



Department for
Communities and
Local Government

Keith Oliver
Ashfords Solicitors
Ashford House
Grenadier Road
Exeter
EX1 3LH

Please ask for: Sara Lewis
Tel: 0303 444 8076
Email: Sara.Lewis@communities.gsi.gov.uk

Your ref: KRO/JWB/260577-00003

Our ref: NPCU/CPO/H5390/71854

Date: 10 October 2014

Dear Mr Oliver,

**Town and County Planning Act 1990: Section 226(1) (a)
Acquisition of Land Act 1981
The London Borough of Hammersmith and Fulham (Shepherds Bush Market
Area) Compulsory Purchase Order 2013**

1. The report of the Inspector, Ava Wood Dip Arch MRTPI, who held a public local inquiry into The London Borough of Hammersmith and Fulham (Shepherds Bush Market Area) Compulsory Purchase Order 2013 ("the Order") on 17-20 September, 23-27 September and 25 November 2013, has been considered. I enclose a copy for your information. 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 Shepherd's Bush Market ("the Market"), the parade of shops at 30-52 Goldhawk Road and its service road, the former Spring Grove laundry site, the Market Lane hostel and flats, the Market Lane Broadway Day Centre, the Lime Grove Hostel, 47 Lime Grove and electricity sub stations which need to be relocated for the purpose of facilitating the redevelopment and regeneration of the Market, and adjoining area to contribute towards significant social, economic and environmental improvements.

3. In a letter dated 24 November 2013, the London Borough of Hammersmith and Fulham Council (the council) requested that the Order be confirmed subject to those

modifications, being the removal of Order lands 1/08 and 2/08 as the compulsory acquisition of these lands is no longer necessary.

Inspector's recommendation and summary of the decision

4. The Inspector recommended (IR.13.1) that the Order should not be confirmed or, if the Secretary of State is minded to confirm the Order, it should be modified by deleting Order lands 1/08 and 2/08 (IR 13.2). For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation and concludes that the Order should be confirmed with modifications.

Consideration

5. When the Inquiry opened there were 132 remaining qualifying objections to the Order and 103 non-qualifying objections. During the course of the Inquiry, 2 qualifying objections were withdrawn and 1 late qualifying objection was lodged during an adjournment. Since the Inquiry ended there has been a withdrawal of a qualifying objection in relation to Cookes Pie and Mash Shop at 48 Goldhawk Road. The main grounds of objection are: the scheme does not conform to the adopted planning framework; the scheme does not contribute to the economic, social and environmental wellbeing of the area; the assessment of alternatives has been inadequate; there have been no proper negotiations; and the safeguards provided in the Section 106 agreement for the Goldhawk Road shopkeepers and Market traders are inadequate.

6. The Inspector's Report summarises the submissions made at the local Inquiry at IR4.1-IR11.5.1

7. The Inspector's conclusions are set out at IR 12.1-12.11.4 and her recommendations are at IR13.1. and 13.2.

8. The Inspector has recommended that the Order should not be confirmed because she concluded that the guarantees and safeguards are not sufficiently robust to be assured that genuine opportunities exist for current traders and/or shopkeepers (or similarly diverse businesses) to continue trading in the Market and Goldhawk Road (IR 12.11.4.) Without such assurances, the Inspector concludes there is a real risk that the Market and replacement Goldhawk Road shops will not provide the ethnic diversity, independent or small scale retailing environment that is central to the appeal of the area. The Inspector concludes that whilst such uncertainties exist, the personal losses and widespread interference with private interests arising from confirmation of the Order cannot be justified. However, in the event that the Secretary of State is minded to confirm the Order, the Inspector recommends that the Order should be modified by deleting Order lands 1/08 and 2/08.

Post Inquiry correspondence

9. Since the conclusion of the Inquiry there have been 6 pieces of post inquiry correspondence. The first from the Shepherd's Bush Market Tenants' Association (SBMTA) contained their closing submissions. The second from the Council, dated 13 May 2014, contained an update on matters unknown at the time of the Inquiry including information on viability would enable the delivery of affordable housing provision and a revised Section 106 agreement. The third from PDC legal (representing the Goldhawk Road shopkeepers), dated 27 May 2014, contained a

request that the inquiry be re-opened in light of the viability reappraisal. The fourth from Development Securities (a co investor in the scheme), dated 25 July 2014, contained a request for a timely decision. The fifth letter from the proprietors of the Cookes Pie and Mash shop dated 25 July 2014 contained a request to withdraw their objection to the Order in relation to 48 Goldhawk Road. The sixth letter from the SBMTA, dated 27 June 2014, raised their concerns with Orion's approach to the surrender of leases, the terms of licenses, the service charge arrangements and the relocation. The Secretary of State considers it unnecessary to revert to the parties on the contents of the post Inquiry correspondence as the matters raised do not affect his conclusions on the decision. Copies of all the correspondence may be obtained by written request to the address at the foot of the first page of this letter.

Request to reopen the Inquiry

10. The letter from PDC legal requested that the inquiry be re-opened in light of the viability reappraisal at reserved matters stage. The Secretary of State has carefully considered the request to re-open the inquiry but does not consider that the viability reappraisal constitutes a reason to re-open as it does not affect his conclusions on the decision. The Inspector concluded that the scheme was in accordance with the adopted planning framework on the basis of the original viability appraisal. The Inspector was also aware (IR 3.2.4) that there was a review mechanism in the Section 106 agreement providing for a viability review at the detailed planning stage. The Secretary of State is satisfied that the Council is actively considering renegotiation of the Section 106 affordable housing requirement in order to ensure development plan policies are met (see para 13 below).

11. The Secretary of State has very carefully considered whether there is a compelling case in the public interest to confirm the Order. Paragraphs IR12.1-12.3 sets out the relevant compulsory purchase legislation and policy in consideration of which the Secretary of State's decision is made.

Planning Framework

12. The Inspector's conclusions on the planning framework are set out at IR 12.5. The Secretary of State agrees that the relevant planning policies are those set out at IR 3.1. The Secretary of State considers that the key policy consideration is policy WCOA3 of the Strategic Policy for the White City Opportunity Area. The policy which seeks the regeneration of the market and other adjacent land to create a vibrant mixed use town centre development of small shops, market stalls, leisure uses, residential and possibly offices. The development should encourage small independent retailers and accommodate market traders. The Inspector concludes at (IR 12.5.13) that the planning framework clearly provides justification for the Order and it fits in with that framework.

13. Core Strategy Policy H2 sets out a requirement that developments for more than 10 units, subject to viability, will be required to meet a Borough wide target of 40% affordable housing. It is noted at (IR12.5.8) that the viability of the scheme was taken into account by the Council and the Mayor in granting outline planning permission for the development without the need for any affordable housing. This was on the basis of Orion's original viability appraisal which concluded that the development could not support any affordable homes. Viability of the planning scheme was reappraised at reserved matters stage pursuant to the review mechanism included in the Section 106 agreement. The Council resolved to grant approval of principal reserved matters

on 3 April 2014 subject to a revised Section 106 agreement being negotiated in respect of the affordable housing provision. The Secretary of State notes that the Council is actively working to ensure that the renegotiated Section 106 affordable housing requirement will meet the relevant development plan policies. In conclusion, the Secretary of State agrees with the Inspector at (IR 12.5.13) that the Order is in compliance with the planning framework, including in relation to affordable housing, notwithstanding the viability reappraisal.

Economic, Social or Environmental well-being

14. The Secretary of State has considered the Inspector's conclusions in relation to the extent the proposed purpose of The Order will contribute to the achievement of the economic, social or environmental well-being of the area at IR 12.6. at (IR 12.6.10.) The Inspector concludes that overall the Orion proposal has the potential to bring about significant improvements in the physical environment of the area, boost the area's economy and generate the social benefits associated with an improved Market, with the Order will equally contribute to the area's well-being as an essential tool in facilitating delivery of those benefits. The Inspector concludes (IR 12.6.11) that these benefits would only materialise if the essential ingredients and uniqueness of the Market and the Goldhawk Road shops are retained and the development provides the requisite financial as well as physical conditions for an independent, small scale, diverse, and ethnic mix of traders and shopkeepers to continue trading. The Inspector notes that these objectives rely on safeguards to ensure that existing businesses or new operators, with similarly qualitative and diverse offerings are protected as far as possible during and after the redevelopment process and that the effectiveness of schedules 15 and 16 of the Section 106 agreement are a vital element of the Order scheme in this regard. The Inspector concludes at IR 12.6.36 that the Order scheme would not fully achieve the social, economic or environmental well-being sought as it lacks the mechanisms to be assured of retaining the number, mix and diversity of traders.

15. The Secretary of State has carefully considered the Inspector's conclusions on the Order schemes contributions to well-being. The Secretary of State considers that sufficient safeguards are in place to ensure that regeneration of the market to create a vibrant mixed use town centre development will be achieved and that existing Market traders and shopkeepers or new operators with similarly qualitative and diverse offerings will be protected. The Secretary of State is satisfied that the Council will ensure that the policy requirements of WCOA3 will be met through a series of planning conditions that will be reviewed and approved by the Council and through the safeguards provided within the Section 106 agreement which are enforceable by the Council. Therefore, the Secretary of State disagrees with the Inspector's conclusions and finds that the proposal will significantly contribute to the economic, social and environmental well-being of the area.

Viability

16. The Secretary of State agrees with the conclusion of the Inspector at IR 12.7.4 that the Order scheme is viable that the promoters have the necessary resources and will to achieve the purpose of the Order within a reasonable timescale.

Alternatives

17. The Secretary of State has considered the Inspector's conclusions whether the Order purposes can be achieved by other means (IR 12.8) and agrees with the

conclusion of the Inspector at (IR 12.8.14) that achieving the Order purposes by other means cannot be conclusively demonstrated. In relation to an alternative scheme which excludes the Goldhawk Road shops, the Inspector concludes at (IR 12.8.9) that there is an urgent need to proceed with a redevelopment proposal. The Secretary of State agrees with the Inspector's conclusion at (IR 12.11.1) that the appropriateness of an alternative proposal (without the Goldhawk Road properties) or other means of funding the market regeneration has not been tested or conclusively demonstrated.

Efforts to Negotiate

18. The Secretary of State has considered the Inspector's conclusions on the efforts to negotiate at (IR 12.9.) The Secretary of State agrees with the Inspector that adequate attempts have been made by the promoters to acquire land interests by agreement.

Human Rights

19. The Secretary of State considers that the benefits of the scheme, notably improvements to the social, economic and environmental 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 8 and 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 Order, a fair balance would be struck between the wider public interests and private interests.

Public Sector Equality Duty

20. The Secretary of State has considered the Equality Act 2010 and that the decision may affect traders and shopkeepers of particular ethnic groups (IR 12.11.4) which are protected for the purposes of the Act. In making this decision, the Secretary of State has had due regard to the requirements of the Public Sector Equality Duty, in particular the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and others. The Secretary of State considers that any impacts (e.g. the lack of suitable and affordable replacement premises for existing and/or similar business) of the decision on these protected groups will be mitigated and provision made through a series of planning conditions and through the Section 106 agreement. Following careful consideration of these matters, the Secretary of State concludes that any impact of the decision is justified and proportionate.

Justification in the public interests and overall balance

21. The Order should be confirmed only if there is a compelling case in the public interest to justify sufficiently the interference with the human rights of those with an interest in the land affected. The Secretary of State considers that the 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. 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. The Secretary of State is satisfied that sufficient safeguards are in place to protect traders and shopkeepers through a series of planning conditions requiring the review and approval of the Council and through the Section 106 agreement which can be enforced by the Council to ensure

that a development in line with the relevant planning framework can be delivered. 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, particularly in light of the urgent need to redevelop the Market. Having regard to these 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.

22. The Secretary of State has therefore decided to confirm the London Borough of Hammersmith and Fulham (Shepherds Bush Market Area) Compulsory Purchase Order 2013 with the modifications requested by the Council, notably the removal of Order lands 1/08 and 2/08

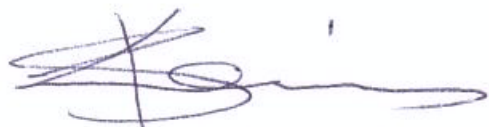
23. I enclose the confirmed Order as modified and the map to which it refers. Your attention is drawn to Section 15 of the Acquisition of Land Act 1981 about publication and service of notices now that the Order has been confirmed. Please inform us of the date on which notice of confirmation of the Order is first published in the press.

24. Copies of this letter and the Inspector's report are being sent to the remaining objectors who appeared or were represented at the local Inquiry.

25. 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 blue ink, appearing to read 'Sara Lewis', with a long horizontal flourish extending to the right.

Sara Lewis
Senior Planning officer