



Department for Transport

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FAO David Mundy

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Dear Sirs

Acquisition of Land Act 1981 Port of London Act 1968

Port of London Authority (Orchard Wharf) Compulsory Purchase Order 2012

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to refer to the Public Local Inquiry held on 23-26 April and 30 April; 1-3 May; 4-6, 11-13, 18-20 June and 5 September 2013 before David Nicholson RIBA, IHBC, an Inspector appointed by the Secretary of State to hear objections to and representations about the above named Order submitted by the Port of London Authority ("PLA").
2. If confirmed by the Secretary of State, the compulsory purchase order (CPO) would authorise the PLA to purchase compulsorily the land described therein for the purpose of securing the provision of port and harbour services on the River Thames at Orchard Wharf.

Secretary of State's consideration

3. The Secretary of State, as set out below in more detail, has considered the objections and representations made and the Inspector's report in exercising his role under section 11 of the Port of London Authority Act 1968 that enables the PLA to seek to acquire land compulsorily.

Inspector's Report

4. The Inspector has considered the objections to the Order both as made in writing and presented orally at the Inquiry and has submitted his report to the Secretary of State. A copy of that report is enclosed with this letter. References in this letter to the Inspector's report are indicated by the abbreviation "IR " followed by the paragraph number in the report.

5. The report also deals with a separate but related issue, namely an appeal by Aggregate Industries UK Ltd and London Concrete Ltd under section 78 of the Town and Country Planning Act 1990 against the refusal to grant planning permission by the Council of the London Borough of Tower Hamlets (“the Council”). This matter is for consideration and decision by the Secretary of State for Communities and Local Government.
6. The Inspector's report summarises the case for the PLA at IR 6.1 to IR 6.64. The case for the objectors Grafton Group and British Dredging (Services) Ltd, who own Orchard Wharf is summarised at IR 8.1 to IR 8.65. The representations by other interested parties are summarised at IR 9.1 to IR 10.12. The Inspector's conclusions are detailed at IR 12.62 to IR 12.122 whilst his recommendations for the CPO are given at IR 13.2.

The Decision of Secretary of State

7. The Secretary of State has considered carefully all the objections to the Order. He has considered the whole of the Inspector's Report and the arguments within it and accepts his conclusions and recommendations. Therefore he has decided to confirm the Order, as submitted. Your clients are required to publish newspaper notices of the determination in the prescribed form.
8. The Secretary of State has considered the factors set out in ODPM Circular 06/2004 Compulsory Purchase and the Crichel Down Rules (Circular 06/2004) as relevant for considering the proposed compulsory purchase of Orchard Wharf. The Inspector focused particularly on the adopted planning framework; the economic, social or environmental well-being of the area; viability and funding; and whether the purpose could be achieved by any other means. The Secretary of State accepts that this was the right approach and has considered those issues in light of the Inspector's report.

Planning framework

9. Orchard Wharf has been safeguarded by the Greater London Authority (GLA) since 1997. The Inspector has reviewed the relevant planning framework, in particular the London Plan and Tower Hamlets Development Plan. Policy 7.26 of the London Plan is *'is to increase the use of the Blue Ribbon Network to transport freight'*. As part of this policy development proposals *'should protect existing facilities for waterborne freight traffic, in particular safeguarded wharves should only be used for waterborne freight handling uses. The redevelopment of safeguarded wharves for other land uses should only be accepted if the wharf is no longer viable or capable of being made viable for waterborne freight handling.'*
10. Therefore, as set out in IR 12.66, there is a policy framework for safeguarded wharves that provides strong support for re-activation of the wharf. The Inspector in particular noted that at the Inquiry, the objectors confirmed that they intended to 'land bank' the site until safeguarding is removed and that *'these facts alone provide a strong case in favour of acquisition [IR 12.67]*. The site is currently vacant and it would be contrary to the planning framework for the site to be used for any other purpose, while it was safeguarded and remains viable to be re-activated as a wharf and the criteria for this is set out in

paragraph 7.77 of the London Plan. The evidence from the PLA demonstrated that Orchard Wharf was viable in navigation terms [IR 6.14] and that the site had proximity to potential markets for concrete, etc [IR 6.20]. The Secretary of State agrees with the Inspector that the planning policy context supports the use of wharves for concrete batching [IR 12.26] in line with the London Plan's policies on use of the river ('blue ribbon network'(BRN)) for freight and aggregates. Therefore the purpose of the CPO is supported by policy [IR 12.104].

11. The re-opening of the wharf by allowing aggregate and other materials to arrive by river and be processed there would contribute to wider GLA policy to reduce freight movements on London's roads.

Safeguarding of wharves

12. The planning policy relevant to Orchard Wharf turns on it being one of the wharves on the River Thames that the Mayor of London has designated as a safeguarded wharf. The position of safeguarded wharves, similar to safeguarded roads or potential rail routes, means that once the designation has been confirmed by the relevant Secretary of State it remains safeguarded until it is decided to remove that designation. The existence of such a designation should be taken into account by those developing sites adjacent to any safeguarded wharf, or feature. It is good practice for such designations to be reviewed to confirm whether the safeguarding remains necessary or appropriate.
13. Since 2011, the Greater London Authority (GLA) has conducted a review of the Safeguarded Wharves Implementation Report. In the consultation versions of the Safeguarded Wharves Review that were published in 2011, and 2012 and the publication of the version submitted in 2013 to the Secretary of State for Communities and Local Government, Orchard Wharf was to continue to be designated as safeguarded, as it had been since at least 1997. Orchard Wharf remains safeguarded under the Direction until this is superseded by the Safeguarded Wharves Review and the Direction is lifted. Reactivation would therefore be in accord with the development plan [IR 12.55]. Therefore consideration of whether to confirm the compulsory purchase order must be on the basis of its current designation. The position might be different, if the Review had proposed removing the designation from Orchard Wharf, or if it were to be designated for the first time. However, neither condition applies therefore the key issue is whether the purpose for which the Order was sought is in accordance with the relevant planning framework, which it is.
14. The Secretary of State also concurs with the Inspector's view that once a wharf ceases to be safeguarded, there is strongly likelihood that it would be redeveloped for other uses and so it would not be possible to safeguard at a future date and so, as set out by the Inspector in his Report, '*It explains the need for the Mayor to take an appropriate precautionary approach as once lost, wharves are unlikely to be reactivated.*' [IR 5.25]
15. At the hearing, the objectors raised concerns that there may have been bias in the GLA's Review of Safeguarded Wharves. The Inspector rightly concluded this was a matter for the Secretary of State for Communities and Local

Government when considering whether to confirm the list of designated wharves.

Economic, social or environmental well-being of the area

16. Re-opening the wharf would provide both direct employment at the wharf, with a prospect of some 33 jobs, and may also support economic development elsewhere in London, as well as meeting the needs of the construction industry in the London area that would support continuing growth [IR 12.70, IR 5.40, IR 6.10]. As the Inspector noted [IR 12.72, IR 3.10, IR 9.2], while 33 jobs were not significant, this was still more than the site currently provided, while the site is vacant and unused. This appears to favour the CPO.
17. The Inspector notes [IR 12.73] the PLA's argument that while there may be harm to views, which overlap with settings of heritage assets, these would need to outweigh substantially the benefits of reactivating the wharf. The Inspector considers that it should be possible to design the scheme so that it causes less harm and cites the example of a similar processing plant at Ferme Park which was designed to take account of location [IR 12.75]. The Inspector concluded that harm to the natural environment and to birds in particular, could be mitigated by conditions and a s106 undertaking.
18. In terms of modal shift, Orchard Wharf has potential to be used to bring cement and aggregates close to the heart of London along the BRN. He concluded that the benefit of modal shift warranted considerable weight in favour of confirming the CPO [IR 12.82, IR 5.5, IR 6.9-6.13, IR 8.33-8.34, IR 8.44-8.46]
19. The Inspector noted in his report that the London Plan at Policy 5.20, and supporting paragraph 5.90, explains that London needs a reliable supply of construction materials to support continued growth. Orchard Wharf is close to the Lower Lee Valley Opportunity Area and other markets. Facilitating the growth of London is a significant economic benefit which should be given considerable weight.
20. The Secretary of State agrees with the Inspector that the re-opening of Orchard Wharf for the purpose proposed would facilitate the growth of London and so provide a significant economic benefit within the region. The potential for modal shift, by reducing the numbers and distance that lorries will travel is in the Secretary of State's view a further factor that helps justify the need for its compulsory purchase.

Viability and funding

21. The applicant, (PLA) has a potential user for the site (Aggregate Industries UK Ltd and London Concrete Ltd), with whom it has entered into an agreement to lease the site, once acquired. These firms have demonstrated their commitment to the project by seeking planning permission for the site – albeit with incomplete success – and the appeal against Tower Hamlets' planning decision and incurred costs in doing so. The applicant demonstrated at the Inquiry that it could afford the site on the basis of a valuation as industrial land [IR 6.44]. The landowners, as objectors, had challenged whether the applicant could purchase the site, but this was on the basis of hope value for the site without the designation as a safeguarded wharf that would allow development for mixed uses.

22. There is no convincing evidence to suggest that the site could not operate economically nor that there is insufficient business to maintain its use for aggregates and concrete.

Could the purpose be achieved by any other means?

23. At the Inquiry, the Grafton Group argued that the PLA had failed to consider alternative sites on the River Thames. The Inspector considered this point and concluded that the CPO was in accordance with the policy background (i.e. it would reactivate a safeguarded wharf and support modal shift away from road). The PLA has also justified CPO as there is a forecast shortfall in wharf capacity to handle aggregates. The Inspector considered that it was for the Secretary of State for DCLG to consider the evidence set out in the Safeguarded Wharf Implementation Report (pre-cursor to Review) and whether there was any evidence that the underlying assumptions were flawed. The Secretary of State noted that Orchard Wharf had been safeguarded for many years and that in the various re-iterations of the Review of Safeguarded Wharves, it had retained this status.
24. Grafton Group had argued that proof of a quantitative shortfall in wharf capacity for importing aggregates is necessary to justify the CPO. [IR 12.104]. However, the Inspector considered that this was not the test. There are two compelling factors to assess whether there is a compelling case – firstly that CPO is supported by policy and secondly that it would support a modal shift. The CPO does both.
25. In terms of alternative sites, the Inspector considered the Objectors arguments that other wharves, including those recommended for release, might serve the same purpose as Orchard Wharf, and concluded that these do not offer the same benefits as Orchard Wharf (eg location, limited reduction in road traffic, uncertainty due to other developments). [IR 12.108]. The PLA produced reasonable evidence to show that Orchard Wharf remains one of the best-placed wharves to meet the purpose of CPO. [IR 12.109, 12.110]. Similarly, the use of the existing concrete batching plant at Bow, which is rail-fed for aggregates, would not, the Inspector noted, achieve the planning policy of shifting freight onto the Thames or maximising the use of the BRN [IR 12.111]
26. The Inspector concluded that the need for wharves was based on precautionary forecasts. If unchallengeable evidence of need was required, when more wharves are safeguarded than will be required, it would never be possible to provide a compelling case and the powers to CPO would be pointless. All that is required was a need, as found at Peruvian Wharf, and a degree of justification to be determined on its own merits. [IR 12.113, IR 12.115].
27. The Secretary of State in considering the Inspector's Report has concluded that the purpose of the CPO - that is securing the provision of port and harbour services and facilities at Orchard Wharf – could not be achieved by any other means [IR 12.117]. Therefore the Secretary of State considers that this provides strong support that there is a compelling case in the public interest to make the CPO. Orchard Wharf is a safeguarded wharf and viable, therefore

there is a reasonable prospect that a suitable scheme to bring it into use will be delivered.

Planning consent

28. Aggregate Industries Ltd (AIL) – the proposed occupiers of Orchard Wharf – sought outline planning consent from London Thames Gateway Development Corporation (LTGDC), which was granted, subject to conditions, on 28 September 2012. The LTGDC then pointed out that part of the site, the proposed pier, was within the responsibility of the London Borough of Tower Hamlets (TH). AIL then sought planning consent from TH. As this is a cross-boundary application, the consent provided by LTGDC cannot be acted on until that part within the TH's area is approved.
29. The Planning Committee of TH considered the planning application twice and rejected it on the basis that its design and elevation represented an inappropriate development. AIL have appealed against TH's decision and this was the subject of the conjoined Inquiry, along with the CPO. The Inspector recommended that the appeal should be dismissed. His grounds for doing so are that the current design has not sought to mitigate its effects nor made any attempt to adjust the proposed layout or arrangement or height of structures to reflect the environmental constraints of the site. The Inspector's report cites a similar batching plant at Ferme Park that demonstrated how plant can be adapted in sensitive sites
30. The Inspector's conclusion is "*In principle, reactivating the wharf would conform to the development plan as a whole, despite some unavoidable harm to the environment. However, there is no reason to believe that it would not be possible to devise a viable scheme that would overcome much of the environmental harm but, due to the poor design and layout, the specific appeal proposals would not accord with the development plan. There are insufficient material considerations to outweigh this conflict. On balance, the proposals would be contrary to the development plan and the appeal should fail.*" [IR 12.36, IR 12.61]
31. The Secretary of State concurs with the Inspector that "*there is no evidence that an alternative design of batching plant or cement silo is not available or that these could not be custom-built to deal with the specific constraints, including views. Similarly, there is no evidence that cement silos must be of a specific height, stand entirely above the ground or be fully enclosed as one unit so preventing any views between them.*" [IR 12.35] He sees no reason to disagree with the Inspector's conclusion that "*There is every reason to suppose that reactivation, including a batching plant, could be achieved with a better design and layout, ideally by including the same extent of plant and storage but, if not, through scaling it down slightly*" [IR 12.59] [IR 12.70 facilitating growth]
32. The Secretary of State notes and agrees with the Inspector that while the balance of harm to the environment arising from the views, weighs against the scheme because of the unnecessary harm to the character and appearance to the area and so counts against the planning appeal, this does not count against the CPO [IR 12.83] He concurs that there remains, as noted above, a

reasonable prospect that an improved design and layout would be granted planning permission and could re-activate the wharf without the harm identified. This taken with the considerable economic and significant social benefits identified, in combination weigh in favour of confirming the CPO.

33. The Secretary of State agrees with the Inspector that there is no evidence that it would not be possible to develop an alternative design of the batching plant or cement silo, nor that these could not be custom-built to deal with the specific constraints, including views, of the site.
34. With regard to the CPO, the Inspector has concluded that the Circular¹ only requires a reasonable prospect that the scheme would proceed before consenting to a compulsory purchase order. The Inspector considers that “*it is a matter of judgement as to whether or not a better design would be likely to come forward. The balance from the evidence is that it probably could and would. If followed, these recommendations do not require an unattainable goal, simply that good design skills are deployed to produce a scheme that properly considers how the necessary plant could be arranged and enclosed to minimise the harm to the environment.*” [IR 12.121] The Inspector continues that “*if the SoSDfT advised the appellants that he was minded to confirm the CPO, it should not take so long for the appellants to obtain an acceptable planning permission that confirmation could not be justified or that it could not wait*” [IR 12.122] [also quote in IR 12.73].
35. The Secretary of State, after careful consideration, concluded that he agrees with the Inspector’s reasoning that there is a realistic prospect that the scheme could be granted planning consent, subject to a revised design being submitted that dealt with the concerns of both the Planning Committee and local residents. Therefore, he has taken into account the wording of Circular 06/2004, that ‘*where planning permission ... has not been granted, there should be no obvious reason why it might be withheld.*’ and agrees with the Inspector’s conclusion it should be feasible for the planning permission to be obtained within a reasonable time frame and therefore there is a reasonable prospect that the scheme could proceed. Appendix A of the Circular 06/2004 accepts that planning permission may not have been obtained before proceeding with an order (paragraph 15)
36. As set out in paragraph 8 above the Secretary of State has concluded that the Inspector has identified the relevant factors that need to be considered in this particular application. These are in accordance with the principles followed for such acquisitions under the Town and Country Planning Act 1990 under Circular 6/2004 in Appendix A (paragraph 16).

Compelling case

37. The Secretary of State has considered the arguments set out by the Inspector on the degree to which there is a compelling case to confirm the CPO. The ODPM Circular 6/2004 requires there to be “*compelling case in the public interest such that the public benefit would outweigh the private loss*”. As set out

¹ ODPM Circular 06/2004 Compulsory Purchase and the Criche Down Rules (see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7691/1918885.pdf)

above the Secretary of State has concluded that the case for the CPO is supported by the adopted planning framework, the economic, social and environmental well-being of the area. The evidence considered by the Inspector has demonstrated to his satisfaction, and that of the Secretary of State, that it is probable that the scheme is viable, and that the funding is in place, which demonstrates that there is a reasonable prospect that the scheme would proceed. The purpose of the CPO, that is securing the provision of port and harbour services at the Orchard Wharf site, could not be achieved by other means. It cannot be in the public interest for this site to remain vacant when there is a reasonable prospect of a scheme being developed that would meet the purposes of the Port of London Authority Act 1968 and would be supported by all up-to-date documents within the development plan. This leads the Secretary of State to conclude that there is strong support for finding a compelling case in the public interest to confirm the CPO.

Post-Inquiry events and correspondence

38. The Secretary of State for Department for Communities and Local Government concluded that he was not in a position to determine the planning appeal following the publication of new Planning Guidance on 6 March 2014. Therefore, on 27 March all interested parties were invited to consider whether the new guidance and the *Barnwell Manor* judgment² was relevant to their case for either the planning appeal, or the compulsory purchase order. All parties were asked to respond by 10 April and were then given until 22 April to comment on the responses from other parties.
39. There were responses from London Borough of Tower Hamlets, Firstplan on behalf of Aggregate Industries UK Ltd and London Concrete Ltd and Port of London Authority, and Lawrence Graham LLP on behalf of the Grafton Group (UK) plc. The last two also commented on each other's. The London Borough of Tower Hamlets stated that it did not wish to make representations on the Planning Guidance, as the case put by the Council at the Inquiry does not rely substantially on the planning practice guidance documents that had been superseded. The Council also noted the recent *Barnwell* judgment, which it considers to have confirmed a legal position that was known at the time of the Inquiry.
40. The responses from Lawrence Graham focused on the *Barnwell Manor* judgment and the importance of setting for listed buildings. It reiterated the evidence given by its expert witness.
41. The response from Firstplan indicated that they did not consider that the Planning Guidance materially changed the policies relevant to their clients' proposals. It also enclosed a note from Firstplan's expert witness. Firstplan's second response of 22 April, set out their client's position that 'the benefits of the proposals ...considerably outweigh this harm.'
42. The Secretary of State has considered these responses and concluded that, as do the interested parties, that the Planning Guidance does not materially affect the consideration of the compulsory purchase order. While the *Barnwell*

² *Barnwell Manor Wind Energy Ltd v East Northants DC, English Nature, and National Trust* EWCA Civ 137

Manor judgment does have some relevance, and may be a factor influencing future decisions on planning consent, the Secretary of State does not consider that any new material issues were raised in the further submissions and the judgment does not interfere with the integrity of the Inspector's conclusion. It is difficult on the CPO to gauge the impact of the judgment on whether obtaining planning consent in the future would be more or less likely, but the Inspector noted at IR 12.35 that there may be alternative designs that could deal with the specific constraints of the site, including views and the Secretary of State believes that this remains the case.

Compensation

43. Details of compensation arising as a consequence of confirmation of a compulsory purchase order are for negotiation with the acquiring authority and not the Secretary of State.

Minister's Decision

44. The Inspector concluded [IR 12.123] that "*For all the above reasons, there is a strong justification in the public interest. The case for making the Order is compelling. The public benefit would therefore justify interfering with the Human Rights of its owners.*" Therefore he recommended at that the CPO be confirmed [IR 13.2].
45. The Secretary of State is adopting the Inspector's report and his recommendation with regard to the compulsory purchase order in full.

Availability of Documents

46. A copy of this letter, together with a copy of the Inspector's report has been sent to the objectors, and the other persons who appeared and made representations at the Inquiry Copies will be made available on request to any other persons directly concerned and can also be viewed on <https://www.gov.uk> .
47. Please arrange for a copy of the Inspector's report and of this letter to be made available for inspection at the offices of the PLA and at all other places used to deposit the Order for public inspection at making stage. Any person entitled to a copy of the Inspector's report may apply to the Secretary of State for Transport, at this address within 6 weeks of the receipt of this letter, to inspect any document, photograph or plan submitted by the Inspector with the Inspector's report

Right of Challenge

48. Notice is to be published of confirmation of the Order. Any person who wishes to question the validity of the confirmed Order, or any particular provision contained therein, on the grounds that the Secretary of State has exceeded his powers or has not complied with the relevant statutory requirements in confirming the Order may, under the provisions of section 23 of the Acquisition of Land Act 1981, do so by application to the High Court. Such application must

be made within six weeks of publication of the notice that the Order has been confirmed. The High Court cannot entertain an application under the said Schedule 2 or section 23 before publication of the notice that the Secretary of State has confirmed the Order.

Yours faithfully

Linda Willson

Authorised to sign on behalf of the Secretary of State