



The Planning Inspectorate

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# **Report to the Secretary of State for Transport**

**by I Jenkins BSc CEng MICE MCIWEM**

**an Inspector appointed by the Secretary of State for Transport**

**Date: 3 May 2013**

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**HIGHWAYS ACT 1980**

**ACQUISITION OF LAND ACT 1981**

**THE LONDON BOROUGH OF ENFIELD (SOUTH STREET) COMPULSORY  
PURCHASE ORDER 2011**

Date of Inquiry: 12 March 2013.

Ref: DPI/Q5300/12/31.

## **TABLE OF CONTENTS**

<b>CASE DETAILS.....</b>	<b>3</b>
<b>1 PREAMBLE.....</b>	<b>3</b>
<b>2 DESCRIPTION OF THE SITE AND ITS SURROUNDINGS.....</b>	<b>4</b>
<b>3 PROCEDURAL/LEGAL SUBMISSIONS .....</b>	<b>4</b>
<b>4 THE CASE FOR THE LONDON BOROUGH OF ENFIELD .....</b>	<b>4</b>
<b>5 THE CASE FOR THE OBJECTOR.....</b>	<b>8</b>
<b>6 REBUTTAL BY THE LONDON BOROUGH OF ENFIELD .....</b>	<b>11</b>
<b>7 INSPECTOR’S CONCLUSIONS .....</b>	<b>15</b>
<b>8 RECOMMENDATIONS.....</b>	<b>21</b>

### **APPENDIX 1 – Appearances at the Inquiry**

### **APPENDIX 2 - Core Documents List**

### **APPENDIX 3 - Inquiry Documents List**

### **APPENDIX 4 - Abbreviations**

## CASE DETAILS

- **The London Borough of Enfield (South Street) Compulsory Purchase Order 2011** (CPO), made under section 239 of the Highways Act 1980 (as amended) (HA), would be confirmed under section 8 of Schedule 1 of the HA and section 13A of the Acquisition of Land Act 1981 (as amended)(ALA). This Order was first published on 22 November 2011 and there was 1 objection outstanding to it at the commencement of the associated local Inquiry. This Order would authorise The London Borough of Enfield (LBE) to purchase compulsorily land for the purposes described in the Order.

**Summary of Recommendations: I recommend that the Order is confirmed, subject to certain modifications.**

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### 1 PREAMBLE

- 1.1 I have been appointed by the Secretary of State for Transport (SoS) to conduct an Inquiry for the purpose of hearing representations and objections concerning the application made by LBE for confirmation of the above mentioned Order. I held the Inquiry at the Civic Centre, Silver Street, Enfield on 12 March 2013. I carried out site visits on 11 and 12 March 2013.

#### *Purpose of the Order*

- 1.2 The purpose of the proposed Compulsory Purchase Order<sup>1</sup> (CPO) is to enable LBE to acquire titles to land which it has identified as being necessary in order to improve highways (HA s239).

#### *Objections to the Order*

- 1.3 1 duly made objection was received from Mr Ozan Beliger<sup>2</sup> (OB) and it had not been withdrawn by the start of the Inquiry. OB appeared at the Inquiry.

#### *Scope of this Report*

- 1.4 This report contains a brief description of the site and its surroundings, the gist of the evidence presented and my conclusions and recommendations. Lists of inquiry appearances, documents and abbreviations used are

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1 CD2.

2 CD6.

attached as appendices. The written submissions of LBE and OB were added to at the Inquiry through oral evidence.

## **2 DESCRIPTION OF THE SITE AND ITS SURROUNDINGS**

- 2.1 South Street is an unclassified road that runs for approximately 800 metres in an easterly direction from the A1010 to Ponders End station. The road has a predominantly residential character and some of its footways narrow to less than 1.5 metres in places. Ponders End Park is situated a short distance to the north of South Street. The CPO plots 1-8 and 11-12 comprise areas along the frontages of South Street properties and plots 9 and 10 are areas of land that link highways to Ponders End Park.

## **3 PROCEDURAL/LEGAL SUBMISSIONS**

### *Statutory formalities*

- 3.1 At the start of the Inquiry LBE confirmed that all the statutory formalities had been complied with and this was not disputed by any other party present.

### *Modifications*

- 3.2 The description of each plot contained within column 2 of table 1 of the CPO begins with 'Approximately'. Prior to the Inquiry LBE confirmed that, in the event that the SoS is minded to confirm the Order, this word should be deleted from each of the plot descriptions.
- 3.3 I consider that the above modifications would be necessary, in the interests of precision, in the event that the CPO were to be confirmed.

## **4 THE CASE FOR THE LONDON BOROUGH OF ENFIELD**

*The gist of the material points made by LBE in its written and oral submissions.*

### **4.1 The Compulsory Purchase Order 2011 (CPO)**

- 4.1.1 The Office of the Deputy Prime Minister Circular 06/2004 confirms that a compulsory purchase order should only be made where there is a compelling case in the public interest and the purposes for which the compulsory purchase order is being made sufficiently justify interfering with the Human Rights of those with an interest in the land affected.

## ***The Public Interest***

### *Need*

- 4.1.2 The Ponders End ward is one of the most deprived in the Borough and consequently is the focus for regeneration. The Ponders End South Street Campus (SSC) is the regeneration area based around the new Oasis Academy Hadley (OAH), which is located on the southern side of South Street towards its eastern end. The OAH opened in January 2013 and when at capacity will provide places for around 1,900 students in the 3-18 age range. It is seen as a major catalyst to lead investment into the SSC area. CS<sup>3</sup> Policy 41 identifies that the objectives of new development within the SSC will be to create, amongst other things, an attractive public realm, designed to promote community safety, and to promote a better street environment along South Street and good links to Ponders End Recreation Ground. The works associated with the OAH include a series of regeneration measures as well as highway improvements along South Street comprising seven elements: carriageway; footways; soft landscaping; traffic calming; waiting restrictions; street lighting; and miscellaneous.
- 4.1.3 The purpose for which LBE is seeking to compulsory purchase land is the carrying out of improvements to the public highway. More specifically the South Street footway widening project, including footway widening and accommodation works as well as improved links to an alternative safe route through Ponders End Park<sup>4</sup> (SSfwp). LBE relies on powers under section 239(3) of the Highways Act 1980. The land affected is within the statutory distance limits<sup>5</sup>.
- 4.1.4 The SSfwp is particularly important now as the OAH has recently opened. Furthermore, St Mathews Primary School is situated on the southern side of South Street to the west of No. 75. Consequently, parents with pupils and pre-school children frequently pass and re-pass along the South Street footways. The passage along South Street of very many school children on narrow footways, necessitating their stepping into or having to cross the street, represents a particular highway safety concern. The Transport Assessment that supported the planning application for the OAH made reference to historic data for the area which indicated that accidents involving pedestrians equate to around 21% of the total.
- 4.1.5 Out of the entire length of South Street, the stretch outside No. 75 has the narrowest width of footway of all, being approximately 1.15 metres wide at its eastern end and around 1.55 metres wide at its western end. Manual for Streets<sup>6</sup> (MfS) sets down a minimum footway width of 1.5

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3 The London Borough of Enfield Core Strategy, adopted in 2010.

4 SoR para 6.6.

5 At schedule 18 of the Highways Act 1980.

6 Department for Transport/Department for Communities and Local Government-Manual for Streets, 2007.

metres to enable an adult to walk next to an adult pushing a single push chair/buggy.

- 4.1.6 Highway improvement measures planned by LBE such as enhanced crossing facilities and traffic calming will assist in providing a safer highway environment for pedestrians. Furthermore, the widening of the footway on the northern side of the street, which also forms part of the SSfwp, is potentially available as an alternative route to narrow southern footways. However, this would inevitably involve pedestrians in having to cross the road, heightening the risk of collision with vehicles. With this in mind and given the high level of pedestrian traffic that is likely, it is necessary to widen the footways on both sides of the street, including that in front of No. 75. The improvements would substantially improve the safety of pedestrians and allow LBE to fulfil its responsibility for ensuring that students can access the OAH site safely.
- 4.1.7 LBE's evidence shows that the CPO fits within and complements the broader planning framework for the Ponders End area as a focus of a major regeneration effort, of which the siting of the OAH on a former gas works site on South Street was the first major initiative. This amounts to a compelling case in the public interest.

#### *Land requirements*

- 4.1.8 Whilst LBE's aspiration would be to widen all South Street footways to at least 3.0 metres, it recognises that a balance needs to be struck so as to facilitate the provision of a reasonable level of highway safety, while not having an undue impact on, amongst other things, those with an interest in the land affected<sup>7</sup>. The SSfwp was drawn up with this in mind.
- 4.1.9 The Municipal Year 2010/2011 Report No. 184 (MYR184) made recommendations to include regeneration improvements and the SSfwp within LBE's Capital Programme and to promote a compulsory purchase order to acquire the necessary land<sup>8</sup>. LBE resolved to agree those recommendations on the 2 March 2011<sup>9</sup>. MYR184 indicated that all the title interests and areas required for footway widening along South Street were shown on drawing no. 2010/036/008/rev 1. Those details are reproduced on drawing no. 2010/036/008 rev A, which is before the Inquiry<sup>10</sup>.
- 4.1.10 There is no dispute that the land the subject of plots 1-10 and 12 is necessary for the implementation of the SSfwp. The purpose of including plot 11 within the CPO is to acquire the land necessary to widen the footway along the frontage of No. 75. The substandard proportions of this

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<sup>7</sup> SoC para 5.7-5.8.

<sup>8</sup> ID6.

<sup>9</sup> ID7.

<sup>10</sup> ID9.

section of footway were recognised some time ago and a section 106 agreement of 17 July 2003<sup>11</sup>, which is associated with planning permission Ref. TP/01/1938 granted for the re-development of that property, requires OB, as successor in title to the owner, to undertake highway improvements, specifically the widening of the footway including that now the subject of the CPO to a minimum of 2 metres.<sup>12</sup> Whilst this obligation has not been fulfilled by OB, it remains legally enforceable.

- 4.1.11 Drawing no. 2010/036/008 rev A (dated January 2011) indicates that a triangular area of land along the frontage of No. 75 would be required, which would taper down from the eastern side boundary of the property to its western boundary and would have an area of 20 m<sup>2</sup>. However, CPO Plot 11 encompasses a larger, rectangular area of land, 32 m<sup>2</sup>, along the frontage of No. 75. The area was increased following advice from LBE's Conservation Officer that the reinstated boundary of the property should be kept parallel to the house<sup>13</sup>. LBE's Group Leader-Transportation Planning & Policy considers that the original triangular proposal would provide a safer route than exists at present. However, the larger rectangular area would be better, although there is no analysis before the Inquiry to support this, such as a safety audit.

*Land acquisition and potential impediments to implementation*

- 4.1.12 The fact that the OAH is already open demonstrates the commitment of resources to, and desire to implement, the broader planning framework. Furthermore, following LBE's resolution to include the SSfwp in its Capital Programme in 2011, approval was given to the acquisition of the land the subject of the CPO by LBE's Cabinet Members for the Environment and Finance and Property in February 2012<sup>14</sup>.
- 4.1.13 Transfer of full title has now been completed on 4 of the 12 CPO plots (plots 1-4). Furthermore, LBE, by agreement with the associated owners, occupiers and landlords has taken possession of 11 of the 12 plots (plots 1-10 and 12). Consequently, it has been able to proceed with the implementation of the bulk of its proposals, which are substantially complete, with the exception of the footway works at the front of No. 75 (plot 11). Although LBE has been engaged in consultation and negotiation with the owner of plot 11 since April 2011, no agreement has been reached. The only thing stopping completion of the scheme is the objector. It is submitted that in light of the clear need for, and public benefit of, the improvements to South Street, the failure so far for the acquisition of OB's land by private treaty should not be a reason not to confirm the Order.

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11 SoC appendix 2.

12 Clauses 1.1, 1.2, 3.1.3 to 3.1.6 and Schedule 1 of the section 106 agreement.

13 PE1 appendix 5. Inspector note: at the Inquiry LBE's Group Leader-Transportation Planning & Policy confirmed that he did not know whether this was simply an informal view expressed by the Conservation Officer.

14 ID8.

- 4.1.14 An allocation of £4 million has been made by LBE in its Capital Programme to fund highways work on South Street, including footway improvements, and sufficient funds remain for the outstanding works at No. 75<sup>15</sup>.
- 4.1.15 The proposed footway widening along the frontage of No. 75 would involve the removal of a tree which is the subject of a Tree Preservation Order. Consent for its removal, Ref. P12-00354TRE<sup>16</sup>, was granted by the local planning authority in a decision notice dated 12 April 2012.
- 4.1.16 Other than land acquisition, there are no impediments to the implementation of the SSfwp. As the OAH is open there is an urgent need for the works to be completed. In the event of the confirmation of the Order LBE plans to undertake the works in the school summer holiday in order to minimise disruption.

### *Conclusions*

- 4.1.17 The titles sought by the Order are necessary for the implementation of the SSfwp. The attempts that have been made to acquire the land titles voluntarily have not been entirely successful. There is a compelling case in the public interest for the confirmation of the Order in order to achieve certainty in the progression of the approved works and the associated environmental and safety improvements to the area.

### ***Human Rights***

- 4.1.18 The land take the subject of the CPO would have a minimal impact on the properties concerned. For the reasons summarised above, there is a compelling public interest that the CPO be confirmed. The consequential interference with private property rights and interests is proportionate and does not outweigh the clear and compelling public interest in the works proceeding. Accordingly, LBE respectfully requests the SoS to confirm the CPO.

## **5 THE CASE FOR THE OBJECTOR**

### *The gist of the material points made by objector:*

#### **5.1 MR O BELIGER (OB)**

### ***The Public Interest***

- 5.1.1 LBE's initial correspondence with me suggested that it would only require

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<sup>15</sup> ID3 & 4.

<sup>16</sup> SoC Appendix 4.



up to 20 m<sup>2</sup> of my land in the form of a triangle tapering down to the west from Hobby Street. This would be sufficient to improve the footway. However, it now requires a significant amount more, 32 m<sup>2</sup>, in the form of a rectangle 1.6 metres deep across the full frontage of No. 75. No explanation has been given for this change and there is no evidence to show that it was approved by LBE. I consider the area now sought to be excessive and unnecessary.

- 5.1.2 LBE scheme proposes to widen the footway in front of No. 75 to around 3.0 metres in width. However, the continuation of the footway to the west narrows to much less than this. Whilst to illustrate this point I made reference in my written submissions to a point to the west where the nib of a wall narrowed the footway to around 1.4 metres, I acknowledge that that local restriction has now been removed. Nevertheless, the footways to the west and east are narrower than 3.0 metres and so I consider that the proposed works in front of No. 75 would not materially improve the safety of pedestrians.
- 5.1.3 Although the OAH is now open, LBE has not provided any evidence to show that the footway in front of No. 75 has contributed to pupils being involved in accidents. LBE makes reference to historic data in relation to pedestrian accidents, the cause of which, in my view, is typically dangerous driving, not children spilling onto the carriageway due to inadequate widths of adjacent footways. A more effective solution to prevent accidents would be to provide: pelican crossings; crossing guards to assist the school children; more road signs; speed checks; speed cameras; a traffic Police presence during peak times; driver training and effective traffic schemes, including traffic calming measures. Furthermore, there is a risk that pedestrian activity would increase on the footway if it is widened and children are often seen walking in groups and playing or cycling on wider footways. Consequently, the proposed widening of the footway at the front of No. 75 may encourage more activity and expose children to a higher risk of accidents.
- 5.1.4 Whilst there is a section 106 agreement in place, which requires the footway to be widened, it would only result in the loss of a strip of land around 1 metre wide across the frontage of No. 75. Furthermore, action could be taken to discharge that obligation under the terms of the *Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992* (as amended).

### ***Human Rights***

- 5.1.5 I chose to purchase No. 75 in particular due to the size of the garden, which is not the same as that of average gardens in the neighbourhood. I have devoted a considerable amount of time and money to developing my front garden to its current standard for my family to enjoy for years to come. Around 2009 I also invested a lot of money importing olive trees from Cyprus. The particular variety of olive tree is rare and has been treated to survive London's weather. Based on my own horticultural research, removing and replanting these trees would almost certainly result in them dying. LBE has refused to provide a guarantee that should

my olive trees perish upon re-planting; they would be replaced or compensated for. Furthermore, aside from the monetary value of the trees, they are of considerable sentimental value, as they produce olives.

- 5.1.6 The front boundary wall of No. 75 and part of its side boundary wall along Hobby Street would be taken down in order to widen the footway. LBE has indicated that the new front boundary wall would not be replaced to the same style, dimensions and standard as it is currently. It would be lower and less ornate. LBE's justification for this is that the current wall does not benefit from planning permission and would be refused planning permission as it is incompatible with the style of the property, which is a Grade II Listed Building, and it is slightly higher than expected. Whilst I believe that the existing wall was constructed in accordance with a planning permission to LBE's satisfaction, I do not have any documentary evidence to support that belief. LBE's suggested reinstatement would result in the front boundary wall having a different appearance to the side boundary wall, which would look dreadful and would not be in keeping with the Listed Building. The proposed reinstatement would significantly reduce my visual enjoyment of my property and privacy as well as the value of the property.
- 5.1.7 Consultation and negotiations with LBE concerning the reinstatement of my wall have been ongoing for over two years. LBE proposes to make a compensation payment to me, which would in its opinion be sufficient to cover the cost of arranging the erection of a new front wall. I believe that the sum suggested is inadequate and I would prefer that LBE be responsible for undertaking the reinstatement works.
- 5.1.8 The loss of 32 m<sup>2</sup> as proposed would permanently alter the landscape of my front garden. It would not only deprive my family of their enjoyment of the land itself but would also adversely effect our enjoyment of the overall property and our private life. It would breach Article 8 of the *European Convention on Human Rights* (ECHR), both by the building work that would be undertaken in my front garden and by the ways in which my land would be reduced in size and altered in appearance. Furthermore, the process would be a disruption of my peaceful enjoyment of my possessions.
- 5.1.9 If the proposal involved the loss of only 20 m<sup>2</sup> of my land in the form of the triangle originally proposed and the rebuilding of the front wall to match that along the Hobby Street boundary, this would still breach my Human Rights. However, in that case the benefits to me of retaining my land, in terms of providing play space for my children and allowing the continued growth and cultivation of my olive trees would not outweigh the safety of school children. I would agree to that. However, my loss associated with the scheme proposed by LBE certainly does outweigh the benefits that would flow from the widening of the footway in front of my house. This is particularly the case as the footways immediately to the east and west would not be as wide. Furthermore, the widened footway on the opposite side of the road would be sufficient to meet the aims of the scheme.

#### *Conclusion*

- 5.1.10 LBE have not presented adequate evidence to show that keeping the

footway as it would pose a safety hazard for school children. Furthermore, it has not shown that widening the footway to 3.0 metres would adequately protect children and prevent accidents resulting from them stepping into the road.

- 5.1.11 The footway in front of my property is adequate for the purposes of pedestrians walking past. In an ideal environment with adequate space, all footways would be consistent and wide enough to guarantee the safety of pedestrians, but this is not possible along the vast majority of London's roads.
- 5.1.12 My reasons for objecting do not stem from a desire to achieve a higher level of compensation. I am more concerned with the proportionality of this CPO and the SSfwp, the way in which it has been handled by LBE, the disruption and permanent impact it would have on my garden, property and olive trees, and the reinstatement of the entire front wall.

## **6 REBUTTAL BY THE LONDON BOROUGH OF ENFIELD**

### **6.1 MR O BELIGER (OB)**

#### ***The Public Interest***

- 6.1.1 Analysis of the issues raised by OB, excluding those that concern quantum of compensation, shows that they do not, either individually or collectively, amount to an impact on his interests that outweighs the public benefit.
- 6.1.2 Indeed, OB appears to accept this point in principle, at page 3 of his statement<sup>17</sup> where he says: '*The benefit of retaining the existing use of the land i.e. for my two young sons to play on and for continued growth and cultivation of my olive trees does not outweigh the safety of 2000 school children.....*'. At the Inquiry he acknowledged that none of his concerns outweigh the safety of school children.
- 6.1.3 The first point OB makes is that initially he was consulted on a different scheme with a tapering footway, shown at his exhibit 1<sup>18</sup>. Based on his oral submissions, it now appears that OB objects to the compulsory purchase of the rectangular area (32 m<sup>2</sup>), but would not object to the inclusion of the original triangular area (20 m<sup>2</sup>). LBE considers that the rectangle of land included within the CPO would provide more benefit in highway safety terms than the smaller triangular area upon which OB was originally consulted. The small difference between the two shows how insubstantial his objection is. In any event, the initial scheme is irrelevant because it is not the scheme that is the subject of the CPO. Furthermore, LBE has shown that the larger area was properly authorised for inclusion within the CPO.

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<sup>17</sup> PE2.

<sup>18</sup> PE2.

- 6.1.4 Finally, OB seeks to argue that the proposed improvements, at least across his frontage, are futile because in other places the footway is almost as narrow. It is not clear exactly where the narrow spaces he refers to are, but the footway outside No. 75, at only 1.15 metres in width, is the narrowest section on either side of the full length of South Street. The logic of his argument is flawed in any event. OB is in effect arguing that because the entirety of South Street cannot have uniformly widened footways, that it is not worth seeking any improvements.
- 6.1.5 OB suggests that instead it would be preferable to encourage more crossing of the highway facilitated by measures such as additional pedestrian crossings and traffic police. The provision of traffic police, for example, is not something within LBE's power. Nevertheless, it is not accepted that encouraging more crossing of the road, how ever organised, can increase safety. It would increase the risk of conflicts between pedestrians and vehicles. Nor is it accepted that widening the footways may actually lead to more accidents. He suggests that traffic calming, road signs and speed cameras should be provided to slow traffic. This would not improve safety in the same way as widening the footway and in any event, traffic calming measures are in place and South Street does not fit the criteria for speed camera installation.
- 6.1.6 The best solution within a constrained environment is that which LBE is embarked upon, to widen as much of the footway along South Street as possible to minimise the likelihood of pedestrians having to step off the footway or cross the road to reach a wider footway on the other side. This is what the CPO seeks to facilitate and in this way the safety of pedestrians would be increased. This argument is not weakened by the absence of evidence of accidents involving OAH pupils, as the academy has only recently opened. There are no realistic alternatives to the improvements that necessitate the CPO.

### ***Human Rights***

- 6.1.7 OB argues that the loss of the land itself would affect his enjoyment of his property and his private life, in breach of Article 8 of the ECHR. His submissions also infer that there would be a conflict with Article 1 of the ECHR.
- 6.1.8 However, the loss of land would be minimal, amounting to a strip 1.6 metres deep across the frontage of the site, a total of 32 m<sup>2</sup>.<sup>19</sup> This in the context of a large garden that would remain large, approximately 16 metres deep, if the CPO is confirmed. By way of example LBE's planning standards aim to achieve private amenity space equivalent to 100% of the gross internal floorspace of the dwelling served; at No. 75 South Street after the CPO land is removed the garden would still provide an area equivalent to 175% of the gross internal floorspace.

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<sup>19</sup> PE2 appendix 2.

- 6.1.9 The Human Rights relied on by OB are of course themselves qualified rights and the need for the land in this case in the public interest clearly necessitates interference with those rights. Furthermore, reliance by OB on Human Rights is not reasonable in circumstances where he is already prima facie in breach of the section 106 agreement of 17 July 2003, which required him to widen the footway, and thereby lose a small part of his garden, upon his acquiring No. 75. OB would have been aware of this obligation when he decided to buy the property. This undermines his argument that he chose the property because of its unusually large garden.
- 6.1.10 The objection OB raises to the proposed replacement wall comprises 2 related elements, neither of which bear scrutiny. First it is said by OB that the wall along the roadside boundaries of No. 75 must be replaced in its entirety. However, there is simply no requirement on the acquiring authority to replace the section of wall along the Hobby Street frontage that is not affected by the CPO. The second point OB makes is that the wall at the South Street frontage ought to be replaced with an exact replica, in terms of design, of what is currently there; the points are related because it is argued that the replacement of the South Street wall with something different to the Hobby Street wall would compound the odd appearance.
- 6.1.11 The flaw in OB's argument is that the existing wall was not built in accordance with the approved plans for planning permission TP/01/1938<sup>20</sup>. That is why LBE cannot offer to replicate the existing design, and why consequently the front wall will not match the side return along Hobby Street. Although his proof of evidence suggests that he may have been involved in the construction of the wall, his oral evidence cast doubt over this matter.
- 6.1.12 OB argues that his olive trees are likely to perish through being transplanted. There is a distinct lack of evidence in support of this view. His olive trees have already been replanted after importation from Cyprus. Furthermore, LBE's Arboricultural Officer has indicated that as they have been successfully transplanted once there is no reason why this could not be done again. There is only one olive tree within the area that would be affected by the proposed footway widening works. However, LBE has offered compensation for the expense of replacement if the olive trees do indeed suffer as a result of the works.

### *Conclusion*

- 6.1.13 Overall, it can be seen that OB's objections are either implausible claims about injury to his Human Rights or quibbles about the accommodation works, perhaps maintained in order to seek greater compensation, given that he raises concerns that the scheme may affect the value of his

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<sup>20</sup> ID2.

property. Nothing he says seriously disturbs the balance in favour of LBE's intentions to improve South Street for the benefit of pedestrians, including those accessing the OAH, which is plainly in the public interest.

- 6.1.14 Without prejudice to the case set out above by LBE, in the event that the SoS determines that plot 11 should be reduced in size to reflect only the area shown on drawing no. 2010/036/008 rev A, this would not amount to a substantial amendment. It would be open to the SoS to confirm the Order subject to such a modification.

## **7 INSPECTOR'S CONCLUSIONS**

*Bearing in mind the submissions that I have reported, I have reached the following conclusions, references being given in square brackets [] to earlier paragraphs where appropriate.*

### **7.1 THE COMPULSORY PURCHASE ORDER 2011 (CPO)**

- 7.1.1 Circular 06/2004 confirms that a compulsory purchase order should only be made where there is a compelling case in the public interest and the purposes for which the compulsory purchase order is being made sufficiently justify interfering with the Human Rights of those with an interest in the land affected. Factors to be taken into account in determining whether there is a compelling case in the public interest include whether: all the land affected by the Order is required; the necessary resources to acquire the land and implement the scheme for which the land is required are likely to be available within a reasonable timescale; the scheme is unlikely to be blocked by any impediments to implementation; and, whether efforts have been made to secure the required land rights and titles by negotiation.

#### **The Public Interest**

##### *Need*

- 7.1.2 The SSC is a regeneration area focussed around the new OAH, which opened in January 2013 with capacity for 1,900 students in the 3-18 age range [4.1.2]. The new academy is expected to give rise to a significant increase in the numbers of pedestrians using South Street footways, which also serve, amongst other things, St Mathews Primary School. The Transport Assessment that supported the planning application for the OAH made reference to historic data for the area which indicated that accidents involving pedestrians equate to around 21% of the total [4.1.4]. In the context of meeting its responsibility for ensuring that pupils can access the OAH safely, LBE identified that in a number of locations the footway widths along South Street were too narrow to satisfactorily accommodate increased numbers of pedestrians safely [4.1.6]. The SSfwp, which includes footway widening and accommodation works as well as improved links to Ponders End Park, is intended to address this safety concern by providing a more pedestrian friendly environment [4.1.3]. It accords with the aims of CS Policy 41, which identifies that the objectives of new development within the SSC will be to create, amongst other things, an attractive public realm, designed to promote community safety, and promoting a better street environment along South Street and good links to Ponders End Recreation Ground [4.1.2].
- 7.1.3 There is no dispute that the works included within the SSfwp are necessary, except in relation to the widening of the section of footway at the front of No. 75 South Street (CPO plot 11).

- 7.1.4 LBE has identified that, out of the entire length of South Street, the section of footway along the frontage of No. 75 is the narrowest of all, being approximately 1.15 metres wide at its eastern end and 1.55 metres wide at its western end. I have not been provided with any compelling evidence to the contrary. I saw that the section of footway immediately to the east and west of No. 75 are not as narrow [5.1.2]. The MfS indicates that a footway width of 1.5 metres is required to enable an adult to walk next to an adult pushing a single push chair/buggy [4.1.5]. I consider that, due to its narrow width, the section of footway in front of No. 75 significantly increases the likelihood of pedestrians having to step onto the carriageway or cross the road more often than would otherwise be the case in order to pass others. These activities would increase the risks of conflict between pedestrians and vehicles. The width of the footway along the frontage of No. 75 seriously prejudices the safety of children walking to and from school. In my judgement, this argument is not materially weakened by the absence of evidence from LBE of OAH pupils having been involved in accidents, as the academy has only recently opened [5.1.3, 6.1.6].
- 7.1.5 I give little weight to OB's suggestion that there are more effective solutions than widening the footway in front of his property, such as the provision of more crossings to wider footways on the northern side of South Street and supervision at peak times [5.1.3]. Provisions such as these would not prevent people from using the footway at the front of No. 75. Furthermore, measures to limit vehicle speeds have already been installed along South Street by LBE [6.1.5]. There is no evidence before me to show that the other traffic calming measures suggested by OB, such as the erection of signs or the introduction of speed cameras, would significantly reduce the risk of pedestrians coming into conflict with vehicles. In addition, the length of the footway in front of No. 75 is relatively short and, in my view, even if its width were to be increased to around 3.0 metres, the resulting space would not be large enough to be attractive as a location for children to play, cycle or gather in groups, thereby leading to an increased risk of accidents at the front of No. 75. Children would be more likely to undertake such activities in the space at the front of the OAH or in the nearby park [5.1.3, 6.1.5].
- 7.1.6 In my judgement it is necessary to widen the footway that runs along the frontage of No. 75, in the interests of the safety and convenience of pedestrians. No realistic alternatives have been put to me. However, I consider below the extent to which it should be widened.

#### *Land requirements*

- 7.1.7 LBE has now acquired full title for CPO plots 1-4 [4.1.13]. Furthermore, no party disputes that in relation to plots 5-10 and 12 the titles sought by the CPO are necessary for the implementation of the proposed works [4.1.10]. I am satisfied that they are. I turn now to consider CPO plot 11, which is owned by OB.
- 7.1.8 The footway widening works at the front of No. 75, which were approved



by LBE on 2 March 2011, are shown on drawing no. 2010/036/008 rev A [4.1.9]. It indicates that it is necessary to acquire a triangular shaped plot of land along the frontage of No. 75, with an area of 20 m<sup>2</sup> [4.1.11]. I will refer to it as area A. This area would allow LBE to widen the footway along the frontage of No. 75, such that it would be wider than the minimum of 1.5 metres which the MfS indicates is necessary for an adult to walk next to an adult pushing a single push chair/buggy. LBE has confirmed that this would provide pedestrians with a safer route along the southern side of South Street than is available to them at present [4.1.11]. Given the usage to which the footway is likely to be put, I consider that this is a reasonable requirement, in the interests of the safety of pedestrians [4.1.4].

- 7.1.9 However, the CPO seeks to acquire a larger, rectangular area of land. That is plot 11, with an area of 32 m<sup>2</sup> [4.1.11]. I will refer to this as area B. Whilst the making of the CPO has been duly authorised by LBE [4.1.12], there is no evidence before me to show that it has formally approved a modification of the footway widening scheme shown on drawing no. 2010/036/008 rev A to require the footway to be extended beyond the bounds of area A [5.1.1, 6.1.3]. On the contrary, the scheme drawings<sup>21</sup> submitted by LBE to the SoS in support of the CPO, prior to the Inquiry, the most recent of which is dated March 2012, show the smaller triangular area in common with drawing no. 2010/036/008 rev A.
- 7.1.10 LBE has indicated that the plot area was changed by the project team from area A to B following advice from LBE's Conservation Officer that the repositioned front boundary should be kept parallel with the house [4.1.11]. However, no documentary record of that advice has been provided and at the Inquiry LBE's Group Leader-Transportation Planning & Policy did not know whether it was simply an informal view expressed by the Conservation Officer. There is no evidence to show that it would be a requirement of the local planning authority in relation to the replacement boundary wall. Under these circumstances, I give the reported view of the Conservation Officer little weight. The Group Leader also confirmed that whilst he considered that the larger area would provide a better footway solution, there was no analysis to support this, such as a safety audit [4.1.11]. I also give this unsupported view little weight.
- 7.1.11 I consider that the additional area of the garden of No. 75 which is included in CPO plot 11 over and above that shown on drawing no. 2010/036/008 rev A is not necessary for the implementation of the SSfwp. Nor is there any compelling evidence to show that it is necessary in the interests of the safety and convenience of highway users or in support of some other interest of acknowledged importance.
- 7.1.12 In my judgement, it is necessary to acquire the titles sought by the Order

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21 Drawing no. 2010/036/001 (dated October 2011) entitled General Arrangement and drawing no. 2010/036/520 (dated March 2012) entitled Adopted Public Highway in Relation to Land to be Acquired.

for plots 5-10 and 12, but only the section of plot 11 comprising area A. It follows that that the CPO should not be confirmed in its original form. Plot 11 should be reduced in size to only include area A. I will refer to the CPO amended to reflect the reduced size of plot 11 along with the modifications set out in paragraph 3.2 above as CPOa.

- 7.1.13 I consider that the titles which would be secured by CPOa are necessary in order to secure the completion of the identified works. The proposed modifications would not alter the purposes for which the Order was made. Furthermore, they would not reduce the CPO boundary, except through the reduction in the size of plot 11. In my judgement, the proposed CPOa modifications to the CPO do not amount to substantial amendments. They would fall within the scope of the SoS powers of modification, with reference to Circular 06/2004 [6.1.14].

*Land acquisition and potential impediments to implementation*

- 7.1.14 Whilst I am satisfied that LBE has actively sought to acquire the land interests to which the Order refers through negotiation, it has not been successful in a number of cases [4.1.13, 5.1.7]. This necessitates the use of compulsory purchase powers in order to ensure that the benefits of the approved scheme can be brought forward in a timely manner and secured.
- 7.1.15 There is no dispute that the funds allocated by LBE in its Capital Programme are sufficient to complete the scheme [4.1.14]. Furthermore, other than land acquisition, there are no impediments to the implementation of the approved works [4.1.16].

*Conclusion*

- 7.1.16 Confirmation of the Order is required now to ensure that the benefits of the approved Scheme can be brought forward in a timely manner and secured. Having had regard to the above matters, including the concerns raised by OB, I conclude on balance, that there is a compelling case in the public interest for the CPOa to be confirmed. That is the Order insofar as it relates to plots 5-10 and 12 as well as the section of plot 11 comprising area A (shown on drawing no. 2010/036/008 rev A), but not the remainder of area B.

**Human Rights**

- 7.1.17 ODPM Circular 06/2004 indicates that an acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the *Human Rights Act 1998 (as amended)*. That is, *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.*

- 7.1.18 I have also had regard to Article 8, which indicates that *everyone has a right to respect for his private and family life, his home and his correspondence. 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*, amongst other things, *public safety*.
- 7.1.19 There are no objections to the CPO from those with an interest in either plots 1-10 or 12. Furthermore, following my finding with respect to public interest, I consider that in relation to those plots the CPO would not result in anyone being deprived of their possessions except in the public interest. Having had regard to the likely benefits of the scheme, and after careful consideration, I am satisfied that the effect of CPOa would not be disproportionate and there would be no violation of their Human Rights. I turn now to plot 11.
- 7.1.20 The front garden of No. 75 is enclosed for the most part along its South Street and Hobby Street boundaries by a relatively low wall topped by arched panels of railings between brick piers. Whilst the majority of this garden comprises either lawn or hardstanding, a border along the back of the South Street boundary wall contains a number of small trees, including a tree which is the subject of a Tree Preservation Order and at least one olive tree [4.1.14, 6.1.12].
- 7.1.21 No documentary evidence has been provided by OB to show that the roadside boundary enclosures of No. 75 were erected in accordance with a planning permission [5.1.6]. Whilst the documentation provided by LBE does not make clear which of the approved details applies to which sections of the boundary, none of the details support OB's contention [6.1.11]. LBE has indicated that the new front boundary wall could not be replaced to the same design as that which would be removed, as it would be unlikely to be granted planning permission. It follows that the new wall would not be identical in design to the remaining section of the Hobby Street boundary enclosure [6.1.11]. Nonetheless, based on the design which LBE has indicated would be likely to be acceptable<sup>22</sup>, in my judgement, the change would not have a significant adverse effect on the character or appearance of the property or, as a consequence, its value. Therefore, I give little weight to OB's view that, in relation to this matter, the scheme would be likely to result in a significant diminution of his visual enjoyment of his property.

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22 CD8 appendix D.

- 7.1.22 In my judgement, the existing boundary treatment along the roadside boundaries of No. 75 does not limit the potential for overlooking of the front garden of this dwelling or the front windows of the house to any significant degree. Consequently, even if the replacement wall is lower, it would not reduce the level of privacy enjoyed by residents of No. 75 when using their front garden. Furthermore, the reduction in the length of the garden, whether area A or B is acquired by the CPO, would not be so great as to materially increase the potential for overlooking of the front windows of the house [5.1.6].
- 7.1.23 Whether area A or B is acquired by the CPO, at least one of OB's olive trees would need to be relocated, if it is to be retained. Whilst OB has suggested that the olive trees, which are of sentimental value to him, would be unlikely to survive relocation, this is disputed by LBE's Arboricultural Officer [5.1.5, 6.1.12]. I give greater weight to the assessment of LBE's Arboricultural Officer, who, in my view, is more likely to be knowledgeable about such matters, than that of OB, which is based on his own unspecified research.
- 7.1.24 OB argues that the loss of the land itself would have a detrimental effect on his enjoyment of his property and his private life [5.1.8]. The CPO would result in the loss of only a small proportion of the garden area of No. 75, irrespective of whether area A or B is taken into account. In my view, this would be unlikely to have a significant effect on the utility of the front garden, which would remain large in comparison with those of many neighbouring dwellings [5.1.5, 6.1.8]. Although the footway widening works would be likely to cause some disruption to OB and his family, the works would be small scale and any associated disruption would be likely to be short lived [5.1.8]. I give OB's concerns in relation to this matter little weight.
- 7.1.25 Disputes with respect to the levels of compensation that would be appropriate, whether in relation to the loss of land, loss of trees, to facilitate the replacement of the boundary enclosure or other matters, are not for me to determine, but for the Lands Tribunal.
- 7.1.26 In my judgement, whether considered in isolation or cumulatively the effect of CPOa on OB's home as well as private and family life would be limited. The Order would result in him being deprived of the front section of his property and this would amount to interference with the peaceful enjoyment of his possessions. Nevertheless, any impact on the Human Rights of OB and his family in relation to these matters must be balanced against the rights and freedoms of others. Having had regard to the likely benefits of the scheme, and after careful consideration, I am satisfied that the effect of CPOa would not be disproportionate and there would be no violation of their Human Rights. Although my view does not turn on the existence of the section 106 agreement of 17 July 2003, which requires the widening of the footway to a minimum of 2 metres, it reinforces my finding. There is no evidence that action has been taken to discharge it [4.1.10, 5.1.4].

## Conclusions

- 7.1.27 I conclude that the environmental and safety benefits that would result from the SSfwp demonstrate both the compelling case in the public interest for the CPOa to be confirmed and the consistency of the scheme with Development Plan policy. The land titles sought by CPOa would be a proportionate response to the needs of the approved scheme. Having regard to Human Rights, in my judgement, there is clear evidence that the public benefit associated with CPOa, would outweigh the private loss of those people with an interest in the land. I conclude on balance, that the purposes for which the Order has been made sufficiently justify interfering with the Human Rights of those with an interest in the land affected. Furthermore, no infringement of the *Human Rights Act 1998 (as amended)* would result from the confirmation of CPOa and I consider that it should be confirmed.

## 8 RECOMMENDATIONS

- 8.1 I recommend that The London Borough of Enfield (South Street) Compulsory Purchase Order 2011, subject to the CPOa modifications<sup>23</sup>, be confirmed. The Order as originally made should not be confirmed.

*I Jenkins*

INSPECTOR

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<sup>23</sup> Defined in para 7.1.12.

## **APPENDICES**

### **APPENDIX 1**

#### **APPEARANCES AT THE INQUIRY**

##### **THE LONDON BOROUGH OF ENFIELD:**

Mr G Atkinson (Of Counsel) He called	Instructed by the Assistant Director of Legal Services at The London Borough of Enfield (LBE).
Mr S Jaggard BSc DipTP MRTPI	Group Leader-Transportation Planning & Policy, LBE.
Mr D Bond MRICS	Property Services, LBE.

##### **OBJECTOR:**

Mr A Esen (Fortis Rose Solicitors) He called	Instructed by Mr O Beliger.
Mr O Beliger	Local resident and landowner.

## APPENDIX 2

### CORE DOCUMENTS LIST

CD1	The Inquiry notice.
CD2	The London Borough of Enfield (South Street) Compulsory Purchase Order 2011.
CD3	Scheme drawing nos. 2010/036/001 (dated October 2011) entitled <i>General Arrangement</i> and drawing no. 2010/036/520 (dated March 2012) entitled <i>Adopted Public Highway in Relation to Land to be Acquired</i> .
CD4	Statement of Reasons.
CD5	Statement of Case.
CD6	Copy of the objection to the Order and correspondence from Fortis Rose Solicitors on behalf of Mr O Beliger.
CD7	Suggested modifications.
CD8	Rebuttal to objections from No. 75 South Street.

## APPENDIX 3

### INQUIRY DOCUMENTS LIST

#### Proofs of Evidence

PE1	Proof of Evidence of Mr S Jaggard, including a witness statement of Mr D Bond (Appendix 5).
PE2	Proof of Evidence of Mr O Beliger.

#### Other Inquiry Documents

ID1	Public notice-Inquiry arrangements.
ID2	Drawing no. 2002/034C-approved boundary enclosure details associated with TP01/1938/3.
ID3	Budget approval and spend tracking.
ID4	Budget estimate for footway widening along the frontage of No. 75.
ID5	Municipal Year 2010/2011 Report No. 182.
ID6	Municipal Year 2010/2011 Report No. 184.
ID7	Minutes of meeting of the Council held on Wednesday 2 March 2011.
ID8	Notification of Decision Taken- approval of the acquisition of the land required for the London Borough of Enfield (South Street) Compulsory Purchase Order 2011 (draft), dated 1 February 2012.

ID9            Drawing no. 2010/036/008A.

## **APPENDIX 4**

### **ABBREVIATIONS**

ALA	The Acquisition of Land Act 1981 (as amended).
Area A	The area of the front garden of No. 75 shown as being required for footway widening on drawing no. 2010/036/008A.
Area B	Plot 11 shown on the CPO.
Circular 06/2004	ODPM Circular 06/2004 Compulsory Purchase and the Crichel Down Rules.
CPO	The London Borough of Enfield (South Street) Compulsory Purchase Order 2011.
CPOa	The Order modified in accordance with paragraph 7.1.12 above.
ECHR	European Convention on Human Rights.
HA	The Highways Act 1980 (as amended).
LBE	The London Borough of Enfield.
MfS	Manual for Streets, 2007.
OAH	Oasis Academy Hadley.
OB	Mr O Beliger.
SoR	Statement of Reasons.
SoS	Secretary of State for Transport.
SSC	Ponders End South Street Campus.
SSfwp	The footway widening and accommodation works as well as improved links to an alternative safe route through Ponders End Park.