

LONDON BOROUGH OF HARINGEY
THE LONDON BOROUGH OF HARINGEY (HIGH ROAD WEST PHASE A)
COMPULSORY PURCHASE ORDER 2023

OPENING STATEMENT FOR THE ACQUIRING AUTHORITY

Purpose of the Compulsory Purchase Order

1. The purpose of the London Borough of Haringey (High Road West Phase A) Compulsory Purchase Order [‘the CPO’] is to enable the acquiring authority, the London Borough of Haringey [‘the Council’], to complete the assembly of the land and rights required to carry out the first phase [‘Phase A’] of development of the site at High Road West, Tottenham that is allocated for comprehensive development under site allocation NT5 in the Tottenham Area Action Plan (adopted July 2017) [‘the TAAP’] [CD3.5].
2. Site allocation NT5 was identified through the High Road West Masterplan Framework (published September 2014) [‘the HRWMF’] [CD3.6] following extensive engagement with and public consultation of the local community. The site allocation is as follows –

“Masterplanned, comprehensive development creating a new residential neighbourhood and a new leisure destination for London. The residential-led mixed-use development will include a new high quality public square and an expanded local shopping centre, as well as an uplift in the amount and quality of open space and improved community infrastructure”.

(TAAP page 102)

Strategic Objective

3. The Council’s strategic objective is to secure the delivery of comprehensive residential-led mixed use regeneration of the area to the west of the High Road which is identified in the NT5 site allocation. High Road West is identified in paragraph 5.85 of the TAAP as one of three major regeneration schemes in the North Tottenham Neighbourhood Area that will transform an area that currently experiences fundamental social and

economic disadvantage and which is dominated by poorly designed and fragmented housing estates and industrial land. Paragraph 5.86 identifies the focus for High Road West as the delivery of transformative housing estate renewal. In section 3 of his main proof of evidence, the Council's Assistant Director for Regeneration and Economic Development, Peter O'Brien, will explain how the High Road West regeneration scheme objective and the delivery of the CPO Scheme as the first phase of High Road West are demonstrably needed to meet long standing social and economic challenges in North Tottenham. In section 4 of his main proof, Mr O'Brien gives a detailed account of the evolution of the High Road West strategy through local community engagement and consultation, identifying the key stages in the development of the strategic and planning policy framework which founds the Council's decision to make the CPO.

Planning matters

4. The NT5 site allocation extends to the south and north of White Hart Lane. On 31st August 2022, planning permission ['the planning permission'] [CD4.28] was granted for the comprehensive redevelopment of the land comprised within the allocated site. In section 4 of his main proof of evidence, Tom Horne explains the application history and provides an analysis of the planning permission and the section 106 agreement dated 31st August 2022 [CD4.29]. In section 5 of his main proof, Mr Horne analyses the planning policy framework. He concludes that implementation of those phases of the comprehensive development authorised by the planning permission to the south of White Hart Lane fits in with that framework and will deliver on the key policy requirements of and principles within the adopted development plan and the wider planning framework.

The CPO Scheme

5. Under the terms of the Development Agreement dated 20 December 2017 ['the DA'] [CD5.16] between the Council and its delivery partner, Lendlease (High Road West) Limited ['Lendlease'], the development authorised by the planning permission is to be delivered in phases.

6. For the purposes of land assembly, the Council and Lendlease have decided to prioritise those phases which relate to plots located south of White Hart Lane (Phases 1A to Phase 7 – Plots A to G). The land and rights included in the schedule to the CPO reflect that delivery strategy. Confirmation of the CPO will enable the Council and Lendlease to take forward development of that part of the allocated site under NT5 which lies to the south of White Hart Lane, as the first phase – Phase A – of the High Road West regeneration scheme authorised by the planning permission.
7. The CPO therefore seeks powers to complete land assembly of that part of the NT5 site which lies to the south of White Hart Lane. The Order Land is described in paragraph 4.1 of the Council’s Statement of Case **[CD7.1]**.
8. In paragraphs 5.1 to 5.6 of his main proof, Mr O’Brien explains why the Council have decided to pursue this phased approach. The Council already owns the freehold of over 80% of the Order Land. The principal element is the Love Lane Estate. The table on page 13 of the Council’s Statement of Case sets out the blocks which comprise the Love Lane Estate – in total, 297 dwellings. Peter O’Brien sets out the current composition of tenure at the Estate (September 2023) in paragraph 6.3 of his main proof. Regeneration of the Estate as part of the High Road West scheme enjoys the support of existing residents on the Estate. See Peter O’Brien’s main proof at paragraphs 4.43 and 4.44.
9. The Council’s Landlord Offer (September 2021) **[CD5.6]** provides a comprehensive rehousing, compensation and support package for both secure and eligible non-secure Council tenants at the Love Lane Estate. See Peter O’Brien’s main proof at paragraphs 6.3 to 6.6. Further information about the Council’s proposals for rehousing secure and non-secure Council tenants residing at the Estate is given in paragraphs 12.1.20 to 12.1.27 of the Council’s Statement of Case.
10. The Council has acquired 44 of the 85 long leasehold interests on the Love Lane Estate. Of the remaining 41 long leasehold interests, terms have been agreed for 6 and negotiations are underway in relation to a further 21. The Council has received no response to date in respect of 14. In addition to the Landlord Offer, the Council has published its Leaseholder Offer **[CD5.15]** which provides further detail on the

rehousing options for resident leaseholders on the Estate. Peter O'Brien provides an overview of those options in paragraphs 6.10 to 6.15 of his main proof.

11. The Council considers that these arrangements, which have been the subject of wide community consultation as described by Mr O'Brien, when backed by the CPO offer the firm prospect of timely completion of land assembly for delivery of the benefits of the development authorised by the planning permission in the southern part of the High Road West allocation. As Mr O'Brien explains in sections 3 and 9 of his evidence, those benefits, economic, social and environmental, will be substantial and extensive.
12. Another key reason for the phased approach to land assembly which underpins the CPO is that explained by Mr O'Brien in paragraph 5.4 of his main proof. Transformative housing estate renewal is a fundamental strategic objective for High Road West. The phased delivery strategy which underpins the CPO will enable the Council and Lendlease to deliver a very substantial quantity of high-quality new homes for existing residents on the Love Lane Estate, across a range of mix and tenure (at least 1350 new homes including 500 social rented units), early in the implementation of the planning permission.
13. However, the advantages of the phased approach to land assembly and delivery of High Road West regeneration are not confined to these benefits. The phased approach also enables the Council and Lendlease to achieve the key policy objectives of delivering Moselle Square, the new Library and Learning Centre and the leisure, community and retail uses which are a vital component of the phased development authorised by the planning permission to the south of White Hart Lane. The need to transform not only the existing housing estate but also the High Road frontage and to create new public spaces and routes between the Station, the High Road and the THFC stadium are key elements underpinning the NT5 site allocation: see paragraphs 5.126 to 5.128 of the TAAP. The Order Lands include the High Road properties (731-759 High Road) which are included within the NT5 site and are required to achieve those key policy objectives. In section 8 of her main proof, Selina Mason of Lendlease explains the revised phasing programme which has been developed in conjunction with the CPO scheme.

14. Under clause 4.4 of the Compulsory Purchase Order Indemnity Agreement (20 December 2017) [‘the CPOIA’] [CD5.4], Lendlease have taken on responsibility for pursuing negotiations for the acquisition of the High Road properties. In his main proof, James Franklin explains the history of engagement and negotiation with owners and occupiers of those properties and summarises the current position (in the table at paragraph 4.38) and in his rebuttal evidence. Through clause 4.4.2 of the CPOIA and schedule 11 of the section 106 agreement, Lendlease have committed to providing appropriate support for businesses displaced by the exercise of powers granted under the CPO, including fulfilling the policy commitments of the Council’s Business Charter (2014) [CD5.7] and developing a business relocation strategy which includes opportunities for displaced business occupiers to relocate within the CPO scheme. Both Ms Mason (section 9) and Mr O’Brien (section 7) give more detail on assistance to businesses displaced by the exercise of CPO powers.
15. In paragraph 4.51 of his main proof, Mr O’Brien explains the Council’s exercise of its powers of appropriation in support of land assembly to clear away any residual proprietary impediments to delivery of the CPO scheme.

Lendlease – Delivery Arrangements

16. Under the terms of the DA [CD5.16], the development and works comprised in the CPO scheme will be delivered by the Council’s partner, Lendlease. Lendlease is a member of the Lendlease Europe Holdings Limited group of companies, which specialises in mixed-use large-scale regeneration projects, principally within London and the English regions. Selina Mason, Director of Masterplanning and Strategic Design for Lendlease Europe’s development business, provides detailed evidence in both her main proof and rebuttal about Lendlease’s commercial and financial standing, access to investment funding, experience and track record in the successful delivery of major regeneration projects in London and elsewhere. Ms Mason also explains Lendlease’s interest in the High Road West regeneration scheme, why the opportunity to partner the Council in the delivery of the scheme was and remains in conformity with Lendlease’s business principles and will enable Lendlease to create significant value and social, economic and environmental improvement through performance of the DA. Mr O’Brien explains both in main and rebuttal evidence that the selection of Lendlease

as the Council's partner for delivery of the regeneration scheme was undertaken in accordance with the statutory procurement and competitive tendering rules, whose objectives are to secure effective delivery of the Council's core requirements and strategic objectives.

17. Certain contractual provisions of the DA merit a brief reference in opening. It will be necessary to return to the DA's terms in greater detail as the inquiry progresses.

18. The obligations in the DA are conditional upon the satisfaction of three "site wide" conditions (see Clauses 3 to 6 of the DA). The three site wide conditions are the Strategy Condition (Clause 4); the Statutory Consents Condition (Clause 5) and the Site Wide Planning Condition (Clause 6). Mr O'Brien and Ms Mason explain that the Strategy and Statutory Consents Conditions have been satisfied. In short summary, the Site Wide Planning Condition (Clause 6) requires the grant of a Satisfactory Permission which is no longer open to legal challenge. The planning permission fulfils the requirements of a "Satisfactory Permission" (page 33 of the DA) and, following the dismissal of THFC's claim for judicial review by the High Court (Saini J) on 18th October 2023 [CD5.17], is no longer open to legal challenge. The Site Wide Planning Condition is accordingly satisfied. The Site Wide Unconditional Date (page 34 of the DA) has therefore been reached and the site wide conditions have been satisfied.

19. Paragraphs 7.38(1-9) of the Council's Statement of Case briefly explain the "Phase Conditions" (Clauses 4-17 of the DA). Ms Mason also summarises their effect in paragraphs 5.11-5.13 of her main proof.

20. The question of whether the phase conditions have been satisfied presently arises only in respect of Plot A (Phase 1A).

(1) Pre planning viability condition (Clause 8) - does not apply to Phase 1A as it is not a Subsequent Phase (p.35) and does not contain Private Sale Homes (p30) - clause 8.1.

(2) Phase planning condition (Clause 9) - applies to Phase 1A - see clause 9.1. Has been satisfied by the grant of full planning permission for Plot A on 31st August 2022 and following the decision of Saini J on 18th October 2023.

- (3) Affordable housing grant condition (Clause 10) - applies to Phase 1A as it contains Affordable Housing Units (p3) - clause 10.1. Satisfied following Affordable Housing Grant funding agreements between the Council and the Greater London Authority on 21st December 2021 (Mr O'Brien at paragraph 10.23 main proof).
- (4) Post planning viability condition (Clause 11) - does not apply to Phase 1A as it is not a Subsequent Phase (p.35) and does not contain Private Sale Homes (p30) - clause 11.1.
- (5) Vacant possession condition (Clause 13) - applies to Phase 1A - see clause 13.1. Council is not yet in a position to notify satisfaction of this condition in respect of Phase 1A, pending completion of acquisition by agreement of all outstanding interests in Plot A or exercise of CPO powers following confirmation of the Order. Confirmation of CPO will enable this condition to be satisfied.
- (6) Milestone condition (Clause 14) - does not apply to Phase 1A - see clause 14.1.
- (7) Socio economic outputs condition (Clause 15) - does not apply to Phase 1A - see clause 15.1.
- (8) Building contract condition (clause 16) - applies to Phase 1A - see clause 16.1. State of progress reported by Selina Mason at paragraph 5.12 (d) of her main proof. Lendlease is ready to let the building contract for Phase 1A (i.e. Plot A works) following satisfaction of the planning condition (see above).
- (9) Delivery methodology condition (Clause 17) - applies to Phase 1A - see clause 17.1. Selina Mason confirms that this condition has been satisfied (paragraph 5.12(e) of main proof).

21. It is important also to mention the following provisions of the DA.

- (1) The contracting parties are under a very strong obligation to procure the satisfaction of all phase conditions in respect of all phases as soon as reasonably practicable – see clause 7.2.1 (page 46). An obligation to use “all reasonable endeavours” is tantamount to a “best endeavours” obligation.
- (2) Failure to satisfy the pre planning viability condition (clause 8) and/or the post planning viability condition (clause 11) does not entitle Lendlease to terminate the DA. Nor is Lendlease the judge of whether either or both of those conditions is satisfied in respect of any phase. That role is vouchsafed to the Steering Group under clauses 8.2.4 and 11.5 of the DA. The Steering Group is provided for under Clause 31.
- (3) It is vital to understand that the consequence of a failure to satisfy the viability condition(s) for any phase to which they apply (see clauses 8.1 and 11.1) is that the matter is deemed to be a “mitigation matter” for which the DA provides under clause 34. The procedure then requires Lendlease to prepare a “Mitigation Plan” – see page 21 of the DA, i.e. alternative proposals for mitigating the failure to satisfy the condition whilst still delivering the Council Facilities and Core Requirements (see pages 2 and 7 of the DA).
- (4) In short, the contractual position is that failure to satisfy a viability condition for any phase to which it applies does not of itself affect the obligation to perform the DA (i.e. clause 26 and schedule 3). The clear common intention of the contracting parties is to identify alternative arrangements to mitigate that failure, whilst maintaining delivery of the Core Requirements and Council Facilities. Or put another way, the contracting parties both recognised the risk that viability may not be achieved and provided for the continued performance of the DA in such circumstances.
- (5) Lendlease’s performance of the DA is guaranteed by Lendlease Corporation Limited (schedule 5 of the DA).

Funding and viability

22. Mr O'Brien and Ms Mason give evidence on funding arrangements for the CPO Scheme. Agreement has been reached between the Council and the GLA for £91,512,000 in the form of Affordable Housing Grant (£70,312,000) and Mayor's Land Fund Grant (£21,200,000) – see Mr O'Brien at paragraphs 10.21 – 10.23. The Council has agreed to acquire 500 social rented homes and 46 shared equity homes to be delivered through early phases of the CPO Scheme. Ms Mason explains the funding sources available to Lendlease in section 6 of her main proof. Pascal Levine's evidence produces a market facing assessment of the viability of the CPO Scheme which demonstrates a positive rate of return which is in line with Lendlease's current market expectations, as Ms Mason explains in section 7 of her main proof.

Public Sector Equality Duty and Human Rights

23. Paragraphs 11.13 to 11.23 of the Council's Statement of Case summarise the action which the Council has taken to discharge the public sector equality duty (section 149 of the Equality Act 2010). Mr O'Brien gives evidence in section 4 of his main proof and appends an update Equalities Impact Assessment report (appendix 2).

24. Paragraphs 11.1 to 11.12 of the Council's Statement of Case address the Human Rights Act 1998. Mr O'Brien give evidence in section 13 of his main proof in support of the Council's case that it has acted in accordance with the applicable articles of the ECHR.

Remaining Objections

25. There are 8 remaining objections to confirmation of the CPO.

26. In short summary, the Council's case in response is as follows –

(1) Acquisition of the High Road properties (731-759 High Road) is required in order to deliver the objectives of both Site Allocation NT5 and of the HRWMF. As both Mr Horne and Mr Lawrence demonstrate in their evidence, both for planning policy and compelling urban design and townscape reasons, the successful fulfilment of the

objectives of the TAAP and the HRWMF depend upon the acquisition of those properties. The planning permission (including the parameter plans and the design specification) found upon the demolition and redevelopment of those properties in order to deliver the mix of uses on Plots C2 and E, including Moselle Square, the Library and Learning Centre, the public route through High Road West to the Station and the leisure destination complementing the THFC stadium scheme.

- (2) The THFC alternative masterplan is founded upon essentially similar land assembly requirements as the CPO Scheme. In other words, that asserted alternative does not avoid the need to take powers of compulsory purchase. On that ground alone, very little weight should be given to the THFC alternative masterplan. Moreover, THFC's alternative concept is highly inchoate and offers no realistic prospect of delivery on a similar, let alone an accelerated, timescale to the CPO Scheme.
- (3) THFC's objection that the CPO Scheme fails to fulfil the policy requirements of the TAAP and the HRWMPF in respect of leisure provision is without merit, for the reasons explained by Mr Horne in his evidence. It is highly relevant that the local planning authority did not so conclude (see paragraph 4.22 of the Officer's Report).
- (4) THFC's objection on crowd safety and control grounds is a matter to be resolved through the regulatory controls imposed by the planning permission (condition 64) and the section 106 agreement (access licence). Ms Haywood's evidence shows that crowd safety and control measures may be developed both during construction and following completion of the CPO Scheme which will fulfil both the requirements of the planning permission and secure a satisfactory arrangement. Lendlease have written to THFC with a view to taking forward negotiations for the grant of an access licence (Ms Mason's rebuttal proof).
- (5) Both the Council and Lendlease have taken active and sustained steps to seek to acquire the necessary land and rights by agreement. See the evidence of Mr Franklin in respect of the High Road properties (the Tryfonos family, including residential leaseholders, Mr Dellal, Kingwell Investments) and Mr O'Brien in respect of residential properties (Mary Powell and Adrian Sherbanov). Appropriate arrangements have been put in place

and offers made to affected commercial and residential occupiers to accommodate the impact of displacement and enable relocation, including within the CPO Scheme.

- (6) Health centre premises will be provided in the scheme in the event that the Tottenham Health Centre is not accommodated elsewhere in the vicinity – see schedule 15 of the section 106 agreement.
- (7) Mr Sherbanov raises a point on section 3 of the Local Government Act 1999. It is submitted that the general duty imposed by that provision is not engaged in the case of a local authority exercising its powers under section 226(1) of the Town and Country Planning Act 1990. In any event, Mr O’Brien explains the history and process of public consultation and engagement which has taken place in this case, including of residents of the Love Lane Estate.

A compelling case in the public interest

27. It will be necessary to explore these and other matters raised by objectors in more detail during the inquiry. At the outset, the Council’s case is that there is a clear and compelling case in the public interest for confirmation of the CPO –

- (1) The CPO is founded upon a well established and evidenced strategic objective which finds expression in the sequence of policy documents considered by Mr O’Brien and Mr Horne in their evidence.
- (2) The development of the Council’s strategy for High Road West has been informed by a sustained sequence of public consultation and community engagement at key stages.
- (3) The CPO Scheme demonstrably fits in with the planning framework. Planning permission is in place and THFC’s legal challenge has been dismissed.
- (4) The CPO Scheme will deliver very substantial and urgently needed social, economic and environmental benefits in fulfilment of the Council’s longstanding strategic and planning policy objectives for High Road West.

(5) Funding arrangements are in place and Lendlease is well placed to secure the necessary funding to deliver the CPO Scheme under the terms of the DA. The DA makes positive provision to enable delivery of the scheme in the event of failure to satisfy the viability condition(s) in relation to any given phase. The CPO scheme has been appraised and produces a positive return in line with Lendlease's current market expectations as delivery partner.

(6) Appropriate efforts have been made by the Council and Lendlease to acquire the required land and rights by agreement. Policy commitments are in place to provide appropriate support to displaced residential and business occupiers.

28. In summary, having regard to the Secretary of State's CPO Guidance (paragraphs 104 and 106) [**CD5.1**] the CPO should be confirmed.

Timothy Mould KC

Heather Sargent

Landmark Chambers

6th November 2023