

THE LONDON BOROUGH OF HARINGEY (HIGH ROAD WEST PHASE A)

COMPULSORY PURCHASE ORDER 2023

ACQUISITION OF LAND ACT 1981

COMPULSORY PURCHASE (INQUIRIES PROCEDURE) RULES 2007

STATEMENT OF CASE

On behalf of

**Alecos Tryfonos, Kate Tryfonos, Kyriacos Tryfonos, Tryfonas Tryfonos, Maria Tryfonos and
Tryfonos Bros. Ltd (OBJ-03)**

24 August 2023

Introduction

1. This Statement of Case is submitted on behalf of Alecos, Kate, Kyriacos, Tryfonas and Maria Tryfonos and Tryfonos Bros. Limited ("**the Objectors**") in support of their objection to the London Borough of Haringey (High Road West Phase A) Compulsory Purchase Order 2023 ("**the CPO**") and pursuant to the directions set out in the Inspector's Note of Pre-Inquiry Meeting dated 21 July 2023.
2. Details of the ownership and occupation of properties in which the objectors have an interest ("**the Tryfonos Properties**") and which are included within the CPO was set out in the letter dated 6 March 2023 ("**the Objection Letter**") appended to this Statement of Case for ease of reference.
3. The Objection Letter sets out the basis on which the Objectors oppose the CPO. The London Borough of Haringey ("**the Council**") purported to respond to the Objection Letter in its undated Statement of Case ("**the LBH SoC**"). The purpose of this Statement of Case is to consider the Council's response to the Objection Letter and to set out the Objector's position in relation to it. Reference is also made to the Statement of Case of Canvax Ltd ("**the Canvax SoC**") where appropriate and to documents included in the Inquiry's core documents library.

The need for inclusion of the Tryfonos Properties in the CPO

4. As set out in the Objection Letter, paragraph 13 of the Government's "Guidance on Compulsory Purchase and the Crichel Down Rules" ("**the 2019 Guidance**") states that:

"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".

The flexibility of the hybrid planning permission

5. The Council's stated purpose in making the CPO and seeking its confirmation is to facilitate the delivery of one phase ("**Phase A**") of the redevelopment of High Road West, Tottenham ("**the Scheme**"), for which the Council granted hybrid planning permission (HGY/2021/3175) on 31 August 2022 ("**the Planning Permission**") (CD 4.27). The land to be acquired pursuant to the CPO makes up only part of the land to which the Planning Permission relates, namely Plots A-G and not Plots H-N. The Tryfonos Properties sit within Plot E. As set out in the Objection Letter, the proposed development of Plot E is described

in the Planning Statement submitted by Lendlease in support of the application for the Planning Permission dated October 2021 (**"the Planning Statement"**) (CD 4.2) 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. The outline element of the Planning Permission provides a great deal of flexibility for the convenience of Lendlease and the Council. The Planning Statement states at paragraph 3.5:

"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 Officer's Report to the Council's planning committee recommending resolution to grant the Planning Permission and dated 10 March 2022 (**"the OR"**) (CD 4.30) 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. The Canvax SoC rightly notes in section 4 (*Overstatement of Benefits*) that:

"4.5 The significant amount of variability in physical parameters and huge degree of flexibility allowed for non-residential uses (many of which are in effect optional), means that the harms and benefits of the Scheme are very difficult to assess, particularly in relation to the numerous heritage assets in the local area that will be affected."

4.6. This flexibility creates particular problems in any justification for compulsory acquisition. Reliance can only be placed on the minimum amount approved and indeed a number of specific land uses (and associated benefits) could be omitted altogether and therefore cannot be given any weight."

Planning flexibility and demonstrable public benefits

9. As noted in the Objection Letter, the flexibility afforded by the outline component of the Planning Permission may be acceptable in planning terms, but it is not acceptable in the

context of a CPO where it is necessary to demonstrate precisely what public benefits will be secured through compulsory purchase. As the Objection Letter noted with reference to the Statement of Reasons (“SoR”) (CD 1.4):

“8. 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.”

10. The LBH SoC summarises and responds to this element of the Objection Letter as follows:

Objection 1:

“The flexibility of the planning permission in relation to Plot E and Moselle Square is not appropriate in the context of a CPO.

It is not enough to demonstrate that the Scheme as a whole meets those tests (i.e. that the public benefits of the Schedule as a whole outweigh the interference with human rights of those affected). It must show that each part of the Order Land is required to deliver the public benefits of the Scheme.”

Council Response:

“As set out within Section 12 of this Statement, the existing properties along the High Road are required in order to deliver on the requirements of the planning framework, specifically Site Allocation NT5 within the TAAP, and facilitate the delivery of the substantial public benefits of the Scheme.”

11. The Council’s response is no more than an assertion that the Scheme will deliver public benefits and makes no real attempt to justify why the Tryfonos Properties are required to deliver the Scheme or what public benefits will be secured by the compulsory purchase of the Tryfonos Properties. More particularly, given the indicative timescales proposed in relation to delivery of the Scheme, the Council’s response provides no justification for the acquisition of the Tryfonos Properties at this point in time.

12. The Council’s response refers to policy compliance and delivery of public benefits. It refers in particular to Site Allocation NT5 (which itself makes no reference to the need for

compulsory purchase to deliver the allocation). As noted at paragraph 6.18 of the Council's SoR: *"[T]he Site Allocation also seeks increased and enhanced community facilities and social infrastructure, including a new library and learning centre alongside the provision of a new and enhanced public open space, including a high-quality public square."*

13. Given the flexibility of the Planning Permission, and the failure in the LBH SoC to identify any obligation on Lendlease to deliver the public benefits identified in Site Allocation NT5, the Council cannot be said to have *"a clear idea of how it intends to use the land which it is proposing to acquire"*, in direct contravention of the 2019 Guidance.
14. Most importantly, the Council is unable to identify what public benefits Lendlease is obliged to deliver on Plot E. Even when an item of infrastructure is identified as providing public benefits, no evidence is provided as to any planning or other contractual obligation on Lendlease to deliver the infrastructure, the scale of the benefit that would be provided, or the timeline for delivery of the benefit. This lack of specificity is further reflected in the Council's response to Objection 2 as follows:

Objection 2:

"The Statement of Reasons makes no reference to the benefits from the development of Plot E and is vague as to the benefits that Moselle Square will bring."

Council Response:

"Notwithstanding the response at Section 12 of this Statement, which sets out the requirement for the existing High Road properties, Plot E and Moselle Square will deliver a number of benefits, which are set out below."

Pursuant to the Planning Permission, Plot E is capable of providing up to 5,500 sqm GEA of community, leisure, retail and Sui Generis (including cinema and public house) floorspace, with a minimum of 1,000 sqm GEA to be provided as commercial, retail, leisure and medical uses (Use Class E (a-e)).

As well as Plot E delivering a key placemaking role and facilitating the delivery of a new east to west route through the Scheme, the provision of the above uses will provide significant economic and social benefits to the area, including employment and learning opportunities.

Furthermore, Plot E is the proposed location of the new Library and Learning Centre as indicated within the Illustrative Masterplan. The provision of the Library and Learning Centre is a key requirement of the Development Plan and will deliver substantial social and economic benefits to the area.

Moselle Square will be a new public square of a minimum of 3,500 sqm. As well as fulfilling the clear requirements of the adopted planning framework, Moselle Square will provide significant new open space for the local community in an area that has been identified as

being deficient in open space. It will provide a range of benefits for the community, including leisure and social spaces and capacity for events, markets and other activities, as well as accommodating the movement of THFC Stadium visitors and for views to and from THFC Stadium and the Station.”

15. It appears from the LBH SoC and the Planning Permission that there has not been a detailed assessment of the public benefits to be delivered by Plot E. It is notable that the primary reference throughout this response is to the aspirations of the planning framework. The Planning Permission is referred to only as being “capable” of providing community uses (amongst many purely commercial uses which it is also capable of providing). No reference is made at all to any obligations being placed on Lendlease to deliver public or community uses on Plot E in the S106 agreement, the CPO indemnity agreement or the development agreement. We have been unable to discover any such obligations in those agreements.
16. Furthermore, the Council have failed to demonstrate how the new Library and Learning Centre (‘LLC’), if delivered, provides a public benefit greater than the existing and operational library, Coombes Croft Library, which is located within Plot C.

Whether Lendlease is obliged to deliver Moselle Square and/or the Library and Learning Centre

17. The case for the CPO relies in part on public benefits which the Council asserts would be delivered by the LLC and Moselle Square. The S106 Agreement does not require the delivery of either of these public benefits for the purposes of the CPO. It is therefore not possible for the Council to rely on them to establish a compelling case in the public interest for the powers conferred by the CPO in relation to the Tryfonos Properties.
18. The LLC is said to be a “key requirement of the Development Plan and will deliver substantial social and economic benefits”. However, the Development Plan does not impose any legal obligations on Lendlease, and the S106 Agreement provides at paragraph 5.2 to Schedule 14, only the obligation that “[the] Developer shall provide and Practically Complete the Library and Learning Centre [...] prior to the Occupation of more than 95% of Open Market Housing Units in the Plot within which the Library and Learned is located”. This would allow the delivery of up to 95% of the market housing units in Plot E (assuming that is the plot within which the LLC will be delivered), without Lendlease having to deliver the LLC. It might well make commercial sense for Lendlease not to deliver the remaining 5% of market housing and in so doing not be required to deliver the LLC.
19. Similarly, paragraph 2.3 of Schedule 13 to the S106 Agreement requires that Lendlease provide “the Moselle Square Open Space in accordance with the Moselle Square Open Space Specification prior to the Occupation of 90% of the Open Market Housing Units in Phase A, or prior to Occupation of 780 Open Market Housing Units, whichever is earlier.”

20. Paragraph 5.4 of the SoR provides a description of the wider Regeneration Scheme for which the Planning Permission grants consent. This includes between 1,350 and 1,665 new homes of which 40% are to be affordable. The Planning Permission therefore consents between 810 and 999 open market housing units.
21. Accordingly, not only is there is no freestanding obligation imposed on Lendlease to provide Moselle Square, but there may also be no commercial imperative for it to do so. As with the LLC, it may make commercial sense for Lendlease not to deliver a small percentage of the consented residential units, so as not to trigger the requirements of paragraph 2.3 of Schedule 13 to the S106 Agreement. Moselle Square might then never be delivered.
22. Moreover, a significant number of the residential dwellings (between 540 and 1,360 according to the SoR at paragraph 5.14) are to be delivered within Phase B of the Scheme which will require another CPO. There is therefore no prospect of Moselle Square being delivered within any reasonable timeframe unless Lendlease decides for its own reasons to deliver it earlier than it is obliged to do. It may also be reasonably inferred from the S106 Agreement that Lendlease requires the sale of Open Market Housing Units to fund the delivery of Moselle Square. The Council have not demonstrated that the costs of constructing Moselle Square are funded separately from the sales of those units such that it is capable of being delivered prior to the construction and sale of units in Phase B of the Scheme. This is unacceptable in the context of a CPO.

The Tryfonos Properties are not required to deliver Moselle Square

23. In relation to Moselle Square, the “Moselle Square Open Space Plan” demonstrates that the “Indicative Location of Public Square minimum area of 3,350m²”, is not within Plot E. It is therefore clear that Tryfonos Properties are not required to deliver Moselle Square. For reference, the following is an extract from that plan, showing the indicative (uncertain) location for Moselle Square in the hexagon hatched red, and Plot E as labelled “E”:



24. In response to Objection 14 in the LBH SoC, the Council states:

“Excluding the High Road properties from the Scheme would result in the Scheme failing to deliver on the key requirements of the adopted planning framework, including the delivery of Moselle Square and the delivery of an east-west connection between the Station and the THFC Stadium.”

25. In fact, as the above plan extract demonstrates, the High Road Properties are not required to deliver Moselle Square. The Council’s case appears merely to be that, by redeveloping the High Road Properties, including the Tryfonos Properties, active frontage will be provided to the units to be delivered at the western side of Moselle Square and east-west connectivity will be provided across the Scheme; both generating footfall for the units on Moselle Square. It is therefore not correct to say that the Tryfonos Properties must be acquired to deliver Moselle Square, rather, the Tryfonos Properties are to be acquired in the hope that this will promote the commercial success of retail units which Lendlease might (bearing in mind the flexibility of the Planning Permission) construct facing Moselle Square. On this basis, we question:

- a. whether Moselle Square is located in an appropriate location within the Scheme; and
- b. whether sufficient investigations have been undertaken to develop plans for Moselle Square such that it operates self-sufficiently, relying on the success of its

operational uses to generate footfall without needing to demolish buildings outside of its footprint.

26. The LBH SoC makes it clear in the following paragraphs that the Tryfonos Properties are included within the Scheme solely in order to promote the commercial success of the commercial units fronting Moselle Square:

“10.9.28 Retention of the existing properties would require the community building and retail and leisure uses to be located to the rear of the High Road properties. Such disconnected relationship and lack of physical and visual connection would limit the opportunity for symbiotic benefits between the community, leisure and commercial clusters, likely resulting in the uses surrounding the new public square missing out on the footfall along the High Road, compromising their social and commercial success. The High Road Frontage Appraisal further highlights that, due to the requirement to provide a generous public square, a building in this rear location would deliver a small footprint and reduced overall floorspace quantum. This would negatively impact the provision of much-needed community and leisure space to the neighbourhood.

[...]

10.9.37 In order to deliver this ‘place changing’ new, high-quality, active public space, it is necessary to remove the High Road properties. By removing these properties, the combined land offers the opportunity to create a bridge and connection between the High Road and the new square, offering a crucial link to the activity of the THFC Stadium, greatly improving the attractiveness of the new “Moselle Square” to commercial occupiers and ensuring the vitality and viability of the public space and its surrounding uses. The success of this important conglomeration of active uses through strong connectivity and legibility is integral to the success of the Scheme, as well as its social and economic contribution to the wider area.

[...]

10.9.39 Retention of the existing High Road properties would unavoidably detach the square from the High Road and THFC Stadium. This disconnection (and the reduced access between the High Road and the new square) would likely result in lower footfall, use and activation of the public space, presenting a significant challenge to the success of the new retail and commercial uses surrounding it.”

27. Furthermore, the SoR states at paragraph 9.45 that:

“In order to deliver Moselle Square and the east to west connectivity it will deliver, the existing properties along the High Road are required to be removed.”

28. As noted above, since Moselle Square is not within Plot E, and there is no clarity in relation to the benefits or location of the “east to west connectivity”, the Objectors are unable to understand why the Tryfonos Properties are required, or how the case for their inclusion can be said to be sufficiently compelling to justify making and confirming the CPO. The SoC and the SoR do not clearly identify the delivery of an east-west connection as a public benefit of the Scheme. Furthermore, whilst the LBH SoC claims at paragraphs 10.9.32 and 10.9.33 that the Scheme responds to the principle of “Direct line of sight from Station to THFC Stadium, creating an impressive and welcoming experience and clear orientation,” the Objectors note that the proposed Plot F (to be developed immediately opposite the station) and Moselle Square (the design parameters for which remain outstanding) which is located within the proposed pedestrian route to the stadium, may actually reduce any direct line of sight to the stadium when compared to the existing direct line of sight between White Hart Lane Station and the THFC Stadium.
29. Taking the Council’s case at its highest, it appears that the Tryfonos Properties have been included within the land subject to the CPO in order to:
- a. facilitate the successful operation of the commercial units on Moselle Square, despite delivery of Moselle Square itself being uncertain and poorly secured in planning terms; and
 - b. strengthen the benefits of Moselle Square, which due to its location, poor design or other lack of consideration, the Council believes cannot deliver sufficient public benefits without demolishing buildings outside of its footprint.
30. In the end, the only purpose of including the Tryfonos Properties within the Scheme is to provide physical connectivity and active frontage to Moselle Square. This is not a public benefit justifying the granting of compulsory purchase powers, particularly since there is no obligation on Lendlease to construct commercial units on Plot E.
31. It is not clear to the Objectors whether any consideration has been given by Lendlease and the Council as to whether the alleged public benefits of the Scheme could be delivered without the Tryfonos Properties being obtained.

Prematurity of acquisition of the Tryfonos Properties

32. The SoR fails to justify why powers to compulsorily acquire the Tryfonos Properties are required at this time. As set out in paragraphs 10-13 of the Objection Letter, the anticipated commencement date for Plot E and Moselle Square is Q4 of 2028. As per paragraph 11 of the Objection Letter, the construction programme:

“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.”

33. The SoR acknowledges in Table 2 that the commencement of Plot E and Moselle Square has already slipped four years from the proposed initial 2024 target. It is entirely plausible, and likely in the current construction and economic climate (and as exacerbated by the material impediments to the scheme set out in paragraphs 39 to 50 below), that the programme slips further, particularly as there is no obligation on Lendlease to deliver Moselle Square until 90% of the market housing units are occupied which in turn will not be until vacant possession of the land within Phase B is secured (which will almost certainly require a further CPO).

34. In the event that the CPO is confirmed in 2024, and is duly implemented within 3 years, the Tryfonos Properties will be acquired at least 2 years before they are required for the Scheme. Such prematurity of acquisition is unacceptable and led to the conclusion in paragraph 14 of the Objection Letter that:

“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.”

35. The Objectors’ concerns regarding prematurity of acquisition of the Tryfonos Properties were raised in Objections 3-5 in the LBH SoC, to which the Council has responded as follows:

“Lendlease's commitment to the delivery of the Scheme and the provision of new Council homes is evidenced via its decision to implement the Planning Permission and commence works on Plot A prior to the Order being confirmed. It is also noted that the Council has made the CPO only in relation to Phase A, and has therefore already taken a view on which land it is appropriate to seek compulsory purchase powers in relation to at this stage. Further information on phasing is set out at Section 7.

However, Lendlease requires certainty that it will be able to assemble and obtain vacant possession of the remainder of the Order Land before implementing any further phases.

In the event the Order is confirmed the powers to acquire the existing interests within the Order Land will be available.

However, the powers are not required to be used immediately.

As set out within Section 12.2.6 of this Statement, with a view to providing certainty and clarity to those impacted by the delivery of the Scheme, including the objector, the Council

and Lendlease have confirmed that they do not intend to rely on the Order to obtain vacant possession of:

a) 731 – 741 High Road (Plots 44-51), in advance Q1 2025; and

b) 743-759 High Road (Plots 69-84), in advance of Q2 2026.”

36. We note that implementation of the Planning Permission does not mean that the Scheme will be delivered in full, or that the Scheme will not be subsequently amended such that the Tryfonos Properties are not required. Nor does it provide any indication of the date by which Plot E will be required.
37. Instead, the Council justifies the inclusion of Plot E within the CPO **solely** by reference to Lendlease’s requirements. This is not an acceptable basis for making a CPO or for confirming one.
38. The target date for vacant possession of the Tryfonos Properties (Q2 2026) is at least two and a half years in advance of the earliest date on which Lendlease propose that Plot E will be commenced (Q4 2028).
39. However, as noted above, there is no obligation on Lendlease to deliver Moselle Square. The adopted planning framework is not binding on Lendlease. Reliance by the Council on that framework demonstrates that there are no obligations on Lendlease to deliver Moselle Square under the Planning Permission or the Council’s contractual arrangements with Lendlease.

Material impediments to the scheme coming forward

40. As set out in the Objection Letter, paragraph 14 of the 2019 Guidance states that:

“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.”

41. The Objection Letter noted that the Council’s SoR failed to comply with paragraph 14 of the 2019 Guidance. At paragraph 23, the Objection Letter summarised the position as follows:

“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.”*

The viability of the Scheme

42. In responding to the Objection Letter, the LBH SoC states (appendix 1, page 69) that *“The objector has referenced the viability information submitted as part of the planning application for the Planning Permission to argue that the Scheme is unviable. It is noted that the viability appraisal agreed between the Council and Lendlease’s viability consultants showed that the development consented by the Planning Permission was viable with an IRR of 11.62%.”*
43. The Canvax SoC also refers at paragraph 5.11 to viability appraisals produced by Lendlease: *“[T]he Developer’s 19 May 2022 viability appraisal concluded that the Regeneration Scheme produced an IRR of 6.6% against a target of 14%, a deficit of 7.4%. While this was challenged by the Local Planning Authority, in a letter dated 13 July 2022, the Developer’s viability advisor confirmed that, following negotiations, the final agreed position was that the wider Regeneration Scheme produced an IRR of 11.62%; a deficit of 1.38% on a revised benchmark IRR rate of 13%.”*
44. As Canvax notes, the agreed viability appraisal has not been provided by the Council for inclusion in the Inquiry library. Similarly, the review undertaken by BNP Paribas Real Estate¹ has not been provided.
45. It is for the Inspector as the Confirming Authority to satisfy himself not only that the Scheme as a whole is viable and deliverable but that each individual phase is viable and deliverable. It is not possible for the Inspector to do so unless the viability information is provided.²

¹ referenced at paragraph 8.19 of the Officer’s report to the Council’s planning committee recommending resolution to grant the Planning Permission dated 10 March 2022

² We note that the Council is intending to provide three viability related documents to the Inquiry, Core Documents 4.33, 4.34 and 4.35. The Objectors have not yet had access to these documents and as such reserve

46. In the absence of the provision of the viability documentation referred to above, it is not possible for the Objectors to consider the extent to which it is accurate. Nevertheless, we note:

- (a) The Council has not provided the date of the agreed viability appraisal. It is essential that viability is assessed as close as possible to the date of the inquiry.
- (b) Since, as noted above, neither Lendlease nor the Council knows (or at any rate has disclosed) what development will be proposed and permitted beyond Plot A and given the extraordinary degree of flexibility for the outline elements of the Planning Permission, it is hard to see how an accurate viability assessment can be undertaken and how it is possible that *“Lendlease is satisfied that the development permitted by the Planning Permission is viable”* as contended by paragraph 7.38.7 of the LBH SoC.
- (c) Even assuming that the viability of the wider Regeneration Scheme for which the Planning Permission was granted was accurately assessed, it has produced an internal rate of return (IRR) below the benchmark of 13%.
- (d) As noted at paragraphs 7.38.6 and 7.38.7 of the LBH SoC, the Development Agreement (CD 5.5) requires that each individual phase other than Phase 1, requires Lendlease to demonstrate the viability of that phase prior to the submission of reserved matters for that phase and following the grant of permission for such reserved matters. There is no claim in the LBH SoC that the phase which includes the development of the Tryfonos Properties is viable.

47. As the inspector made clear in paragraphs 132 and 134 of her report refusing to confirm the London Borough of Barking and Dagenham Council (Vicarage Field and surrounding land) Compulsory Purchase Order 2021:

“For a CPO to be confirmed, I must consider the potential financial viability of the scheme for which the land is being acquired.”

“It is the AA’s responsibility to provide substantive information as to the financial viability of the scheme in light of the CPO Guidance, and to be able to defend this.”

48. It is inconceivable that the Council and Lendlease are unaware of this widely-reported decision. The withholding of any documentation relating to the appraisal of viability for the scheme or any phase must therefore be intentional. The inspector should not confirm the CPO without having had the opportunity to review this documentation and assess its

comment regarding such documents and any such further documents, or redacted information within the documents provided, relating to the viability of the Scheme that the Objectors consider should be disclosed to the Inquiry.

adequacy. The Council should be required to disclose it at the earliest opportunity so that objectors to the CPO are afforded the opportunity to consider and respond to it fully.

49. Unless the Inspector can be satisfied that Phase A (i.e. the phase for which the CPO is being promoted) is independently financially viable, he should require that the Council demonstrates that Lendlease is legally obliged to deliver the Scheme irrespective of its viability. While paragraphs 7.9 and 7.10 of the LBH SoC state that Lendlease is “*fully committed*” and “*committed to deliver the scheme*”, these are simply assertions without substance. It is not stated in the LBH SoC that there is any legal commitment by Lendlease to deliver the Scheme. Indeed, the LBH SoC makes it clear that each phase within the Scheme is subject to a number of conditions including viability. The Inspector should be satisfied that the Scheme **as a whole** is viable and that it has a reasonable prospect of proceeding to completion (see paragraph 106 of the 2019 Guidance). This is particularly important where public benefits are to be realised only in later phases.

50. In the absence of any such legally binding obligation, it is irrelevant that Lendlease or the guarantor parent company under the development agreement has a track record of delivering development, that it might be able to secure funding for the development and that it has invested £15m in the scheme to date (presumably a tiny fraction of the required investment). As the inspector in the Vicarage Field CPO noted in paragraph 176:

“Accounting for the spend to date, it is clear that PBBE has funds and would have access to funds. But no developer or financial services company would invest in a product that was not going to make a return. It would not make financial sense, no matter how invested they are in the scheme, and whilst they have underwritten the costs of the CPO process, there is no commitment to build out the scheme.”

51. Lendlease, as a publicly listed company, has a duty to its shareholders and will not undertake development which does not meet its requirements in terms of a return of investment. Like all other major development companies, it has withdrawn from a number of schemes where circumstances have dictated that it would be unviable to pursue them irrespective of any sunken costs. Examples include the Athletes Village for the Commonwealth games in Birmingham, Preston Tithe Barn and the Allianz Stadium in Sydney, Australia.

Compulsory Purchase is not a last resort

52. 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.”

53. The Objectors consider that the acquiring authority has failed to take reasonable steps to acquire the Tryfonos Properties by agreement, prior to the making of the CPO. Any subsequent negotiations in relation to the Tryfonos Properties after the making of the CPO are not relevant to the Council's decision to compulsorily acquire the Tryfonos Properties.

54. As noted in paragraph 26 of the Objection Letter:

"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)."

55. The Objectors dispute the assertions made in paragraphs 11.35-11.43 of the SoR and paragraph 12 of the LBH SoC which set out the purported engagement Lendlease and the Council have undertaken with the Objectors.

56. Of the *"three formal engagements"* alleged in paragraph 11.38 of the SoR, one was simply to take measurements of the Chick King Premises. There were therefore only two meaningful attempts to hold negotiations regarding the Tryfonos Properties prior to the making of the CPO.

57. This number of formal meetings is wholly inappropriate given the Objectors' willingness to negotiate with the Council and Lendlease. The nature of the Scheme suggests that several years of planning on the part of Lendlease and the Council went into both (i) the Planning Permission, applied for in June 2022, and (ii) the CPO itself. We understand that community engagement for the Planning Permission began in 2018. One could consider that to be the appropriate marker for when Lendlease and the Council may have been ready to start formally engaging with landowners of land to be acquired under the CPO. Thus, the Council and Lendlease have only sought to hold two formal engagements with the Objectors over a five-year period. That falls far short of taking reasonable steps to acquire by agreement.

58. Paragraphs 11.37 and 11.38 of the SoR refer to *"many meetings"* and *"numerous engagements"* with Alecos Tryfonos, and paragraph 11.39 of the SoR 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."

Businesses in the Tryfonos Properties

59. In respect of the Chick King business, to date no discussion, meeting or other engagement has provided a relocation offer that could properly be considered by the Objectors. This is because no specific locations have been offered for the replacement Chick King unit, although CBRE (who we understand act for both the Council and Lendlease) has proposed that relocation could occur somewhere within Plot C2. Presumably a precise location or specification cannot be provided because there is no detailed planning permission in place in relation to Plot C2. Construction within Plot C2 is not expected before Q4 2028. Until detailed approval of Plot C2 is obtained and implemented, due to the impermissible flexibility of the Planning Permission, the Objectors have no comfort as to whether Plot C2 will in fact be delivered and there is a realistic prospect of the Chick King business being left without an operational location. As set out in paragraph 31 of the Objection Letter, the Objectors cannot consider a relocation offer for the Chick King business until receipt of *"a detailed written offer specifying (amongst other things) the location, size 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."*
60. There has yet to be a reasonable offer received in respect of the relocation of K&M Store Household Goods operated by Kate Tryfonos Properties, and no attempt to offer relocation of this business was made prior to the making of the CPO.
61. In response, the LBH SoC states that:
- "The meeting held on 28 June 2022 was attended by Alecos Tryfonos as well as CBRE and a representative of Lendlease's retail team. During the meeting, CBRE and Lendlease sought to further understand the objector's business requirements. As part of those discussions, the location of alternative premises was discussed and whether it would be possible for the objector's Chick King business to relocate within the Scheme. Details regarding vehicular access, lease duration, service charges and rents were also discussed. Following the meeting on 28 June, an offer was made for the acquisition of the objector's properties. The offer included two options, one of which would have enabled the objector to continue trading until vacant possession of the objector's properties was required, thereby enabling further time for discussions regarding the relocation of the objector's existing businesses (both Chick King and K&M) within the Scheme."*
62. A further offer by CBRE was made on 31 May 2023 which supersedes the offer referred to in the LH SoC. Town Legal responded to by letter dated 6 July 2023 noting, amongst other matters that:

- a. There is no planning permission in place which would enable the Council to offer a relocation unit (as set out above).
- b. The offer is for 5 year leases replacing the current freehold interests enjoyed by the businesses. No reference is made to whether the leases will be protected or not.
- c. No reference is made to the level of rent (other than a market rent would be offered) or service charges.
- d. No details are provided as to access or servicing of the units.
- e. The units offered are smaller than the current units.
- f. No offer has been made with respect to fit out and relocation costs.

63. A response to the 6 July letter was sent by CBRE on 11 August 2023, which the Objectors are considering.

64. It is not surprising that Lendlease and the Council have failed to make proper relocation offers to businesses given that a robust, up-to-date business relocation strategy has not been adopted. Paragraphs 33 and 34 of the Objection Letter noted:

"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."

65. The LBH SoC responds that *"[T]he Business Charter sets out principles that must be adhered to in the relocation of businesses as part of the Scheme. Whilst the Business Charter is stated as being in draft form, the Council and Lendlease are committed to the principles within it."*

66. It is surprising, to say the least, that the Council rely on a document that is nine years old and which itself acknowledges that it needed to be developed and become more detailed. The Council therefore relies on a document which **itself** sets out that it is not adequate for its intended purposes. Further, Schedule 11 to the S106 Agreement requires that a Business Relocation Strategy for each Phase is submitted to the Council by Lendlease prior to commencement of that Phase. The S106 Agreement therefore acknowledges that the 2014 draft document is inadequate in planning terms. It is equally – if not more – so for the purposes of justifying the CPO.

Residential Properties within the Tryfonos Properties

67. The Objectors submit that the treatment of the resident freeholders such as Kate, Kyriacos and Maria Tryfonos, whose homes form part of the land to be acquired under the CPO, has been materially different and less favourable than the treatment of resident leaseholders on the Love Lane Estate contrary to article 14 of the European Convention on Human Rights in conjunction with article 8 and/or article 1 of the First Protocol. Paragraph 11.12 of the SoR sets out a favourable offer for resident leaseholders who 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”*

68. No such detailed and fair offer has been provided in respect of the resident freehold properties forming part of the Tryfonos Properties.

69. As set out in paragraph 11.9 of the SoR, the *“offer to leaseholders is also expanded upon specifically in the Love Lane Leaseholder Offer, which was also adopted by the Council in 2021”*, which offer contains favourable terms set out in more detail in paragraphs 11.11 to 11.14 of the SoR. The document which incorporates the expanded offer to those in the Love Lane Estate is in fact the *“Love Lane Landlord Offer”*, to which the foreword 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.”

70. The offers made to leaseholders and to those on the Love Lane Estate demonstrates the unlawful unequal treatment received by the Objectors in respect of their residential property interests. Paragraphs 38-41 of the Objection Letter express the unreasonable engagement from the Council and Lendlease as follows:

“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.”

71. As set out in paragraph 38 of the Objection Letter, 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.”*

72. The LBH SoC, in response to Objection 20, which states the SoR *“sets out the offers that have been made to resident leaseholders. It is unclear why a similar offer has not been made to resident freeholders of Tryfonos properties and why Council tenants are treated better than resident freeholder owner-occupiers”*, the Council state that:

“The Love Lane Leaseholder Offer was developed to provide a rehousing offer for those resident leaseholders who live on the Council-owned Love Lane Estate including those that had purchased their homes through the Right to Buy scheme. The Council has a direct responsibility for its residents on its estates, including its tenants, leaseholders and freeholders. The Leaseholder Offer was developed in the context of the Estate Renewal Rehousing and Payments Policy (ERRPP) 2017 which sets out the baseline offer for its

residents who are required to move due to an estate renewal scheme. As such the policy does not apply to resident freeholders or leaseholders outside of the Council's estates.

73. It is unclear what the Council means when it refers to "its freeholders". No attempt is made to justify the differential treatment given to those who are resident on the Love Lane Estate save by reference to the Council's own discriminatory policy. It is clear that the Council simply did not consider the position of resident freeholders outside of the Love Lane Estate and whether the above offer should be made to them. This is clear from the sections on consultation in the LBH SoC and the SoR (section 3 in both documents) which include headings for "Love Lane residents", "Business owners" and "Spurs" but makes no reference to those residing outside of the Love Lane estate.
74. It had appeared that the Council had changed its view when CBRE in an email dated 10 May 2023 stated that the resident Objectors would benefit from the 2017 policy referred to above, only to "clarify" on 5 June 2023 that the Council had misinterpreted its own policy and that it did not apply to those living outside of the Love Lane Estate. It is unclear whether the Council has considered whether (i) a similar offer to the Leaseholder Offer should have been offered in respect of the Tryfonos Properties, or (ii) the Leaseholder Offer should be taken into account when an offer was made in respect of the Tryfonos Properties, or as a minimum whether the Objectors should have received the same concessions as those on the Love Lane Estate, such as more being invited to residents' meetings. It is clear from Section 3 (*Consultation and Engagement*) of the LBH SoC, that careful consideration has not been given to the position of all residents affected by the CPO.
75. The objectors submit that due to the Council and Lendlease's failure to take reasonable steps to acquire the Tryfonos Properties by agreement, the acquiring authority has acted in direct contradiction with the 2019 Guidance and contrary to the Objectors' human rights.

Conclusion

76. For the reasons set out above, the Objectors do not consider that there is a compelling case in the public interest to justify the confirmation of the CPO, 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 be delivered in sub-phase 3 of Phase A, and therefore cannot establish what public benefits (if any) will accrue.
77. The evidence provided by the Council does not demonstrate why the Tryfonos Properties are included within the CPO save that they are required to provide an active frontage to Moselle Square and an east-west connection between Moselle Square and the High Road. However, Lendlease are under no obligation to deliver Moselle Square until after the sale

and occupation of market units to be constructed within Phase B of the Scheme or to construct commercial units fronting Moselle Square. To the extent that there might be public benefits realised through the development of the Tryfonos Properties there is no obligation on Lendlease to deliver them and no realistic prospect of them doing so within the lifetime of the CPO.

78. There are significant material impediments to the delivery of the Scheme. The Council has failed to demonstrate the cost of the Scheme, whether it is viable and if not, and how any financial shortfalls will be met. In fact, there has been no meaningful evidence presented as to how the Scheme will be funded, whether the total cost of the Scheme if funded, and that there are no conditions to such funding which are likely to result in the funding being withdrawn.
79. The Objectors have not been given a meaningful voice in the proposed development or the decision-making process, and no consideration has been given as to whether the Scheme and the public benefits proposed can be achieved without the inclusion of the Tryfonos Properties.
80. The Council and Lendlease have failed to take reasonable steps to acquire the Tryfonos Properties. Engagement has been minimal, has ignored K&M Store Household Goods, and in respect of Chick King, has failed to present any reasonable and certain offer of relocation. The Council's failure to produce a formal relocation strategy demonstrates a severe lack of concern for businesses to be acquired within the CPO. Any offers made in respect of the residential elements of the Tryfonos Properties are unfairly less attractive than offers made to leaseholders whose votes were required to enable the Scheme to proceed.
81. 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 should not be confirmed if it includes the Tryfonos Properties.