INTRODUCTION

1. This is a Public Inquiry raising important issues of principle and policy at the local, national and international level - each of which will be considered below. This scheme is affecting primarily - almost wholly - BME people. Issues of principle and policy at stake in this case therefore pertains not only to planning rules and law but the consideration of human rights of such a group, in the context of planning. This Public Inquiry has heard near twenty witnesses called by the Traders (including experts reports and lay witnesses). Prof. Michael Edwards (Barllett School of Planning UCL) referred to two visions of regeneration in London and stated: “Haringey’s regeneration approach to Wards corner is to dilute and replace existing local people”. Witness Manuel Peláez said in chief-examination: “Grainger are running me over”; “They are morally bulldozing me”. Witness Martin Ball stated that this was happening to the Latin
American community of the Seven Sisters market and other ethnic minorities in the Order Land because “they were inconvenient and in the way’ of Grainger and Haringey.” We say that all of that is not in the name of public good. But even if it were, as experts on minority rights Lucy Claridge (Minority Rights Group International) and Prof. Alexandra Xanthanki stated: “The restriction of human rights of the Latin American community cannot be merely justified in the name of public good”. The State owes this community positive duties.

2. These closing submissions are intended to explain fully the principal reasons why the Council has failed to demonstrate a compelling case, in the public interest, for its proposed confirmation of the CPO and the Order Scheme. Nevertheless, the Market Traders respectfully invite the Inspector and the Secretary of State to re-read their Statement of Case and their Opening Submissions carefully in coming to their decisions.

3. The Market Traders’ original objections to the Order and the Order Scheme fall into ten broad categories, each of which remain valid:

   a. The Order Scheme does not accord with the National Planning Policy Framework (NPPF) because it does not pursue sustainable development. Nor does it fit with the Local Plan and London Plan.

   b. The Council’s decision-making is vitiated for breach of their Public Sector Equality Duty;

   c. The Order Scheme would involve unjustified interferences with human rights and constitute indirect discrimination against ethnic minorities and women;
d. The Council has wholly failed to take into account the best interest of children affected by the Order, in breach of domestic and international law;

e. The Order Scheme fails to secure the future of the Market, in part because the Council has fundamentally misunderstood the meaning and practical effects of the S106 Agreement;

f. The Order Scheme fails to protect important community and heritage assets;

g. The Order Scheme fails to provide much-needed affordable housing;

h. The Council’s evidence as to the economic, social or environmental benefits of the Order Scheme is limited;

i. There are alternative plans for the Order Land and possible alternative locations in which the proposed development could take place; and

j. In the premises, there is no compelling case for compulsory purchase and the Order should not be confirmed.

4. These objections remain valid and have been substantiated by the oral evidence during this inquiry, as demonstrated in the cross-examination of the main witnesses put forward by the Council and Grainger - most of whom performed poorly when challenged as to the basis and justifications for their views and upon examination of the information alleged to support those views. It is to be remembered that the burden remains firmly on the Council to prove a compelling case for confirmation in the public interest.
5. Despite the Council’s constantly changing case for the Order, and its last minute attempts to remedy its previous failings by the introduction on 23 June 2017 of a new draft Deed of Variation (“DDV”) to the S106 Agreement (which was finally executed on 25 July 2017, the “Deed of Variation”), it is submitted by the Market Traders that these retrospective changes have wholly failed to remedy the serious defects in the Order Scheme or provide any realistic future for the Market or the current Market Traders.

6. In summary, the evidence heard by the Inquiry shows that the Order Scheme will push the rents payable by the Market Traders much higher than they would otherwise have been, thereby driving them out of business. This will spell the end for a unique community comprising 97% BME stallholders. Quite apart from the lack of a compelling case for the Order Scheme in such circumstances, this constitutes unlawful ethnic and cultural discrimination and a violation of fundamental rights as a matter of both domestic and public international law. The effects on other protected groups, particularly women and children, are also unlawful as a matter of both domestic and public international law.

BACKGROUND

7. The Council went to great lengths in their Opening Submissions, and throughout the hearing, to stress the importance of developing South Tottenham, one of the most deprived areas in London, to secure “a sustainable future for everyone in Tottenham” and “alleviate this high level of deprivation and social disadvantage”.

8. The Market Traders wholly support the alleviation of poverty and the reduction of social deprivation and disadvantage. They even support the improvement of the existing market building. But, as they have repeatedly stated, it is thoroughly disingenuous for the Council to put the Order Scheme forward as a vehicle for

---

1 Council’s Opening Submission at [9].
protecting and improving the lives and rights of the marginalised, the poor or the minorities whom currently thrive in the Market.

9. Grainger’s aim is profit, not the alleviation of poverty. Neither the evidence of Lyn Garner, Strategic Director of Regeneration, Planning and Development with Haringey Council nor the evidence of Suzanne Johnson demonstrated that Haringey has had the needs of the community they are supposed to serve in Tottenham at heart with this development. The response Lyn Garner gave when questioned about the percentage of BME people in Haringey was telling. She did not know. Likewise Ms Johnson was unable to recall what are the needs of the community of Haringey on housing matters. Nothing in her statement refers to a policy document in that regard. This in our submission reflects the extent to which Grainger’s project has not been thought through by Haringey from the perspective of the communities they are supposed to serve. It simply is not conceived to serve them.

10. The responses of the Council and Grainger in recent days to basic requests from the Market Traders for information about the rent figures on which they basis crucial elements of their own case demonstrated the same obfuscation, lack of co-operation and disregard with which Market Traders have been treated since the inception of the Order Scheme in 2008. Even in the preparation of the core documents, the Council chose only to include the passages of planning policy that it relied upon and which assisted its case. Nor was legislation that the Market Traders relied upon included in the core documents. It is telling the fact that the Council did not consider it relevant to include any of the human rights statutory provisions, under legislation, in the Core Documents. It is clear to the Market Traders that their interests are only considered by the Council to the minimum level which the Council feels it can get away with legally. The overall

In cross-examination she was taken to a document entitled Borough Profile Housing Information, by Haringey, found by the Traders, where it is stated that the main challenges concerning housing in Haringey are: “The need to reduce the number of households in temporary accommodation; the need to ensure that housing meets the Decent Homes Standard, overcrowding and under-occupation of homes; providing affordable homes. The Grainger Scheme does not address any of those needs.
theme is one of the Council continually attempting to reverse engineer a decision that has already been made in an *ex post facto* attempt to show compliance with fundamental rights and discrimination law (as Myfanwy Taylor suggested in her evidence).

11. The Council’s aspiration to implement the Order Scheme is of long standing and things must, inevitably, change over time. But a long-standing vision is no reason at all to confirm the Order and the need for change cannot of itself necessitate change in this way, at this rate and with this cost.

12. Unless the Council can show that its vision is a compelling and inclusive one, which really does secure the future of the Market, the CPO cannot be confirmed. That is why the Council’s case is premised on securing the future of the Market. If they lose that factual point, they cannot justify the CPO on their own case.

**THE THRESHOLD FOR CONFIRMATION OF THE CPO**

13. Confirmation of the CPO can only take place if the Council satisfies the high threshold required for its case to be accepted.

14. The Council made this Order under section 226(1)(a) of the Town and Country Planning Act 1990 (**the Act**), which provides that:

   “A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area . . .

   (a) if the authority thinks that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land.”

15. Section 226(1A) then provides that:
“[A] local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects—

(a) the promotion or improvement of the economic well-being of their area;

(b) the promotion or improvement of the social well-being of their area;

(c) the promotion or improvement of the environmental well-being of their area.”

16. Paragraph 2 of the Compulsory Purchase Guidance then provides that:

“[A] compulsory purchase order should only be made where there is a compelling case in the public interest.

... When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers’ report seeking authorisation for the compulsory purchase order should address human rights issues”

17. Paragraph 76 of the Guidance further provides that:

“Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:

• Whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework
• **The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area**

• **Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.**

18. It is therefore for the Council to prove that:

(1) The Order Scheme will promote or improve the economic, social or environmental well-being of the area – when weighed against the disbenefits of the proposals;

(2) There is a “**compelling case**” for compulsory purchase and that the Order is therefore “**in the public interest**” – not merely that it is in the interests of Grainger, the Council or some category or section of the public; and

(3) On the full merits of the case, including consideration of all human rights issues arising in both domestic and public international law, both the acquiring and authorising authorities are sure that the purposes for which the Order is made justify the interferences with human rights that the Order entails.

**STRUCTURE OF CLOSING SUBMISSIONS**

19. The Market Traders’ submissions are structured as follows:

**Section A: What will be the impact of the Order Scheme?**
(1) Will the increased rents under the Order Scheme drive the market out of business?
(2) Will rents increase by the same amount even if the Order Scheme does not go ahead?
(3) What terms would be acceptable to the Market Traders?
(4) Have Grainger made a meaningful commitment to affordable housing in the Deed of Variation?
(5) Will the Order Scheme regenerate the local area?
(6) What will be the impact of the Order Scheme on children?
(7) What will be the impact of the Order Scheme on women?
(8) Does the Order Scheme protect local heritage adequately or at all?

Section B: Application of planning policy and domestic and public international law to the Order Scheme

(1) Inconsistency with Planning Policy
(2) Breach of Public Sector Equality Duty
(3) Breach of the duty to have due regard to the best interests of children
(4) Unjustified interference with Human Rights and Indirect Discrimination
(5) The traders’ rights as a minority
(6) What is the place of international law in this CPO Inquiry?
(7) International dimension of minorities rights of the Latin traders menaced by the CPO

SECTION A: WHAT WILL BE THE IMPACT OF THE ORDER SCHEME?

(1) Will the increased rents under the Order Scheme drive the Market Traders out of business?

Rents under the Deed of Variation

20. On Mr Saunders’ evidence, current rents in the market are, on average, £60/sq ft p.a. for an interior stall, and £65/sq ft p.a. for a “front” stall. The Traders do not currently pay VAT on their rents.
21. The Deed of Variation provides for a 5 year term of fixed rents as follows:

(1) During the construction of the development, a Temporary Market is to be located in Apex House. On arrival in the Temporary Market, Traders have 3 months rent-free.

(2) Subsequently, the Traders pay fixed Licence Fees, as defined in the Deed of Variation, for the remainder of their time in the Temporary Market. Since the duration of this period is contingent on the completion of the New Market, it is not fixed, but Mr Saunders estimated that it would last 2 years and 3 months. VAT will be charged on the Licence Fees. Accordingly:

(a) Traders with catering businesses will pay £96/sq ft p.a. (incl. VAT).

(b) Traders with stalls in Zone A of the Temporary Market will pay £90/sq ft p.a. (incl. VAT).

(c) Traders with stalls in Zone B of the Temporary Market will pay £78/sq ft p.a. (incl. VAT).

(d) Traders with stalls on the mezzanine will pay £42/sq ft p.a. (incl. VAT)

(3) When the Traders move to the New Market, a 30% reduction in Licence Fees will apply for 18 months. Accordingly:

(a) Traders with catering businesses will pay £67/sq ft p.a. (incl. VAT).

(b) Traders in Zone A will pay £63/sq ft p.a. (incl. VAT).

(c) Traders in Zone B will pay £54.60/sq ft p.a. (incl. VAT)
(4) After 18 months in the New Market, the Traders will pay full Licence Fees for the remaining year of the fixed rent period. Accordingly:

(a) Traders with catering businesses will pay £96/sq ft p.a. (incl. VAT).

(b) Traders with stalls in Zone A of the Temporary Market will pay £90/ sq ft p.a. (incl. VAT).

(c) Traders with stalls in Zone B of the Temporary Market will pay £78/ sq ft p.a. (incl. VAT).

(5) When the fixed rent period ends, the Market Operator will be free to charge the Traders open market rents, subject to the Deed of Variation, which provides that that licence fees shall be set “at a level that is consistent with the Council’s policy objective to attract and promote local independent traders” (p.5).

22. Turning now to the evidence, the programme of fixed rents under the Deed of Variation will drive the market out of business, for the following reasons.

(i) Mr Saunders’ report conceals substantial periods of dramatic rent increases

23. Mr Saunders’ report seriously understates the impact that the increased rents in the Order Scheme will have on the market. Whether or not Mr Saunders is correct that the increase in the total rent payable over the course of five years is about 25% more than that payable during the same period under the Order Scheme, it is clear that, within that period, there are lengthy periods of as long as two years and three months during which Traders will pay 40-50% more in rent.

---

1 For Traders who move from internal units to Zone A, which Mr Saunders agreed would be the most numerous class.
than current average rents¹. Mr Saunders states that “even when comparing current rents to the proposed fees including VAT, ... the largest increase over the five years of fixed fees is 33.55% for those Traders in “internal” units with catering businesses, followed by Traders in “front” units with catering businesses with a 25.23% increase over five years. An increase of 33.55% over five years is an average increase of 6.71% per year” (para 4.99). That is misleading, for the following reasons:

(1) Mr Saunders’ workings for those calculations are shown at Appendix 6 to his report, in Table 3. As we move through the five years of the fixed-rent period in the DDV, it is illuminating to compare the rent payable at current levels by a Trader with an internal unit against the rent payable under the DDV by the same Trader, who moves from an internal unit in the current market into a Zone A unit in the Temporary Market and New Market. As Mr Saunders accepted in his evidence, Zone A units are the most numerous. They are therefore the most representative of the impact of the Order Scheme on the market as a whole. Table 6 shows that the total rent payable for such a Trader under the DDV is 25% greater over the course of five years than it would be over the same period if rents simply increased by 2% per year above current levels. However, Table 6 also shows that, after an initial three month rent-holiday in the Temporary Market, Traders in Zone A will be paying £7.50/sq ft pcm⁵. By contrast, at current rent levels, they would only be paying £5/sq ft pcm. After only three months of the DDV fixed-rent period, the Traders will, therefore, be paying 50% more than they do now and, as the table shows, that is expected to continue for the next two years and three months (or longer, if the construction of the development overruns). If a scheme had been deliberately designed to push the Traders

¹ Being the current average rents as calculated by Mr Saunders and stated at para 3.9 of his report, which the Traders have been unable to check due to Grainger/Council’s unreasonable refusal to disclose the raw data underlying the averages.

⁵ Due to a quirk in Mr Saunders’ methodology, Table 6 shows rents on a per sq ft pcm basis, rather than a per sq ft p.a. basis.
out of business, Grainger and the Council could scarcely have done a better job.

(2) In their evidence, the Market Traders described the effect that an increase in rent of 50% above current levels would have on their business.

(a) In his evidence in chief, Diego Alvarez was asked, “if your rent all of the sudden had to rise 50% - how long you think you would stay trading?”. He responded, “If they were to come to me and say Juancho restaurant, raise your rent by 50% it would be a disaster ... I could survive but I would go bankrupt”. He also gave evidence that, if he were required to pay VAT on rent, it would be “really difficult” to pass the VAT onto his customers, because their low incomes would mean that they could no longer afford to eat in his restaurant.

(b) In her evidence in chief, Martha Giraldo Sanchez was asked, “so, Martha, could you afford having to pay a raise of 50 per cent more on top of the rent that you actually pay right now?”. She responded, “No, I don’t think I can pay more money on rent, or increased taxes etc. We have established costs and we would not be able to meet higher charges”.

(c) Fernando Esguerra, for his part, gave evidence that “it would be impossible to pay 50 percent rent increase. We would not be able to pay. I would say, right now we pay too high rents, non-sustainably, 50 per cent increase would be impossible for us to cover”. He was then asked, “But let’s say that this is happening how long would you be able to be working at a loss, having to pay that rent...”. He responded, “Maximum one month. We could not go further than a month with an increase as high as

---

1 Friday, 21 July 2017 (morning), 2h51.
2 Friday, 21 July 2017 (morning) 2h48
3 Thursday 20 July 2017 (afternoon) 0h33
4 Friday, 21 July 2017 (afternoon) 2h26
50 per cent”¹⁰. Mr Esguerra also gave evidence that he would not be able to pay VAT on rents: “it would not be possible with a VAT rise. It would destroy our businesses. Our community is not a community with a lot of money. It would be impossible for us to be successful if prices have to increase both for our clients and for us”¹¹.

(d) Maria Osorio was asked, “if you had to add VAT to items you sell, would that work?” She replied with a simple “no”¹².

(3) That period of at least two years and three months in the Temporary Market is not, however, the only period during the five years of fixed rents during which rents are substantially higher than they are now. During the last year of that five year period, Table 6 shows that Traders in Zone A will pay between £7.50 and £7.65 per sq ft pcm, which is about 41% more than the rents of between £5.31 and £5.52 that they would be paying during the same period if current rents were simply increased in line with inflation.

(4) These dramatic increases in rent are offset, in part, by a three month rent holiday when the Traders first move to the Temporary Market, and an 18 month period when they first move to the New Market during which Licence Fees are discounted by 30% below the DDV level. Those concessions are, however, smoke and mirrors:

(a) After an initial (and short-lived) rent holiday in the Temporary Market, the Traders will have to endure about 2 years and 3 months (and possibly longer) of rents that are 50% higher than the current average rent¹³ before they move to the New Market, and the 18 month discount period kicks in. The discount period in the New Market will be no use to Traders.

¹⁰ Friday 21 July 2017 (afternoon) 2h27
¹¹ Friday 21 July 2017 (afternoon) 2h25
¹² Friday 21 July 2017 (afternoon), 1h42
¹³ As calculated by Mr Saunders, which is not necessarily accepted by the Traders.
who have been pushed out of business by over 2 years of exorbitant rents in the meantime.

(b) According to Mr Saunders, the purpose of the 3 month rent holiday on arrival at the Temporary Market is to provide “a cushion for any Traders who experience any drop in turnover due to disruption caused by the Market’s relocation or the movement of their unit within the Market” (para 4.103). Mr Saunders’ report does not suggest that he has carried out any calculations that indicate that it would also be sufficient to assist the Traders in meeting dramatically increased rents for the next 2 years. Indeed, it would be rather odd if this were part of the purpose of the rent holiday, as lower rents could simply have been charged over the 2 year period, rather than front-loading the assistance to the Traders in the first 3 months.

(5) Further, Mr Saunders is incorrect as a matter of mathematics to claim that “an increase of 33.55% over five years is an average increase of 6.71% per year” (4.99). If the Market Operator increased rents by 6.71% per year, he would not come close to collecting 33.55% more in rent over a five year period. Indeed, he would only collect 33.55% more rent in the final year of that period; in the first year, he would only collect 6.71% more rent, in the second, 13.42% more rent, and so on. Mr Saunders’ scheme is not, therefore, the equivalent of raising rents by about 6% per year; on the contrary, in order to collect about 25% more rent over 5 years, the Deed of Variation provides for a period of about two years and three months during which Traders will be paying 50% more than they do now, and a further period of a year in which they will be paying about 41% more.

(ii) Rents under the Deed of Variation will be unacceptably volatile
24. Under the Order Scheme, Traders will have to contend with highly volatile rents.

(1) Traders in Zone A will bounce from their current rents in the present market building to a 3 month rent-free period in the Temporary Market, then spring up to £90/ sq ft p.a. (incl. VAT) for about 2 years and 3 months, before plunging back down to £63/ sq ft p.a. (incl. VAT) for 18 months, and then surging back up to £90/ sq ft p.a. (incl. VAT) for the final year of the 5 year fixed-rent period. No attempt has been made to graduate or smooth out this volatility. Tellingly, in cross-examination, Mr Saunders was forced to concede that “I think it’s a quirky system. The rises and falls is not perfect. But I am happy with the overall outcome”.

(2) Such volatility is particularly inexplicable in circumstances where, as Mr Saunders admitted in cross-examination, the difficulties encountered by Traders in relocating to the Temporary Market and New Market are likely to be comparable, and yet the assistance afford to Traders by the Order Scheme is quite different, comprising a 3 month rent-free period on relocation to the Temporary Market, and an 18 month period at a 30% discount on relocation to the New Market. In cross-examination, Mr Saunders could not explain this arbitrary difference, abdicating responsibility by claiming that “I didn’t develop that mechanism; that was already in place”. Shortly afterwards, Mr Saunders claimed that “they were in place when I started looking at the scheme. It feels like we’re taking a long time here talking about the stages. They were in place, and were just adopted, and that’s the way that they work out when I looked at the rent over the five-year fixed period”. Far from carrying out a holistic review of the Order Scheme, Mr Saunders left in place vestiges of an eccentric and volatile rent scheme that he had inherited, but did not think to correct:

14 Tues 18 July 2017, morning, 2h42
15 2h51-2h52
16 2h52
“Q: What you’ve done here is, without sufficient reflection, you’ve adopted a scheme that was presented to you, and which you didn’t develop, and you’ve adopted that scheme notwithstanding that it produced what you’ve described in your evidence as some quirky results?
A: Yes, and my focus being, you know, what I could fix for five years using the concessions that were already in the DDV” (emphasis added)\(^\text{17}\)

(iii) Increased rents but substantially reduced floorspace

25. During the lengthy periods of rent that are 40-50% higher than current rents, the Traders’ ability to pay will be further impeded by a substantial loss of floorspace.

(1) The figures that Mr Saunders gave as the average rents that Traders are currently paying appear to have been based on the floorspace specified in the Traders’ licences (para 3.8). They did not, therefore, take into account the additional floorspace, comprising mezzanines, pavements and parts of walkways, which Mr Saunders admitted in his evidence was “substantial”\(^\text{18}\). If, for the sake of argument, a Trader has a mezzanine that was the same floorspace as the licensed floorspace of his or her unit, his “effective” rate of rent would be half of that relied upon by Mr Saunders in making his calculations, e.g. £30/ sq ft p.a. rather than £60/ sq ft p.a. The Traders’ additional space will not, however, be provided in either the Temporary Market or the New Market (cl.7.8, Deed of Variation). As a result, grocers will, for example, have less storage space, and will therefore have to reduce their selling space, thereby reducing profits. Some Traders may even lose a sub-licensee\(^\text{19}\). Profits will inevitably fall. Grainger and the Council are, therefore, expecting Traders to be able to pay rents that are 50% higher than

---
\(^{17}\) 2h52
\(^{18}\) 2h43
\(^{19}\) This was put to Mr Saunders in cross-examination and, he responded that he had heard that some Traders might have sub-licensees of mezzanine space, he had not seen confirmation. Grainger and the Council have not, however, adduced evidence to contradict the existence of sub-licensees of mezzanine space.
current rents for a period of about 2 years and 3 months (and possibly longer), notwithstanding a substantial loss of floorspace.

(2) Further, some businesses may require a certain floorspace as a minimum. For them, relocation to the Temporary Market or New Market will not be an option. For example, Manuel Pelaez, who operates a restaurant in the market, has three bread ovens on his mezzanine. When asked whether he could operate his business without the mezzanine space, he said “it would be unheard of, it would be an impossible thing”. The Order Scheme is, therefore, likely to prevent some Traders from moving to the Temporary and New Markets, resulting in the fragmentation of a unique ethnic minority community.

(3) Furthermore, the Traders have invested substantial capital in improvements to their stalls. Manuel Pelaez, for example, invested about £43,000 for refurbishment (para 8). There is no proposal to compensate the Traders for that loss of capital.

(4) In his report, Mr Saunders explained that he did not take the Traders’ additional space into account for the following reason: “gradual creeping extensions and unauthorised mezzanines have significantly increased the “official” rented size of some stalls, however. As these extensions are not permitted under the terms of the Traders’ licences and as the individual sizes of these have not been formally measured, they have not been taken into account in any discussions” (para 3.8). That does not address the point:

(a) The licensed or unlicensed nature of the additional space used by the Traders is nothing to the point; the fact is, whatever the status of that space, it is currently a profit-making space that the Traders rely upon to meet their current rents. If that space is taken away, they would not be

---

20 Friday 21 July 2017, morning, 1:48:35
able to pay their current rents, let alone the increased rents that Grainger propose. It is as simple as that.

(b) In cross-examination, Mr Kiddle accepted that it was a “fair assumption” that when the Traders built their mezzanines, this was accepted by their licensor at the time. They were, therefore, led to believe that it was entirely permissible for them to construct additional space:

“Q: Now in the present market many traders have built their own mezzanines and roof storage spaces which your expert describes as unauthorised, haven’t they?
A: Yes
Q: And that was the result of a permissive attitude from the previous landlord, wasn’t it?
A: Seemingly, yes.
Q: So many traders would have built those spaces on the understanding that it was accepted by those to whom they answered under their licences at that time?
A: Yeah I think by virtue of the fact that no one stopped them doing it, yeah that’s probably a fair assumption”

(c) According to Mr Saunders, the Traders’ licences can be terminated by the market operator on 7 days’ notice (3.12). It does not follow, however, that Traders who have invested substantial sums of money (as much as £43,000 in some cases) in their units could be evicted on a mere 7 days’ notice, however. That would defy common sense. Moreover, it is wrong as a matter of law: there is at least a good arguable case that an investment of that magnitude would give rise to a proprietary estoppel.

---

21 Afternoon
(5) In his evidence, Mr Saunders said that there was sufficient room in the Temporary Market that existing Traders would not have to take units on the less desirable mezzanine level. He also said that he recalled that there would be provision for storage space above units in the New Market. Notwithstanding the apparent existence of available space in the development, the Council have nonetheless failed to explore whether the Traders could have been given a unit with the same floorspace as their present unit (including both licensed and additional floorspace).

(6) Additionally, the Deed of Variation does not contain any guarantees that the Traders will not be required to take stalls in the Temporary and New Markets that are larger than their present stalls, and on which a higher rent (in absolute terms) would therefore be payable. In her report recommending that the Secretary of State should not confirm a CPO in respect of Shepherd’s Bush Market, the Inspector in that inquiry said the following: “At para 12.5.17 she pointed out that the size of replacement premises was unknown. Since rent for retail property is charged at a rate per square foot, it is obvious that the size of a unit is a crucial factor in determining whether the rent is affordable” ([Horada v Secretary of State for Communities and Local Govt](https://www.gov.uk/government/publications/horada-v-secretary-of-state-for-communities-and-local-govt) [2016] EWCA Civ 169, para 31).

(iv) Traders are thrown to the wolves after five years

26. Although the DDV provides for a period of fixed rents of approximately five years from the point that the Traders begin trading in the Temporary Market, the Traders will be thrown to the wolves on the open market after that five year period has elapsed. Units are likely to command higher rents on the open market than they do at present, as a result of the redevelopment.

(1) After the 5 year period of fixed fees, the definition of New Market Area Scheme in the Deed of Variation only requires licence fees to be set “at a
level that is consistent with the Council’s policy objective to attract and promote local independent traders” (para (d)).

(a) This definition does not require licence fees to be set at a level that promotes the existing market traders, or indeed the type of local independent traders who are characteristic of an indoor market, rather than a high street. The term “local independent trader” could embrace more up-market retail units (particularly as the area gentrifies), who would be capable of paying much higher rents. This term does not, therefore provide any meaningful rent protection.

(b) Both Lyn Garner and Gary Saunders appeared to be under the misconception that the Deed of Variation would give the Council “oversight” over future rents. It does not. Provided the Market Operator can make a reasonable case that its rents are consistent with the Council’s policy for the attraction and promotion of local independent traders (which, given the vagueness of that phrase, should not be difficult), the Council will be powerless to interfere.

(2) In his report, Mr Saunders said that “it is very important to emphasis that setting a viable rent is therefore in the Market Operator’s interests just as much as it is in the Traders’: market operators need to keep their markets full and bustling. I am therefore confident that, even after the first 30 months in the New Market Area, the Licence Fee levels will not suddenly increase beyond the budget of the Traders” (8.10). That is, however, predicated on the assumption that, if the Market Operator attempted to raise rents significantly after the end of the 5 year fixed-rent period, he would be left with empty units. The alternative possibility is that, even if higher rents push the existing Traders out, the Market Operator might be able to fill the units with traders of a perceived higher quality, who would be able to pay him higher rents. This could incentivise the Market Operator to raise rents after
the end of the 5 year fixed-rent period to levels that the Traders cannot afford.

(3) Surprisingly, Mr Kiddle admitted in cross-examination that Grainger had not even carried out a viability study to assess how much it would have cost to extend a fixed-rent period beyond five years.

“Q: the most serious, and very serious, problem with the DDV is that there is no rent protection whatsoever after five years. Now you haven’t even carried out a viability assessment to determine how a longer rent freeze would affect the viability of the Order Scheme, have you?

A: No, I don’t believe that we have, no”[22]

(4) As the Council’s viability expert, Robert Fourt, was called the afternoon after Mr Kiddle, the Council had the opportunity to rectify this defect in their evidence, but did not do so.

“Q: Mr Fourt, you haven’t considered the viability of a longer term cap on market rents or more favourable rents offered to the market traders, have you?

A: Sorry, a point of clarification: are you talking about the Alternative Scheme or the Order Scheme please?

Q: I’m talking about the Order Scheme now.

A: No, that’s correct, because all I have been tasked with is as per the s.106 Agreement in valuing what effectively a Market Operator would pay Grainger, and therefore how that operator then looks to charge the market traders is a separate matter and a matter that is dealt with within Mr Saunders’ evidence”[23]

[22] Wed 13 July, 2h29
[23] Thurs 14 July, afternoon, 2h07
(5) In summary, therefore, the Traders will be thrown to the wolves on the open market after about 5 years of fixed rents, and the Council have not even attempted to estimate the cost of a lengthier programme of fixed rents that would avoid that outcome. This is an important similarity with the Shepherd’s Bush Market CPO Inquiry, in which the Inspector recommended that the CPO should not be confirmed:

“So far as financial conditions were concerned she found that the rent and service charge freeze would provide a level of certainty during the construction period. Since it was a freeze, that was clearly right. But since the rent and service charge freeze was time limited, clearly it could offer no certainty after the construction period was over. Indeed the council’s case (recorded at para 4.7.6) was that once the construction period was over rent would “be determined by the market in the usual way”. So she looked for mechanisms to provide what she regarded as necessary protection for existing traders after the construction period was over ... what she was looking for was “binding/enforceable measures ... to be assured that the replacement premises (stalls and shop units) would be ... affordable enough for traders to return to the site in sufficient numbers and maintain the market's character ... She returned to the point at para 12.10.6 where she said that it was not possible to establish whether “new trading conditions would be sufficiently affordable [for] the needs of traders currently operating in the market”. She concluded that the guarantees and safeguards were not sufficiently robust to be assured that genuine opportunities existed for current traders to continue trading in the market.” (as summarised by the Court of Appeal in Horada v Secretary of State for Communities and Local Govt [2016] EWCA Civ 169, para 31).

(v) The Deed of Variation is a “one size fits all” rent scheme
27. Although Mr Saunders considered the extent of the increase in rent that Traders currently paying average rents will experience under the Order Scheme, he did not consider the impact of rent increases on Traders who are currently paying below average rents. When the Council finally agreed to disclose the individual rents on the eve of closing submissions, the reason for their reluctance to do so was immediately apparent: they show that at least eleven Traders with interior units currently pay below Mr Saunders’ average of £60/ sq ft. Six of those Traders pay rents in the mid to high £40s, and five pay rents spread through the £50s. The Council provided data for thirty-two Traders with interior units in total. 34% of those Traders therefore pay rents below Mr Saunders’ average.

28. For units with frontage, two traders (out of six) pay under Mr Saunders’ average of £65/ sq ft, again about 33%. So although the Licence Fees payable under the Deed of Variation are 50% higher than current rents for those traders who are currently paying average rents, they are substantially higher for roughly a third of Traders who pay below-average rents at present. A major problem with the scheme of Licence Fees, then, is that it is a “one-size-fits-all” solution that assumes that all Traders are paying about the same rent at present, when they are clearly not.

(vi) Mr Saunders had no good reasons for believing that the market would survive the Order Scheme

29. Each of the reasons that Mr Saunders gave at para 4.109 of his report for believing that the market would survive the rent increases under the Order Scheme is deeply unconvincing:

(1) First of all, Mr Saunders said that the rent increases “will be structured over a period of around five years – assuming at least two and a half years in the Temporary Market whilst the New Market Area is built – with three months fee-free and an 18 months 30% discount. There will therefore be time for
Traders to adjust”. However, the rents set by the scheme in the Deed of Variation are, in fact, highly volatile. Traders will begin with a 3 month rent free period in the Temporary Market, before rents surge immediately to a level 50% higher than current rents. There will, contrary to Mr Saunders’ contention, be no time for Traders to adjust.

(2) Secondly, Mr Saunders asserted that “the Temporary Market and New Market Area will both be open for trading on Sunday, adding another 52 profitable trading days per year”. However, this is irreconcilable with the view expressed earlier in his report that “seven day trading can be very demanding for independent sole traders: some Traders will not be able to open every day of the week even if they wished to” (para 3.33).

(3) Thirdly, Mr Saunders asserted that “the improvements in built environment, signage, visibility, advertising and business assistance from the Market Facilitator, in both the Temporary Market and the New Market Area, are very likely to attract new customers and increase trade levels and the Traders’ profits”.

(a) In the Temporary Market, after 3 months rent free, rents will rise to 50% above currently levels for about two years and three months, notwithstanding the following serious problems that would actually make it appropriate for the Traders to pay less in the Temporary Market than they do now:

(i) The Traders will have lost the benefit of the “substantial”24 additional space (e.g. mezzanines) that they currently enjoy, and will therefore be paying a much higher “effective” rent than they do at present.

24 As Mr Saunders agreed that it could be described, in his evidence.
(ii) The Traders will be in a location that is unfamiliar to their customers.

(iii) The Council have not undertaken any study of footfall at Apex House in comparison with the present market, as Mr Saunders accepted in his evidence. It is a less favourable pitch, because, unlike the present market, it is not directly opposite Seven Sisters Underground Station.

(iv) In the Temporary Market, there are nine units on a mezzanine level and a further ten in a separate building (marked as Zone B) (Appendix 4 to Mr Saunders’ report). The Traders, and particularly those in Zone B and on the mezzanine, will lose the benefit of critical mass that they currently enjoy.

(v) The Traders will lose the benefit of the 15-20 car parking spaces for customers that they currently enjoy. Since they sell Latin American products that are difficult to source elsewhere, customers will travel long distances. Given the difficulty in travelling across London by public transport (as opposed to in and out), the loss of car parking space is significant. Furthermore, as a matter of common sense, it is difficult to carry shopping on the underground; that is exactly why people typically do their supermarket shopping by car.

(vi) The Temporary Market is significantly further away from the cash point next to Sainsbury’s on West Green Road. This will increase the pressure on Traders to install card machines, with the associated costs.

(vii) Although a number of Traders presently enjoy an open frontage, that will not be available in the Temporary Market.
(viii) According to Mr Kiddle, there is scope for the relocation of
the Traders to the Temporary Market prior to practical
completion of Apex House (para 7.23(b)). The rents payable in
the Temporary Market do not, however, make an allowance for
the noise, dust and unsightliness that construction works going on
above the market would cause, which would be particularly
problematic for e.g. restaurants. This also undermines the
Council’s case that the Traders would have the use of the
courtyard in the middle of Apex House, since this is unlikely to be
a pleasant environment in the course of ongoing construction
works. It also knocks out Mr Kiddle’s suggestion in evidence that
the Traders will benefit from the custom of the residents in Apex
House during their time in the Temporary Market, since the
development may not yet be tenanted.

(b) It would also be appropriate for rent in the New Market to be lower
it is now, or, at the very least, the same, since it has a number of important
defects:

   (i) Again, the Traders will have lost the benefit of the “substantial”\textsuperscript{25}
additional space (e.g. mezzanines) that they currently enjoy.

   (ii) The New Market will not be in the same location as the current
market, which faces the entrance to Seven Sisters Underground
Station. Rather, it will be around the corner, on Seven Sisters
Road (Saunders, Appendix 4). Quite apart from the less
favourable location, it can be seen from Mr Saunders’ appendix 4
that there is less pavement space on Seven Sisters Road than
Tottenham High Road, which will prejudice those Traders who
currently enjoy use of the pavement.

\textsuperscript{25} As Mr Saunders agreed that it could be described, in his evidence.
(iii) Again, there will be no car parking facilities available to the Traders or their customers (notwithstanding that a “ramp to car park” is marked on the plan of the New Market, such that parking could have been made available) (Saunders, appendix 4).

(4) Mr Saunders’ fourth reason at para 4.109 for believing that the Traders would survive the rent increases proposed under the Deed of Variation was that “Traders have already weathered a significant rise of 52.25% for internal units ... between 2008 and 2015, with none of the anticipated benefits of the Grainger scheme. In addition, there have been no licence fee increases since 2015: Traders cannot realistically expect to remain at the same licence fees indefinitely”. As to that:

(a) A 52.25% rise in rents over 7 years does not show that Traders can cope with a 50% rise in rents after their first three months in the Temporary Market, particularly given the defects in the Temporary Market identified above.

(b) Mr Saunders acknowledged that a possible reason for the rise in rents since 2008 was the construction of mezzanines, rather than a natural growth in rents.

(c) The Traders do not expect to remain at the same licence fees indefinitely; they do, however, expect not to be subjected to an increase of 50% above current rents after only 3 months in (a rather sub-standard) Temporary Market.

(5) Mr Saunders’ fifth reason was that “these predetermined Licence Fees are very much in line with fees charged in other London Markets”. When VAT is added to the Licence Fees, they are (a) £78/ sq ft in Zone B, (b) £90/ sq ft in Zone A and (c) £96/ sq ft for catering units. These Licence Fees fall
outside the range of rents at 3 out of 4 of the markets surveyed by Mr Saunders: at Wood Green, rents are said to be £40/ sq ft[^26], at Tooting, they are said to fall in the range £55-£80/sq ft (incl. VAT) and at Tooting Broadway, they are said to be £70/ sq ft (incl. VAT). Although rents at Nag’s Head are £138/ sq ft, this is a clear outlier, and Mr Saunders himself admitted that it was “rather expensive”[^27].

(vii) Failure to take business rates into account

30. The Order Scheme does not make any provision for the protection of the Traders against possible liability (or increased liability) for business rates that they might incur as a result of the transfer to the Temporary Market and the New Market. This concern was raised by Fernando Esguerra, who said in his statement that “we do not have a clear idea of what will happen to us, who is going to manage the market, how much the rent will be, what the business rates will be” (para 10, emphasis added). This is not a matter that Mr Saunders has considered.

(viii) No obligation to provide a New Market at all in some circumstances

31. Grainger are only required to provide the New Market if the Market Condition is satisfied. The Market Condition will only be satisfied if Grainger receive an offer from a Market Operator to enter into the Market Lease no later than 12 months before Practical Completion of the Development. This may or may not happen, depending on the rent Grainger seek. There is no reason whatsoever why the future of the market could not be secured by imposing an absolute obligation on Grainger to provide the New Market; if no Market Operator comes forward, Grainger can simply operate the New Market through a managing agent.

[^26]: It is unclear whether this is inclusive of VAT.
[^27]: 3h17
Summary

32. In summary, then, the Traders are unlikely to survive the rents that will be due under the Order Scheme for the following reasons:

(1) Mr Saunders’ assessment of the percentage increase in rent over the five year period of fixed rents is misleading, because it conceals much greater percentage increases during lengthy portions of that five year period, e.g. a 50% increase lasting for about two years and three months (and possibly longer).

(2) The rents set by the Deed of Variation are unacceptably volatile, and no attempt has been made at graduation and smoothing.

(3) Not content with raising rents well above current levels, the Council also expects the Traders to be able to pay those rents on dramatically-reduced floorspace. There is no guarantee, furthermore, that Traders will not be forced into units that are significantly larger, and therefore more expensive, than their present units.

(4) The fixed rent period only lasts for five years, after which the Traders are thrown to the wolves at open market rents, which will be significantly higher than rents pre-development. No attempt was made to cost out a lengthier period of rent protection.

(5) The Licence Fees are a “three sizes fit all” scheme that do not properly take into account the extent to which the rents currently paid by individual traders deviate from the mean. As a result, Licence Fees will rise by substantially more than 50% above current levels for some Traders after a mere 3 months in the Temporary Market.
(6) Each of the reasons that Mr Saunders gave for his belief that the Market would survive the rent increases under the Order Scheme is deeply unconvincing.

(7) Mr Saunders did not assess the potential impact of relocation to the Temporary and New Markets on the Traders’ liability for business rates.

(8) Quite apart from rents, there is no obligation at all to provide a New Market in certain circumstances.

33. The fixed rents under the Deed of Variation will, therefore, be much higher, more volatile, less trader-specific, and in any event time-limited and payable on a substantially reduced floorspace when compared with current rents. As a result, the Traders would be driven out of business if the CPO is confirmed.

(2) Will rents increase by the same amount even if the Order Scheme does not go ahead?

34. At para 4.101 of his report, Mr Saunders claims that:

“under Grainger’s scheme the Traders will be paying lower licence fees than under the “do nothing” option, the “make do” option or the WCC scheme...:
(i) “Do nothing”: internal units at between £75-80/sq ft and “front” units at around £100/sq ft
(ii) “Make do”: £85/sq ft (plus VAT) for “internal” units and £112/sq ft (plus VAT) for “front” units;
(iii) “WCC scheme”: using the fixed DDV figures as a minimum, the WCC scheme makes a loss. It is therefore certain that the licence fees would have to be higher than those in the fixed DDV scheme, although I am unable to say how much higher given the lack of detail on the intended business model and the intention not to use a market operator”.
35. For the reasons given, it is unlikely that the Traders could survive an increase in Licence Fees of the magnitude proposed by the Deed of Variation. Consequently, Mr Saunders’ claim that rents will be even higher if the Order Scheme does not go ahead really boils down to a contention that, if higher rents are going to kill the market, then it is going to die anyway, whether or not the Order Scheme goes ahead. That is an unattractive and defeatist proposition: if the Order Scheme included sensible rent terms for the Traders, then the future of the market could so easily be secured\textsuperscript{a}. At present, the Council have missed a golden opportunity to do just that. The Traders set out below in paragraphs 41 and on the rent terms that the Council could and should have agreed with Grainger.

36. In any case, Mr Saunders is incorrect to claim that rents would be higher under the “do nothing” hypothesis or the “make do” hypothesis than under the Order Scheme. We address each in turn.

(i) The “do nothing” hypothesis

37. The “do nothing” hypothesis assumes that “the Market continues without any investment at all” (4.24). In cross-examination, Mr Saunders accepted that the terminology of “do nothing” was slightly misleading, and that “do the minimum necessary” would be a better characterisation. Consequently, we refer to it henceforth as the “minimum necessary” hypothesis.

38. Although rents may rise slightly under the “minimum necessary” hypothesis, Mr Saunders has no basis for claiming that they will be higher, or even the same level, than under the Order Scheme:

(1) Mr Saunders’ estimate that, on the “minimum necessary” hypothesis, rent levels would increase to £75-80/sq ft for “internal” units, and around £100/sq ft for “front” units after five years appears to have been plucked from clean

\textsuperscript{a} Rent terms that would be acceptable to the Traders are set out below.
Neither in his statement, nor in his evidence, was any rational basis offered for it. This is the Council’s case to prove, and on this point, as on many others, they have simply failed to do so.

(2) In any case, on the “minimum necessary” hypothesis, the market operator would not have to register the building for VAT purposes, since Mr Saunders accepts that the main reason for doing so would be to recoup the VAT paid on the cost of repairs (4.37(ii)). This is accepted by Mr Saunders at 4.37(ii), where he states that VAT would have to be added to rents under the “make do” hypothesis and the WCC scheme. Notably, he does not indicate that VAT would be charged on rents under the “minimum necessary” hypothesis. Under the Deed of Variation, the Licence Fee due for units in Zone A is £90/ sq ft p.a. (incl. VAT). That is substantially higher than the figures Mr Saunders gives for the “minimum necessary” hypothesis, which are £75-80/ sq ft p.a.

(3) On the “minimum necessary” hypothesis, Traders would have the continued use of their additional space (e.g. mezzanines etc.). By contrast, under the Deed of Variation, Traders will only be allocated their licensed floorspace in the Temporary Market and New Market. Accordingly, comparing rates of rent under the “minimum necessary” hypothesis and the Deed of Variation is not comparing like with like, since, under the former, the Traders have access to significant additional space that is not reflected in the average rents.

(4) Further, Mr Saunders claims that, under the “minimum necessary” hypothesis, rent would increase “in increments”, and would only be comparable in level to the Licence Fees after five years (4.26). By contrast, under the Deed of Variation, the full Licence Fee kicks in after only three months in the Temporary Market, and that lasts for about two years and three months. It is odd to claim that the Deed of Variation is no worse for the Traders than the “minimum necessary” hypothesis, simply because rents
under the latter after five years are allegedly comparable to rents under the former after a mere three months.

(5) Under the “minimum necessary” hypothesis, the Traders would not experience the same problems of volatility and “one size fits all” rents that they would encounter under the Deed of Variation.

(6) Mr Saunders’ comparison is between the fixed Licence Fee payable under the Deed of Variation after five years, and the rent that he considers is likely to be payable under the “minimum necessary” hypothesis after five years. After the period of fixed rents has ended, he says that “although there is an element of speculation here – given that this is some years away – my instinct is that, in the long term, this trend would continue: the Traders’ fees would be lower under Grainger’s scheme and profits higher than under the “do nothing”, “make do” or WCC options” (4.2(iv)). The Traders should not have to rely on an expert’s “instinct” and “speculation”. For the reasons given above, it is likely that the fixed licence fees under the Deed of Variation will be higher than those under the “minimum necessary” hypothesis; if that is the case, then it can reasonably be expected that open market rents in a redeveloped Wards’ Corner will be even higher.

(ii) The “make do” hypothesis

39. At the outset, it should be noted that the “make do” hypothesis is misnamed; as Mr Saunders accepted in his evidence, the “do nothing” hypothesis would be better termed the “do the minimum” hypothesis, in which case the words “make do” cannot bear their natural meaning, otherwise the “make do” hypothesis would be no different from the “do nothing” hypothesis. For that reason, we will refer to the so-called “make do” hypothesis as the “Renovation hypothesis”.

40. Mr Saunders claims that, under the “Renovation hypothesis”, rents would rise to £102/ sq ft (incl. VAT) for internal units and £134.40/ sq ft (incl. VAT) for front units. This, he says, “equates to immediate rises of, respectively, 70% and 110%
including VAT” (4.34). VAT would, says Mr Saunders, be charged on rents because the market operator would be compelled to register the building for VAT in order to recoup the VAT paid out on the cost of renovation (4.37(ii)). With respect, this hypothesis is entirely unrealistic:

(1) First of all, it is inconsistent with the Council’s own case. Mr Saunders expresses the view that “setting a viable rent is therefore in the Market Operator’s interests just as much as it is in the Traders” (4.74). Plainly, a Market Operator would never undertake a programme of renovation that required “immediate” rent increases of 70%-110%, because the effect would inevitably be to drive the Traders out of business in short order, leaving the Market Operator with an empty market”. Mr Saunders’ Renovation hypothesis is therefore unreal, and the “do the minimum necessary” hypothesis is far more probable. On that hypothesis, as we have seen, rent rises are much lower than under the Deed of Variation.

(2) The Renovation hypothesis is based on a report prepared by CBRE, which estimates that £1,239,000 was required for the purpose of “essential repairs to keep the market premises running safely as a market hall for the next 10-15 years” (p.2). As explored in some detail in cross-examination, however, the repairs and expenses itemised in the report go beyond essential repairs and expenses. For example, CBRE costed £103,330.48 for the services of a contract administrator, without considering whether an ordinary market operator would be likely to use such a service. As another example, approximately £260,000 was costed for works to “demolish the partitions forming the stalls/retail units as they are not built to a uniform standard” and “rebuild and decorate the walls forming the retail units/stalls as open plan units to a uniform and statutory compliant standards”. Plainly, “uniform” partitions are not essential. The Market may be shabby and slightly run down, but it is perfectly serviceable as it is, and, when the detail of the CBRE

29 This is without prejudice to the Traders’ point that the Market Operator may, after five years of fixed rents, gradually increase rents by more modest amounts, thereby pushing the Traders out of the market.
report is examined, it does not show the contrary. Despite our suggestion in the cross-examination of Mr Saunders, the Council did not elect to tender the author of the CBRE report for cross-examination.

Summary

41. In summary, rents under the “*Do the minimum necessary*” hypothesis are significantly lower than under the Deed of Variation, and the “*Renovation hypothesis*” is entirely unreal. Mr Saunders is therefore wrong to claim that “under Grainger’s scheme the Traders will be paying lower licence fees than under the “do nothing” option [or] the “make do” option” (4.101). In fact, rents will be significantly higher under the Deed of Variation than they will if the Order Scheme does not go ahead.

(3) What rent terms would be acceptable to the Traders?

42. At this stage, the Traders have established that:

(1) They could not survive the rents under the Deed of Variation; and

(2) Those rents are significantly higher than the rents that they are likely to pay if the Order Scheme does not go ahead.

43. The Traders’ firm primary position is that, as a result, the Order Scheme should not be confirmed. Their fallback position, however, is that the Inspector should recommend to the Secretary of State that he should only confirm the CPO if Grainger are willing to accept the following terms:

(1) Each Trader to have a stall in the Temporary Market and New Market with 100% of the licensed floor space of their current stall.
(2) In addition, each Trader’s stall in the Temporary Market and New Market shall also have 90% of the additional floor space of their current stall (e.g. mezzanines and use of public walkways and pavements).

(3) Six months’ rent free on arrival at the Temporary Market.

(4) After six months in the Temporary Market, Traders to pay rent which, including VAT, is to be equal to the following: their rent per sq ft as at 11/7/2017 (i.e. the opening of the Inquiry), increased by 2% for each full year that has elapsed since that date. Traders will, however, only pay rent on floorspace that is no greater than the licensed floorspace of their current stall (as they do at present). Discounts on that rent to apply for Traders in Zone B (the smaller building in the Temporary Market) and on the mezzanine.

(5) When the Traders move to the New Market (after about two and a half years in the Temporary Market), six months rent free.

(6) After six months in the New Market, Traders to pay rent which, including VAT, is to be equal to the following: their rent as at 11/7/2017 (i.e. the opening of the inquiry), increased by 2% for each full year that has elapsed since that date. Again, Traders will only pay rent on floorspace that is no greater than the current licensed floorspace of their current stall (as they do at present). This is to continue until the Traders have been in the New Market for 7 ½ years.

(7) For ten years from relocation to the Temporary Market, Grainger to provide the Traders with an indemnity in respect of the following proportions of any increased business rates that become payable on, or as a result of, relocation to the Temporary Market and New Market: year 1, 100%, year 2, 95%, year 3, 90%, year 4, 85%, year 5, 80%, year 6, 75%, year 7, 70%, year 8, 65%, year 9, 60%, year 10, 55%.
(8) Ten parking spaces in the underground car-park in the Order Scheme to be allocated to customers of the market.

(9) Grainger to include in the Order Scheme a room, of a dimension to be agreed between the parties, which shall function as a community centre for both the Latino community. Alternatively, the Council to lease a room from Grainger for the same purpose.

(10) Traders to have meaningful input into, and control of, the operation of the Temporary and New Markets, in a form to be agreed.

(11) The design of the New Market should reflect, in a modest fashion, the Pueblito Paisa town, near to Medellin in Colombia (after which the market is named). This should be attractive to Grainger, as it would give the development a unique character.

(12) Traders to have the option (at no extra cost) to contract for the supply of utilities directly with utility companies, rather than through the Market Operator.

(13) A “no Jonathan Owen” clause, precluding Grainger from appointing a company associated with Mr. Jonathan Owen as Market Operator.

44. The Traders’ fallback case, then, is that the CPO should only be confirmed on the condition that the Council and Grainger agree to these terms.

(4) Summary on Rent

45. In summary, the rents proposed under the Deed of Variation would drive the Market Traders out of business and would, contrary to Mr Saunders’ claims, be significantly higher than those that would be payable if the Order Scheme did
not go ahead. The effect of the Order Scheme would, therefore, be to destroy a unique BME community. Grainger and the Council appear to accept that, if the Order Scheme will destroy Pueblito Paisa, the Order Scheme cannot be confirmed; their whole case is predicated on the assumption that the Deed of Variation secures the future of the market, when it clearly does not.

(5) Have Grainger made a meaningful commitment to affordable housing in the Deed of Variation?

46. The Deed of Variation pays lip service to affordable housing by providing that, in the event that Grainger’s profit margin exceeds 20%, the surplus should be paid over to the Council for the provision of affordable housing. Since the Order Scheme has such a deleterious impact on an almost exclusively BME community, one might expect to find a strong countervailing positive social impact. That is wholly absent here. Grainger’s viability expert, Robert Fourt, presently assesses the viability of the Order Scheme at approximately 16%. Realistically, Grainger’s profit margin is therefore very unlikely to reach 20%, such that Grainger are required to contribute to affordable housing. The Order Scheme will simply have destroyed a unique BME community, with no compensating social benefit. The Council could so easily have set the threshold for Grainger’s contribution at a realistic percentage, say, 18%.

(6) Will the Order Scheme regenerate the local area?

47. In reality, the Order Scheme will be a dormitory for commuters, an ivory tower atop the Seven Sisters underground station. If the Order Scheme contained affordable housing, it would at least be a mixed community. If it were not constructed directly above the underground station, the residents would at least have a reason to set foot in the local community, rather than speed down the Victoria line to work during the week, and to the bright lights of Central London at the weekends, as Lyn Garner accepted that they well might.
48. Neither are the retail units likely to pull in shoppers from other parts of London; as Jonathan Kiddle accepted, they are chiefly aimed at locals, rather than shoppers from further afield. The regenerative effects of the Order Scheme are, therefore, seriously limited. Taken together with the destruction of a unique BME community, they do not amount to a compelling reason for the confirmation of the Order Scheme.

(6) What will be the impact of the Order Scheme on children?

49. In their evidence, the Market Traders described the importance of the market to their children in the following terms:

(1) Martha Giraldo Sanchez explained that “My son Santiago Giraldo, who was born in the United Kingdom, visits the market every day after school because I have nobody with whom I can leave him. He spends his time doing special activities in the market. He also spends entire days in the market at weekends. He takes part in activities on Saturdays: artistic activities, dance group, football group. All these activities were started up in the market with other market traders’ children. All his friends are Latin friends that he has met in the market. All his social life has been developed here. Santiago’s Latin identity is very much linked to the market, to the people, to the music, to the culture in that he has learned everything here” (para 13). In live evidence, Ms Giraldo Sanchez elaborated: “My son pretty much was born, grew up there, he started crawling there. I was able to work and be with my child at the same time. He is now 12. In fact, he was one of the children that wrote to the Public Inquiry, not to be evicted from Pueblito Paisa”( emphasis added).³⁰

(2) Daniel Martinez said that “I’ve got three underage children. My wife looks after them. It would be very expensive to pay someone else to do this. She also helps me at the butcher’s sometimes because here she can have the

³° Thursday 20 July (afternoon), 0h27
children close by in safety, sure that nothing bad will happen to them. They play in the corridors” (para 6).

(3) Maria Osorio said that “I take care of a grandson aged 5. I bring him to work with me”. In her oral evidence, she elaborated, saying that “having this opportunity, to work, see my kids running through the corridors of the market whilst I worked”

(4) Mirca Morera, of Latin Corner UK, explained that she runs an informal community service for Market Traders’ children in the market.

50. If the Order Scheme drives the Market Traders out of business, it is unlikely that a similar safe space in South Tottenham, where the children of low income BME families can play safely whilst their parents work, would replace the market. This would also force parents to either incur the expense of childcare, or give up work in order to look after their children.

(7) What will be the impact of the Order Scheme on women?

51. In their evidence, the Market Traders described the representation of women within the traders in Seven Sisters Market in the following terms. Ms Martha Hinestroza observed: “more or less 70 % of the traders are women. This 70 % is made up of different categories of women like women that are separated, divorced, head of families, and the market provides these ladies with a space to be able to share with each other, to have their children nearby. They are all women that work extremely hard and provide economic and moral support to their families.”

She further stated that: “Women in the market play a very important role, a fundamental role bringing life into the market and supporting the community. ... These are hard working women, in general, they looked out to achieve the best future for their kids; have opted for economic independence, earning their money, in a dignifying way, and at the same time providing a

---

31 Friday 21 July (afternoon), 1h48
32 Thursday 20 July (afternoon), [2:40:37]
service for the community.” Ms Hinestroza also pointed out that the average age of these women was 55 years old.34

52. When asked whether it would be easy for someone middle age, for the women traders to start all over again if the market were to be destroyed, she replied:

“It would be supremely difficult, extraordinarily difficult to start again. We don’t have the same energy as in previous years. If you think, the whole process has been a long process, not even a 5 years process but a 18 year process. A lot of women started younger than when I started. Basically, gave the best years to the market. It would be degrading to be pushed to another job, say cleaning, which they would not be able in physical terms to carry out if they were going to start again. It would be like killing our lives or hope, and [...] like killing my soul, if not allowing us to stay in the market.35

In my particular case, I have already been the victim of several forced displacements in my life (...) to each time put all my energy, vitality, in the reconstruction of my life. I am 52 of age [...] to contemplate to start all over again, [...] it annihilate me emotionally.”

53. Likewise Marta Giraldo stated, when asked whether she could start somewhere else just as she started her business in the Pueblito Paisa years back: “It would be very hard to start again. We put an awful lot of effort, of energy, and we need to spend all that energy again. It would be difficult, specially at our age [...] start all over again, from zero, [...] the idea to start again is very difficult to imagine.”36 At 54, she stated that the prospects for her would be to lose her independent position as a trader and possibly having to go back to a cleaning job, which she did not see herself doing at her age.

54. It was possibly trader Maria Osorio who in her evidence eloquently explained what the market has been for the local women, in addition to the traders, when asked how important had the market been in her life. She had successfully brought up five children as head of family thanks to her work at the market. She said: “I never thought I would be alone with my kids [5]. Having this

* Ibid. [2:42:09]
* Ibid. [2:42:58]
* Ibid [[2:46:12]
* Thursday 20 July (morning), [0:36:03]
opportunity, to work, see my kids running through the corridors of the market whilst I worked. I met so many women like me, [...] I told them, if I can, you can. We managed to progress, my daughter works now full-time in a hospital, as nutritionist [...] bringing up 5 kids on my own” She also explained how it was in that market that she had developed her entrepreneurial skills and proved herself she could support her family, realise herself. She also referred to the space she had created in her shop, sharing with other women, clients, many going through domestic violence, who often saw her as a role model as an independent woman. She eloquently stated in that sense: “Many refer to the market as a total dump but this market has showed me my worth”

55. In destroying the livelihoods of these women, the effect of the Order Scheme would have devastating consequences on these female traders as they are statistically less likely (vis a vis men) to be able to have access to an alternative job, as pointed out by expert Dr. Patria Román in her evidence to the Public Inquiry.

(8)Does the Order Scheme protect local heritage, adequately or at all?

56. As pointed out in the Statement of Case on behalf of Save Britain’s Heritage (OBJ/166/1), the vision of regeneration envisaged by Grainger and Haringey Council is “a heavy-handed and unimaginative one”. It stated “The current proposal appears to be a model where big business ousts smaller existing enterprises, replacing a thriving local retail centre with a bland, standardised mall with expensive flats above”. SAVE submitted that Haringey council has given insufficient weight to the harm caused by the proposed development, by failing to address matters of substantial harm to a designated heritage asset, inadequate

---

* Friday 21 July (afternoon), [1:48:15]
* Ibid, [1:49:34]
* OBJ/166/1 § 30.
consideration of the loss of local listed buildings, and failure to consider non-designated heritage assets adjoining the conservation area.\footnote{Ibid. § 34.}

57. The traders make this observations their own and agree with SAVE that the alleged public benefits of the Grainger’s plan are grossly overstated, and that the tests required by Paragraphs 133, 134, 135 of NPPF are not met by the proposals.

David Lewis’ evidence (APP/5/1)

58. The Scheme has failed to give proper consideration to heritage matters, including the provisions under the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG). In addition, the approved scheme does not comply with the provisions of the current London Plan 2016.

59. The Proof of Evidence by Mr David Lewis ((APP/5/1) was entirely what one would expect in arguing on behalf of the developer, aiming to minimise the heritage value of existing buildings proposed for demolition. It was confusing whether he was giving evidence on heritage issues or rather on design, as his notion of “conservation” in his evidence was an idiosyncratic one: one based on demolition. His approach to preservation was based on what he called a Darwinian approach to conservation. We could not find anything in the relevant framework that supported this approach. He made the astonishing proposition that the demolition of the Wards Corner would “enhance” the Conservation Area. By contrast the Traders agree with leading conservation organisation, SAVE Britain’s Heritage, in that “the demolition of a whole street block between Seven Sisters Road and West Green Road creates a large hole in an otherwise cohesive conservation area. It is considered that this amount to substantial harm”\footnote{Ibid. § 9.}
60. The analysis of the contribution made by the existing buildings to the Conservation Area reflects the Council’s own conflicting policies. He quoted in Paragraph 6.2.0 the Council’s own development brief which states that “the buildings at Wards Corner make only a neutral contribution to the character and appearance of the Conservation Area”. This, of course, conflicts with the council’s Conservation Area Assessment. It exposes the ambivalence of the local Council in trying to justify the total demolition of the Wards Corner site, and the attempts to dilute its policies of protecting existing buildings that contribute to the Conservation Area.

61. Paragraph 8.5.1 of Mr Lewis’ proof states that “the extent and scope of the Conservation Area was extremely selective”, which suggests that what was included in the designated area was indeed considered to be ‘special’ in terms of its architectural and historic character and appearance. The Proof of Evidence then went to great length to suggest that the Wards Corner site has no special interest.

62. Mr Lewis’ unilateral statement that the Conservation Area is overwhelmed by the nature of the highway (paragraph 8.5.2) was totally unsupported.

63. Moreover, the suggestion made in Section 8.10.0 of his Proofs that the heritage value of the High Street frontage is reduced because shop and commercial fronts were inserted soon after their initial construction had no support either. Rather it could be argued that it is the mixed commercial/residential use of the retail premises that makes such a strong contribution to the character and appearance of the CA. The suggestion that the ‘drastic’ alterations made in Edwardian times detract from the existing buildings and reduce their value is a fatuous argument. It was not considered to be an impediment to their inclusion in the designated conservation area. The argument displays a lack of appreciation of Edwardian and early 20th century architectural intervention.
64. The suggestion that the locally listed buildings make no more than a neutral
collection to the Conservation Area demonstrates a lack of understanding
about what the character and appearance of the Conservation Area actually is.

65. The neglected condition of existing buildings is taken as a reason why their
heritage value is reduced, without any consideration or recognition that repairs
and improvements, including restoration of lost architectural features, could be
made.

66. By concluding in Paragraph 8.10.12 that only total demolition will improve the
Conservation Area, Mr Lewis’ Proofs shows a complete lack of understanding of
what the Conservation Area is. The Proof might have argued that the site should
not be Conservation Area in the first place, but does not in fact do that. Quite
how demolition of this part of the Conservation Area will ‘better reveal its
significance’ is unclear.

67. The conclusion in Paragraph 12.11.0 that the existing frontage to the High Road
“is totally incapable in terms of scale or architectural presence of addressing its
setting in the conservation area” seems to betray the author’s fundamental
mindset in trying to justify the redevelopment proposals.

68. Concerning the Wards Corner building, the lengthy discourse put forward in
Paragraphs 8.11.4 – 8.11.14 seems to be largely irrelevant in determining
whether this locally listed building possesses architectural or historic merit which
contributes positively to the character and appearance of the Conservation Area.
Its national or wider significance is not relevant to its contribution to the local
townscape and heritage.

69. In terms of condition, Paragraph 8.11.15 notes that despite vacancy and neglect
spanning 40 years ‘no cracking to brickwork or masonry is evident at Ward’s
Corner’.

46
70. The argument put forward in Paragraph 8.13.3 that Nos.709-721 Seven Sisters Road are “pleasant but lack the architectural interest and heritage significance of the buildings which characterise the conservation area” sits oddly with the earlier denigration of the Wards Corner and High Street buildings, which are in the conservation area.

71. The Proof of Evidence does not adequately address the issue of Optimum viable Use. Paragraph 12.3.0 dismisses the alternative proposal because it was not a comprehensive one for the whole of the site. There is, of course, no why regeneration of the whole site should not be undertaken in a piece-meal way. The somewhat patronising dismissal of the alternative scheme relies on an assumption that the existing buildings are not worth saving or repairing, implying that even if they were restored to their original Edwardian condition, they would still detract from the conservation area, in essence because they are not big enough. It is a weak and self-serving argument.

Andrew Beharrell, Pollar Thomas Edwards (Design & Conservation) (APP/2/1)

72. Andrew Beharrell’s evidence relied heavily on David Lewis’s heritage statement. Since David Lewis’ statement is flawed, the analysis on which Mr Beharrell rests, on the impact on the Conservation Area, is infected by the unsustainable proposition by Mr David Lewis, that “the loss of the existing building is justified and that the redevelopment proposals, from harming the Conservation Area, will enhance and strengthen its character”.44

73. Mr Beharrell’s further has failed to engage meaningfully in its evidence with the objections to its design, simply dismissing them as “unfounded” or otherwise “emotive and subjective claims”.45

44 APP/2/1 § 6.1.2
45 Ibid § 2.1.3
74. Neither Mr Beharrell’s evidence nor Mr Lewis’ has showed that the scheme is in the public interest or should otherwise override the conservation of the heritage assets of the area.

SECTION B: APPLICATION OF PLANNING POLICY AND DOMESTIC AND PUBLIC INTERNATIONAL LAW TO THE ORDER SCHEME

(1) Planning policy

Planning policy and the importance of the market

75. It is important to keep in mind the planning policy context, as an Order Scheme which in fact fails to secure the future of the Market in any meaningful way will fall foul of a significant body of planning policies - including those on which the Council has expressly relied in these proceedings.

76. As the CPO Guidance states at paragraph 76, the Secretary of State must consider “whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework”.

77. The Market Traders will therefore focus on the NPPF, the London Plan, and the Tottenham Area Action Plan.

The NPPF (CD2/8)

78. As noted by the Council at section 7 of its Statement of Case, the NPPF, published by the Government in March 2012, introduced a presumption in favour of sustainable development. The Council quoted at section 7.42, paragraph 7 of the NPPF which sets out three roles for the planning system in contributing to sustainable development:

“an economic role - contributing to building a strong, responsive and competitive economy...;

a social role - supporting strong, vibrant and healthy communities ... and
an environmental role - contributing to protecting and enhancing our natural, built and historic environment...” (NPPF, para 7)

79. The Council likewise acknowledges that the above roles “are mutually dependent” (NPPF, para 8).

80. The vision statement for Haringey in 2026, on the other hand, as laid down in Haringey’s Local Plan Strategic Policies 2012-2026, ties its notion of “economic growth” to the “socially inclusive” character of the borough, and the presence of “mixed communities” as part of Haringey’s growth.” Paragraph 1.5.1 under Vision and Objectives of the said Local Plan, indeed mentions “a place for diverse communities” as the Local Plan Vision.

81. Contrary to those policies, the Order Scheme severely and adversely affects the businesses and housing of ethnic minority groups (Black, Asian and minority ethnic – Latin Hispanic) as a mixed community. Indeed 97% of the Market Traders, who will be driven out of business by the Order Scheme, are members of the BME community.

82. Further, rather than following core planning principles underpinning decision-making (as enshrined in Paragraph 17 of the NPPF) such as “empowering local people to shape their surroundings” the Scheme, in spite of the local community, disregards the community’s conception of “quality public spaces”, “sense of destination”, and identity.

83. In short, the Order Scheme is not in accordance with the principle of sustainability enshrined in paragraph 7 of the NPPF because (i) it does not foster economic growth in inclusive terms as mandated by Haringey’s Local Plan – failing to contribute to building a strong, responsive and competitive economy;

---

46 Haringey’s Local Plan: Strategic Policies 2013-2026 (formerly the Core Strategy), para. 1.5.4, pp. 16-17.

47 Haringey’s Statement of Reasons, para. 8.59.
(ii) it does not foster community cohesion by implementing a measure (CPO) amounting to indirect discrimination on ethnic minorities – failing to contribute to supporting strong, vibrant and healthy communities; and (iii) it fails to contribute to protecting, and enhancing, the historic environment in the area by demolishing buildings with historical value, absent the economic and social benefits.

84. Further, the Order Scheme is inconsistent with paragraph 23 of the NPPF, which requires local planning authorities to implement policies to “retain and enhance existing markets and, where appropriate, re-introduce or create new ones, ensuring that markets remain attractive and competitive” and “allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres”.

The London Plan 2016 (CD2/2)

85. Unless the Order Scheme in fact secures the future of the Market, it is in clear tension with the London Plan (as Professor Michael Edwards and Ms Myfanwy Taylor made clear in their expert reports and in their oral evidence).

86. In relation to the absence of any affordable housing from the Order Scheme, Policy 3.8 specifically provides that “Londoners should have a genuine choice of homes that they can afford”, the “provision of affordable family housing is addressed as a strategic priority in LDF policies”. Paragraph 3.44 provides that London needs some 25,600 additional affordable homes every year until 2034 and notes the “significant need for affordable housing”.

87. As the Market Traders have explained, the Council’s modifications to the original s.106 agreement in the Deed of Variation display a justifiable apprehensiveness on the part of the Council about the Market Traders’
criticisms of the failure of the Order Scheme to provide any affordable housing whatsoever (despite Policy 3.1 of the London Plan expressly recognising the pressing need for more homes in London and Policy 3.12 stating that Boroughs should seek “the maximum reasonable amount of affordable housing . . . when negotiating on individual private residential and mixed-use schemes”).

88. This calls into serious doubt the benefits of the Order Scheme for the local community (most of whom, given local deprivation levels, will not be able to afford to share in the housing benefits of the Order Scheme).

89. It also casts serious doubt on whether the Order Scheme is capable of achieving the Council’s stated aim of developing South Tottenham to secure “a sustainable future for everyone in Tottenham” and “alleviate this high level of deprivation and social disadvantage”.

90. Policy 4.8 of the London Plan, on which Professor Michael Edwards focussed his attention, specifically provides for the promotion of a “diverse retail sector” and requires the development of policies (and thereby promotes actual decision-making) which aims to “prevent the loss of retail and related facilities that provide essential convenience and specialist shopping or valued local community assets, including public houses, justified by robust evidence” and “support the range of London’s markets, including street, farmers’ and, where relevant, strategic markets, complementing other measures to improve their management, enhance their offer and contribute to the vitality of town centres”.

91. Professor Michael Edwards considered the Market in this case to be a strategic market, having a wider that “sub-regional offer” and being a “significant attraction for Londoners and visitors alike” for the purposes of this scheme. As set out in the Market Traders Statement of Case, the Market generates significant interest across London and across the UK. Further, the recent interest of the UN Office

---

* Council’s Opening Submission at [9].
of the High Commissioner on Human Rights in this case demonstrates the international significance of the Market. The UN human rights experts working on the matter comment that “the market is a renowned space for social and cultural interactions among the shop owners and their families, the people of the area and the wider Latin American London community. It operates in effect as a cultural centre, regularly hosting cultural activities and providing space for intercultural gatherings, and is particularly important for women”.

92. Unless the Order Scheme is modified in a meaningful way to secure the future of the Market in its current form, it is clearly in tension with the London Plan.

**Draft Tottenham Area Action Plan 2016 (CD2/5)**

93. The Council’s case appears to be that the Tottenham Area Action Plan 2016 complies with the above planning policies by specifically providing that:

(1) **“Seven Sisters hosts a wide range of multicultural retail premises, including the Seven Sisters Market, which is the anchor development for the retail offer at Seven Sisters, with provision extending westwards down West Green Road. The market is predominantly South American in character with stalls selling goods from countries such as Colombia, Peru, and Brazil”** (para 2.24 of the TAAP);

(2) **“The Council will require the retention of the Seven Sisters Market in the area”** (Policy SS1F); and

(3) **“The retention of a market in this area is seen as important to ensuring that the existing multicultural feel of the area is sustained in the future. This policy therefore seeks to retain this part of the centre as the retail heart of the**

---

District Centre, with a particular focus on encouraging additional comparison retail uses in the area” (para 5.24 of the TAAP).

94. The Market Traders are not saying (and never have said) that the Council’s local planning policies of themselves breach the London Plan or the NPPF. Their case is that the Order Scheme manifestly fails to properly implement or fit into these planning policies at the national, regional and local level.

95. Unless, as a matter of fact, the Order Scheme protects the Market as a “multicultural retail premises” and “the anchor development for the retail offer at Seven Sisters”, and retains its special “South American” character together with “the existing multicultural feel of the area” (all of which will necessarily require the current traders to be able to afford to continue trading at the Market after the proposed development), the Order Scheme and the CPO will wholly fail to achieve the Council’s own stated aims for this development.

96. In short, the Council cannot establish any compelling case for the development if it fails to comply with the Council’s own stated aims and policies of:

(1) Securing “a sustainable future for everyone in Tottenham” and alleviating “high level(s) of deprivation and social disadvantage”; and

(2) Enhancing and protecting the existing Market and its traders as a “multicultural retail premises” which is “the anchor development for the retail offer at Seven Sisters” and which retains its special “South American” character together with “the existing multicultural feel”.

97. On both counts, the Council has failed to make out its case.

(2) Breach of Public Sector Equality Duty

Council’s Opening Submission at [9].
98. Pursuant to section 149 of the Equality Act 2010, the Council and the Secretary of State are subject to the Public Sector Equality Duty, which requires them, in the exercise of their public functions, to have “due regard to the need to –

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

99. The Council appears to claim that it has fulfilled its Public Sector Equality Duty merely by commissioning the various EIAs but that is plainly insufficient evidence that the Council has actually given “due regard” to its Public Law Equality Duty (which is a question of substance):

(1) The Council’s Statement of Reasons contained no reference to, or consideration of, the Council’s Public Law Equality Duty or to the EIAs, and only refers to the issue of equality once, at para 1.19, in which it is merely asserted, without reasoning or justification, that “the Order is acceptable having regard to the objectives of the Equalities Act 2010”.

(2) The Statement of Reasons therefore demonstrated that the Council had, in making the Order, wholly failed to have “due regard” to the need to eliminate discrimination, advance equal opportunity and foster good relations between different ethnic groups.
The Council’s Statement of Case, no doubt drafted by its lawyers, sought to remedy this failing by making specific reference to the EIAs and to the Council’s Public Law Equality Duty. But the relevant passages, at section 17 of the Council’s Statement of Case, provide no evidence of “due consideration” at the time of the decision to make the Order or at all, and simply pay lip service to the concept by copying isolated conclusions from the EIAs without giving evidence of any further or independent consideration. The same can be said of the EIA 2017 “Update”.

The principles which ought to have guided the Council, and which must guide the Secretary of State, were recently set out by the Supreme Court in Hotak v Southwark London Borough Council [2015] UKSC 30 at [75]:

“As was made clear in a passage quoted in the Bracking case [2014] EqLR 60, para 60, the duty ‘must be exercised in ‘substance, with rigour, and with an open mind’ (per Aikens LJ in R (Brown) v Secretary of State for Work and Pensions (Equality and Human Rights Commission intervening) [2009] PTSR 1506, para 92). And, as Elias LJ said, at paras 77-78, in the Hurley case [2012] HRLR 374, it is for the decision-maker to determine how much weigh to give to the duty: the court simply has to be satisfied that ‘there has been a rigorous consideration of the duty’. Provided that there has been ‘a proper and conscientious focus on the statutory criteria’, he said ‘the court cannot interfere... simply because it would have given greater weight to the equality implications of the decision’.”

A balancing exercise is required and, if it “is clear precisely what the equality implications are when [it] puts them in the balance, and ... [the authority] recognise[s] the desirability of achieving them”, the authority is entitled to weigh equality considerations against any other matters that are relevant: R (on
the application of Hurley and another) v Secretary of State for Business, Innovation and Skills [2012] EWHC 201 at [78].

102. The Public Law Equality Duty is personal to the decision-maker and cannot be delegated to those conducting EIAs, such as URS or AECOM. Accordingly, there is clear legal authority that a decision-maker can fail to fulfil its Public Law Equality Duty even if it has commissioned a full EIA and especially if the EIA proves (on closer examination) to be flawed in its approach: R (Cushnie) v Secretary of State for Health [2014] EWHC 3626 (Admin).

103. It is for the decision-maker to produce clear evidence that it has rigorously considered its Public Law Equality Duty, including race-relation impacts, and this is not simply to be inferred in the absence of clear evidence that the correct factors have been considered by the Council or the Secretary of State: R (Winder) v Sandwell Metropolitan Borough Council [2014] EWHC 2617; and R (Fakih) v Secretary of State for the Home Department [2014] UKUT 513 (IAC).

104. The Council stated in its opening submissions at paragraph 3(c) that “the duty of the Council was to have “due regard” to equality impacts when reaching its decision to make the Order. The Council has properly preformed this task, including by assessing the equality impacts of the Deed of Variation to the s. 106 agreement in an updated equality impact assessment”. That is illogical and must, necessarily, be wrong.

105. If the duty of the Council was to have “due regard” to equality impacts when reaching its decision to make the Order on 22 September 2016, the updated equality impact assessment of 20 June 2017 and the DDV of 23 June 2017 cannot form any part of an assessment as to whether the Council properly had “due regard” to equality implications when reaching that decision. Merely stating, as the Council does, that the Public Law Equality Duty is a continuing one fails to address this point.
Further, the constantly changing case of the Council in relation to the S106 Agreement suggests anything but “due regard” to equality impacts.

*(3) Breach of duty to have due regard to the best interests of children*

107. The Council has unlawfully failed to put specific weight on the best interests of the children when making its decision as to whether there is adequate justification for interference with their Article 8 rights.

108. The interference of the Order with the Article 8 rights of the children who benefit from the Market as a social and family hub requires a specific form of consideration which is wholly absent from the EIAs commissioned by the Council, the Council’s Statement of Reasons and its Statement of Case.

109. The Supreme Court in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 confirmed at [33] that Article 3 of the United Nations Convention on the Rights of the Child 1989 requires that the best interests of children be “a primary consideration” in any proportionality assessment under Article 8, meaning that “they must be considered first” – although “they can, of course, be outweighed by the cumulative effect of other considerations”.

110. Article 3 of the United Nations Convention on the Rights of the Child 1989 itself provides that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”
111. Specific further guidance on the principles which apply to an assessment of the best interests of the children was given by the Supreme Court in Zoumbas v Secretary of State for the Home Department [2013] UKSC 74 at [10]

“(1) The best interests of a child are an integral part of the proportionality assessment under article 8 of the Convention;

(2) in making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;

(3) although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;

(4) while different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;

(5) it is important to have a clear idea of a child’s circumstances and of what is in a child’s best interests before one asks oneself whether those interests are outweighed by the force of other considerations;

(6) to that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and

(7) a child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent.”
112. The Council, and those carrying out the EIAs, have wholly failed to treat the best interests of the children affected by the Order as a primary consideration in their decision-making process, or as integral to any proportionality balancing exercise under Article 8. They have plainly treated a wide range of factors as inherently more significant than the best interests of the children and have not analysed the interests of the children in any orderly manner, leading to a significant undervaluing of their interests.

113. There has been a wholly insufficient investigation of the children’s circumstances in the existing Market or of what would be in their best interests (taking into account their family units, cultural communities and social habits in addition to the risks posed by the Order to the continued existence of the Market and its community). Even the EIA “Update” 2017 makes only a passing reference to the Market Trader’s case on the interest of children and provides no meaningful or independent analysis of impact.

114. In light of this abject failure to consider the best interests of the children as a primary consideration, the Order should not be confirmed and the Council’s conclusion at para 16.11 of its Statement of Case that “the Council is satisfied that the use of its powers of compulsory acquisition pursuant to section 226(1)(a) of the Act is proportionate” must be viewed with extreme caution and scepticism.

115. Indeed, the Council appears to fundamentally misunderstands the law on the best interests of children being a primary consideration:

(1) The Council claimed at paragraphs 15(e) and 35 of their opening submissions that the best interests of children were not separately identified in the responses of Market Traders to the 2012 Business Survey as an excuse for their failure to consider the children. That a wholly inadequate answer to the point because the survey only asked questions about business interests. It
was for the Council to investigate the best interests of the children and they have failed to do so, despite being notified of the problem by the Market Traders in their Statement of Case.

(2) The Council then makes the astonishing claim at paragraphs 15(e) and 35 of their opening submissions that the interests of the children were “the same as the rest of their identified communities” and at the Council was entitled to “assume that these children’s carers would ‘properly represent the child’s best interests’”. Those are also poor excuses, which are wrong as a matter of law and demonstrate a complete failure to take into account relevant considerations when making the decision to put forward the CPO):

(a) It was the Council which had the obligation to take into account the best interests of children as a primary consideration;

(b) The Council has never investigated the best interests of children or specifically consulted Market Traders in their capacity as parents or carers. It only consulted businesses about the impact of the Order Scheme on their businesses;

(c) The Market Traders have, in fact, now put forward in this Inquiry the best interests of their children as a reason why this Order should not be confirmed.

116. The Council’s case appears to be that the burden is on the Market Traders to compensate for the Council’s own failure to consider that which they were obliged to investigate and consider as a primary consideration. That is not only wrong in law, it is also deeply unattractive. It is not an approach which the Inspector or the Secretary of State should (of, as a matter of law, can) follow.
117. The Court of Appeal’s decision in Collins [2013] EWCA Civ 1193 at [10] does not assist the Council in justifying its failure to specifically consider the interests of children:

(1) The Court of Appeal affirmed that the decision-maker has a duty “to identify what the child’s best interest are”;

(2) The Court of Appeal affirmed that “the best interests of any child must be kept at the forefront of the decision-maker’s mind”; and

(3) The Court of Appeal affirmed that “whether the decision-maker has properly performed this exercise is a question of substance, not form”.

118. Finally, as the Supreme Court made clear, it must not be assumed (as the Council appears to have done) that the best interests of children converge with those of their parents or carers. As Lord Kerr stated in the context of deportation in Makhlof v Secretary of State for the Home Department (Northern Ireland) [2016] UKSC 59 at [40]:

“Where a decision is taken about the deportation of a foreign criminal who has children residing in this country, separate consideration of their best interests is obviously required, especially if they do not converge with those of the parent to be deported. And I consider that Ms Higgins is right in her submission that in the case of a child with a dual ethnic background, that factor requires to be closely examined. She is also right in submitting that the child’s interests must rank as a primary consideration - see, in particular, ZH (Tanzania) v Secretary of State for the Home Department [2011] 2 AC 166.”
119. The Council had a mandatory duty to investigate and consider the specific and separate interests of children affected by the Order and has wholly failed to do so.

120. Ms Johnson’ proof of evidence on behalf of the Council claimed at paragraph 8.128 that “the EqIA does not identify any specific disadvantage arising as a result of the CPO for the Trader’s children” but that is contrary to the express advice in the EIA “Update” 2017 that:

\[
\text{The CPO will result in the loss of one family-sized Council home and two Council flats. This is considered to be a potential negative indirect impact affecting children in Haringey living in households experiencing housing need. The development will not provide affordable housing on site as it has been proven to be unviable to deliver affordable housing as part of the scheme} \]

(paragraph 7.2.2).

\[
\text{“Evidence, in the form of four letters received from trader’s children, presented in the Statement of Case highlighted that the market is viewed to be an important gathering place for children of Latin American families. The Statement of Case suggested that the interests of children would be negatively impacted by the closure of the existing market. However, there may also be benefits to these children from an improved public realm and higher quality facilities” (paragraph 7.7.4).}
\]

121. The evidence of Ms Johnson on this point is at best misleading and inaccurate, even taking into account the obvious failure of those who produced the EIA “Update” 2017 to properly consider and weigh the best interest of children as a primary consideration.

122. This firmly suggests that the Council is deliberately overlooking the interests of children affected by the proposed Order Scheme and only seeking to
retrospectively pay lip service to the concept in an attempt to force thorough the CPO. That is unlawful, transparently unattractive and doomed to fail.

123. As the Market Traders submit, the best interest of the children affected by the proposed Order are served by maintaining the Market for the development of their social ties, culture, community and language.

(4) Unjustified interference with Human Rights and Indirect Discrimination

124. Approval of the Order Scheme would also constitute a disproportionate interference with the human rights of the Traders, their communities and children, and amounts to unjustified and illegal indirect discrimination against protected groups.

125. The Council’s Statement of Reasons admits (at para 16.1) that its decision to make the Order engages the rights contained in Article 8 of the ECHR and Article 1 of Protocol 1. However, there is a complete failure by the Council to specifically consider whose rights are engaged and the level to which the Order interferes with those rights or gives rise to unjustified discrimination. Further, Article 14 of the ECHR, which prohibits discrimination, is not mentioned by the Council at all and does not appear to have been considered by it. In fact, it is the view of the Council that it does not have any relevance here, in its misconceived understanding of the law advanced in its legal submissions, (“the place of international law in a compulsory purchase inquiry”), which would be addressed further below.

126. The Council states, boldly, that “any interference caused by the Order” would fall within the relevant exceptions “having regard to the substantial and
compelling public benefit" of the development. There is no evidence here that the interferences with human rights have been properly considered or that a meaningful proportionality assessment has been undertaken.

127. Although the language of proportionality is used in the Council’s Statement of Case (at paras 18.29-18.31), merely asserting that the Council has carefully balanced interferences with human rights is no substitute for providing evidence as to whose rights have been considered, which factors have been taken into account in the balancing exercise, and why the overall outcome is proportionate.

128. Para 18.29 of the Council’s Statement of Case indicates that the Council only considered the “human rights of those with interests in the Order Land”, which appears to cover the Traders but fails to account for the Article 8 rights of others within ethnic minority communities, including their children, who rely upon the Market for the social, cultural and family benefits which they derive from it.

129. The failure to address these rights is another fundamental and serious failure by the Council which needs to be assessed in light of the severe risk which the Order Scheme poses to the continuance of the Market, including its impact on current Traders, their communities and children.

130. Article 8 of the ECHR, which applies to all actions of public authorities under section 6 of the Human Rights Act 1998, provides that:

“(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security,

*Council’s Statement of Reasons at para 16.3.*
131. The right to private and family life is clearly engaged in respect of those who live within the Order Land. But, critically in this case, Article 8 rights are also engaged in respect of all those who carry out businesses in the Market or rely upon it as a social and community centre – including the Traders, the wider Latin American community, other ethnic minority groups and their children.

132. It is for these reasons, largely social and cultural, that the European Court of Human Rights confirmed in Niemietz v Germany [1992] ECHR 13710/88 at [29] that “respect for private life must . . . comprise to a certain degree the right to establish and develop relationships with other human beings”, and that Article 8 extended to professional or business activities because “in the course of their working lives . . . the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world”. As stated more recently in SH v Austria (2011) 52 E.H.R.R. 6 at [58], the notion of “private life” in Article 8 is “a broad concept which encompasses, inter alia, the right to establish and develop relationships with other human beings, the right to ‘personal development’ or the right to self-determination as such”. Social interaction and the ability to develop relationships within particular groups of people is therefore protected by Article 8.

133. The destruction of the Market therefore constitutes a grave interference with the Article 8 rights of those who work there and of those for whom the Market is a means of establishing and developing relationships with their families, cultural or ethnic groups and the outside world, including members of the Latin American community and their children.
134. Article 8 also needs to be considered against the background of Article 27 of the International Covenant on Civil and Political Rights (likewise binding on the UK), which provides that “in those states in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their own group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”. Rights of minority groups to cultural development are therefore to be given due weight in any balancing exercise.

135. There is no evidence that the Council has specifically considered these categories of Article 8 interference or established any clear justification for effectively destroying the Market and/or pricing out existing Trader under the Order Scheme, which will have obvious and potentially catastrophic consequences for the Latin American community, their families and children.

136. Further, Article 1 of Protocol 1 provides that:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”
137. This is clearly of particular relevance to the Traders who are likely to lose their business and livelihoods as a result of the Order Scheme, without adequate compensation or the financial ability to take advantage of the proposed new market facilities, given the anticipated substantial rent increase.

138. Finally, Article 14 of the ECHR prohibits discrimination in the following terms:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

139. Article 14 does not provide a free-standing right but rather protects against discrimination in the enjoyment of the rights and freedoms set out in the European Convention on Human Rights.

140. The Article 8 and Article 1, Protocol 1 interferences with human rights which result from the Order would be particularly felt by those of Latin American and other ethnic minority descent, which gives rise to indirect discrimination on the basis of race and/or colour under Article 14. The leading case on indirect discrimination under Article 14 is *DH and Others v The Czech Republic* (No. 57325/00 ECHR, 13 November 2007), decided by the Grand Chamber of the European Court on Human Rights. In accordance with the principles enunciated in that case, indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and
the means of achieving that aim are appropriate and necessary. As things stand, the CPO measures will affect only ethnic minorities, who are being disproportionately affected by the development. The Council has not objectively shown this to be a proportionate measure. It follows that confirmation of the CPO would amount to indirect discrimination on the groups of racial or ethnic origin and a violation of Article 14 of the ECHR.

141. Further, the proposed Order indirectly discriminates against women in violation of Article 14, as it is likely to be prove harder for female traders to find alternative sources of income after being displaced from the Market in comparison with male traders.

142. It is submitted that the Council has failed to discharge its burden of demonstrating that these various and severe interferences with rights under Articles 8 and 14 and Article 1 of Protocol 1 are proportionate and has not, in fact, carried out any proper or structured balancing exercise which takes into account the true gravity of the interference or properly considers its indirectly discriminatory effects.

143. In those circumstances, the Traders maintain that the interference which the Order will cause to their rights and those of the users of the Market will be wholly disproportionate and that the the Secretary of State should refuse to confirm the Council’s Order.

(5) The traders’ rights as a minority

144. As pointed out in the evidence of experts Lucy Claridge and Professor Alexandra Xanthaki, the Council has not taken into account the rights of the traders as a minority.
145. The expert report and evidence of Lucy Claridge and Professor Xanthaki at the Public Inquiry demonstrated that the State through all its instrumentalities, including local authorities, have negative and positive obligations towards minorities.

146. As pointed out by the Inspector during the Inquiry, the status of the Latin Community as a minority is not a contentious point in the Inquiry.

147. In Chapman, the European Court of Human Rights recognised that Article 8 entailed positive obligations for the State to facilitate the Roma way of life, particularly by considering their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases.

148. Prof Xanthaki pointed out in her evidence to this Inquiry that the UN Human Rights Committee in GC23 also explains that the rights established and recognised under Article 27 of the ICCPR are “conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy”. In her evidence Prof Xanthaki also stressed that the United Nations Committee on the Elimination of All forms of Racial Discrimination has clarified that these measures deriving from the positive obligation of States to fulfil the content of the rights are ‘specific rights pertaining to certain categories of person or community, such as, for example the rights of persons belonging to minorities to enjoy their own culture, profess and practise their own religion and use their own language ... and rights of women to non-identical treatment with men, such as the provision of maternity leave, on account of biological

---

**Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

United Nations Human Rights Committee, General Comment No 23. (Article 27), para. 1.
differences from men”. Such rights are permanent rights, recognised as such in human rights instruments.

149. The Experts on minorities rights therefore pointed out that in addition to these specific permanent measures that members of the London Latin American community are entitled to, special measures, namely temporary measures ‘taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination”\(^5\). The United Nations Committee on the Elimination of Racial Discrimination has clarified that such measures are not in the discretion of a State, such as the U, but they are an obligation on the State.

150. Indeed as stressed by Prof Xanthaki, in *Chapman v United Kingdom*, the European Court of Human Rights noted ‘an emerging international consensus .... recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle... not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community”\(^6\).

151. Prof Xanthaki’s evidence stated that the rights that were violated by the Compulsory Purchase Order were *inter alia* the right to culture and the right to effective participation and consultation and their right to non-discrimination.

152. Prof Xanthaki concluded that the decision of the Council to re-provision the market and the compulsory acquisition order to facilitate the development constitutes indirect discrimination against the London Latin American

---


\(^6\) International Convention on the Elimination of all forms of Racial Discrimination, article 1(4).

\(^*\) Chapman v The United Kingdom (European Court of Human rights, Application No 27238/95, 18 January, 2001.
community. The proposed development, while in appearance neutral on the face of it, would disproportionately impact the Seven Sisters Market Traders given 75 per cent of those surveyed are of the view that the re-provisioned market would be unlikely or highly unlikely to support existing businesses to continue operating and that people with Latin American or Hispanic background amount for almost 56 percent of those employed in the Seven Sisters market.

153. Their evidence also stated that in balancing the rights of minorities with other rights or interests, including economic development, the State must give special weight to minority rights in view of the vulnerability of persons belonging to minorities, and the role of the State in the promotion and protection of minority identities. They stated further, that the European Court of Human Rights in Chapman v United Kingdom and the UN Human Rights Committee in General Comment No 23 confirm that minority rights carry more weight and must be protected more than rights of the rest of the population, because of the level of vulnerability that minorities carry. In their view, therefore, the restriction of the minority rights of the members of the Latin community in Seven Sisters market as a result of the CPO threat cannot merely be justified in the name of the public good and the general right to development of the local population. The right of the local population to development does not prevail over the right of the minority in this case.

154. Prof Xanthaki stressed that the Council’s Statement of Case and Statement of Reasons do not provide analysis of how the local authority has sought to balance the rights of the Seven sisters Market Traders as members of a minority with the objectives of the development. We say, this is not surprising, as the Council has taken the view that all the standards concerning minorities are simply not applicable within domestic law in the UK. This we submit, is a wrong statement of the law.

---


(6) What is the place of international law in this CPO Inquiry?

155. At paragraph 53 of the additional legal submissions filed by the Council with its opening Statement, the Council asserts that “treaties, being made by the executive alone, have no effect in English law unless and then only to the extent that they are implement by legislation.” This is the correct statement of the law.

156. We have attached to this submissions a list of authorities that demonstrate the opposite.

157. In **Boyce v the Queen** [2004] UKPC 32 [2005] 1 AC 400, [25-26] [Lord Hoffmann] raised the significant influence [I]nternational law can have upon the interpretation of domestic law “because of the well established principle that the courts will so far as possible construe domestic law so as to avoid creating a breach of the State’s international obligations. This is, as pointed out by publicists, the presumption of compatibility to legislation of an unincorporated treaty.” In this case, this is the principle to consider the relevance of the ICCPR and other unincorporated UN treaties in this case.

158. In **Garland v British Rail** [1983] 2 AC 751 (HL), 77 1A-C Lord Diplock stated in the context of unincorporated treaties generally: “[I]t is a principle of construction of United Kingdom status now too well established to call for citation of authority, that the words of a statute passed after the Treaty has been signed and dealing with the subject matter of the international obligation of the United Kingdom, are to be construed, if they are reasonably capable of bearing such a meaning, as intended to carry out the obligation, and not to be inconsistent with it”. The Equalities Act 2010 and the Human Rights Act have been passed after the ICCPR was ratified by the United Kingdom. As a result

---

this principle applies in its interpretation: they have to be construed as intended to carry the ICCPR UK obligations, including in respect of minorities rights.

159. But this presumption of compatibility does not only apply in respect of statutory instruments in domestic law, but the presumption of compatibility “also operates as a rule of construction in the common law”, operating “fairly freely, unconstrained by the need to identify ambiguities or obscurities upon which the traditional statutory presumption of compatibility is based”.

(7) International dimension of minorities’ rights of the Latin traders menaced by the CPO

160. International standards are so relevant to the examination of the impact the CPO may have on the Latin traders that the UN itself has issued a statement dated 27 July 2017 in relation to the threat posed by the CPO on minority rights of the Latin American community at the market. This note was jointly issued by Ms. Karima Bennoune, Special Rapporteur in the field of cultural rights; Mr Surya Deva, current Chairperson of the Working Group on Business and Human Rights; and Ms. Rita Izsak-Ndiaye, Special Rapporteur on minority issues. They pointed out that the plans concerning the Seven Sister market “as part of a gentrification project represent a threat to cultural life” and that this would have “a disproportionate impact on people belonging to minorities and their right to equal participation in economic, social and cultural rights,” the experts added.

161. The intervention of the UN Special Rapporteurs or mechanisms under Special Procedures on specific cases is rare. It is unlikely to take place in a light manner. Rather, this is indicative that the situation faced by the traders as a minority group is to be seriously considered. We call on this Public Inquiry to likewise fully considered the impact of the CPO on the Traders in a consistent manner with the UK international obligations.

*Ibid. p. 342, para. 10.3.*
CONCLUSION

162. In summary, the Order Scheme will drive a community of 97% BME Market Traders out of business. This is not only inconsistent with planning policy, but also (and more importantly) a violation of fundamental rights in both domestic and public international law, to the extent that it has attracted the condemnation of the United Nations Special Rapporteurs on cultural and minority rights. Accordingly, the Secretary of State should not confirm the Order Scheme or, in the alternative, should only confirm it on the conditions set out above.

MONICA FERIA-TINTA

TOM LEARY

ALISTAIR WOODER

20 ESSEX STREET

27 JULY 2017