



Department for Communities and Local Government

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Your ref: LEG/PP/20323/JXK
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For the attention of David Merson

Date: 11th July 2014

Dear Sir,

**Town and Country Planning Act 1990: Section 226(1)(a)
Acquisition of Land Act 1981
The London Borough of Haringey (Northumberland Development Project)
(No 1) Compulsory Purchase Order 2012**

- 1 The report of the Inspector, David Nicholson RIBA IHBC, who held a public local inquiry into The London Borough of Haringey (Northumberland Development Project) (No 1) Compulsory Purchase Order 2012 (the Order) on 12-15 March and 4, 16 and 18 April 2013 has been considered. A copy of the Inspector's Report is enclosed. References in this letter to paragraphs in the Inspector's Report are indicated by the abbreviation IR, followed by the relevant paragraph number.
- 2 The Order, if confirmed, would authorise the compulsory purchase of lands at Paxton Road, High Road and Bill Nicholson Way, Tottenham, London N17 for the purpose of facilitating the carrying out of development, redevelopment or improvement of the land comprising the demolition of existing buildings and comprehensive redevelopment to provide a new stadium and ancillary uses such as Club museum; shop and offices for the Tottenham Hotspur Foundation; residential; college and/or health centre and/or health club uses; and public realm improvements which will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the North Tottenham Area.

- 3 In a letter dated 15 February 2013 the Council requested that the Order be confirmed subject to modifications, being the removal of Plots 3, 5, 6, 8 and 9 as the acquisition of these plots is no longer necessary.

Inspector's recommendation and Summary of the Decision

- 4 The Inspector recommended (IR 9.2) that the Order should not be confirmed or that, in the event that the Secretary of State is minded to confirm the Order, he should confirm the Order with modifications subject to receipt of a satisfactory s106 agreement. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendations and concludes that the Order should be confirmed with modifications.

Consideration

- 5 Four qualifying objections to the Order were received. Three of these had interests in plots which have now been requested to be removed from the Order. These objections were subsequently withdrawn. When the inquiry opened there was one remaining objection on behalf of the Josif family and Archway Sheet Metal Works Limited. The main grounds of objection are that there are fatal legal defects; state aid would arise; the scheme does not conform to the adopted planning framework; its contribution to regeneration and well-being would be modest; the assessment of alternatives has been inadequate; and there have been no proper negotiations.
- 6 The Inspector's Report summarises the submissions made at the local inquiry at IR6.1–6.29 and IR7.1–7.22.
- 7 The Inspector's conclusions are set out at IR8.1–8.59 and his recommendations are at IR9.1 and 9.2
- 8 The Inspector has recommended that, in the absence of a further planning obligation, the Order should not be confirmed. However, in the event that the Secretary of State is minded to confirm the Order, he recommended that the London Borough of Haringey (the Council) be canvassed to see whether the Council and Tottenham Hotspur Football Club (the Club) could enter into a new s106 agreement, cancelling the second s106 agreement (of 29 March 2012 – IR 3.10) and reinstating the package of measures in the original s106 agreement, including the requirement for affordable housing. He recommended that, subject to receipt of such an agreement, the Order should be confirmed with modifications (IR9.2).

Matters post close of the inquiry

- 9 Following receipt of the Inspector's Report the Secretary of State deferred his decision on the Order and in accordance with the Inspector's recommendation wrote to all parties on 18 December 2013 seeking representations as to whether there was any reason why the second agreement of 29 March 2012 should not be cancelled and the package of measures in the original s106, including the requirement for affordable housing, reinstated.

- 10 Representations were received from Paul Winter & Co, on behalf of the objectors, Richard Max & Co Solicitors, on behalf of the Club and Haringey Council. Richard Max & Co Solicitors' letter of 31 January 2014 confirmed that a Unilateral Undertaking ("UU of January 2014") had been made pursuant to s106 of the Town and Country Planning Act 1990 to deliver 100 affordable dwellings. Haringey Council in a letter dated 31 January reaffirmed their view that there is a compelling case in the public interest for the confirmation of the CPO. The Council welcomed the UU of January 2014 to provide 100 units of affordable housing. Paul Winter & Co's letter of 10 February 2014 sets out the following: i) it is clear by implication that the club are unwilling to reinstate the original s106 agreement ii) the UU of January 2014 is somewhat vague and inadequate (iii) concern at the procedure being undertaken by the Secretary of State iv) their clients will be prejudiced by the Inspector's Report not being made available v) it is not possible to revert to the package of measures in the original s106 agreement as it relates to a different scheme of development vi) the terms of the UU of January 2014 are non-compliant with relevant planning policies, not providing 50% affordable housing on-site vii) it is incorrect that there has been no change in the financial position of the club and; viii) a re-opening of the Inquiry would be regarded as unlawful and an inappropriate course of action.
- 11 The UU of January 2014 does not offer the package of measures contained in the original s106 agreement. In any event, the Secretary of State considers that the UU of January 2014 is unacceptably vague, key terms are not adequately defined and it is likely to be unenforceable. It is regrettable that having explored the possibility of getting the original s106 package reinstated, which would have delivered significant benefits and put the balance beyond doubt in favour of confirmation, no such package has been received. In the absence of such a package the Secretary of State has very carefully considered the fine balance as to whether or not there is a compelling case in the public interest to confirm the Order. Paragraph IR 5.14 sets out the relevant compulsory purchase legislation and policy in consideration of which this decision is made.

Planning Framework

- 12 The Inspector's conclusions on the planning framework are set out at IR 8.1 to 8.13. The Secretary of State agrees that the relevant planning policies are those set out at IR8.4. The Secretary of State notes (IR8.13, IR8.48 and IR8.58) that with the possible exception of affordable housing, the Inspector considers the Order scheme is supported by the development plan as a whole and would therefore accord with the planning framework for the area. The Secretary of State agrees with this overall conclusion.
- 13 Local Plan: Strategic Policies (LPSP) Policy SP2 sets out a housing target for the Borough and a requirement that developments for more than 10 units, subject to viability, will be required to meet a borough-wide target of 50% affordable housing. It is noted from IR8.7 that viability of the stadium redevelopment scheme as a whole was a factor taken into account by the Greater London Authority and the Council in granting planning permission for Phase 3 of the development without the need for any affordable housing. The Inspector found at IR8.31 that the Council was entitled to omit the affordable

housing requirement as otherwise the scheme as a whole would not be viable, therefore the scheme as a whole would comply with affordable housing policy. This was on the basis of viability which subsequently changed and viability was no longer at issue (IR 8.7 and IR8.32). As a result of this change in relation to viability the Secretary of State is of the view that the proposal does not accord with the requirement at SP2 of the LPSP (affordable housing) and to this limited extent in his view the proposal does not accord with the planning framework.

Well-being (regeneration)

- 14 The Secretary of State has considered the Inspector's conclusions in respect of the extent to which the proposed purpose of the CPO will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area. In terms of economic well-being, the Inspector (IR 8.18) considers that the scheme would be likely to both promote and improve the economic well-being of the area; but that, (IR8.19) following the revised s106 agreement, the economic regeneration would be heavily dependent on new infrastructure, the cost of which would be met largely by public funds. In terms of social well-being the Inspector reported (IR 8.20) that the scheme would bring investment, employment and new housing. He also considered (IR8.21) that it is difficult for the Council to claim significant benefits to social well-being from the Club's scheme when the expensive infrastructure provisions would be met from public funds. For these reasons, the Inspector considered that the public funding of infrastructure and the absence of any affordable housing substantially reduces the contribution the scheme would make to social well-being. In terms of environmental well-being the Inspector reported (IR8.25) that the substantial harm through the loss of a listed building and the harm to a conservation area would be offset by the heritage benefits and the improvements to the character of the area by the stadium and regeneration. However, he continued to say (IR8.27) that it is hard to justify giving much weight in a CPO decision to the public interest from a fund which would be paid for by the public
- 15 The Inspector concluded (IR8.58) that there is a compelling case with regard to the well-being of the area but, for each strand of this test, most of the public benefits would depend on an injection of public funds. Because of this, he concluded that what could amount to a compelling case in the public interest would fail to meet this hurdle on account of the need for public funds. Consequently he considered that the benefits would not outweigh the interference with the specific human rights in which case the Order should not be confirmed.
- 16 The Secretary of State has carefully considered the Inspector's conclusions. He disagrees with the Inspector in his view that reliance on public funding to deliver the Scheme would negate the benefits to the well-being of the area and that the source of the funding should be given more weight than the overall benefits to the economic, social and environmental well-being of the area that will be realised by confirmation of this Order. The use of public funds to bring forward schemes is not uncommon in delivering regeneration schemes and the Secretary of State does not consider that reliance on public funding itself reduces the extent to which the scheme would be in the public interest.

- 17 The Secretary of State notes the Inspector's view and reasoning on the well-being test. He agrees with the Inspector's conclusion that there is a compelling case with regard to the well-being of the area (IR8.5), but disagrees with the Inspector in his views on the use of public funding. For the reasons set out at paragraph 16 above he does not agree that the compelling case fails to be met on account of the need for public funds.

Human Rights

- 18 The Secretary of State therefore does consider that the benefits of the Scheme notably improvements to the social, environmental and economic well-being of the area outweigh the interference with the specific human rights of qualifying persons under section 12(2A) of the Acquisition of Land Act 1981 and he is satisfied that such interference is justified. In particular he has considered the provisions of Article 1 of the First Protocol to the European Convention on Human Rights. In this respect the Secretary of State is satisfied that in confirming the CPO a fair balance would be struck between the wider public interests and interests of the qualifying persons. The Secretary of State disagrees with IR8.49 that the shift in funding considerably reduces the extent the Scheme would be in the public interest as explained at paragraph 16 above.

Other matters

(i) Alleged legal defects

- 19 Four alleged legal defects were raised by the objectors. These were that i) the residential tenants of Plot 1 were not served notice ii) those with rights of light were not served notice iii) the Council failed to consider the tenants' human rights and iv) the Council's cabinet did not have the authority to make the CPO. All the allegations were rejected by the Council.
- 20 The Secretary of State does not consider that any substantial prejudice was caused to the tenants of Plot 1 who were served notice on 5 March 2013 once the Council had been advised of the tenancy. A Notice of the Order was also affixed on or near the land on 1 August 2012.
- 21 With regard Rights of Light the Council did not serve Notice as they did not consider owners of the land which lies outside of the area within the CPO were entitled to notification under section 12 of the Acquisition of Land Act 1981. If, contrary to the Council's view, an owner's Right to Light has been interfered with, compensation may be payable under Section 10 of the Compulsory Purchase Act 1965. Given the circumstances the Secretary of State does not consider that any issue of substantial prejudice arises.
- 22 The allegation that the Council failed to consider the tenants' human rights was rejected by the Council. In any event, this did not prevent both the Inspector and the Secretary of State from considering such matters, which both have done.

- 23 The Secretary of State's view on whether the Council had authority to make the CPO is that given that the resolution was passed on 20 March and was not challenged, he considers it to have been lawfully made.
- 24 Allegations of unlawful state aid have also been made. These are a separate matter and are not before the Secretary of State to determine. If proven unlawful state aid could be recovered through the Courts. The allegations do not prevent the Secretary of State taking a decision on the CPO.

(ii) Alternatives

- 25 With regard to the objector's concerns that the assessment of alternatives had been inadequate and that there have been no proper negotiations, these are addressed at IR8.36-8.40 and IR8.41-8.47 respectively. The Secretary of State agrees with the Inspector's conclusions on these matters.
- 26 In response to Paul Winter & Co's correspondence referred to in paragraph 10 of this letter, the Inspector's Report, or relevant extracts from it, were not released to any party as this may have prejudiced the Secretary of State's consideration of the CPO.

(iii) Justification in the public interest and overall balance

- 27 The Order should be confirmed only if there is a compelling case in the public interest to justify sufficiently interference with the human rights of those with an interest in the land affected. Paragraph 16 of Annex A of Circular 06/2004 explains that any decision about whether to confirm an order made under section 226(1)(a) of the 1990 Act will be made on its own merits but that there are a number of factors which the Secretary of State can be expected to consider (and which he has considered). The Secretary of State considers that the proposed purpose of the Order, including the redevelopment and regeneration of the area, will significantly contribute to the achievement of the promotion or improvement of the economic, social and environmental wellbeing of the area, and that this is so notwithstanding the contribution from the public purse. The Secretary of State considers that the potential financial viability of the scheme has been demonstrated, and that no adequate alternatives exist in terms of achieving the purpose of the proposal. The Secretary of State considers that the 2014 Unilateral Undertaking is deficient. The Secretary of State considers that the purpose for which the land is being acquired fits in with the adopted planning framework for the area, and the planning context generally, save in respect of affordable housing. Having regard to the paragraph 16 factors, and to all other matters, the Secretary of State has concluded that there is a compelling case in the public interest to justify sufficiently the interference with the human rights of those with an interest in the land affected.
- 28 The Secretary of State has therefore decided to confirm The London Borough of Haringey (Northumberland Development Project) (No 1) Compulsory Purchase Order 2012 with the modifications requested by the Council, notably the removal of Plots 3, 5, 6, 8 and 9.

- 29 I enclose the confirmed Order as modified and the map to which it refers. Your attention is drawn to section 15 of the Acquisition of Land Act 1981 about publication and service of notices now that the Order has been confirmed. Please inform us of the date on which notice of confirmation of the Order is first published in the press.
- 30 Copies of this letter and the Inspector's report are being sent to remaining objectors who appeared or were represented at the local inquiry. Copies of the letter are also being sent to other persons who made submissions at the local inquiry.
- 31 This letter does not convey any other consent or approval in respect of the land to which the Order relates.

Yours sincerely,

Signed by authority of the Secretary of State for Communities and Local Government

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

Rebecca Pointon
Team Leader