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Our ref TRY001/0001

Your ref:

6 March 2023

Dear Sir,

**The London Borough of Haringey (High Road West Phase A) Compulsory Purchase Order 2023 (“the CPO”)**  
**Objection on behalf of: Alecos, Kate, Kyriacos, Tryfonas and Maria Tryfonos and Tryfonos Bros. Ltd.**

1. We act for the above-named objectors (the “Clients”) who hold interests in and in some cases occupy the properties included in the CPO as set out below.

| Property (CPO plot no) | Owner and address                       | Interest | Description  |
|------------------------|---|----------|--|
| 745 High Road (73)     | Kate Tryfonos, [REDACTED]               | Freehold | Shop (K&M Store Household Goods) operated by Kate Tryfonos and flat let on assured shorthold tenancy |
| 747 High Road (74)     | Alecos Tryfonos, [REDACTED]             | Freehold | Shop (Prince and Princess) and flat let on assured shorthold tenancy                                 |
| 749 High Road (76)     | Tryfonas Tryfonos, [REDACTED]           | Freehold | Shop (currently vacant) and flat let on assured shorthold tenancy                                    |
| 755 High Road (82)     | Alecos and Tryfonas Tryfonos [REDACTED] | Freehold | Shop occupied by Tryfonos Bros Ltd operating as Chick King   |

Partners: Elizabeth Christie, Mary Cook, Duncan Field, Clare Fielding, Michael Gallimore, Raj Gupta, Meeta Kaur, Simon Ricketts, Patrick Robinson, Louise Samuel

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|                     |   |                           |  |
|---------------------|---|---------------------------|--|
| 755a High Road (82) | Alec0s and Tryfonas Tryfonos (addresses as above)<br>Kate Tryfonas [REDACTED]<br>[REDACTED] | Freehold<br><br>Leasehold | Flat occupied by Kate Tryfonas under 999 year lease                            |
| 757 High Road (83)  | Kyriacos and Maria Tryfonos, [REDACTED]<br>[REDACTED]                                       | Freehold                  | Shop (The Nail Group Limited) and flat occupied by Kyriacos and Maria Tryfonos |

2. In addition, the schedule to the CPO identifies:

- (a) Alec0s and Kate Tryfonos as owners and occupiers of private accessway situated to the rear of 745 and 747 High Street (plot 72)
- (b) Tryfonas Tryfonos as owner and occupier of private accessway situated to the rear of 749 High Street (plot 75)
- (c) Alec0s and Tryfonas Tryfonos as owners and occupiers of private accessway situated to the rear of 755 High Street (plot 81)

3. The grounds for our Clients' objections are set out below. Our Clients reserve the right to provide further detail in evidence and submissions provided in respect of any inquiry held into the Order. For the purposes of this letter the following terms are used:

**"the 2019 Guidance"**: the Ministry of Housing, Communities and Local Government "Guidance on Compulsory Purchase Process and the Crichel Down Rules";

**"the Council"**: the London Borough of Haringey;

**"Lendlease"**: Lendlease (High Road West) Limited described at paragraph 1.12 of the SoR as the Council's development partner;

**"the OR"**: the Officer's report to the Council's planning committee recommending resolution to grant the Planning Permission and dated 10 March 2022;

**"the Order"**: the London Borough of Haringey (High Road West Phase A) Compulsory Purchase Order;

**"the Order Land"**: the land included to be acquired pursuant to the Order

**"the Planning Permission"**: the hybrid planning permission (HGY/2021/3175) granted by the Council for the Scheme;

**"the Planning Statement"** the statement submitted by Lendlease in support of the application for the planning permission dated October 2021;

**"the Scheme"**: the redevelopment of the Order Land pursuant to the Planning Permission and described in section 5 of the SoR;

**"the SoR"**: the statement of reasons submitted with the Order; and

**"the Tryfonos Properties"**: collectively, the properties identified in the table above

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### **The need for inclusion of the Tryfonos Properties in the Order Land**

4. The 2019 Guidance at paragraph 13 states:

*“It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired, but a confirming minister will need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons for the powers to be sought at this time”. It further states that an acquiring authority should “have a clear idea of how it intends to use the land which it is proposing to acquire.”*

5. The Scheme comprises phase A and plots A-G within the Planning Permission. The Tryfonos Properties sit within plot E and public realm proposed to be a part of Moselle Square. The description of proposed development of plot E in the Planning Statement (paragraph 3.13, table 2) is as follows:

*“The principal land use across all floors will be community floorspace (Use Class F1) with the potential for commercial, retail and leisure (Use Class E (a – e) and F2), office and industrial processes (Use Class E(g)) and/or for the delivery of a Cinema and/or Public House and/or Energy Centre (Sui Generis) together with parking and/or plant.”*

6. Both Lendlease and the Council make a virtue of the flexibility of the outline consent. The Planning Statement at paragraph 3.5 states:

*“The Development comprises a true mix of uses which will be built out over a prolonged period of time and will encounter market fluctuations, full economic cycles and demand pressures. The need for flexibility is therefore paramount to allow the Development to respond to changing needs and patterns as future phases come forward for development.”*

7. Similarly, the OR at paragraph 3.3 states:

*“The submission is accompanied by an illustrative layout which provides a potential way that the outline part of the site could be development within the submitted control documents (the parameters plans, design code and development specification). The illustrative scheme does not represent the maximum development for which planning permission will be granted, but illustrates how it could come forward within the parameters and design code proposed.”*

8. This degree of flexibility may be acceptable in planning terms since the Council, as local planning authority, has the opportunity to consider and determine applications for reserved matters at the appropriate time. It is not appropriate in the context of a CPO. As the above references to the 2019 Guidance makes clear, the acquiring authority must show that the public (economic, social and environmental) benefits of the relevant scheme outweigh the interference with the human rights of those affected. It is not enough to demonstrate (as section 9 of the SoR seeks to do) that the Scheme as a whole meets those tests. It must be shown that each part of the Order Land is required in order to deliver the public benefits of the Scheme.

9. Self-evidently if Lendlease and the Council do not know what is to be built on the land comprising the Tryfonos Properties, it is not possible for the confirming authority to ascertain what public benefits will accrue from the compulsory purchase and development of that land and whether they outweigh the human rights of our Clients. It is notable that the SoR makes no reference at all to the benefits that will result from the development of plot E and is vague as to the benefits that Moselle Square will bring.

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10. The SoR at paragraph 7.26 sets out an anticipated start date for sub-phase 3 (plots B, C, E and Moselle Square) of Q4 2028. Paragraph 7.29 explains:

*“In order to provide certainty on the ability to deliver the Scheme (which will include the delivery of new housing funded by the GLA and the flexibility to enable the re-provision of homes for all qualifying residents) the Council has included all land and rights required to deliver the Scheme within the Order now, including land required for the later sub phases which are not due to commence until Q4 2028.”*

11. This is not sufficient to provide a compelling case in the public interest for the confirmation of compulsory purchase powers over the Tryfonos Properties. The SoR does not explain why powers are required in 2023/2024 for a sub-phase which will not commence until at least four years later. No explanation is forthcoming in the Statement of Reasons.
12. The timeframe set out is in any event indicative and presumably optimistic. It is noted that the anticipated start date has already slipped since the OR was produced less than a year ago. The OR at table 2 showed sub-phase 3 commencing in 2024.
13. Further, assuming the CPO is confirmed in early 2024, it will need to be implemented within three years and so the Tryfonos Properties will be acquired nearly two years before they are required. It is not acceptable for an acquiring authority to seek compulsory purchase powers so far in advance of when they are needed.
14. The Council should remove the Tryfonos Properties (and all other land from sub-phase 3) from the Order Land. If appropriate, it can make a further CPO when it is in a position to set out what development that land is needed for and can demonstrate a compelling case in the public interest for its compulsory acquisition.

### **Material impediments to the scheme coming forward**

15. Paragraph 14 of the 2019 Guidance states:

*“In preparing its justification, the acquiring authority should address:*

- (a) ***sources of funding*** - *the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme for which the land is required. If the scheme is not intended to be independently financially viable, or that the details cannot be finalised until there is certainty that the necessary land will be required, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include:*
- *the degree to which other bodies (including the private sector) have agreed to make financial contributions or underwrite the scheme; and*
  - *the basis on which the contributions or underwriting is to be made*
- (b) ***timing of that funding*** - *funding should generally be available now or early in the process. Failing that, the confirming minister would expect funding to be available to complete the compulsory acquisition within the statutory period (see section 4 of the Compulsory Purchase Act 1965) following the operative date, and only in exceptional circumstances would it be reasonable to acquire land with little prospect of the scheme being implemented for a number of years.”*

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16. The SoR does not comply with the 2019 Guidance. Section 7 of the SoR purports to set out how the Scheme will be delivered and funded but fails to do so.

17. Paragraph 8.19 of the OR states:

*“The applicant’s viability appraisal has been independently reviewed by BNP Paribas Real Estate. The review sets out that the estimated viability of the scheme is contingent on the number of dwellings and amount of residential floorspace proposed and therefore it is considered essential that the scheme viability is revised upon the submission of reserved matters applications. **The review also found a viability deficit** and recommends securing early, middle and late-stage reviews via legal agreement.”* (our emphasis)

18. The SoR does not contend that the Scheme is independently financially viable. In accordance with the 2019 Guidance, it is therefore incumbent on the Council to set out how much the Scheme will cost to deliver, the extent of the likely financial shortfalls and how any such shortfalls will be met.

19. Paragraph 7.10 of the SoR refers to the Council having secured £91.5m grant funding but does not say that the funding is unconditional or if it relates to any specific phases of the Scheme. Paragraph 7.10 goes on to state that Lendlease Corporation Ltd has assets and funds under management of circa A\$70.8bn. However, the development agreement and CPO indemnity agreement are not with Lendlease Corporation Ltd but a subsidiary company Lendlease (High Road West) Ltd, which is presumably a special purpose vehicle. No reference is made in the SoR of any parent company guarantees given to the Council to ensure delivery of the Scheme. No evidence is provided that the subsidiary SPV has sufficient funds to finance the construction of the Scheme.

20. Paragraph 7.16 of the SoR states that the Council is satisfied that Lendlease has the necessary funds to carry out and complete the Scheme but it is for the confirming authority to be satisfied, not the Council.

21. Paragraph 7.16 of the SoR goes on to say that:

*“Lendlease has indicated that the Scheme is likely to be funded by a combination of grant funding, internal funding and potentially third-party capital.”*

It is clear from this statement that funding is not yet in place and that Lendlease and its parent company have not contractually committed their own funds to deliver the Scheme.

22. Paragraphs 7.21 to 7.24 of the SoR sets out various conditions which the Council consider have or will be met in order for sub-phase 1 (plots A and G) to be delivered. The SoR is entirely silent as to the conditions to be met for the delivery of sub-phases 2 and 3, the latter of which includes the Tryfonos Properties. In the absence of any information on the phase agreements for those two sub-phases (if they exist at present), it must be assumed that the conditions have not been met and that the Council is not able to say that it considers that they will be met. This is another example of the prematurity of seeking compulsory purchase powers in relation to the sub-phase 3 land.

23. In summary, the Council has not in the SoR:

- contended that the Scheme is viable;
- provided evidence that funding is in place for the Scheme; or
- set out the conditions for the delivery of sub-phases 2 and 3 or whether they will be met.

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24. Unless and until the Council can provide evidence (including the details of the estimated viability gap of the scheme and of each sub-phase, copies of the development, phase and indemnity agreements and details of the grant funding and its conditions), the confirming authority will not be in a position to satisfy itself that there are no material impediments to the delivery of the Scheme.

### **Compulsory purchase is not a last resort**

25. Paragraph 2 of the 2019 Guidance states:

*“The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement.”*

26. Paragraph 11.5 of the SoR asserts that the Council and Lendlease have *“sought to acquire all of the required interests with the Order Land by agreement”*. It is notable that the Council does not assert that it and Lendlease have taken *“reasonable steps”* to acquire interests in land or that it has in fact acquired any interests by agreement (apart from right to buy leasehold interests).

27. Paragraphs 11.35-11.43 of the SoR set out the purported efforts to acquire the Tryfonos Properties. Our Clients dispute various assertions made in these paragraphs, which are set out below.

28. Paragraph 11.36 states that our Clients *“have been a long-time objector to the Scheme”*. This is a mischaracterisation of our Clients’ concerns: they do not object to the Scheme as a whole, but rather the inclusion of the Tryfonos Properties in the Order Land and the failure to properly engage with them.

29. Paragraphs 11.37 and 11.38 refer to *“many meetings”* and *“numerous engagements”* with Alecos Tryfonos. Only two of such engagements involved negotiations regarding the Tryfonos Properties. One of the three *“formal engagements”* referred to merely involved representatives of Lendlease taking measurements of the Chick King premises. Most of the meetings concerned the planning application or the Scheme generally. Nor was there any opportunity for negotiations specific to the Tryfonos Properties during the *“drop-in sessions”* referenced.

30. Paragraph 11.39 states the following:

*“During these meetings, discussions have included ... opportunities for relocation inside and outside of the Scheme. This specifically included the relocation of the Chick King business within the Scheme. During the latest meeting Lendlease detailed specific locations within the Scheme that it thought would be suitable for the relocation of the Chick King business. In addition, outline discussions on the potential commercial arrangements that could be offered to the Tryfonos family were provided.*

*Furthermore, discussions were also had regarding the family’s wider property holdings, specifically the residential property where some of the family currently resides. These discussions included opportunities for replacement premises within the Scheme.”*

31. These discussions have lacked sufficient detail to constitute a relocation offer that could be properly considered by our Clients. No *“specific locations”* were in fact offered for Chick King; rather, Lendlease suggested relocation could occur somewhere within Plot C2, but there was no indication of which specific unit. This is unsurprising given that Lendlease has yet to apply for approval of detailed planning permission for Plot C2 and does not envisage commencing construction until Q4 2028 (see above). It is not enough to make vague references to a possible unit to which Chick King could relocate. The Council or Lendlease need to make a detailed written offer specifying (amongst other things) the location, size

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and specification of the unit, provisions for loading and parking, the terms on which it will be let (including the length of the lease, rent and service charges) and the timetable for construction and relocation and whether there will be any interruption to Chick King's business.

32. Secondly, discussions have revolved around Chick King and until the most recent meeting there had been no discussion at all regarding the relocation of K&M Store Household Goods operated by Kate Tryfonos Properties.
33. More generally, the Council has failed to produce a relocation strategy for businesses affected by the CPO. The SoR still refers to the Council's "Business Charter" document which dates from 2014. However, as the Business Charter itself states, it is no more than a *"draft document...intended [to] be a statement of intent of the council and does not constitute a legally binding agreement and it will not create any rights enforceable by any person"*. Despite the stated intention that *"this Charter will develop and become more detailed over time as more information and detail about the regeneration process is gained"*, no such document has been forthcoming. Accordingly, there is no evidence of the Council or Lendlease developing their relocation strategy beyond the position in 2014. It is entirely unacceptable for the Council to proceed with a CPO which will displace numerous small community-owned businesses in reliance of a nine year old draft document which in any event provides no solid proposals to mitigate the impact of the proposed CPO beyond what the businesses are entitled to as a matter of law in any event (such as fair compensation being payable to them).
34. The Business Charter commits to providing a *"dedicated officer"* to each business and household in occupation, who will meet *"on a one-to-one basis"* and provide advice. No such officer has been provided to any of the businesses or households constituting the Tryfonos Properties.
35. Paragraph 11.12 of the SoR sets out the offer made to resident leaseholders including that such leaseholders will:
- "Have access to several rehousing options, including:*
- *Buying a home in the Scheme with an enhanced rent and interest-free equity loan offer from the Council, who will contribute up to 75% of the value of the new property*
  - *Buying a home elsewhere in the Borough with a rent and interest-free equity loan offer from the Council, who will contribute up to 40% of the value of the new property*
  - *A leasehold swap option, where a leaseholder can buy and own the leasehold of a Council-owned property of equivalent value*
  - *Option to buy a property on the open market without financial support from the Council"*
36. It is unclear why a similar offer is not being made to resident freeholders such as Kate, Kyriacos and Maria Tryfonos whose homes are included in the Order Land and who have been resident in them for decades.
37. As paragraph 11.9 of the SoR the above terms proposed to leaseholders is part of a wider offer set out in the *"Love Lane Leaseholder Offer"* adopted by the Council in 2021 (the document referred to appears in fact to be the Love Lane Landlord Offer). The foreword to the Love Lane Landlord Offer is candid as to the underlying reason for the offer:
- "This Landlord Offer is our commitment to existing residents should you choose to vote 'yes' in the up-and-coming resident ballot."*

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38. Having not been offered a say on the loss of their homes, it is particularly disappointing that Kate, Kyriacos and Maria Tryfonos are equally deprived of the enhanced terms offered to those whose votes were required in the ballot. The Council should treat all residents to be displaced in consequence of the scheme equally. There appears to be no good reason why resident owners whose landlord happens to be the Council should be treated better than freeholder owner-occupiers.
39. This is particularly so since our Clients have had no opportunity at all to influence whether the Tryfonos Properties should be included in any scheme of development. They have not been invited to any residents' meetings – another indication that residents outside of the Love Lane estate have been treated less favourably than those within it.
40. Paragraph 2.7 of the SoR refers to early public consultation on three masterplan options for the High Road West area, but goes on to state that

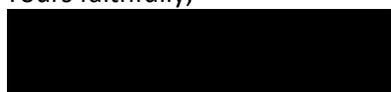
*“The redevelopment of No’s 731-759 High Road was included in all three options in order to facilitate the delivery of a new area linking the improved Station to the new THFC Stadium. The three masterplan options were published for public consultation between April and June 2013.”*

41. Our Clients have therefore never been offered a meaningful voice on the proposed redevelopment. In the period leading up to the masterplan public consultation and in the ten years since, the Council have not considered any alternative which did not require the acquisition and demolition of the Tryfonos Properties.

#### **Conclusion**

42. The Council has not been able to demonstrate a compelling case in the public interest for the inclusion of the Tryfonos Properties in the Order Land and specifically why they are included when not required until the end of 2028 at the earliest. The Council does not know what development will take place in Phase 3 and therefore cannot establish what public benefits (if any) will accrue.
43. The Council have failed to set out how much the Scheme will cost to deliver, whether it is viable and if not and how any financial shortfalls will be met. The Council notably fails to set out any basis on which Lendlease is contractually obliged to proceed with the development of phases 2 or 3.
44. Our Clients have not been given a meaningful voice in the proposed redevelopment. All options for development included their land. The Council and Lendlease have failed to take reasonable steps to acquire the Tryfonos Properties. Engagement has been minimal, and no detailed offer for the relocation of Chick King has been made and no offer of any sort for K&M. The Council have failed to provide an updated relocation strategy or a dedicated officer for each of the business and household within the Tryfonos Properties, despite committing to this. The offer made to resident freeholders is unfairly less attractive than that made to leaseholders whose votes were required to enable the Scheme to proceed.
45. In summary, insofar as the CPO proposes the acquisition of the Tryfonos Properties, a compelling case in the public interest for compulsory purchase is not established, the Council has not demonstrated that there are no material impediments to the Scheme coming forward and compulsory purchase is not a last resort. Accordingly, the CPO including the Tryfonos Properties should not be confirmed.

Yours faithfully,



Town Legal LLP