servicing), ground, and first floor levels.
- 5.4 M&S raise a series of objections to the CPO, which has been expanded upon in several strands of evidence presented to the Inquiry¹⁵⁵. These are gathered

¹⁴⁷ CD13.16

¹⁴⁸ CD13.17

¹⁴⁹ CD13.18

¹⁵⁰ CD13.19

¹⁵¹ CD13.20

¹⁵² OBJ/001/1.1 – OBJ/001/3.1

¹⁵³ OBJ/001/105

¹⁵⁴ CD12.1

¹⁵⁵ OBJ/062/1.1 – OBJ/062/3.3

together in the closing statement to the Inquiry made on their behalf, which forms the basis for this summary¹⁵⁶.

- 5.5 In order to justify the acquisition of M&S' interest, the AA has to present a compelling case in the public interest. This derives not only from a long line of case law, but also by the fact that compulsory acquisition represents an interference with M&S' human rights under Article 8 of the European Convention on Human Rights (ECHR) and Article 1 of Protocol 1. That interference in itself requires justification. All that is reflected in the provisions of the CPO Circular.
- 5.6 In that context, it is not the case that the AA has to establish that it would like to have the M&S interest, or that it would be useful to have it. It has to be shown that the public interest decisively demands that the M&S interest is acquired.
- 5.7 It is also the case that the AA must establish decisively that the whole of each and every interest it wishes to acquire is required, in the public interest. It is not enough to demonstrate that only part of an interest is required in order to acquire the whole. If it is the case that part of an interest sought by an AA is decisively required to be acquired in the public interest, then the SoS can only lawfully confirm that part of the Order, and not the whole.
- 5.8 In this case, the AA contends that the acquisition of the whole of M&S' interest in the M&S Store has to be acquired in order to deliver the Scheme, and through it, a qualitative improvement to the town centre of Croydon. The AA has fallen a long way short of establishing that it is necessary to acquire every single one of M&S' interests in the M&S Store as a whole, in order to achieve this objective.
- 5.9 The AA has founded its case upon the grant of outline planning permission dated 4 February 2014. That grant merely permits the refurbishment of the M&S Store¹⁵⁷. Refurbishment is a vague term. There is no detail contained within the outline planning permission, the attached conditions, or the associated planning obligation, as to what this means for the M&S Store. However, the grant of outline planning permission does not permit its demolition.
- 5.10 Thus, the case has to be made by the AA that compulsory acquisition of all of M&S' interest is decisively required in order to carry out works of refurbishment to the existing M&S Store.
- 5.11 Firstly it is contended that the acquisition of the entire M&S interest is necessary in order to include a refurbished M&S Store as the northern anchor in the scheme. However, it has not been established that it is necessary to have a northern anchor store in order for the scheme objectives to be achieved. The grant of outline planning permission does not require a northern anchor store to be provided. If the M&S Store was compulsorily purchased, there is nothing to prevent it being subdivided into a series of smaller units¹⁵⁸.

¹⁵⁶ OBJ/062/103

¹⁵⁷ Confirmed by Mr Rhodes in x-e

¹⁵⁸ Confirmed by Mr Rhodes in x-e

- 5.12 There is no evidence that it is necessary to have a northern anchor store tied into the Scheme in order for it to be viable. It was asserted in evidence¹⁵⁹ that if the M&S Store was not compulsorily acquired in its entirety 'CLP may not proceed' with the scheme as a whole. However, there is no evidence from CLP to that effect and it remains a bare assertion¹⁶⁰. Whilst it is no doubt commercially desirable for CLP to have a northern anchor tied into the scheme, the fact that something would be nice, does not prove that the public interest decisively demands that it should come about.
- 5.13 The position is that there is nothing that requires a northern anchor to be provided. As a matter of fact, there is no evidence that a northern anchor is required for the scheme to be viable. Its provision is not a pre-condition to any development agreement. In short, if the CPO is confirmed, there is nothing in place that would ensure the provision of an anchor store on the site of the M&S Store. Nor is there anything to demonstrate that the provision of an anchor store in that location is more likely than not. Secondly, it is contended that the acquisition of all of M&S' interests are required in order to undertake the works required to connect the M&S Store into the Scheme.
- 5.14 The AA has the statutory power to acquire rights to undertake works¹⁶¹. Indeed, it relies upon those powers as part of the broader CPO sought. In that context, it cannot be necessary to acquire all of M&S' interests in order to carry out works when an alternative means of carrying out those works is open to the AA which would not involve permanent acquisition. Even if there is a need to undertake works, those works can be achieved without the compulsory acquisition of all of M&S' interests.
- 5.15 In addition, the nature of the works which are said to be necessary is uncertain. The scheme has not been worked up in sufficient detail to be able to make reserved matters applications, let alone a specification of works¹⁶². Indeed, there are numerous issues with the various iterations of the scheme produced to date. For example, the RDTP¹⁶³ contains errors relating to the nature of the connection between the M&S Store and the Scheme. They also show the upper floor of a refurbished store at the same level throughout whereas the drawings the CLP Fire Officer was asked to review show an arrangement with a change in height across the entirety of the floor. Indeed, the drawings reviewed by the Fire Officer, appear to show works to the upper floor being undertaken over trading floor space on the floor below, which cannot be right. There is uncertainty, obviously¹⁶⁴.
- 5.16 M&S has been criticised for failing to bring a scheme for the M&S Store forward¹⁶⁵. However, uncertainties over the nature of the larger scheme are so great that neither M&S nor anyone else could bring forward a scheme of its own to tie into the larger scheme. The design of the larger scheme is not fixed. Indeed, CLP is currently unable to bring forward a finalised scheme for the

¹⁵⁹ Mr Owen in-c

¹⁶⁰ Mr Owen was unable to point to any such evidence in x-e

¹⁶¹ Confirmed by Mr Chase in evidence

¹⁶² Confirmed by Messrs Rhodes and Skelton in x-e

¹⁶³ LBC 4.2 Appendix 16

¹⁶⁴ As acknowledged by Mr Skelton in x-e

¹⁶⁵ LBC 2.1 Paragraph 8.50

M&S Unit. If CLP cannot do this then it is unreasonable to criticise M&S for being unable to do the same.

- 5.17 In any event, notwithstanding the uncertainty around the nature of the works, the works that the AA asserts give rise to a compelling case for acquisition of M&S' interests in their entirety are, in fact, only to the rear of the building and within the basement¹⁶⁶. When asked why the acquisition of the M&S freehold interest in the front of the store was necessary, no answer was forthcoming¹⁶⁷. The reason why is obvious – it is not necessary.
- 5.18 Thirdly, it is argued that acquisition of all of M&S' interests is necessary in order to ensure unity of ownership by CLP. This does not and cannot form a basis for a decisive requirement for compulsory purchase in the public interest. There is no evidence from CLP that it will not proceed with the Scheme if it does not own outright the M&S Store, just the assertion that it is possible¹⁶⁸. There is no evidence that a failure to acquire all of the M&S interests will render the scheme unviable.
- 5.19 Whilst there can be no doubt that acquisition of the M&S Store would be commercially desirable for CLP, compulsory purchase cannot be justifiably used to pass commercial advantage from one private company to another – that falls a long way short of establishing that there is a compelling case in the public interest.
- 5.20 Fourthly, it is argued that the CPO is needed in order to keep the pressure on M&S in the commercial negotiations underway outside the CPO process. It was explained¹⁶⁹ that if the threat of the CPO was removed, then CLP's negotiating position would be undermined. Again, what is being asserted is that a private company wishes to use the powers provided by the CPO process for its own commercial advantage. It would appear that the AA may have forgotten that it can only use compulsory purchase powers in pursuit of the public interest, not CLP's private interests.
- 5.21 The best way to examine whether it is necessary to acquire all of M&S' interests is to consider the position on the basis that the CPO is made against that which will prevail if it is not. By comparing those alternative scenarios, a judgement can properly be reached about whether there is a compelling case for acquisition of the entirety of M&S' interests.

If the CPO is Made

- 5.22 If negotiations result in a satisfactory resolution of M&S' objections, compulsory acquisition of its interests will not be required. It follows that compulsory purchase will only take place in circumstances where negotiations have failed.
- 5.23 In those circumstances, if the CPO was made, M&S would no longer have a right to occupy the M&S Store, no deal will have been done, and M&S would be lost to Croydon as no alternative location from which it could trade long term

¹⁶⁶ Explained by Mr Skelton in x-e

¹⁶⁷ Mr Burton x-e

¹⁶⁸ Mr Owen in x-e

¹⁶⁹ Mr Owen in evidence

has been identified. It was explained that M&S would not be prepared to trade from the Centrale Shopping Centre on a long term basis in the separate units that are the subject of discussions about temporary relocation¹⁷⁰.

- 5.24 In this scenario, one of the most important retailers in Croydon would be lost. Whilst M&S would seek to ensure continuity of employment for its staff, this could not be guaranteed.
- 5.25 M&S would vacate the M&S Store in any event because it has been made clear that it will not trade from the store during the construction of the scheme. That is because the scheme will result in numerous impacts that will make trading impractical.
- 5.26 In the absence of M&S, there is no evidence that anyone else would occupy the M&S Unit during the construction period. Indeed, given the scale of the impacts, the likely reduction in footfall, and the generally poor environment, it is unlikely that a significant retailer would be secured for the M&S Store for that period. The result would be that the M&S Store would not be occupied during the construction of the scheme. Thus, the whole rationale for retention of the M&S Store, to ensure continuity of trade, is shown to be misconceived.
- 5.27 Further, after refurbishment, it seems to be the case from the latest iteration of the scheme in the RDTP that the upper floor will be divided into two parts at different levels across the entire width of the store, resulting in a need for customers to change levels within the upper floor. The plans had not even considered the implications of the Equality Act 2010 on this.
- 5.28 This would result in a building compromised from a retailer's perspective; it certainly results in a building less attractive to modern retailing than a new build store which could be designed to have floors all at the same level and an optimal floor layout.
- 5.29 It is perfectly plain that it would be possible to secure a new store on the site of the existing M&S store which would provide for a better quality of retail experience than a refurbished store ever could. A refurbished store would not meet the public interest objective of the Scheme, to improve the retail offer of the town centre, as well as a new build store.
- 5.30 Further, it was confirmed that no discussions have taken place with any other anchor store operator to occupy a refurbished M&S Store¹⁷¹. There is then, no evidence of any interest in the occupation of a refurbished M&S Store by anyone else in the event the CPO was confirmed.
- 5.31 The result is that there is significant uncertainty about the nature of the retailing that might come forward within the M&S Store. There is no guarantee that if the CPO is confirmed that the M&S Store would be occupied as a northern anchor. There is no indication of who might occupy it if it did remain an anchor store. Further, if it were subdivided into smaller units, there is no indication of the nature of the retailer that might occupy it.

¹⁷⁰ Mr Line in evidence

¹⁷¹ Mr Burton x-e

- 5.32 On this basis, there is significant uncertainty as to the extent of the contribution to the objective of improving the quality of the retail offer that might result from confirming the CPO in respect of M&S' interests. That significant uncertainty must mean that it cannot reasonably be concluded that the contribution would be significant. Thus a compelling case in the public interest has not been made for the compulsory purchase of M&S' interests in their entirety.

If the CPO is not Made in Respect of the Entirety of M&S' Interests

- 5.33 It is of course for the AA to show that compulsory acquisition of all of the M&S interests included in the CPO is necessary. It is not for M&S to show that they are not. This has the result that it is for the AA to establish that there is a decisive requirement in the public interest for every element of the M&S interest to be acquired. M&S has tested a number of possible alternatives to acquisition of all of M&S' interests. Some may be more attractive than others.
- 5.34 It has been suggested¹⁷² that modification of the CPO so that only the occupational lease for the M&S Store remained would still achieve the public interest objectives of the Scheme. That is because if the occupational lease remained, there is a significant commercial incentive for both M&S and CLP to reach agreement on a way forward for the M&S Store.
- 5.35 M&S has explained that it would be to its commercial advantage to have a unit in place that ties into the Scheme. That is because it sees that the Scheme will increase footfall in the town centre and a store that ties into the Scheme could take advantage of that.
- 5.36 CLP was at pains to assert that it wants M&S to be a part of the Scheme¹⁷³. Indeed many of the AA's witnesses stressed that they fully expect negotiations with M&S to be successfully concluded for M&S to act as the northern anchor and provide a basis for other tenants to be secured.
- 5.37 However, M&S will not remain trading from the M&S Store during construction. On that basis, it makes no sense to pursue a refurbishment option for the store. Rather, a new build store option should be pursued. Indeed, that option has been the only basis of discussions between M&S and CLP since March 2014. A new build store would make for higher quality and would better achieve the scheme objective to improve the town centre retail offer.
- 5.38 There is a considerable commercial incentive upon the parties to reach agreement and there is no reason to suppose that, if the occupational lease was left in place, the parties would not reach an agreement. Indeed, there is a real incentive to reach that agreement on a timely basis to enable a new build scheme design to come forward at the same time as the scheme.
- 5.39 Planning permission for that option, or a variation of the existing scheme, should not prove difficult to obtain¹⁷⁴. Any agreement reached would address the rationalisation of rights and covenants¹⁷⁵ - this is commonly the case in

¹⁷² OBJ/062/3.3 Paragraph 3.4 ii

¹⁷³ Mr Burton in evidence

¹⁷⁴ Mr Rhodes x-e

¹⁷⁵ Mr Chase x-e

similar circumstances. The only suggestion that to leave any M&S interest in place would jeopardise the scheme was based on assertion¹⁷⁶. The point made was that without the threat of a confirmed CPO, M&S would not negotiate. However, the reality became apparent – it was not that M&S would not negotiate rather it was that CLP’s negotiating position would be weakened¹⁷⁷. In other words, CLP might not achieve the commercial terms it might if the CPO were confirmed.

- 5.40 Thus the AA’s case here is that the CPO should be confirmed in order to give one company a commercial advantage over another. In the absence of any evidence that the viability of the scheme as a whole rests on CLP being able to maintain that advantage, it cannot form the basis for an argument that there is a compelling case in the public interest for the acquisition of all of M&S’ interests. The CPO process does not exist to facilitate a commercial advantage for one private company over another.
- 5.41 The fact that agreement with M&S has not been reached even after a protracted period does not indicate that agreement might not be reached. It might be postulated that agreement has not been reached because the party with the benefit of CPO powers is yet to make an offer that is commercially acceptable rather than assume that it is the party subject to compulsory acquisition that is preventing agreement – there is no evidence either way on this issue. The point is that the mere presence of a delay does not mean that agreement might not be reached unless the threat of CPO is maintained – there are many other possible reasons why agreement may not have been reached.
- 5.42 If the CPO was modified to allow M&S’ occupational lease to remain, the only possible conclusion is that agreement with M&S would be reached. It might be reached on terms less commercially favourable for CLP than might otherwise be the case, but that is of no consequence for the public interest. In this way, a new store would come forward on the site of the existing M&S Store. Not only that, but because M&S retained an interest in the land, the Scheme would immediately get its northern anchor.
- 5.43 On this basis, it is apparent that to modify the CPO so as to enable M&S to retain its occupational leases would better achieve the objective of improving the quality of the retail offer in Croydon town centre than the acquisition of the whole of the M&S interest.

Conclusion

- 5.44 For these reasons, there is no compelling case in the public interest to underpin the compulsory acquisition of the M&S interest. The CPO should not be confirmed in respect of these interests or, in the alternative, the CPO should only be confirmed in respects of M&S’ interests, excluding the occupational ease.

¹⁷⁶ Mr Owen x-e

¹⁷⁷ Mr Owen x-e

Sainsbury's Supermarkets Ltd (Sainsbury's) (OBJ/003)

- 5.45 Sainsbury's provided evidence in advance of the event¹⁷⁸. However, their appearance at the Inquiry was brief and limited to a little cross-examination¹⁷⁹. Despite having reserved a place in the programme, their evidence was not presented to the Inquiry, witnesses were not made available for cross-examination, and no closing statement was made. The case presented on their behalf needs to be seen in that light.
- 5.46 Sainsbury's currently operate from an existing store in the Whitgift Centre, occupied on a leasehold basis of 25 years from 20 July 2002.
- 5.47 There are two main strands to the objection. The first relates to relocation options both temporary, and permanent. There is a clear need for a mid-sized supermarket in Croydon town centre as can be demonstrated by the strong trading performance of the existing Sainsbury's store with its 35,000 weekly customers who purchase a substantially wider range of products than that provided in a standard convenience store.
- 5.48 The latest phasing programme suggests that Sainsbury's would need to occupy alternative accommodation for a period of 34 months – a considerable period. However, the temporary relocation unit in the Centrale Shopping Centre, offered by the AA is not a viable option. It would be smaller in size than the existing store, thus reducing the range of available goods, and have significantly reduced footfall due to the nature of the access to the basement location, and the limited offer provided by adjoining units.
- 5.49 Sainsbury's is keen to ensure that they can remain in their existing store for as long as possible and occupy (suitable) temporary accommodation for as short a time as possible. Moreover, once plans have been finalised for the redeveloped shopping centre, Sainsbury's wishes to be offered a suitable unit therein that will provide at least the same size accommodation, in a location with higher levels of footfall, and with appropriate access for servicing.
- 5.50 There are also concerns about the way in which the CPO has been pursued. A CPO can be made where it is in the public interest, but it must be a last resort. The interference with private rights should be minimised as far as possible and steps must be taken to ensure that as little disruption as possible is caused to business and their ability to meet public needs.
- 5.51 The AA has not attempted to negotiate terms which would allow Sainsbury's continued occupation of their existing unit in the Whitgift Centre for the duration of the works, or failing that for as long as possible, been unable or unwilling to provide a suitable alternative unit for the duration of the works, or provided comfort that a suitable relocation package in the new shopping centre can be agreed.
- 5.52 By not entering these discussions in an effective manner, there has been no proper attempt to minimise the interference with the private rights of Sainsbury's and as a consequence, it has not been demonstrated that the CPO

¹⁷⁸ OBJ/003/1.1 to 1.3 and 2.1 to 2.3

¹⁷⁹ Of Mr Burton

is justified as a last resort. The required compelling case in the public interest, set out in the CPO Circular, has not been demonstrated.

Minerva (Stores) Ltd, Minerva (Finance) Ltd, Park Place Limited Partnership and Croydon Plaza Ltd (Minerva) (OBJ/056)

- 5.53 Minerva provided evidence in advance of the event¹⁸⁰. However, they did not appear at the Inquiry so their evidence was not presented, witnesses were not made available for cross-examination, and no closing statement was made. The case presented on their behalf needs to be seen in that light.
- 5.54 Minerva's Croydon Estate comprises approximately 2.47 hectares divided into two land holdings, separated by George Street. On the south side of George Street Minerva owns the Croydon Centre, which comprises retail and office accommodation with ancillary parking¹⁸¹.
- 5.55 Minerva's estate to the north of George Street, in its entirety, falls within the Order Lands¹⁸². Plot 69 relates to Nos.17 and 19 Dingwall Avenue, in which Minerva holds the freehold interest, part of the former Alders Department Store. Plot 70 is London House, a vacant 1960s office block in which Minerva has a freehold interest held by Croydon Plaza Ltd. Plot 71 is Focus House another 1960s office building where Minerva has a short-term freehold interest held by Park Place Limited Partnership. Plot 74 covers part of the former Alders Department Store in which Minerva holds three separate leasehold interests. Plot 75 encompasses Nos.20-30 North End (even) where Minerva holds a leasehold interest while it enjoys a freehold interest in Plot 76, Nos.4-18 North End, another part of the former Alders Department Store.
- 5.56 It can be seen that the majority of Minerva's interests are held within the former Alders Department Store (Plots 69, 74, 75 and 76). The freehold is held by Minerva (Stores) Ltd and the leaseholds by Minerva (Finance) Ltd. In addition Minerva has potential rights of light over some of the Order Lands for the benefit of all its plots, as well as Nos.20-28 George Street.
- 5.57 Minerva's objection to the CPO takes a number of strands. There is no wish to stand in the way of a scheme which includes for a JLP anchor store. It is clear that the scheme has been designed on the basis that JLP would fulfil that anchor function. None of the other potential department store operators would create the sort of demand and footfall necessary to underpin a development scheme of the scale proposed.
- 5.58 However, having regard to the studies produced on their behalf by Deloitte LLP the promoters of the scheme have not shown that it is viable, with or without JLP¹⁸³. In simple terms, the Council and CLP have not shown that there is a reasonable prospect of the scheme proceeding, because there is no formal commitment from JLP, and no convincing evidence that it is viable with, or without, JLP.

¹⁸⁰ OBJ/056/1.1 to 1.2, 2.1 to 2.3, 3.1 to 3.4 and 4.1 to 4.3

¹⁸¹ OBJ/056/3.3 Appendix T.J.E.1

¹⁸² OBJ/056/3.3 Appendix T.J.E.2 –Title Plan

¹⁸³ OBJ/056/1.2 refers

- 5.59 If JLP do not commit to the scheme, and there is no convincing evidence to show that they will, or the scheme does not proceed for other reasons, then the approach to the development of the area will have to be very different, and incremental in nature. This is borne out in the OAPF¹⁸⁴ which specifically recognises that in the event a comprehensive scheme is not delivered in a reasonable timescale, an incremental approach may have to be pursued.
- 5.60 Minerva has considered alternative approaches which could deliver the Council's regeneration objectives, in that scenario. These are illustrated in the evidence presented¹⁸⁵. However, there is no compelling need to acquire Minerva's interests to facilitate the currently pursued comprehensive, or the alternative incremental, approach. Minerva could be allowed to retain its freehold interests in the Order Land in either scenario because it is prepared, in principle, to grant from these interests, a 250 year lease to the developer, in a similar way to that which is envisaged as coming forward from the Whitgift Foundation. Regrettably, the Council and CLP have failed to engage with Minerva on that prospect.
- 5.61 Bringing all those points together, the compelling case necessary to justify confirmation of the CPO has not been demonstrated.

Bouwfonds European Real Estate Parking Fund Croydon S.A.R.L. – Whitgift Car Park, Bouwfonds Real Estate Parking Fund Croydon S.A.R.L. – Alders Car Park and Bouwfonds IM Financial Services B.V. – Whitgift and Alders Car Parks (Bouwfonds) (OBJ/057, OBJ/059 & OBJ/60)

- 5.62 Evidence was submitted on behalf of Bouwfonds in advance of the Inquiry and this was supplemented in the course of the event with further evidence and submissions¹⁸⁶. However, Bouwfonds did not appear at the Inquiry to present the evidence or submissions made on their behalf so it could not be tested under cross-examination. There was no closing statement. Their sustained objection to the CPO needs to be considered in that light.
- 5.63 Bouwfonds have a leasehold interest in the Alders multi-storey car park (part of Plots 72 and 73) and another leasehold interest in the Whitgift multi-storey car park (Plot 1). The former provides about 583 car parking spaces on 13 levels and is located at the south-east corner of the shopping centre with vehicular access and egress on to Dingwall Avenue. The latter contains around 1,059 spaces over 6 levels and lies at the north-east corner of the shopping centre with vehicular entry from Wellesley Road and exit to Poplar Walk.
- 5.64 Bouwfonds' lease on the Whitgift car park is protected under the Landlord and Tenant Act 1954 and runs to 20 December 2067. The car park is sub-let to National Car Parks Ltd (NCP) on a contracted out lease that expires at the end of March 2035. The lease on the Alders car park expires on 30 March 2022 and there is a contracted out sub-let to NCP that expires on 3 December 2035.

¹⁸⁴ CD 4.8

¹⁸⁵ OBJ/056/2.3

¹⁸⁶ OBJ/057/1.1-1.4 and OBJ/057/101-103

- 5.65 The objections raised by Bouwfonds are wide-ranging in their compass and covered in detail in their submissions to the Inquiry. They can be gathered under a series of headings and summarised as follows.
- 5.66 In the first instance, no compelling case in the public interest has been made for the compulsory acquisition of Bouwfonds' interest in the Whitgift car park, when the reduction in capacity proposed, which is a questionable strategy in any event, given viability constraints, and the refurbishment and upgrade said to be necessary, could be achieved with the current Operator in place. There is no good reason either why the current Operator could not continue in their management of the facility.
- 5.67 A similar issue arises with the Allders car park. This is proposed for demolition as part of the latest proposals¹⁸⁷ in order to accommodate the main anchor unit. However, this is an inefficient approach, in particular when the viability of the scheme is very much open to question, and a suitable occupier has not been found for the main anchor unit. It has not been demonstrated that another position on the site would be just as, or even more, suitable for the location of the anchor unit. In that context, the justification provided for the compulsory acquisition of Bouwfonds' interest in the Allders car park is weak.
- 5.68 Secondly, compulsory purchase powers should be used as a last resort. In this case, there are alternative means available to the promoter. A significant element of the existing Whitgift car park will be retained as part of the scheme. It has not been shown that demolition of the Allders car park is necessary or desirable. Bouwfonds has offered to consent to an agreement to assign the NCP leases in both car parks to CLP and NCP is content with that. There is no reason why the car parks could not serve the development, or a variation of the development currently proposed, under the management of NCP. That offers a way forward that does not involve compulsory purchase.
- 5.69 Thirdly, the evidence provided by the promoter falls well short of what is required. The Deloitte Reports¹⁸⁸ do not demonstrate that the scheme is viable and this has clearly been an issue that has borne heavily on the grant of outline planning permission, in terms of the provision of affordable housing, in particular. In that questionable context, it is difficult to see how compulsory purchase of Bouwfonds' interests can be justified.
- 5.70 The Agreement under Section 106 attached to the grant of outline planning permission and the ILTA have been considered in detail. Both are in breach of state aid and best consideration requirements. As such, there is the likelihood of challenges to the scheme which act as a significant impediment on delivery.
- 5.71 Finally, the scheme would breach Bouwfonds' rights under Article 1 of the First Protocol to the ECHR, the right of property. There is no justification for the proposed CPO. If the AA has given careful consideration to the fair balance to be struck between individual rights and the wider public interest, it would have engaged better in exploring meaningful alternatives to the CPO. The lack of any such engagement shows that the fair balance necessary has not been struck.

¹⁸⁷ LBC 4.2 Appendix 16

¹⁸⁸ LBC 6.2

- 5.72 All in all, it is Bouwfonds' position that the CPO should not be confirmed or that if it is, their interests in the Whitgift and Allders car parks should be removed from it.

Rush Hairdressers (OBJ/089)

- 5.73 Objections to the CPO were submitted on behalf of Mr Stelos Andrew t/a Rush Hairdressers, Health and Beauty as freeholder and occupier of Nos.23, 23a and 25a George Street, Croydon (Plot Nos.60, 61 and 62) and expanded upon at the Inquiry¹⁸⁹.
- 5.74 There is no intention to frustrate the CPO but, concerns remain. These can be summarised as a concern that the rights sought from the Objector are non-specific and wide-ranging, the lack of meaningful negotiations, doubts about the process given the failure of the Park Place scheme, and worries about the transport elements. It is imperative that if the CPO is confirmed Notice to Treat and General Vesting procedures are implemented quickly to avoid blight.

National Westminster Bank Plc (OBJ/024)

- 5.75 National Westminster Bank Plc occupies Units 40-44 in the existing Whitgift Centre and raised objection to the CPO in evidence presented to the Inquiry¹⁹⁰. However, in the course of the Inquiry, terms were agreed with CLP that allowed those objections to the CPO to be withdrawn in their entirety¹⁹¹. In that context, there is no need to address these further.

W H Smith Retail Holdings Ltd (WH Smith) (OBJ/035)

- 5.76 Evidence was provided on behalf of W H Smith in advance of the event¹⁹². However, they did not appear at the Inquiry so their evidence was not presented, their witness was not made available for cross-examination, and no closing statement was made. The case presented on their behalf needs to be seen in that light.
- 5.77 W H Smith currently occupy, as one unit, Units 135-137 and 1135-1137 Whitgift Centre, and 34 North End, under two leases. The store has traded successfully in this configuration since October 1994. The store is W H Smith's 6th largest trading in the UK and is the 8th largest in terms of sales out of 604 (as at Financial Year ending August 2014).
- 5.78 The W H Smith objection is multi-faceted. In the first instance, concerns are raised over the fact that only the part of their unit within the existing Whitgift Centre is covered by the CPO. The rump, at 34 North End, would be too small to operate sensibly from and access to, and from, the Whitgift Centre would be lost. The existing means of escape and service access is over land included in the CPO. Altogether, that means W H Smith could not continue to operate and relocation would become necessary, in the short term.

¹⁸⁹ OBJ/089/101

¹⁹⁰ OBJ/024/1.1 and OBJ/024/101

¹⁹¹ CD12.2

¹⁹² OBJ/035/1.1 to 1.4

- 5.79 To avoid a complete and damaging break in trade, temporary premises would be necessary for the duration of the development works. The latest situation is that proposals have been put forward by the AA but no commercially acceptable financial terms to acquire the W H Smith interest have been proposed, and there is a concern that no suitable temporary accommodation will come forward in time to ensure continuity of trade.
- 5.80 The CPO Circular encourages AAs to continue to negotiate with objectors after submitting an Order for confirmation. The only real efforts to negotiate are coming from W H Smith. On that basis, there is no compelling case in the public interest to justify interfering with WH Smith's rights under the ECHR.

Uncle Lim's Kitchen (OBJ/041)

- 5.81 Uncle Lim's Kitchen operates as an authentic Malaysian kitchen from Units 1123-1124 in the existing Whitgift Centre. The regeneration of Croydon is supported but the uncertainty around relocation for the duration of the construction work, and questions about whether there will be space in the new shopping centre for independent operators, makes matters difficult and leads to real concerns about the future of the business.
- 5.82 To that end, it would be helpful if some reassurance could be given about the potential for temporary premises to be made available in the short-term, and for assistance in relocating to the new Food Court¹⁹³.

Other Objectors

- 5.83 **The Coral Group of Companies (Coral) (OBJ/078)** did not appear at the Inquiry but made written submissions to it¹⁹⁴. Coral occupy Plot 63 of the Order Lands and objects on the basis that the proposed new rights sought are disproportionate and not underpinned by a compelling case. In particular, the loss of the rear fire exit will lead to an inability to operate and a consequential impact on the Town Centre. No enforceable undertaking has been put forward to deal with that difficulty. There are concerns too about the crane oversail rights and rights of access sought which are felt to be unjustified.
- 5.84 **Specsavers Optical Superstores Ltd (Specsavers) (OBJ/136)** did not appear at the Inquiry but made written submissions to it¹⁹⁵. Specsavers occupy Plot 40 of the Order Lands and objects to the CPO on the basis that the rights sought within it are over extensive. No compelling case for acquiring those rights has been demonstrated. In particular, there is an objection to the loss of their fire escape which will mean that the store cannot operate. There is no enforceable undertaking that would remedy this difficulty. The result would be detrimental to the Town Centre.
- 5.85 **TSB Bank Plc (TSB) (OBJ/118)** occupies Plot 37 of the Order Lands. They did not appear at the Inquiry but made a written submission to it¹⁹⁶. An objection is raised to the loss of a fire exit and the exposure of the existing boundary wall to the north of Plot 37. Without a fire escape, TSB will not be able to

¹⁹³ OBJ/041/101 and OBJ/041/102

¹⁹⁴ OBJ/078/101 and OBJ/078/102

¹⁹⁵ OBJ/136/101 and OBJ/136/102

¹⁹⁶ OBJ/118/101

operate. No enforceable undertaking has been put forward to deal with this difficulty and the loss of TSB will be detrimental to the Town Centre, as will an empty unit. All this would be easy to resolve, but the Council has failed to take steps to do so.

Other Objectors

- 5.86 There remain many more objections to the CPO from parties who did not appear at the Inquiry, or make submissions to it beyond their letters of objection. Details of these are set out in the various letters and submissions made in response to the CPO and in the course of the Inquiry¹⁹⁷. There are a number of themes common to those rehearsed by objectors who appeared at and made submissions to the Inquiry.
- 5.87 In brief, these include points about the lack of justification for the Scheme or the CPO because the existing Whitgift Centre is fit for purpose; the failure to show that the Scheme is financially viable or that it will actually come forward; uncertainty about the planning position given ongoing Court proceedings; the lack of an identified anchor tenant; the failure of the AA to negotiate meaningfully before opting for CPO; the lack of alternative accommodation for the duration of the works; no guarantees that accommodation in the Scheme will be provided for those whose property interests will have been compulsorily acquired; disruption to the town centre during what will be complex construction works; and the loss of existing retail employment for the duration of the works. In simple terms, it is felt that the interference with rights enjoyed by virtue of the ECHR would be disproportionate.

6. Other Submissions in opposition to the CPO

- 6.1 **Susan Oliver**, a local resident made a series of points of objection that are set out in full in her statements to the Inquiry¹⁹⁸. In summary, it was suggested that the Scheme, because of its sheer scale, and its location in a major metropolitan centre, would be incredibly disruptive and would undermine the ability of many people to enjoy Central Croydon for a significant period. There would be an attendant effect on trade.
- 6.2 The Scheme would replace a facility (the Existing Whitgift Shopping Centre) that is well-used and held in high regard by Croydon residents with a centre that would aim at 'gentrification' and, consequently, not fit in. Many of the traders in the existing Whitgift Shopping Centre are local, and they would be marginalised by the plans.
- 6.3 **Andrew Kennedy**, a local resident made a presentation to the Inquiry¹⁹⁹ which explored some of the architectural decisions around façade retention visited on Croydon in the past. A plea was made for the Scheme to exhibit a better, more sympathetic approach to the existing buildings to be retained as part of it.

¹⁹⁷ CD 10.1 to CD 10.135 but note those withdrawn (CD 12.1 to CD 12.22) and OBJ/136/101 and OBJ/136/102

¹⁹⁸ OBJ/SO/101 and OBJ/SO/102

¹⁹⁹ OBJ/AK/101

- 6.4 **Sean Creighton**, a local resident made a significant contribution to the Inquiry and put forward a series of reasons why the CPO should be rejected. These are set out fully in the written submissions provided²⁰⁰. In summary, the CPO is said to be flawed because the grant of outline planning permission prevents proper democratic assessment of the scheme which will come forward through reserved matters. The CPO is highly partial, and an infringement of the human rights of businesses and the people of Croydon, with the ultimate beneficiaries being CLP and the Whitgift Foundation. Linked to that, the Inquiry has been denied the opportunity to properly scrutinise the evidence because the Whitgift Foundation failed to appear at it.
- 6.5 The suggested benefits of the scheme are at a very low level and would deliver little for the people of Croydon. A very narrow view has been taken as to the form of redevelopment favoured by the OAPF and there has been a failure by the Council to explore with others, whether a different approach could have been taken. The scheme will not produce a vibrant retail core and will provide no major new leisure attraction that can appeal to a cross-section of people. A significant number of the new retail outlets will be 'high-end' which will not meet the needs of Croydonians. The scheme will fail to link other parts of the town centre and the Opportunity Area to complement the existing retail offer and create a wider town centre that people will wish to use. The Scheme will stand apart.
- 6.6 A number of modifications are suggested to the CPO to deal with reserved matters, a District Energy System, the operations of JLP, the lot of construction workers, to address the human rights of M&S and their staff, and other affected traders, and to secure redesign of parts of the Scheme and the housing and affordable housing elements in particular.

7. Inspector's Conclusions

- 7.1 Paragraph 17 of the CPO Circular states that a compulsory purchase order should only be made where there is a compelling case in the public interest. An AA should be sure that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the ECHR, as incorporated by the Human Rights Act 1998.
- 7.2 Paragraph 16 of Appendix A to the CPO Circular sets out a series of factors that the SoS can be expected to consider in the context of a CPO promulgated under Section 226(1)(a) of the 1990 Act. I have used these factors to provide a structure for these conclusions.

Whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area

- 7.3 On 10 March 2015, the Mayor of London adopted FALP and it became operative as formal alterations to the LP²⁰¹. Together with the Croydon

²⁰⁰ OBJ/SC/101, OBJ/SC/102 and OBJ/SC/103

²⁰¹ CD4.4

LP(SP)²⁰², and the saved policies of the Croydon Replacement Unitary Development Plan 2006²⁰³, it forms the development plan for the area. There is also the OAPF²⁰⁴ which is supplementary guidance to the LP, adopted by the LB Croydon as a Supplementary Planning Document, setting out a strategy for the Croydon Opportunity Area, to consider, along with, at a higher strategic level, the NPPF²⁰⁵.

- 7.4 It is fair to observe at the outset that there was no substantive argument put forward, in written submissions, or at the Inquiry, to suggest that the Scheme, which the CPO is intended to facilitate, is in anything but full accordance with the adopted planning framework for the area.
- 7.5 Starting at the highest strategic level, the Framework supports the vitality of town centres and requires that retail, leisure, and other town centre needs be met in full. LPAs are encouraged to generate a positive strategy for their town centres. There has been a co-ordinated approach between the Mayor of London and the Council to secure that and there is in place a framework of statutory and supplementary strategic and local policy which supports large scale change in Croydon Town Centre and this regeneration is considered to be a matter of regional significance.
- 7.6 FALP²⁰⁶ recognises the status of Croydon as London's largest 'Metropolitan' town centre and promotes its regeneration and re-branding as evidence of the scale of investment and change which is necessary. Specific reference is made to the Whitgift redevelopment. This is underlined in the OAPF where the Mayor's introduction explains '*Croydon Metropolitan Centre (CMC) is set for major transformation. Its success is crucial to the economy of South London. Croydon has suffered economic decline in relation to its competitors, and has not benefitted significantly from the two development booms over the same period. The scale and range of possible sites for redevelopment show enormous potential for transformation and improvement*'. The aspiration of the OAPF is that the town centre of Croydon will be transformed into a leading 21st Century destination.
- 7.7 The OAPF identifies the Order Lands for a retail-led, mixed-use development including residential, leisure space, and amenity space²⁰⁷ and also advocates a series of retail outcomes including: improvements to the town centre's status as a major retail location, substantial improvements to the qualitative offer of retail space to meet the current requirements of retailers and the aspirations of shoppers and the development of a new, quality, full-range department store, located to provide a joined up and comprehensive retail circuit²⁰⁸.
- 7.8 Whatever, one might think about the outcome of such an approach, a matter I turn to below, there can be no question that the Scheme fully accords with the OAPF, FALP, and, as a result, the NPPF. There is also compliance with LP(SP)

²⁰² CD4.5

²⁰³ CD4.7

²⁰⁴ CD 4.8

²⁰⁵ CD 4.1

²⁰⁶ CD 4.4 Annex 1

²⁰⁷ CD 4.8 Figure 4.6 Page 34

²⁰⁸ CD 4.8 Paragraph 4.14 Page 29

Policy SP3.1 that encourages investment to support enterprise and increased employment and Policy SP3.9 that identifies CMC as the principal location in the Borough for office, retail, and cultural activity. Similarly, there is accord with LP(SP) Policy SP3.12 that looks favourably upon net increases to the stock of retail premises to foster vitality and viability in the CMC.

- 7.9 On a more detailed level, the Scheme would deliver a significant number (400 to 600) of new homes in the CMC which will contribute to the annual target of 1,435 new homes, of which about a third is envisaged for delivery in the CMC, in accordance with FALP Policies 3.3 and 3.4 that, like LP(SP) Policy SP2.1 seek to optimise the supply of housing. The affordable housing element proposed complies with FALP Policies 3.11 and 3.12, and LP(SP) Policy SP2.4.
- 7.10 In heritage terms, subject to the reserved matters, the Scheme is very likely to enhance both the settings of the nearby listed buildings, and the character and appearance of the conservation area in line with the statutory provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990, and the approach of the NPPF²⁰⁹.
- 7.11 On the basis of the mitigation that will be secured through the S.106 Agreement, and Section 278 works, the Scheme will have no unacceptable impacts on the highway or public transport networks.
- 7.12 All in all, there can be no doubt whatsoever that the Scheme, which is the purpose for which the land is being acquired, fits in with the adopted planning framework for the area. **[3.4, 3.14-3.16, 3.114, 3.128, and 6.1-6.2]**

The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social, or environmental well-being of the area

- 7.13 Again, it is correct to record at the outset that there was no substantive argument put forward by any statutory objector alleging that the Scheme, which the CPO is intended to facilitate, would not contribute to the achievement of the promotion or improvement of the economic, social, or environmental well-being of the area. Having said that, representations were made by a number of local residents to that effect.
- 7.14 There are a number of angles to those representations. In the first instance, I agree entirely that it is imperative for the environmental well-being of the area that the detailed design of the Scheme does not repeat errors that have been perpetrated in the past, particularly around the treatment of retained buildings and facades. However, the evident care and attention that has been paid to the Scheme on a conceptual level²¹⁰, the Design Guidelines²¹¹, and the Design and Access Statement²¹², give me every confidence that, through the reserved matters process, the Scheme will bring significant enhancement to Croydon town centre generally, the settings of the nearby listed buildings, and both the character and appearance of the conservation area.

²⁰⁹ CD 7.7 refers

²¹⁰ As set out in the evidence of Mr Allies

²¹¹ CD 7.3

²¹² CD 7.4

- 7.15 Criticism was made of the reserved matters process but, with respect, that is based on a misunderstanding. It is perfectly normal for planning permission for large development proposals like the Scheme to be granted in outline, with detailed design addressed through reserved matters. Applications for approval of reserved matters are not clandestine attempts to evade scrutiny. Such applications are made to the LPA, publicised like any other, and open to comment by interested parties. Thus, if elements of the detailed design come forward that a local resident takes issue with, they can make their feelings known and the LPA, in making their decision whether to grant approval, will need to take such representations into account.
- 7.16 In that context, there can be no doubt, in my view, that through that process, the Scheme will contribute to the achievement of the environmental well-being of the area.
- 7.17 Another criticism has been the suggestion that the Scheme would have a negative effect on the economic and social well-being of the area as a result of the 'gentrification' it would bring to the centre of Croydon. My visits to the shopping centres at Westfield London and Westfield Stratford City demonstrated to me that the Scheme would be likely to lead to a significant change from what one currently experiences in the existing Whitgift Centre, and Croydon town centre generally.
- 7.18 I can appreciate that if the Scheme proceeds, some people will find that the changed environment created is not to their taste. However, it seems to me that the forum for a philosophical debate about the future of Croydon town centre was through the evolution of policy, in the FALP, the LP(SP) and the OAPF. That debate has already taken place. Similarly, if the Scheme was felt to be wanting in terms of the impact it would have on the character of the town centre, then the time for that discussion was when the application for outline planning permission was under consideration. That opportunity has passed, and outline planning permission has been granted for the Scheme. The policy background has been arrived at in a proper, transparent fashion and outline permission was granted largely because the Scheme accorded with that policy background. Indeed, the applicants consulted widely on the Scheme and the responses were, in the main positive²¹³.
- 7.19 It is not for the decision-maker, in considering whether to confirm a CPO, to reopen those debates. It is abundantly clear that the Scheme will contribute to the achievement of the economic and social well-being of the area in the manner that the policy background envisages. It is relevant to note that this is the view too of many of those who have written in support. **[3.7, 3.17, 3.109-3.113, 4.1-4.16 and 6.1-6.6]**

The potential financial viability of the scheme for which the land is being acquired

- 7.20 Paragraph 16(iii) of Annex A to the CPO Circular sets out that a general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the SoS that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial

²¹³ CD 7.9 refers

viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be.

- 7.21 Questions around this matter formed the major basis of the objections made by the Whitgift Trust, since withdrawn. Others have raised the matter too. The central point of this line of objection emanates from the suggestion in Deloitte's first Draft Viability Assessment of October 2013²¹⁴ that *'The summary appraisal sheet currently shows a significant deficit between scheme values and costs such that CLP's required return on income is not reached'*.
- 7.22 When Deloitte looked again at the Scheme in March 2014²¹⁵ the conclusion was reached that *'In our view the profit on cost and development yield the appraisal shows are lower than a developer whose sole motivation is to carry out the development and then sell in order to receive the developer's profit would wish to achieve'*.
- 7.23 The Viability Review conducted by Deloitte in January 2015²¹⁶ concluded *'The profit on cost and development yield the Current Appraisal shows are lower than a speculative developer (whose sole motivation is to carry out the development and then sell in order to receive the developer's profit) would be likely to accept'*.
- 7.24 All this has been used by various objectors to bolster suggestions that the Scheme is not viable in any conventional sense and that it may well not come forward as a result. However, it is important to set those statements made by Deloitte in their proper context. They cannot be read in isolation.
- 7.25 In the March 2014 report²¹⁷, Deloitte said *'However, as noted above, we understand CLP is not intending to sell at completion, but to retain some element of ownership and management control that will allow it to capture future value and therefore potentially achieve better returns in the medium to long term. It is also clear that CLP attaches value to the opportunity to develop and own what it expects to be the premier shopping centre in south London, which should also enhance the attractiveness and value of Centrale, which it also owns. That opportunity could not be achieved by other means'*.
- 7.26 In the January 2015 review, Deloitte reaffirmed that position²¹⁸ and went on to note that *'In addition, CLP has also advised that its intention is to fund the Scheme with internal equity, which reduces the pressure to secure a high proportion of pre-lets which would typically be a condition for external debt funding'* and *'CLP has maintained a clear commitment to the Scheme, evidenced by both the professional fees and resources it has continued to commit and also the work it has undertaken to refine the Scheme's internal layout'*. The review concludes²¹⁹ *'we are satisfied that CLP has demonstrated progress over the last 9 months and it remains our view that financial viability does not give rise to an impediment to the delivery of the Scheme by CLP. We*

²¹⁴ LBC 6.2 Appendix RA02 Paragraph 5.1

²¹⁵ LBC 6.2 Appendix RA03 Paragraph 5.54

²¹⁶ LBC 6.2 Appendix RA04 Paragraph 5.3

²¹⁷ LBC 6.2 Appendix RA03 Paragraph 5.55

²¹⁸ LBC 6.2 Appendix RA04 Paragraph 5.4 to 5.6

²¹⁹ LBC 6.2 Appendix RA04 Paragraph 5.7

therefore consider that there is a reasonable prospect of the Scheme proceeding, should the CPO be confirmed'.

- 7.27 It is evident therefore that far from casting doubt over the viability of the Scheme, having had access to the detailed financial data, Deloitte are confident that it will come forward. The detailed financial data was not disclosed to the Inquiry on the basis that it is commercially confidential. Unlike some, I see no real difficulty with that. The central question for the decision-maker in considering whether to confirm the CPO is not whether the Scheme is viable, but whether there is a reasonable prospect that it will come forward?
- 7.28 While of course, there are always wider economic issues at play, and for a project of the scale proposed those go beyond local, and even national factors, it is abundantly clear from the evidence put forward by the AA that as things stand, CLP intends to implement the Scheme, if the CPO is confirmed. I fail to see why companies of the stature of Hammerson and Westfield would invest the sorts of sums they have in a project that they did not intend to see through to completion.
- 7.29 It has been suggested too that the Scheme will falter without JLP as the anchor tenant. It is clear that discussions are well underway with JLP to the extent that the anchor store shown on the RDTP has been designed to meet their requirements. JLP have an existing relationship with Hammerson and Westfield and despite their existing presence in Croydon, in an out of town unit on Purley Way, JLP do not envisage any obvious difficulty with taking a prominent role in the Scheme.
- 7.30 However, even if JLP choose not to take their place as anchor tenant, there is no good evidence to suggest that their absence would deal a fatal blow to the Scheme. There are several other potential candidates for the anchor store as was set out in evidence by the AA.
- 7.31 Taking all those points together, the matter of assessing whether the scheme is financially viable is not the determining question in deciding whether to confirm the CPO. On the basis of the evidence put forward, there is, at the very least, a reasonable prospect that the Scheme will come forward. **[3.18-3.32, 3.127, 5.66-5.67, 5.69 and 5.87]**

Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means

- 7.32 In simple terms, the objection made by Minerva is based on the premise that the regeneration of Croydon town centre could be secured in an incremental fashion rather than the comprehensive approach integral to the Scheme. It is suggested that this sort of approach will, in reality, be necessary because there is no surety about the position of JLP as anchor tenant.
- 7.33 In the first instance, the position with JLP is more promising than Minerva suggest and in any event, the AA has been very clear that there are alternatives to JLP as anchor tenant. Consequently, the incremental approach Minerva favour, which would allow their interests to remain intact, while acknowledged in the OAPF, appears unlikely to be necessary.
- 7.34 That in my view is no bad thing. Incremental approaches like Park Place and Bishops Court 2 have failed in the past and the difficulties running through the

sketch proposals advanced by Minerva to bolster their objection amply demonstrate that. Allowing Minerva to retain their interests would give them leverage that would make necessary amendments to the Scheme that would very likely frustrate its progress. **[3.33-3.34, 3.37, 3.105-3.108 and 5.53-5.61]**

- 7.35 There are similar issues with the Bouwfonds objection. It is suggested that the Allders Car Park could be retained as part of a scheme, under their control, and that they could also retain the Whitgift Car Park to serve the Scheme. However, the area occupied by the Allders Car Park is where the main anchor store is situated in the Scheme. The AA has demonstrated that this is the optimum location for the main anchor store, in urban design terms and on that basis, there is no sensible way in which the Allders Car Park could be retained as part of a scheme.
- 7.36 In terms of the Whitgift Car Park, this is largely retained as part of the Scheme. However, it was very clear from my visits to the Westfield London and Westfield Stratford City Shopping Centres that car parking is taken very seriously by the operators, as part of the overall visitor experience. The ease with which arrival and departure is facilitated, the way in which arrivals are directed to available parking spaces, the pay-stations, and the pleasant, secure, well-lit, environment, with clear signage, set a standard way beyond the usual multi-storey car park experience. To ensure that standard is attained as part of the Scheme, it is clear that CLP would need to have direct control of the car parking facilities. Allowing Bouwfonds to retain their interest in the Whitgift Car Park would undermine that and could, potentially, frustrate delivery of the Scheme. **[3.102-3.103, 5.63-5.68]**
- 7.37 The M&S objection is in a similar vein but much more comprehensive in its presentation. Unlike that of Minerva, and Bouwfonds, M&S' evidence was presented to the Inquiry, and properly tested. It can be accorded greater weight as a result.
- 7.38 It is important to observe at the outset that I see little in the suggestion that there is no need for a northern anchor store, as part of the Scheme, in the location of the existing M&S store. The Scheme layout has been carefully designed as part of a route and that route needs a major attractor of footfall in the location of the existing M&S store. It is inconceivable, in my view, that if the CPO was confirmed, the site of the existing M&S store would be divided into smaller units.
- 7.39 On top of that, it seems clear that notwithstanding the negotiations that have been taking place, CLP want M&S to be the northern anchor in the Scheme. Given the commercial success M&S have had in this Croydon town centre location, since the 1920s, it is fanciful to imagine that if the CPO was confirmed, M&S would leave Croydon and not take their place as part of the Scheme.
- 7.40 It is also correct to say that the grant of outline planning permission only makes provision for refurbishment of the existing M&S store, with some expansion, and a link to the malls proposed within the Scheme, and the servicing at basement level.

- 7.41 I can foresee that linking a refurbished store into the Scheme would present massive difficulties, not least with floor levels, but also with services. It seems obvious that 'refurbishment' would involve gutting the existing store because trading floor levels would almost certainly need to be at a level corresponding to the trading floor levels in the Scheme, and services such as air conditioning, sprinklers, electrics, and fire alarms would most likely need to function as part of a wider whole.
- 7.42 In that context, CLP and M&S are right to observe that rebuilding the existing M&S store as part of the Scheme would be a better option. While the existing grant of outline planning permission would not cover that, there is no good reason why the demolition of the existing, and its replacement with a well-designed new store, would not gain planning permission.
- 7.43 Nevertheless, the issues around M&S' objection to the CPO do not depend on whether a refurbishment or new build option comes forward. They are the same in either scenario and in simple terms, revolve around logistical control.
- 7.44 Implementation of the Scheme would be, without doubt, a very complex operation. In my experience, the linkages and interfaces between individual retail units within the Scheme, and the common parts, in terms of circulation, and services, and other matters, are amongst the most challenging aspects of the design and construction process.
- 7.45 It seems to me imperative that the developer has control over those interfaces whether the road chosen is refurbishment or new build. If M&S retained control over their existing store, and implemented their own new-build project or indeed refurbishment, as part of the overall Scheme, the degree of liaison would be intense, and there would be massive scope for difficulties in co-ordination. To my mind, that would make an already very complex process, unnecessarily difficult.
- 7.46 For a successful implementation of the Scheme, which is the underlying purpose of the CPO, and, it is accepted, the wider public interest, it is imperative that CLP retain control over the Scheme, as a whole. Allowing others to implement their own parts of the Scheme seems to me a recipe for disruption and difficulty that would likely prejudice delivery.
- 7.47 Much was made about how confirmation of the CPO would give CLP a commercial advantage over M&S. That may be so but it is important not to take such a narrow view and to remember why the CPO has been sought. It is acknowledged that delivery of the regeneration of Croydon town centre is in the wider public interest. The surest way to deliver that obvious benefit is for the Scheme to be brought forward as soon as practicable. That will most likely be achieved through confirmation of the CPO. If confirmation of the CPO undermines, to a degree, M&S', and indeed others', commercial advantages held through existing property rights, then that is not an unreasonable price to pay for the obvious benefits that will flow from the Scheme.
- 7.48 In any event, CLP clearly want M&S as part of the Scheme and it is difficult to conceive of a situation where M&S would leave Croydon. With goodwill on both sides, I see no reason why M&S cannot take their place as the northern anchor, in a new-build or refurbishment scheme.

- 7.49 M&S have confirmed that they would not trade from their existing store if the Scheme was being implemented around it. There are all sorts of reasons why that would be a sensible decision. Trading conditions alongside a construction project of the magnitude proposed would be challenging, to say the least. Nevertheless that need have no significant impact on the town centre for that period because M&S have been offered temporary accommodation in Centrale. That accommodation may not be ideal but it would be temporary and a precursor to better accommodation as part of the Scheme. **[3.46-3.68 and 5.3-5.44]**
- 7.50 The same logic applies to Sainsbury's, W H Smith and others' similar concerns about temporary relocation. **[5.45-5.52, 5.76-5.80, 5.81-5.82 and 5.86-5.87]**

Other Potential Impediments

- 7.51 In this regard, paragraph 22 of the CPO Circular says that in demonstrating that there is a reasonable prospect of a scheme going ahead, the AA will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. Bouwfonds, and others, have suggested that issues around state aid, best consideration, and public procurement, represent barriers to the CPO and thereby, the Scheme.
- 7.52 Ultimately, these are matters for the Courts but on my analysis, these matters have been considered carefully by the AA and I see no obvious impediment in relation to any of these issues. **[3.42-3.45, 3.87-3.101 and 5.70]**

Other Matters

- 7.53 A lot of objectors have pointed to the disturbance that the Scheme will bring to the centre of Croydon. There can be no doubt that it will be a major undertaking in terms of logistics, demolition, and construction terms and it will inevitably lead to significant disruption over a relatively long period. However, it is difficult to see how the ambition of the Council and CLP's regenerative vision for the town centre, and the requirements of the policy approach set out above, can be realised without that degree of disruption. While it is clear from the evidence of the AA that every effort will be made to minimise it, it seems to me that significant disruption is an inevitable consequence of any project of the scale present in the Scheme. That ambition should not be frustrated by concerns about what will be temporary disturbance. **[5.74, 5.86-5.87, and 6.1-6.2]**
- 7.54 Similarly, many objectors have complained that their business will be frustrated and hampered, by the implementation of the Scheme, and that options for relocation are unattractive. Again, it is difficult to see how the regeneration of an extensive part of the town centre, anticipated in the policy approach adopted by the LPA and the Mayor, can be realised without some impact of this kind. **[5.86-5.87, and 6.1]**
- 7.55 Nevertheless, CLP has implemented a relocation strategy, and hardship scheme and it is clear that many prominent, and smaller, retailers have already been found new, temporary homes in the Centrale Shopping Centre, and elsewhere. In my view, bearing in mind that any hiatus in trade will be temporary, this is a reasonable, and proportionate, approach and the CLP cannot reasonably be faulted in this regard. Any such concerns raised by retailers are no good reason not to confirm the CPO.

- 7.56 Many retailers, ranging from large to small, including Uncle Lim's Kitchen, have raised concerns about being able to find a new home as part of the Scheme. That is a matter for CLP in the final analysis but given the scale of the Scheme, and the obvious fact that a cross-section of retailers, and other operators, from large to small, will be required to ensure its vitality and viability, I am sure that homes can and will be found for those who wish to be part of the Scheme. **[5.82 and 5.86-5.87]**
- 7.57 Some objectors have suggested that the rights sought over adjoining premises for crane oversails, and the like, are excessive. It needs to be borne in mind first of all, that the Scheme is grand in terms of scale and ambition. In that context, the AA has sought to allow itself sufficient control to ensure that it can demolish the existing buildings, itself a significant undertaking, and then build the Scheme, without encountering difficulties in terms of access and the like.
- 7.58 Given that the Scheme is at a relatively early stage of the design process, it is perfectly understandable that CLP have sought rights over an area that gives it proper scope to implement. There is nothing unreasonable about that in principle and I am sure that as the Scheme evolves into more detailed iterations, matters will become much clearer and negotiations will ensure a proper understanding of the extent of work involved. **[5.73-5.74 and 5.86-5.87]**
- 7.59 Similarly, others have raised issues around the logistics of maintaining fire escapes during the course of the works. However, there is nothing unusual about such matters in construction schemes large or small, and no reason why protected routes cannot be maintained. These can be properly planned and arranged once the layout of the Scheme and the programme of works are nearer being finalised. It is clear from the evidence of the AA that they are well versed in the mechanics of complex construction projects and I have no doubt in their ability to implement the Scheme in a way that minimises any such difficulties for neighbouring occupiers. **[5.83-5.87]**
- 7.60 A lot has been made about the manner in which the AA has conducted negotiations. The CPO Circular makes clear in paragraph 24 that AAs should seek to acquire land by negotiation wherever practicable. That a number of objections have been withdrawn, notably that of the Whitgift Trust, provides ample evidence that proper negotiation is being carried out. I do not see that the AA is failing to comply with the requirements of the CPO Circular. **[5.52, 5.60, 5.71, 5.80 and 5.86-5.87]**
- 7.61 On a final point, it was suggested that conditions be attached to any confirmation of the CPO. There is no legal basis for that and in any event, many of the areas of concern set out by the Objector concerned, are covered in the grant of outline planning permission and the conditions attached to it, the Agreement under S.106, or by other legislation. Others, like the safety of construction workers or JLP workers' rights, while important, obviously, are not matters for the CPO, or planning processes. They are covered by other legislative procedures and safeguards. **[6.4-6.6]**

Final Conclusion

- 7.62 The Scheme fits in with the adopted planning framework for the area and it will contribute significantly to the achievement of the promotion or

improvement of the economic, social, and environmental well-being of the area. There is a reasonable prospect that the Scheme will be brought forward and the purpose for which the AA is proposing to acquire the land could not, realistically, be achieved by any other means. There are no other impediments that might frustrate delivery of the Scheme.

- 7.63 Taking all those points together, the AA has made a compelling case in the public interest for confirmation of the CPO. The purposes for which the AA 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 1998.
- 7.64 The Order should therefore be confirmed, with the minor modification relating to Plot 72 requested by the AA.

8. Recommendation

- 8.1 I recommend that 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 be confirmed subject to the modifications in respect of Plot 72 in Table 1 of the Schedule, as proposed by the AA²²⁰.

Paul Griffiths

INSPECTOR

²²⁰ LB 121 sets the required alteration out in detail

ANNEX1: APPEARANCES

FOR LB CROYDON and CROYDON LIMITED PARTNERSHIP (CLP):

| | |
|---------------------------|---|
| David Elvin QC | Instructed by Pinsent Masons |
| Richard Turney of Counsel | |
| Richard Moules of Counsel | |
| They called | |
| Bob Allies | Partner, Allies & Morrison |
| MA DipArch RIBA RIAS | |
| John Rhodes | Director, Quod |
| OBE BSc RICS | |
| John Burton | Director of Development, CLP; Director of |
| OBE BA MBF | Development, Westfield |
| Mike Kiely | Director of Planning, LB Croydon |
| BTP MBA MRTPI | |
| Joanna Angela Negrini | Executive Director of Development and |
| BTP | Environment, LB Croydon |
| Steve Skelton | Director for Project Control, Westfield |
| BSc(Hons) (Building) | |
| Steve Iles | Head of Highways and Parking Services, LB |
| MBE | Croydon |
| Richard Owen | Partner, Deloitte LLP |
| BA FRICS IRRV | |

FOR WHITGIFT ONE LTD, WHITGIFT TWO LTD and THE WHITGIFT TRUST:

| | |
|----------------------|--|
| Paul Brown QC | Instructed by Whitgift One Ltd, Whitgift Two Ltd and The Whitgift Trust |
| He called | |
| Graham Frank Chase | Senior Partner, Chase & Partners LLP |
| FRICS C.ARB FRSA | |
| FINSTCPD | |
| Robert Adrian Oliver | Director, Vale Retail Ltd and Vale Asset |
| BSc FRICS | Management Ltd |

FOR MARKS & SPENCER (M&S) SCOTTISH LIMITED PARTNERSHIP and M&S PLC:

| | |
|----------------------|---|
| Reuben Taylor QC | Instructed by M&S Scottish Limited Partnership and M&S PLC |
| He called | |
| Peter John Line | Head of Retail, South Division, M&S Plc |
| Peter John Stone | Director, TTG Architects Ltd |
| BSc BArch RIBA | |
| Anthony Martin Chase | Partner, Planning and Development Team and |
| FRICS | Head of Compensation, Gerald Eve LLP |

FOR SAINSBURY'S SUPERMARKETS LTD

| | |
|-------------------|--|
| David Forsdick QC | Instructed by Sainsbury's Supermarkets Ltd |
|-------------------|--|

FOR RUSH HAIRDRESSERS

James Winbourne

Instructed by Rush Hairdressers

FOR NATIONAL WESTMINSTER BANK PLC

Annabel Graham Paul of
Counsel

Instructed by DLA Piper

FOR UNCLE LIM'S KITCHEN

Sarah Pui Chin Yap

Proprietor, Uncle Lim's Kitchen

INTERESTED PERSONS:

Susan Oliver
Andrew Kennedy
Sean Creighton

Local Resident
Local Resident
Local Resident

ANNEX 2: INQUIRY DOCUMENTS

CORE DOCUMENTS

CPO Documents

| | |
|--------|---|
| CD1.1 | Sealed Order and Schedule |
| CD1.2 | Sealed Map |
| CD1.3 | Statement of Reasons |
| CD1.4 | Acquiring Authority Statement of Case |
| CD1.5 | Report to Cabinet of 7 April 2014 |
| CD1.6 | Addendum Report to Cabinet of 7 April 2014 |
| CD1.7 | Minutes of Cabinet of 7 April 2014 |
| CD1.8 | Protected Assets Certificate |
| CD1.9 | Consecrated Land Certificate |
| CD1.10 | General Certificate |
| CD1.11 | Delivery Schedule |
| CD1.12 | CPO Formalities – Croydon Advertiser – 18 April 2014 |
| CD1.13 | CPO Formalities – Croydon Guardian – 23 April 2014 |
| CD1.14 | CPO Formalities – Croydon Advertiser – 25 April 2014 |
| CD1.15 | CPO Formalities – Croydon Guardian – 30 April 2014 |
| CD1.16 | Evidence of Site Advertisements |
| CD1.17 | Land Acquisition and Relocation Strategy |
| CD1.18 | Exceptional Hardship Scheme |
| CD1.19 | CPO Initial preparation Indemnity Agreement – 23 July 2013 |
| CD1.20 | CPO Indemnity and Land Transfer Agreement – 15 April 2014 |
| CD1.21 | Equality Analysis (2014) |
| CD1.22 | Overlay Plan of the Development Site and the CPO Order Land |

SUO Documents

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|--------|---|
| CD2.1 | Draft Stopping Up Order and Schedule |
| CD2.2 | Stopping Up Order Plan |
| CD2.3 | Public Notice of Stopping Up Order |
| CD2.4 | Advertisements – Croydon Gazette |
| CD2.5 | Advertisements – London Gazette |
| CD2.6 | GLA Planning Report and accompanying Letter of 22 October 2014 |
| CD2.7 | CLP Statement of Case in respect of Proposed Stopping Up Order |
| CD2.8 | LBC Statement of Case in respect of Proposed Stopping Up Order |
| CD2.9 | Access Management and Maintenance Agreement (4 February 2014) (also at LBC 108) |
| CD2.10 | Notice of Decision to approve an application under s.96A (28 January 2015) (also LBC 112) |

CPO Circular

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| CD3.1 | ODPM Circular 06/2004: Compulsory Purchase and the Crichel Down Rules |
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Planning Policy Documents

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| CD4.1 | The National Planning Policy Framework (2012) |
| CD4.2 | National Planning Policy Guidance (2014) |
| CD4.3 | London Plan (2011) and Revised Early Minor Alterations (2013) |
| CD4.4 | Draft Further Alterations to the London Plan and Further Alterations to the London Plan (December 2014) (Note: Replaced by LBC 107 and LBC 122 - Adopted Version) |
| CD4.5 | The Croydon Local Plan: Strategic Policies (2013) |

- CD4.6 The Croydon Local Plan: Draft Detailed Policies and Proposals (2013)
- CD4.7 Croydon Replacement Unitary Development Plan 2006 Saved Policies (2013)
- CD4.8 Croydon Opportunity Area Planning Framework (2013)
- CD4.9 Central Croydon Conservation Area Map
- CD4.10 Croydon's Community Strategy 2013-2018
- CD4.11 Conservation Area General Guidance Supplementary Planning Document (2013)
- CD4.12 Conservation Area Appraisal for the Central Croydon Conservation Area (2014)
- CD4.13 London Plan Supplementary Planning Guidance: Shaping Neighbourhoods Play and Informal Recreation (2012)
- CD4.14 London Plan Supplementary Planning Guidance: Town Centres (July 2014)
- CD4.15 2013 London Town Centre Health Check Analysis Report (March 2014)

Other Planning Related Documents

- CD5.1 Drivers Jonas Retail Study 2009
- CD5.2 Transport Infrastructure Agreement (30 January 2014)
- CD5.3 The Croydon Promise: Growth for All (September 2014)
- CD5.4 Winchester Silver Hill CPO and SUO Inspector's Report (17 December 2012) and Decisions of the Secretary of State
- CD5.5 S.106 Planning Obligations in Croydon and their relationship to CIL (non-statutory guidance) (April 2013)
- CD5.6 Extract from the Inspector's Report on the Examination into the Croydon Local Plan Strategic Policies (17 December 2012)
- CD5.7 Whitgift Centre Redevelopment Croydon Town Centre Draft Viability Assessment (3 October 2013)

Historic/Superseded Planning Policy Documents and Decisions

- CD6.1 London Plan (2004)
- CD6.2 Croydon Replacement Unitary Development Plan (2006)
- CD6.3 Croydon Unitary Development Plan (1997)
- CD6.4 Croydon 2020: The Thinking and the Vision (1998)
- CD6.5 Croydon Supplementary Planning Guidance Note 11: Central Croydon (2002)
- CD6.6 Park Place CPO Inspector's Report and Decision of the Secretary of State (March 2007) plus Letters from John Lewis of 8 February 2005 and 26 January 2006
- CD6.7 Bishops Court 2 Inspector's Report and Secretary of State Decision (October 2005)

Relevant Planning Applications, Permission, and Related Documents

- CD7.1 Application Form for Outline Planning Permission
- CD7.2 Development Specification and Framework including Parameter Plans
- CD7.3 Design Guidelines
- CD7.4 Design and Access Statement
- CD7.5 Planning Statement including Town Centre Uses Assessment and Regeneration Statement
- CD7.6 Affordable Housing Strategy
- CD7.7 Heritage Statement
- CD7.8 Landscape and Public Realm Strategy
- CD7.9 Statement of Community Involvement
- CD7.10 Environmental Statement Volumes 1-3 and Non-Technical Summary
- CD7.11 Transport Assessment including Appendices and Supplementary Report
- CD7.12 Planning Application Regulation 22 Submission (May 2013)
- CD7.13 Planning Application Regulation 22 Submission (June 2013)
- CD7.14 Planning Application Regulation 22 Submission (October 2013)

- CD7.15 GLA Stage 1 Response
- CD7.16 GLA Stage 2 Response
- CD7.17 DCLG Decision not to 'call-in'
- CD7.18 Responses from Statutory Consultees on Planning Application
- CD7.19 Report to Strategic Planning Committee (25 November 2013)
- CD7.20 Addendum Report to Strategic Planning Committee (25 November 2013)
- CD7.21 Minutes of Strategic Planning Committee (25 November 2013)
- CD7.22 Decision Notice granting Outline Planning Permission (Ref.12/02542/P dated 5 February 2014)
- CD7.23 Agreement under S.106 dated 5 February 2014
- CD7.24 Application Form for Conservation Area Consent
- CD7.25 Development Specification and Framework
- CD7.26 Design and Access Statement (as CD 7.4)
- CD7.27 Design Guidelines (as CD 7.3)
- CD7.28 Heritage Statement (as CD 7.7)
- CD7.29 Built Heritage Chapter of the Environmental Statement (as CD 7.10)
- CD7.30 Decision Notice granting Conservation Area Consent (Ref.12/02543/CA dated 5 February 2014)
- CD7.31 Application Form for Planning Permission (Chapel Walk)
- CD7.32 Chapel Walk CIL Form
- CD7.33 Chapel Walk Drawings
- CD7.34 Chapel Walk Design and Access Statement
- CD7.35 Chapel Walk Planning Statement
- CD7.36 Chapel Walk Environmental Statement including Archaeological Assessment and Non-Technical Summary
- CD7.37 Responses from Statutory Consultees on Chapel Walk
- CD7.38 Decision Notice granting Planning Permission (Ref.14/02824/P dated 24 December 2014 and Officer Report

Judicial Review

- CD8.1 Judgement of Collins J dated 10 November 2014
- CD8.2 Order made by Sullivan L J dated 19 December 2014

NPCU Documentation

- CD9.1 Letter from NPCU confirming Relevant Date (22 July 2014)
- CD9.2 Letter from NPCU giving Notice of Joint Inquiry into CPO and SUO (22 October 2014)

Objections to CPO

- CD10.1 Whitgift One Ltd, Whitgift Two Ltd and the Whitgift Trust (OBJ/001)
- CD10.2 Smith Group Plc (OBJ/002)
- CD10.3 Sainsbury's Supermarkets Ltd (OBJ/003)
- CD10.4 C & J Clark International (Clarks) (OBJ/004)
- CD10.5 Sportswift Ltd t/a Card Factory (OBJ/005)
- CD10.6 Signet Trading Ltd t/a Ernest Jones (OBJ/006)
- CD10.7 Signet Trading Ltd t/a H Samuel (OBJ/007)
- CD10.8 The Carphone Warehouse Ltd (OBJ/008)
- CD10.9 A S Watson t/a 3 Store (OBJ/009)
- CD10.10 A S Watson t/a The Perfume Store (OBJ/010)
- CD10.11 Charles Birch Ltd t/a Shoecare (OBJ/011)
- CD10.12 New Look Retailers (OBJ/012)
- CD10.13 Claire's Accessories (OBJ/013)
- CD10.14 River Island (OBJ/014)
- CD10.15 Mr M Patel and Mrs J Patel t/a All in One Eyecare Ltd (OBJ/015)

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| CD10.16 | Mr Steven Boros t/a Boros Leather Goods Ltd (OBJ/016) |
| CD10.17 | Swarovski (OBJ/017) |
| CD10.18 | NBTY Europe t/a Holland & Barratt Retail Ltd (OBJ/018) |
| CD10.19 | NBTY Europe t/a Health and Diet Centre as GNC (OBJ/019) |
| CD10.20 | The Body Shop International Plc (OBJ/020) |
| CD10.21 | Arcadia Group Ltd and Top Shop/Top Man Properties (OBJ/021) |
| CD10.22 | Arcadia Group Ltd and Evans (OBJ/022) |
| CD10.23 | Arcadia Group Ltd and BHS (OBJ/023) |
| CD10.24 | National Westminster Bank Plc (OBJ/024) |
| CD10.25 | Multiyork Furniture Ltd (OBJ/025) |
| CD10.26 | Urban Junction (OBJ/026) |
| CD10.27 | Waterstones Booksellers Ltd (OBJ/027) |
| CD10.28 | North End News Ltd (OBJ/028) |
| CD10.29 | Shuropody Ltd (OBJ/029) |
| CD10.30 | All Clear Dental Ltd c/o TG Associates (OBJ/030) |
| CD10.31 | C-Retail Ltd t/a Superdry (OBJ/031) |
| CD10.32 | Telefonica UK Ltd and DX Communications Ltd (O2) (OBJ/032) |
| CD10.33 | Mothercare (UK) Ltd (OBJ/033) |
| CD10.34 | Costa Ltd (OBJ/034) |
| CD10.35 | W H Smith Retail Holdings Ltd (OBJ/035) |
| CD10.36 | Vodafone Ltd (OBJ/036) |
| CD10.37 | Mr Yianni Constantinou t/a YC (London) Ltd (OBJ/037) |
| CD10.38 | Mr Sunash Parekh t/a Camden Coffee House (OBJ/038) |
| CD10.39 | Mr Carmel Joseph Delicata t/a Image (OBJ/039) |
| CD10.40 | Malnards (London) Ltd t/a Grange (OBJ/040) |
| CD10.41 | Ms Sarah Pui Chin Yap t/a Uncle Lim's Kitchen (OBJ/041) |
| CD10.42 | Mr Afonso t/a English and Continental Bar (OBJ/042) |
| CD10.43 | Mrs K A Page t/a Pure Flowers (OBJ/043) |
| CD10.44 | Mr Singadia Priyesh t/a Yoke Menswear (OBJ/044) |
| CD10.45 | Mr G Nguyen-Xuan t/a The End Hair (OBJ/045) |
| CD10.46 | Mr Anthony Francis Bull and Barbara Dorrington t/a Zucchi Shoes Ltd (OBJ/046) |
| CD10.47 | Harvey & Thompson Ltd t/a H&T Pawnbrokers (OBJ/047) |
| CD10.48 | Mr Nae Wagner Caleap t/a Classic Café (OBJ/048) |
| CD10.49 | Mr Andreas Andreou and Miss Constantina Andreou t/a Amai (Hair) Ltd (OBJ/049) |
| CD10.50 | Mr Mehmet Ayhan Ozeli t/a Continental Salon (OBJ/050) |
| CD10.51 | Select Service Partners t/a Millies (OBJ/051) |
| CD10.52 | Carillion Construction Ltd (OBJ/052) |
| CD10.53 | Mr Roger Black (OBJ/053) |
| CD10.54 | Shahin Lalani t/a Whitgift Dental Practice (OBJ/054) |
| CD10.55 | Ralph Snow's Charity (OBJ/055) |
| CD10.56 | Minerva (Finance) Ltd, Park Place Limited Partnership and Croydon Plaza Ltd (OBJ/056) |
| CD10.57 | Bouwfonds Investment Management BV (OBJ/057) |
| CD10.58 | Albermarle Croydon LLP c/o Egan Property Asset Management LLP (OBJ/058) |
| CD10.59 | Bouwfonds European Real Estate Parking Fund Croydon Sarl (formerly Eagle Croydon Centre W Ltd) (OBJ/059) |
| CD10.60 | Bouwfonds European Real Estate Parking Fund Croydon Sarl (formerly Eagle Croydon Centre A Ltd) (OBJ/060) |
| CD10.61 | Legal and General Assurance Society Ltd (OBJ/061) |
| CD10.62 | Marks & Spencer Scottish Limited Partnership and Marks & Spencer Plc (OBJ/062) |
| CD10.63 | Poundland Ltd (OBJ/063) |
| CD10.64 | A S Watson t/a Superdrug (OBJ/064) |
| CD10.65 | Dr Robert Clad t/a The Chiropractic Centre (OBJ/065) |
| CD10.66 | Mr Anthony Ferrara t/a Bishops Wine Bar (OBJ/066) |

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| CD10.67 | Clas Ohlson Ltd (OBJ/067) |
| CD10.68 | Davy & Co Ltd (OBJ/068) |
| CD10.69 | Hennes & Mauritz (UK) Ltd (H&M) (OBJ/069) |
| CD10.70 | Arcadia Group Ltd and Wallis Fashion Group Ltd (OBJ/070) |
| CD10.71 | Arcadia Group Ltd and Burton/Dorothy Perkins Properties Ltd (OBJ/071) |
| CD10.72 | Chasetone Properties Investments Ltd (OBJ/072) |
| CD10.73 | McDonald's Real Estate LLP and Jardin Valley Restaurants Ltd (rights plots) (OBJ/073) |
| CD10.74 | Game Retail Ltd (OBJ/074) |
| CD10.75 | Stairview Estates Ltd (OBJ/075) |
| CD10.76 | Alecta Pensionsforsakring Omesifigit (OBJ/076) |
| CD10.77 | IRP Holdings (Wetherspoon's) (OBJ/077) |
| CD10.78 | Gala Coral Group (OBJ/078) |
| CD10.79 | HSBC Bank (OBJ/079) |
| CD10.80 | Office Holdings Ltd (OBJ/080) |
| CD10.81 | Stagecoach Pension Trustee Co Ltd and Stagecoach Pension Trustee Co (No.2) Ltd (OBJ/081) |
| CD10.82 | Nationwide Building Society (OBJ/082) |
| CD10.83 | Marosmay Ventures Corporation (OBJ/083) |
| CD10.84 | Paintfirst Ltd (in administration) (OBJ/084) |
| CD10.85 | Simply Vibe Ltd (OBJ/085) |
| CD10.86 | Pearl Holdings Ltd (OBJ/086) |
| CD10.87 | JD Wetherspoon (OBJ/087) |
| CD10.88 | Yorkshire Building Society (OBJ/088) |
| CD10.89 | Mr Stelos Andrew t/a Rush Hairdressers, Health and Beauty (OBJ/089) |
| CD10.90 | Halifax Plc (OBJ/090) |
| CD10.91 | Omaha Nominees Ltd (OBJ/091) |
| CD10.92 | Lloyds Private Banking Trustee (OBJ/092) |
| CD10.93 | Bank of Ireland (OBJ/093) |
| CD10.94 | Aviva Commercial Finance Ltd (OBJ/094) |
| CD10.95 | Bank of Scotland Plc (OBJ/095) |
| CD10.96 | Not Used |
| CD10.97 | Not Used |
| CD10.98 | Pizza Hut (UK) Ltd (OBJ/098) |
| CD10.99 | Global London Ltd (OBJ/099) |
| CD10.100 | Primark Stores Ltd (OBJ/100) |
| CD10.101 | Mr Jeremy Davies (OBJ/101) |
| CD10.102 | Prudential Assurance Co Ltd (OBJ/102) |
| CD10.103 | Mr R & Dr A R Sheriff (OBJ/103) |
| CD10.104 | Mr Paul Faiman (OBJ/104) |
| CD10.105 | Fortune Estates Ltd (OBJ/105) |
| CD10.106 | Zara UK Ltd (OBJ/106) |
| CD10.107 | Trewen Properties (OBJ/107) |
| CD10.108 | Minesh Patel t/a Quick Stop (OBJ/108) |
| CD10.109 | Sidham Estates Ltd (OBJ/109) |
| CD10.110 | HSBC Bank Plc (OBJ/110) |
| CD10.111 | Mrs Angela Greaves (OBJ/111) |
| CD10.112 | Luxury Leisure (OBJ/112) |
| CD10.113 | Costa Ltd (OBJ/113) |
| CD10.114 | William Hill Organisation Ltd (OBJ/114) |
| CD10.115 | Lunar House Ltd (OBJ/115) |
| CD10.116 | E Amoah-Buahin (OBJ/116) |
| CD10.117 | Barclays Bank Plc (OBJ/117) |
| CD10.118 | TSB Bank Plc (OBJ/118) |
| CD10.119 | Mapeley Columbus (OBJ/119) |
| CD10.120 | Palace Amusements (Kent) Ltd (OBJ/120) |
| CD10.121 | Debenhams Properties Ltd (OBJ/121) |

- CD10.122 Jeans West Ltd (OBJ/122)
- CD10.123 Mr J Asade (OBJ/123)
- CD10.124 S Buahin (OBJ/124)
- CD10.125 Midos Partnership LLP (OBJ/125)
- CD10.126 Lloyds TSB Bank Plc (OBJ/126)
- CD10.127 Pizza Express (Restaurants) Ltd (OBJ/127)
- CD10.128 Power Leisure Bookmakers Ltd and Paddy Power Plc (OBJ/128)
- CD10.129 Mecca Bingo Ltd (OBJ/129)
- CD10.130 South Eastern Power Networks Plc (OBJ/130)
- CD10.131 Southern Gas Networks Plc (OBJ/131)
- CD10.132 Transport for London, Tramtrack Croydon Ltd and London Bus Services Ltd (OBJ/132)
- CD10.133 Pub Freehold Acquisitions SARL (OBJ/133)
- CD10.134 Irish Bank Resolution Corporation (OBJ/134)
- CD10.135 Tiger Retail Ltd (OBJ/135)

Statements of Case

- CD11.1 Statement of Case of Whitgift One Ltd, Whitgift Two Ltd and Whitgift Trust
- CD11.2 Statement of Case of M&S Scottish Limited Partnership and M&S Plc
- CD11.3 Statement of Case of Legal and General Assurance Society Ltd
- CD11.4 Statements of Case of Bouwfonds European Real Estate Parking Fund Croydon SARL and Bouwfonds IM Financial Services BV
- CD11.5 Statement of Case of Minerva (Stores) Ltd, Minerva (Finance) Ltd, Park Place Limited Partnership and Croydon Plaza Ltd
- CD11.6 Letter from Burlington Loan Management Ltd

Withdrawn Objections to CPO

- CD12.1 Whitgift One Ltd, Whitgift Two Ltd and the Whitgift Trust (OBJ/001)
- CD12.2 National Westminster Bank Plc (OBJ/024)
- CD12.3 Carmel Joseph Delicata (OBJ/039)
- CD12.4 George Nguyen-Xuan t/a The End Hair (OBJ/045)
- CD12.5 Mr Anthony Francis Bull and Barbara Dorrington t/a Zucchi Shoes Ltd (OBJ/046)
- CD12.6 Harvey & Thompson t/a H&T Pawnbrokers (OBJ/047)
- CD12.7 Amai Ltd (OBJ/049)
- CD12.8 Arcadia Group Ltd and Burton/Dorothy Perkins Properties Ltd (OBJ/071)
- CD12.9 Bank of Scotland Plc (OBJ/095)
- CD12.10 Primark Stores Ltd (OBJ/100)
- CD12.11 Mr J Davies (OBJ/101)
- CD12.12 Fortune Estates Ltd (OBJ/105)
- CD12.13 Mr Minesh Patel t/a Quick Stop (OBJ/108)
- CD12.14 Sidham Estates Ltd (OBJ/109)
- CD12.15 HSBC Bank Plc (OBJ/110)
- CD12.16 Mrs A Greaves (OBJ/111)
- CD12.17 Barclays Bank Plc (OBJ/117)
- CD12.18 Debenhams Properties Ltd (OBJ/121)
- CD12.19 Lloyds TSB Bank Plc (OBJ/126)
- CD12.20 South Eastern Power Networks Plc (OBJ/130)
- CD12.21 Southern Gas Networks Plc (OBJ/131)
- CD12.22 Transport for London, Tramtrack Croydon Ltd and London Bus Services Ltd (OBJ/132)

Letters of Support for CPO

- CD13.1 The Whitgift Foundation (SUPP/001)

- CD13.2 South London YMCA (SUPP/002)
- CD13.3 Gavin Barwell MP for Croydon Central (SUPP/003)
- CD13.4 Steve Connell AM, Greater London Authority (SUPP/004)
- CD13.5 John Lewis Partnership (SUPP/005)
- CD13.6 ITC Concepts Ltd (SUPP/006)
- CD13.7 Fairfield (Croydon) Ltd (SUPP/007)
- CD13.8 Develop Croydon (SUPP/008)
- CD13.9 Durkan (SUPP/009)
- CD13.10 Centrale Shopping Centre (SUPP/010)
- CD13.11 Croydon Churches Housing Association (SUPP/011)
- CD13.12 Sinclair Clark (SUPP/012)
- CD13.13 R J Witt Associates (SUPP/013)
- CD13.14 Hooper Naylor Friend (SUPP/014)
- CD13.15 Guildhouse UK Ltd (SUPP/015)
- CD13.16 Guildhouse-Rosepride LLP (SUPP/016)
- CD13.17 Berkeley Homes (South East London) Ltd (SUPP/017)
- CD13.18 Crystal Palace Football Club Foundation (SUPP/018)
- CD13.19 Croydon Conservative Councillors Group (SUPP/019)
- CD13.20 Angel Catering (UK) Ltd

Objections to SUO

- CD14.1 HSBC Bank Plc (SUO/OBJ/001)
- CD14.2 Virgin Media (SUO/OBJ/002)
- CD14.3 National Car Park Ltd (SUO/OBJ/003)
- CD14.4 Whitgift One Ltd, Whitgift Two Ltd and the Whitgift Trust (SUO/OBJ/004)
- CD14.5 Eagle Croydon Centre A Ltd (Bouwfonds European Real Estate Parking Fund Croydon Sarl) (SUO/OBJ/005)
- CD14.6 Stairview Estates Ltd (SUO/OBJ/006)
- CD14.7 Albermarle Croydon LLP c/o Egan Property Asset Management Ltd (SUO/OBJ/007)
- CD14.8 Croydon Plaza Ltd, Minerva Finance Ltd, Minerva Stores Ltd and Park Place Limited Partnership (SUO/OBJ/008)

Withdrawn Objections to SUO

- CD15.1 Whitgift One Ltd, Whitgift Two Ltd and the Whitgift Trust (SUO/OBJ/004)
- CD15.2 National Car Park Ltd (SUO/OBJ/003)
- CD15.3 Virgin Media (SUO/OBJ/002)

ANNEX 3: COUNCIL AND CLP DOCUMENTS

Evidence to the Inquiry

| | |
|----------|--|
| LBC 1.1 | Proof of Evidence of Jo Negrini |
| LBC 1.2 | Appendices to Proof of Evidence of Jo Negrini |
| LBC 1.3 | Summary Proof of Evidence of Jo Negrini |
| LBC 1.4 | Rebuttal Proof of Evidence of Jo Negrini |
| LBC 2.1 | Proof of Evidence of John Burton |
| LBC 2.2 | Appendices to Proof of Evidence of John Burton |
| LBC 2.3A | Summary Proof of Evidence of John Burton (CPO) |
| LBC 2.3B | Summary Proof of Evidence of John Burton (SUO) |
| LBC 2.4 | Rebuttal Proof of Evidence of John Burton |
| LBC 3.1 | Proof of Evidence of Mike Kiely |
| LBC 3.2 | Not Used |
| LBC 3.3 | Summary Proof of Evidence Of Mike Kiely |
| LBC 3.4 | Rebuttal Proof of Evidence of Mike Kiely |
| LBC 4.1 | Proof of Evidence of John Rhodes |
| LBC 4.2 | Appendices to Proof of Evidence of John Rhodes |
| LBC 4.3 | Summary Proof of Evidence of John Rhodes |
| LBC 4.4 | Rebuttal Proof of Evidence of John Rhodes |
| LBC 5.1 | Proof of Evidence of Steve Skelton |
| LBC 5.2 | Appendices to Proof of Evidence of Steve Skelton |
| LBC 5.3 | Summary Proof of Evidence of Steve Skelton |
| LBC 5.4 | Rebuttal Proof of Evidence of Steve Skelton |
| LBC 6.1 | Proof of Evidence of Richard Owen |
| LBC 6.2 | Appendices to Proof of Evidence of Richard Owen |
| LBC 6.3 | Summary Proof of Evidence of Richard Owen |
| LBC 6.4 | Rebuttal Proof of Evidence of Richard Owen |
| LBC 7.1 | Proof of Evidence of Bob Allies |
| LBC 7.2 | Appendices to Proof of Evidence of Bob Allies |
| LBC 7.3 | Summary Proof of Evidence of Bob Allies |
| LBC 7.4 | Rebuttal Proof of Evidence of Bob Allies |
| LBC 8.1 | Proof of Evidence of Steve Skelton (SUO) |
| LBC 8.2 | Appendices to Proof of Evidence of Steve Skelton (SUO) |
| LBC 8.3 | Summary Proof of Evidence of Steve Skelton (SUO) |
| LBC 9.1 | Proof of Evidence of Steve Iles |
| LBC 9.2 | Appendices to Proof of Evidence of Steve Iles |
| LBC 9.3 | Summary Proof of Evidence of Steve Iles |
| LBC 9.4 | Rebuttal Proof of Evidence of Steve Iles |

Documents Submitted at the Inquiry

| | |
|---------|---|
| LBC 101 | Opening Statement to the Inquiry |
| LBC 102 | Accompanied Site Visit Route Plan |
| LBC 103 | List of Appearances |
| LBC 104 | Conformities Bundle |
| LBC 105 | Bob Allies' PowerPoint Presentation |
| LBC 106 | Bob Allies' Flythrough |
| LBC 107 | Replacement for CD 4.4 (Adopted Version of the FALP) |
| LBC 108 | Access Management and Maintenance Agreement (4 February 2014) (also at CD 2.9) |
| LBC 109 | Letters from John Lewis of 8 February 2005 and 26 January 2006 (added also to CD 6.6) |
| LBC 110 | AMM Agreement Legal Note |
| LBC 111 | M&S Ownership Interests Legal Note |
| LBC 112 | Notice of Decision to approve an application under s.96A (28 January 2015) |

- LBC 113 Extract from Skeleton Argument presented by Whitgift Trust to the High Court dated 24 September 2014
- LBC 114 Stopping Up Order Legal Note
- LBC 115 Email from Paul Grace to Juliet Munn dated 26 February 2015 attaching M&S Fire Strategy Plans
- LBC 116 Note about relocations to Centrale and update on other objections
- LBC 117 Response to submissions made on behalf of Bouwfonds
- LBC 118 Westfield London and Westfield Stratford City Site Visits Map
- LBC 119 Schedule and bundle of correspondence with Uncle Lim's Kitchen
- LBC 120 Schedule and bundle of correspondence with NatWest Bank plus additional correspondence
- LBC 121 Proposed CPO Schedule Modifications
- LBC 122 Adopted FALP (CD4.4)
- LBC 123 Letter to Sarah Yap (Uncle Lim's Kitchen) of 12 March 2015
- LBC 124 Letter to Coral Group of Companies of 12 March 2015
- LBC 125 Letter to Specsavers Optical Superstores Ltd dated 12 March 2015
- LBC 126 Letter to TSB Bank Plc dated 12 March 2015
- LBC 127 Note in respect of letter from Whitgift Trust dated 11 March 2015
- LBC 128 Closing Statement plus Attachments

ANNEX 4: OBJECTORS' DOCUMENTATION

WHITGIFT ONE LTD, WHITGIFT TWO LTD and THE WHITGIFT TRUST DOCUMENTS (OBJ/001)

Evidence to the Inquiry

- OBJ/001/ Proof of Evidence of Graham Frank Chase
1.1
- OBJ/001/ Appendices to Proof of Evidence Graham Frank Chase
1.2
- OBJ/001/ Summary Proof of Evidence of Graham Frank Chase
1.3
- OBJ/001/ Proof of Evidence of Robert Adrian Oliver
2.1
- OBJ/001/ Summary Proof of Evidence of Robert Adrian Oliver
2.2
- OBJ/001/ Further Written Representations
3.1

Documents Submitted at the Inquiry

- OBJ/001/ Centre for Retail Research Paper on Online Retailing
101
- OBJ/001/ Centre for Retail Research Paper on Retailing in 2018
102
- OBJ/001/ Not Used
103
- OBJ/001/ Letter dated 11 March 2015 referring to Wragge & Co correspondence and
104 Hammerson Plc Full-Year Results
- OBJ/001/ Closing Statement
105

MARKS & SPENCER (M&S) SCOTTISH LIMITED PARTNERSHIP and M&S PLC (OBJ/062)

Evidence to the Inquiry

- OBJ/062/ Summary Proof of Evidence of Peter John Line
1.1
- OBJ/062/ Proof of Evidence of Peter John Line
1.2
- OBJ/062/ Appendices to Proof of Evidence of Peter John Line
1.3
- OBJ/062/ Rebuttal Proof of Evidence of Peter John Line
1.4
- OBJ/062/ Summary Proof of Evidence of Peter John Stone
2.1
- OBJ/062/ Proof of Evidence of Peter John Stone
2.2
- OBJ/062/ Appendices to Proof of Evidence of Peter John Stone
2.3
- OBJ/062/ Rebuttal Proof of Evidence of Peter John Stone
2.4
- OBJ/062/ Summary Proof of Evidence of Anthony Martin Chase
3.1
- OBJ/062/ Proof of Evidence of Anthony Martin Chase

- 3.2
- OBJ/062/ Rebuttal Proof of Evidence of Anthony Martin Chase
- 3.3

Documents Submitted at the Inquiry

- OBJ/062/ M&S Offline Study
- 101
- OBJ/062/ Amended version of Peter Line's Appendix Plan 6
- 102
- OBJ/062/ Closing Statement
- 103

SAINSBURY'S SUPERMARKETS LTD (OBJ/003)

Evidence to the Inquiry

- OBJ/003/ Summary Proof of Evidence of Tom Olden
- 1.1
- OBJ/003/ Proof of Evidence of Tom Olden
- 1.2
- OBJ/003/ Appendices to Proof of Evidence of Tom Olden
- 1.3
- OBJ/003/ Proof of Evidence of Jonathan Graham with Appendices
- 2.1
- OBJ/003/ Appendices to the Rebuttal Proof of Evidence of Jonathan Graham
- 2.2
- OBJ/003/ Rebuttal Proof of Evidence of Jonathan Graham
- 2.3

Documents Submitted at the Inquiry

- OBJ/003/ E-Mail correspondence between Paul Grace and Sarah Wotton
- 101

NATIONAL WESTMINSTER BANK PLC (OBJ/024)

Evidence to the Inquiry

- OBJ/024/ Proof of Evidence with Appendices and Summary of Evidence of Mark Davey
- 1.1

Documents Submitted at the Inquiry

- OBJ/024/ Supplementary Proof of Evidence of Mark Davey
- 101

W H SMITH RETAIL HOLDINGS LTD (OBJ/035)

Evidence to the Inquiry

- OBJ/035/ Summary Proof of Evidence of Christopher Michael Williams
- 1.1
- OBJ/035/ Proof of Evidence of Christopher Michael Williams
- 1.2
- OBJ/035/ Appendices to Proof of Evidence of Christopher Michael Williams
- 1.3

OBJ/035/ Rebuttal Proof of Evidence of Christopher Michael Williams
1.4

MINERVA (STORES) LTD, MINERVA (FINANCE) LTD, PARK PLACE LTD PARTNERSHIP and CROYDON PLAZA LTD (MINERVA) (OBJ/056)

Evidence to the Inquiry

OBJ/056/ Summary Proof of Evidence of Gary Howes
1.1
OBJ/056/ Proof of Evidence of Gary Howes
1.2
OBJ/056/ Summary Proof of Evidence of Julia Foster
2.1
OBJ/056/ Proof of Evidence of Julia Foster
2.2
OBJ/056/ Appendices to Proof of Evidence of Julia Foster
2.3
OBJ/056/ Summary Proof of Evidence of Timothy Earl
3.1
OBJ/056/ Proof of Evidence of Timothy Earl
3.2
OBJ/056/ Appendices to Proof of Evidence of Timothy Earl
3.3
OBJ/056/ Rebuttal Proof of Evidence of Timothy Earl
3.4
OBJ/056/ Summary Proof of Evidence of N P Goodman
4.1
OBJ/056/ Proof of Evidence of N P Goodman
4.2
OBJ/056/ Appendices to Proof of Evidence of N P Goodman
4.3

BOUWFONDS EUROPEAN REAL ESTATE PARKING FUND CROYDON S.A.R.L. – WHITGIFT CAR PARK, BOUWFONDS REAL ESTATE PARKING FUND CROYDON S.A.R.L. – ALLDERS CAR PARK and BOUWFONDS IM FINANCIAL SERVICES B.V. – WHITGIFT AND ALLDERS CAR PARKS (OBJ/057, OBJ/059 & OBJ/60)

OBJ/057/ Summary Statement of Evidence of Peter Roberts
1.1
OBJ/057/ Statement of Evidence of Peter Roberts
1.2
OBJ/057/ Appendices to Statement of Evidence of Peter Roberts
1.3
OBJ/057/ Rebuttal Proof of Evidence of Peter Roberts
1.4

Documents Submitted at the Inquiry

OBJ/057/ Supplementary Proof of Evidence of Peter Roberts
101
OBJ/057/ Submission on State Aid and Public Procurement
102
OBJ/057/ Response to LBC and CLP Response of 5 March 2015 (LBC/117)
103

RUSH HAIRDRESSERS (OBJ/089) Evidence to the Inquiry

OBJ/089/ Proof of Evidence of James Winbourne
1.1

Documents Submitted at the Inquiry

OBJ/089/ Presentation by James Winbourne
101

UNCLE LIM'S KITCHEN (SARAH YAP) (OBJ/041)

Documents Submitted at the Inquiry

OBJ/041/ Statement and Appendices of Sarah Yap (presented to Inquiry on 10 March
101 2015)

OBJ/041/ E-mail to LBC/CLP from Sarah Yap of 10 March 2015
102

OBJ/041/ Letter and Enclosures from Sarah Yap of 14 February 2015
103

OTHER DOCUMENTS SUBMITTED TO THE INQUIRY

OBJ/078/101 Letter from Bond Dickinson submitted to the Inquiry on 12 March 2015 (Gala
Coral Group)

OBJ/078/102 Letter from Bond Dickinson submitted to the Inquiry on 12 March 2015 in
response to the LBC/CLP reply of 12 March 2015 (LBC 124)

OBJ/118/101 Letter from Bond Dickinson submitted to the Inquiry on 12 March 2015 (TSB
Bank Plc)

OBJ/136/101 Letter from Bond Dickinson submitted to the Inquiry on 12 March 2015
(Specsavers Optical Superstores Ltd)

OBJ/136/102 Letter from Bond Dickinson submitted to the Inquiry on 13 March 2015 in
response to the LBC/CLP reply of 12 March 2015 (LBC 125)

OBJ/SC/101 Statement to the Inquiry of Sean Creighton

OBJ/SC/102 Note on Sustainability Review and Sustainability Appraisal Scoping Report
from Sean Creighton

OBJ/SC/103 Closing Statement of Sean Creighton

OBJ/SO/101 Statement to the Inquiry of Susan Oliver

OBJ/SO/102 Closing Statement of Susan Oliver

OBJ/AK/101 Statement to the Inquiry of Andrew Kennedy

ANNEX 5: ABBREVIATIONS

| | |
|-----------------------|--|
| The Council | The London Borough of Croydon |
| AA | The Acquiring Authority |
| LPA | The Local Planning Authority |
| CLP | Croydon Limited Partnership |
| CPO | Compulsory Purchase Order |
| The CPO | 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 |
| The SUO | The London Borough of Croydon Stopping Up of Highway Dingwall Avenue Stopping Up Order No.2, 2014 |
| CD-- | Core Document plus number |
| The Promoters | The Council and CLP |
| LBC-- | The Promoters' Documents plus number |
| The Order Lands | The properties included in the CPO |
| The Scheme | The scheme for the redevelopment of the Order Lands pursuant to the Permission |
| The Permission | Outline Planning Permission for the Scheme Ref.12/2542/P dated 5 February 2014 and Conservation Area Consent for the Scheme Ref.12/2543/CA dated 5 February 2014 |
| CPO Circular | ODPM Circular 06/2004: <i>Compulsory Purchase and the Criche! Down Rules</i> |
| SoS | The Secretary of State for Communities and Local Government |
| The s.106 Agreement | The s.106 Agreement associated with the Scheme |
| ILTA | The Indemnity and Land Transfer Agreement dated 15 April 2014 |
| Foundation Agreement | The exclusivity agreement between the Westfield Group and the Whitgift Foundation dated 1 November 2011 |
| TCPA 1990 | The Town & Country Planning Act 1990 |
| PCPA 2004 | The Planning & Compulsory Purchase Act 2004 |
| HRA | The Human Rights Act 1998 |
| ECHR | The European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| LGMPA | The Local Government (Miscellaneous Provisions) Act 1976 |
| NPPF or the Framework | The National Planning Policy Framework |
| PPG | Planning Practice Guidance |
| LP | The London Plan 'Spatial Development Strategy for Greater London consolidated with alterations since 2011' of March 2015 (replacing the earlier version adopted in July 2011) |
| FALP | Further Alterations to the London Plan consolidated into the London Plan in March 2015 |
| OAPF | Croydon Opportunity Area Planning Framework of January 2013 |
| LP(SP) | Croydon Local Plan (Strategic Policies) of April 2013 |
| CMC | Croydon Metropolitan Centre |
| JLP | John Lewis Partnership |
| RDTP | Retail Design Team Plans |
| in-c | Evidence in chief |
| x-e | Cross-examination |
| re-e | Re-examination |