
CPO Report to the Secretary of State for Communities and Local Government

by Richard Clegg BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 6 July 2017

**TOWN AND COUNTRY PLANNING ACT 1990
LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT
1976
ACQUISITION OF LAND ACT 1981
LONDON BOROUGH OF BARNET
APPLICATION FOR CONFIRMATION OF
THE LONDON BOROUGH OF BARNET (BRENT CROSS
CRICKLEWOOD) COMPULSORY PURCHASE ORDERS
(NOS 1 & 2) 2015**

Inquiry opened on 17 May 2016
Inspections were carried out on 20 May and 27 & 28 July 2016.

File Refs: APP/NPCU/CPO/N5090/75474, APP/NPCU/CPO/N5090/75475

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The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No. 1) 2015

- The Compulsory Purchase Order was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by the Council of the London Borough of Barnet on 20 April 2015.
- The purposes of the Order are to facilitate the development, redevelopment or improvement of the Order lands by way of a mixed-use scheme comprising retail, leisure and office development; hotel development; industrial, storage and distribution development; community facilities; residential development; car parking; public transport infrastructure and facilities; major infrastructure and highway works; and public realm and environmental improvement works; thereby contributing towards the promotion and/ or the improvement of the economic, social and environmental well-being of the area.
- The main grounds of objection cover a range of matters, but, in simple terms, it is said that the Acquiring Authority has failed to demonstrate the compelling case in the public interest necessary to justify confirmation.
- When the inquiry opened there were 68 remaining objections and one non-statutory additional objection. Three objections had been withdrawn and four late non-statutory objections were lodged at the inquiry.

Summary of Recommendation: The Order be confirmed with modifications.

File Ref: APP/NPCU/CPO/N5090/75475

The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No. 2) 2015

- The Compulsory Purchase Order was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by the Council of the London Borough of Barnet on 20 April 2015.
- The purposes of the Order are to facilitate the development, redevelopment or improvement of the Order lands by way of a mixed-use scheme comprising retail development; community facilities; residential development; leisure development; car parking; infrastructure and highway works; and public realm and environmental improvement works; thereby contributing towards the promotion and/ or the improvement of the economic, social and environmental well-being of the area.
- The main grounds of objection cover a range of matters, but, in simple terms, it is said that the Acquiring Authority has failed to demonstrate the compelling case in the public interest necessary to justify confirmation.
- When the inquiry opened there were 38 remaining objections and five non-statutory additional objections. No objections had been withdrawn, and one late objection from a qualifying person and three late non-statutory objections were lodged at the inquiry.

Summary of Recommendation: The Order be confirmed without modification.

1. Procedural Matters and Statutory Formalities

- 1.1 The inquiry sat for 20 days: 17-19 and 24- 27 May, 7-10, 15-17 and 27-30 June, 1 and 6 July 2016. The inquiry was adjourned on 6 July to provide an opportunity for certain outstanding documentation to be submitted. Additional documentation was subsequently received, and the inquiry was closed in writing on 27 July 2016.
- 1.2 The Council proposes to make the Brent Cross Cricklewood Regeneration (Adrian Avenue) Stopping-Up Order 2016 (SUO). The SUO concerns highway within the area covered by Compulsory Purchase Order No 1 (CPO1). I held an

inquiry into the SUO in June and July 2016, and the SUO is the subject of a separate report to the Council.

- 1.3 Both CPOs concern the Cricklewood, Brent Cross and West Hendon Regeneration Area (RA). The Acquiring Authority (AA) and, where relevant, the objectors presented their cases for CPOs 1 & 2 together. I have adopted the same approach in this report.
- 1.4 When the inquiry opened, the AA confirmed that it had complied with the statutory formalities in respect of each compulsory purchase order (CPO) and the arrangements for the inquiry¹.
- 1.5 In entries for plots 262 and 264-267 in table 1 of CPO No 1, the name of *Caren Bettina Ferster* has been misspelt and it appears as *Caren Bettina Frester* (Document OBJ/1/51). I consider that this minor error can be remedied by a modification to the Order.
- 1.6 This report contains a description of the Order lands and their surroundings, the gist of the representations of the parties, and my conclusions and recommendations. Lists of appearances and documents are appended, excluding core documents (CDs) which are listed separately. Proofs of evidence and the opening and closing submissions for the Council are included as inquiry documents: in delivery they were subject to a number of detailed alterations. A glossary of terms used in the evidence is set out in CD F1.

2. The Order Lands and Surroundings

The surrounding area

- 2.1 The CPO2 Order Lands and virtually the whole of the CPO1 Order lands lie within the RA in North-West London². The RA is defined in figure 1 of the Cricklewood, Brent Cross and West Hendon Development Framework (DF - CD B13). For the most part it is contained between the A5 to the west and the A41 to the east, although in the north-west it extends across the A5 up to Brent Reservoir. Brent Cross shopping centre (BXSC) and Hendon rail station are within its northern boundary, and to the south the Regeneration Area is bounded by the A407 as far west as Cricklewood rail station, extending slightly further south between the railway and the A5.
- 2.2 Apart from two small areas along the A407, the CPO1 Order lands are in the northern part of the RA, where they straddle the River Brent and the A406 (North Circular Road)³. To the north of BXSC and east of the M1 is an area of predominantly residential development, and an established housing area also extends to the north-east of the A41. The Northern Line of the Underground runs parallel to the A41 and just beyond the north-easternmost part of the Order Lands (plot 237), and Brent Cross station is close to this point, off Highfield Avenue. Around the western end of the Order Lands, at Staples Corner, is a variety of commercial properties. The Midland Mainline railway line runs through the Order Lands at Staples Corner, between the junctions of the A406 with the A5 and the M1. The Order Lands extend in several places to the

¹ Details of compliance with the statutory formalities are given in Documents AA/INQ/2 & 3.

² The Order maps are at CDs D3 and E3.

³ This part of the Order Lands is shown on sheets 1 and 2 of the Order Map (CD D3).

south of the North Circular Road. Between Whitefield Avenue, Claremont Way and Tempelhof Avenue they enclose Clarefield Park, and a short distance to the west Brent South Shopping Park, a development of large modern retail units, is enclosed between the North Circular Road and the CPO2 Order Lands at Claremont Way Industrial Estate⁴. To the south of the A406/ A41 junction are more large retail units and two schools. Further south are areas of established housing, including the residential part of Brent Terrace. On the north-east side of Brent Terrace are the two areas of open space known as the Brent Terrace triangles, where planning permission has been granted for housing to replace dwellings on Whitefield Estate included in CPO1. The open space of Clitterhouse Playing Fields lies to the east of Claremont Road.

- 2.3 At the southern end of the RA several parcels of the CPO1 Order Lands are at the junction of Cricklewood Broadway (the A5) and Cricklewood Lane (the A407)⁵. This is an area of town centre uses, with a wide variety of retail and commercial premises along both roads. Above ground floor level there is residential accommodation in several buildings, including in the terrace of properties to the north-east of Edward Close, which extends along Cricklewood lane from the edge of the Order Lands. The other outlier of the CPO1 Order Lands comprises a few small parcels at the junction of Claremont Road and Cricklewood Lane. This junction is just to the east of Cricklewood station, and there is housing on both roads in the vicinity of the Order Lands.

The CPO1 Order Lands

- 2.4 The CPO1 Order Lands include BXSC (plots 282-466)⁶. This is a large free-standing shopping centre on the north side of the North Circular Road⁷. Trading takes place on three levels and three large stores were referred to at the inquiry as the anchor tenants; namely Fenwick, John Lewis and Marks & Spencer⁸. On the north side of the shopping centre is a multi-storey car park, and there are surface car parks on the other sides (plot 96). In a central position on the south side of BXSC is Brent Cross bus station (plot 330). The River Brent (part of plot 184) flows westwards between the bus station and further areas of surface parking (plots 96, 185, 190 & 193).
- 2.5 The interchanges of the North Circular Road with the M1 (plots 65-73) and the A5 (excluding the North Circular Road) (plots 44-49) at Staples Corner and a short stretch of the motorway are at the western end of the CPO1 Order Lands⁹. The railway runs through this part of the Order Lands on a viaduct above the North Circular Road and the River Brent (plots 27-31, 34 & 60)¹⁰. A number of the viaduct arches between the A406 and the river accommodate business uses (plots 27-31), and to the west are the modern premises of a car dealership (plot 40).

⁴ Plan No 1 in CD F2 shows the extent of both the CPO1 and CPO2 Order Lands.

⁵ See sheet No 3 of the Order Map (CD D3).

⁶ The plots at BXSC are shown on sheets 4-7 of the Order Map (CD D3).

⁷ An aerial photograph of BXSC is in Appendix 5 of Document FEN/DL/2b, which also includes photographs of the Fenwick store.

⁸ Fenwick Ltd, John Lewis Properties Plc and Marks & Spencer Plc identify themselves as the anchor tenants in their joint statement to the pre-inquiry meeting (Document O2).

⁹ The North Circular Road, M1 and Edgware Road flyovers and interests owned by the Secretary of State for Transport are excluded from the land to be acquired.

¹⁰ Network Rail's rights to operate the railway, and its interest in the track and the railway structure are excluded from the land to be acquired.

- 2.6 The North Circular Road runs through the Order Lands to the A41 interchange to the east: for a relatively short distance on each side of the junction, the A41 is also within the Order Lands, as are other lengths of highway near these roads. A few plots lie to the north-east of the A41, on both sides of the North Circular Road. To the north-west of the North Circular Road are the commercial premises known as the Exchange (plot 222), together with various sections of highway and small parcels of other land. Sections of highway, including parts of Brentfield Gardens and Hendon Way are to the south-east of the North Circular Road. A storage yard where there are various vehicles and containers (plots 236-237) lies between Oakfield Court and the North Circular Road.
- 2.7 An hotel, the Holiday Inn (plot 108), is contained between Tilling Road and Tempelhof Avenue close to the south side of the North Circular Road. Tempelhof Avenue provides access across the North Circular Road to BXSC.
- 2.8 Dwellings on Whitefield Estate, which lies between the North Circular Road and Clitterhouse Playing Fields are included in both CPOs¹¹. CPO1 includes the three storey blocks at the northern end of the estate, the terrace houses on Whitefield Avenue, and the Rosa Freedman Centre and a three storey block with ground floor retail and commercial units on Claremont Way. The Rosa Freedman Centre (plot 132) contains sheltered accommodation and a day care facility.
- 2.9 Industrial and commercial premises on Brent Terrace and Claremont Way are similarly included in both CPO1 and CPO2. In CPO1 the large contemporary premises of Community Foods (plot 80) are on the south-west side of Brent Terrace, and there are older buildings on the other side of the road (plots 81-83). A short distance to the south-west a variety of smaller units extend along the western part of Claremont Way and the footpath which leads to Clarefield Park and Whitefield Estate.
- 2.10 At the junction of Cricklewood Lane and Cricklewood Broadway, the Order Lands include highway and a number of commercial premises between Cricklewood Broadway and Edward Close. Edward Close is a gated passage which provides access to adjacent premises. On the north-east side of the passage is an external staircase (plot 261) which serves the dwellings situated in a terrace of properties on Cricklewood Lane: the commercial unit and residential accommodation at this end of the terrace (plot 260) are also within the Order lands.
- 2.11 On the south-west side of the junction of Cricklewood Lane and Claremont Road, plots 256 and 257 are narrow strips of land which are currently part of a small garden and plots 258 and 259 are part of a reclamation yard. Plots 254 and 255 are two smaller parcels of land on the opposite side of the junction which form part of the hardstanding at the building used as flats at No1 Claremont Road.

The CPO2 Order Lands

- 2.12 That part of Whitefield Estate within the CPO2 Order Lands comprises the three tower blocks of Whyhcote Point (plot 5), Clare Point (plot 6) and Norden Point (plot 8), together with grassed areas, highway and a car park on the

¹¹ Plan 12 in CD/F2 shows the relationship of the dwellings on Whitefield Estate to CPOs 1 & 2.

surrounding land¹². Whyhcote Point and Clare Point are situated between Whitefield Avenue and Claremont Road: Norden Point is further south and is on the opposite side of Claremont Road to Clitterhouse Playing Fields.

- 2.13 A variety of industrial and commercial premises on Brent Terrace and Claremont Way Industrial Estate are covered by CPO2. These include a concrete plant (plot 23), a waste transfer station (plots 9, 10 & 22), and the premises of the former Brent Smelting Works (plot 19) which is currently used by Jesus House for the storage of furniture and other goods.
- 2.14 In addition, the Order Lands include the house known as Brent Farm Cottage (plot 1), situated at the junction of Claremont Road and Tilling Road; and several grassed areas, a short length of highway and an electricity sub-station at the western end of Prayle Grove (plots 27-32), close to its junction with Claremont Road.

3. Planning Policies

The Development Plan

- 3.1 The Development Plan includes The London Plan 2015, Barnet's Local Plan, and the saved policies of the Barnet Unitary Development Plan (UDP), which have not been replaced by the Local Plan. The Local Plan comprises a suite of documents, including the Core Strategy and the Development Management Policies Development Plan Document (DPD).

The London Plan

- 3.2 The current version of The London Plan was formally published in 2011. Subsequently, revised early minor alterations were published in 2013, followed by further alterations in 2015. A consolidated edition of the Plan, incorporating these alterations was published in 2015 (CD A18). The London Plan identifies Cricklewood/ Brent Cross as an opportunity area¹³, and paragraph 2.58 refers to opportunity areas as the capital's major reservoir of brownfield land with significant capacity to accommodate new housing, commercial and other development linked to improvements to public transport accessibility. Annex 1 gives strategic policy directions for the opportunity areas, including indicative estimates of employment capacity and minimum guidelines for new homes between 2011 and 2031: the figures for Cricklewood/ Brent Cross are 20,000 jobs and a minimum of 10,000 new homes. Policy 2.13 explains that the Mayor will support the preparation and implementation of planning frameworks for the opportunity areas (a development framework for the Cricklewood, Brent Cross and West Hendon Regeneration Area was adopted in 2004, below para 3.7). Development proposals within these areas should, amongst other intentions, support the strategic policy directions in Annex 1, contribute to meeting the minimum guidelines for housing and indicative estimates for employment capacity, and integrate into the surrounding areas.
- 3.3 Policy 2.16 is concerned with strategic outer London development centres. Such centres should have one or more strategic economic functions of greater than sub-regional importance, and the list of such centres includes Brent Cross

¹² See the Order Map, CD E3.

¹³ Cricklewood/ Brent Cross is opportunity area No 7 on map 2.4 in The London Plan.

in respect of a strategic retail function and Brent Cross/ Cricklewood in respect of a strategic office function (subject to demand). These centres are to be developed by, amongst other means, a co-ordination of public and private infrastructure investment, and placing a strong emphasis on creating a distinct and attractive business offer and public realm through design and mixed use development. In Annex 2, Brent Cross is identified as a regional shopping centre with the potential to become a metropolitan centre during the plan period.

- 3.4 Policy 3.3 refers to a pressing need for more homes in London. Boroughs are expected to at least achieve minimum annual average housing targets. The target for Barnet for the ten year period of 2015-2025 is 23,489 dwellings, with an annual monitoring target of 2,349 dwellings. At least 17,000 more affordable homes are sought each year over the plan period under Policy 3.11. Policy 3.12 requires the maximum reasonable amount of affordable housing to be sought on private residential and mixed use schemes.

The Core Strategy

- 3.5 The Core Strategy was adopted in 2012 (CD B1). On the key diagram (Map 2), Brent Cross/ Cricklewood is identified as a regeneration/ development area, and Brent Cross shopping centre as a regional shopping centre. Policy CS2 is concerned with the regeneration of Brent Cross/ Cricklewood. Comprehensive redevelopment is sought in accordance with The London Plan, the saved policies of the UDP, and the Development Framework. The latter is intended to provide the key elements of the local policy framework for determining planning applications unless and until it is replaced by new development plan documents or supplementary planning documents as a result of the Local Plan monitoring and review process.
- 3.6 During the lifetime of the Core Strategy, 2011/12-2025/26, Policy CS3 expects 28,000 new homes to be provided in the Borough. The focus of growth includes Brent Cross Cricklewood (BXC), where about 5,500 of these dwellings should come forward. A minimum of 5,500 affordable homes should be provided by 2025/26, with a borough-wide target of 40% affordable housing on sites capable of accommodating ten or more dwellings (Policy CS4).

The Development Management Policies DPD

- 3.7 This DPD was adopted in 2012. The Cricklewood Town Centre Map shows several plots in CPO No 1 at the junction of Cricklewood Broadway and Cricklewood Lane as being within the primary shopping frontage of the town centre¹⁴. Policy DM11 seeks to prevent the combined proportion of A1 use in the primary shopping frontage falling below 75%. Paragraph 1.4.3 of the DPD explains that the policies in it will not apply to the development of the Brent Cross Cricklewood Regeneration Scheme unless and until the Core Strategy or DPD is reviewed, or until a further local development document is adopted which would apply such development policies to that scheme (CD C21). At the date of the inquiry, none of these circumstances had occurred.

¹⁴ Map 13, Document SFA/13.

The UDP

3.8 The UDP was adopted in 2006. Most policies have been replaced by the Local Plan, but those in Chapter 12, which concerns the RA, were saved by a direction of the Secretary of State in 2009 (CD B1). The RA covers a more extensive area than the Order Lands (above, para 2.1). Policy GCrick states that this area will be a major focus for the creation of new jobs and homes, building upon its strategic location and its key rail facilities. A new town centre is to be fully integrated into the regeneration scheme. Under Policy C1, the Council is to seek the comprehensive redevelopment of the regeneration area in accordance with the Development Framework. Additional retail development will be supported at Brent Cross as part of a new town centre extending to both the north and south of the North Circular Road (Policy C6). A series of requirements include the provision of a broad range of uses, significant public transport improvements, and enhanced pedestrian and cycling links.

Cricklewood, Brent Cross and West Hendon Regeneration Area Development Framework

3.9 In its original form, the DF was adopted as Supplementary Planning Guidance in 2004. It was subsequently revised to identify future development uses for the Eastern Lands (the area to the south of the North Circular/ A 41 interchange), and the current version of the DF was adopted in 2005 (CD B13). The strategic principles of the DF include a new town centre; employment uses located around a new transport interchange; around 10,000 new homes; a main line railway station; new bridges across the North Circular Road and the main line railway; a new bus station; and a fully accessible street network which encourages the use of public transport, walking and cycling. The strategic principles are illustrated in figure 16 of the DF.

4. Planning Permissions

- 4.1 In 2010 outline planning permission was granted for the comprehensive mixed use redevelopment of the RA (CD C2). The area covered by the permission includes virtually the whole of the Order lands, Brent South retail park, the Eastern Lands, the railway and the area on each side, and several areas of open space including Clitterhouse Recreation Ground. It excludes several established housing areas which lie within the RA¹⁵.
- 4.2 Subsequently, in 2014, a further planning permission (referred to as the Section 73 (S73) permission) was granted for the comprehensive mixed use redevelopment of the RA without compliance with conditions attached to the 2010 permission (CD C3). Adjustments have been made to reflect the evolution of the scheme design since 2010. The main changes are:
- Creation of a pedestrian and cycle bridge with landscaping (known as the Living Bridge) over the North Circular Road to improve pedestrian and cycle connectivity and to provide better integration between the northern and southern parts of the development.
 - Alterations to the layout of development within Brent Cross East Development Zone (around the remodelled BXSC) including an interface

¹⁵ The extent of the site subject to the 2010 permission is shown on plan 3 in CD F2.

with the Living Bridge, and consequential amendments to the alignment of the River Brent.

- Alterations to phasing to bring more of the Brent Cross East Development Zone into phase 1, including the new bus station.
 - Alterations to the open space and public realm provision including the reconfiguration of Brent Cross Square and Market Square to integrate with the Living Bridge.
- 4.3 A planning agreement relating to the S73 permission covers a range of matters in respect of the proposed redevelopment (CD C6), including arrangements for changes to the phased delivery of the BXC scheme.
- 4.4 Reserved matters have been approved for phase 1A north and phase 1A south¹⁶. In addition approval has been given in respect of phase 1A north for several detailed amendments under conditions attached to the S73 permission and a number of non-material minor amendment applications have been submitted. As a consequence of changes to phase 1A north, a deed of variation to the planning agreement was executed in January 2016 (CD C32). Document AA/TW/4 includes details of the applications which have been submitted for these sub-phases. Distinct from phase 1, planning permission has been granted for highway and associated works at the A406 and 111 Highfield Avenue.

5. The Case for the Acquiring Authority

Introduction

- 5.1 The CPOs are required in order to complete the land assembly process so that the first phase of the BXC scheme can be delivered by the respective CPO1 and CPO2 developers. Moreover the delivery of the entire project is dependent on the delivery of the critical infrastructure¹⁷. This falls within the CPO1 lands. The comprehensive regeneration of the BXC area is a long-standing objective of The London Plan and local planning policy. It is a project that will transform the area and bring massive wellbeing benefits.
- 5.2 The purpose of both CPOs in this case is to facilitate the development, redevelopment or improvement of the land affected through the implementation of a mixed-use scheme comprising the elements set out in paragraph 1 of each Order, thereby contributing to the economic, social and environmental well-being of the area. This purpose reflects both key London-wide and local policy objectives and, more specifically, the development permitted by the S73 permission, which is itself compliant with those objectives.
- 5.3 In the Council's submission it is sufficient, in order to justify the Orders, that they are required to enable their stated purpose to be achieved. The advice in the Guidance on Compulsory purchase process (CPO Guidance)¹⁸ on the factors that the Secretary of State will consider when deciding whether to confirm a S226 order is consistent with that submission. So far as the first of these is

¹⁶ Details of the reserved matters approvals are in Document AA/TW/4. Plans showing the seven main phases of the redevelopment and the five sub-phases of phase 1 are in Document AA/INQ/8.

¹⁷ Critical infrastructure is defined on pages 173-180 of the S73 permission (glossary to conditions), CD C3.

¹⁸ Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion; DCLG; 2015.

concerned, the purpose for which the land is being acquired fits in very well with the Local Plan. Second, that purpose will contribute in a very significant and substantial way to the well-being not only of the Council's area, but also of London as a whole.

- 5.4 The third factor is whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. That purpose – the comprehensive regeneration of the BXC policy area, in accordance with policy and as currently exemplified by the S73 Permission – cannot be achieved without (for example) the Barker land, the Whitefield Estate properties or the Swishbrook property. It is possible that some other scheme of regeneration may be achievable, but what form this might take, whether it would achieve comprehensiveness, and the timescale within which it might happen, are wholly uncertain. Critically there was no alternative proposal before the inquiry for the Secretary of State to consider.
- 5.5 The CPO1 Development Partners (DPs), responsible for progressing phases 1A (north) and 1B (north) are Hammerson plc and Standard Life Investments, the joint owners of BXSC. Hammerson is an owner, manager and developer of retail-led projects, and its portfolio of retail property is valued at about £9billion. Standard Life is an investment management company with assets under management of £253.2billion in March 2015¹⁹. Since mid-2012, the DPs have incurred expenditure of about £55million in advancing that part of the scheme for which they are responsible. A further £115million is expected to be spent prior to the start of work on site: amongst other matters this would include detailed design, land acquisition and potential early enabling works.
- 5.6 A property development agreement has been entered into with the AA (Documents AA/INQ/48 & 48A) to facilitate the comprehensive redevelopment of the area. The agreement contains a series of staging conditions which must be satisfied (or waived in the case of certain conditions) to trigger commencement of development work. Funding and viability conditions are included in the agreement. The DPs have confirmed to the Council that they are able to finance the costs of the project, and the viability condition requires the DPs to confirm that the project would meet a target return.
- 5.7 It is not sufficient to justify non-confirmation of the Orders in respect of any particular interest for the Secretary of State to conclude that there is doubt about whether that interest is required in order for the scheme to proceed, or whether the scheme might be able to proceed without it. One of the principal purposes of the CPO process is to achieve certainty that all the interests and rights required to achieve that objective have been assembled. If he were to exclude any particular interest from either of the Orders, or modify them in any substantial way, the Secretary of State would need to be convinced, on the evidence presented at the inquiry, that the scheme was still likely to proceed. There is no such convincing evidence in respect of any of the objections.
- 5.8 Development of the CPO2 lands, and a part of the area covered by CPO1, would be taken forward by Brent Cross South Limited Partnership (BXS LP), to be established between the Council and Argent Related. Argent Related itself is a partnership between two development companies: Argent provides

¹⁹ Document AA/MM/1, paragraphs 2.3 & 2.4.

development and asset management services to property related projects. Related Companies is an American organisation with a portfolio of real estate assets valued at over \$20 billion. At the time of the inquiry, Argent Related and the AA had reached the final stages of agreeing joint venture and project documentation for BXS LP. A project agreement includes viability and funding conditions (Documents AA/INQ/49 & 49A). The former requires agreement by the Council and BXS LP that the part of the project to be commenced is viable, and the latter requires BXS LP to notify the Council, that the developer concerned has the necessary financial resources²⁰. These conditions can be waived. Land acquisitions are to be funded by BXS LP, and the funding of infrastructure and plot construction is expected to involve other investors.

Objection by Fenwick Ltd (CPO No 1 - plots 310, 358, 361, 444)

5.9 The CPO Guidance states that compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. It is plain from the language used, and from the context in which this advice appears, that negotiations with landowners do not have to have broken down entirely before a CPO is made. In relation to the Fenwick objection, the Council submits that the power to acquire Fenwick's leasehold interest needs to remain in CPO1 so that, as a last resort, the power can be exercised.

5.10 Fenwick and the CPO1 DPs have been engaged in negotiations with a view to reaching agreement about how the existing Fenwick store can best be integrated into the scheme, and how the impacts of the construction phase on the store's ability to trade successfully can be appropriately mitigated. These negotiations are close to being concluded.

Arrangements during construction

5.11 Fenwick accepts that the Mace proposals²¹ provide the basis for the satisfactory management of the potential impacts of the scheme on its servicing and delivery arrangements and on other matters such as emergency means of escape during the construction phase. The AA's and DPs' undertaking includes these matters in substantially the same terms as Fenwick themselves had included them in the draft Agreement which they had proposed²². Details of servicing, collection and delivery, access and egress, and car parking arrangements during the construction phase will be included in applications to discharge conditions 8.1 (Code of Construction Practice), 8.3/28.1 (Construction Environmental Management Plan), and/or 12.1 (Construction Transport Management Plan)²³.

Integration with existing centre

5.12 The Fenwick store is one of the three anchor stores in BXSC and there is no proposal to alter that position once the scheme has been developed. There are ongoing discussions between Fenwick and the DPs concerning various matters, some of which are commercially confidential, and which need to be resolved before the scheme can proceed. The Council and the DPs are not prepared to

²⁰ Document AA/AG/1, paragraphs 5.6.8 & 5.6.9.

²¹ Document FEN/INQ/3.

²² In Document FEN/INQ/17.

²³ This matter is covered in correspondence between Mr Wyld and Mr Murphy, Documents AA/INQ/25 & 26.

enter into an agreement with Fenwick which would enable its leasehold interest to be withdrawn from CPO1 and its objection to be withdrawn unless and until all matters, including the commercially confidential ones, have been resolved.

Justification for inclusion of Fenwick's lease

5.13 The works which Fenwick say the Council and DPs must commit to providing if their objection is to be met are set out in Schedule 1 to its draft Undertaking²⁴ and draft Agreement (Documents FEN/INQ/17a & 17). They comprise:

- a) Connections at each trading level of the Fenwick store from the adjacent multi-storey car park.
- b) Accessibility between the lower ground floor of the car park and the parking floor above to include an escalator so far as reasonably practicable, and valet parking on the lower ground floor.
- c) A connection for pedestrians from the east end of the bus station to the east end of the shopping centre, subject to the approval of Transport for London (TfL).
- d) Entrances to the south-west corner of the store on each of its lower three levels from the new mall.
- e) An external walkway from the first floor of BXSC to the multi-storey car park.

5.14 These works are not matters in respect of which any assurance or undertaking is needed from the Council or the DPs that they will be included in the detailed scheme. Whilst it is no doubt in the public interest, as well as Fenwick's and the DPs' commercial interests, that the Fenwick store should enjoy good linkages to the rest of the shopping centre, that does not demonstrate that these works must be provided in order that a compelling case in the public interest for confirming CPO1 can be shown. Given the importance of securing such connections to both landlord and tenant and the level of agreement reached about what is appropriate in this regard, it is highly likely that the works will be secured, but resolving the detail at this stage and in the context of the CPO is not necessary. There is nothing in the policy framework for the redevelopment which requires their provision, and they are not necessary to ensure that the benefits of the scheme are compelling.

5.15 Fenwick's undertakings in relation to the grant of rights and other matters concerning the provisions of their lease, as set out in clause 2.1, are conditional on the AA and DPs including in the development the works as set out in schedule 1. However the undertaking needs to be unconditional to be accorded weight. At this stage the AA and DPs are not prepared to commit to including the schedule 1 works in the scheme, and there is no obligation on them to do so.

5.16 The AA's undertakings in relation to the construction phase of the scheme are given on an unconditional basis. Its undertaking not to implement the Order in relation to Fenwick's interest is, however, conditional on Fenwick having first entered into appropriately documented legally binding commitments which

²⁴ The draft undertaking in Document FEN/INQ/17a has been superseded by the executed undertaking (Document FEN/INQ/26). The content remains the same.

grant to the AA and DPs the rights required to undertake the scheme and waive the rights enjoyed by the tenants under sub-clauses 5(1) and 5(4)(a). That is because the AA does not accept that either Fenwick's proposed modification to the CPO or their undertaking would give the required degree of certainty that the scheme could be undertaken in the absence of such commitments.

- 5.17 The Council's and DPs' undertaking omits any commitment to deliver the list of works set out in schedule 1 to Fenwick's draft agreement and undertaking, since these are not considered as necessary for confirmation of the CPO. Moreover the schedule 1 works are part of the wider commercial negotiation that is taking place on a without prejudice, confidential basis. Whilst the DPs have agreed in principle to the majority of these works, the commercial terms of the wider deal that will include the DPs' commitment to undertake the works remain to be agreed. The DPs are not willing to commit to including the works in the scheme without having first agreed the wider commercial deal.
- 5.18 Without such agreement, the project cannot proceed unless Fenwick's leasehold interest remains in CPO1. At present, whilst a great deal of progress has been made since CPO1 was made, there remain too many uncertainties to justify modifying the CPO and replacing the acquisition of Fenwick's lease with S13 rights²⁵ and relying on S237 of the Town & Country Planning Act 1990²⁶ to cover matters that cannot be addressed through the acquisition of rights.
- 5.19 At the time that CPO1 was made there was ample justification for the inclusion of Fenwick's and the other retailers' leasehold interests. The context for this is that the very objective of making a CPO under S226 is to enable the completion of land assembly so that the planning authority and (where applicable) the developer can ensure that this potential impediment to scheme delivery is removed, and there is therefore the requisite degree of certainty that the scheme can proceed. It is necessary for the Secretary of State to consider the position in the light of current circumstances.
- 5.20 There are still significant uncertainties about whether the scheme could be delivered if CPO1 were modified and rights included instead, and/or reliance were placed on S237 to enable the scheme to be constructed. These uncertainties are as follows:
- i) A commercial deal has not yet been completed.
 - ii) Whether the proposed 'bull-nose' feature²⁷ at the south-west corner of the store would require a change to Fenwick's demise.
 - iii) Potential interventions in the structure of the existing store may require consents under or variations to the terms of the existing lease. These potential interventions include: the removal of many of the precast concrete panels in order to form the new shopfront, the recladding of panels, the removal of the two porticos, removal of the ground underneath the existing surface car park from the retaining wall at lower ground floor

²⁵ Section 13 of the Local Government (Miscellaneous Provisions) Act 1976.

²⁶ On 13 July 2016, after the closing submissions of Fenwick and the AA had been delivered, S237 was replaced by Sections 203-206 of the Housing & Planning Act 2016. References in the reports of the cases to S237 should be read as applying to S203 of the 2016 Act.

²⁷ The 'bull-nose' feature is shown in the plans and sketches included in Document FEN/INQ/13.

level and the cutting of an opening in the wall in order to achieve access from the multi-storey car park into the store, the proposed walkway at second floor level, and the new roof over the extended centre.

iv) Matters concerning sub-clause 5(4)(a) in the lease.

5.21 The AA and DPs do not doubt that Fenwick genuinely intends to grant the rights that are necessary to achieve the development, together with the other works that they wish to see undertaken in order to integrate their store into the scheme. However the AA's and the DPs' position remains that Fenwick's undertaking should be given no weight because of its conditionality, and that agreement cannot be reached on the proposed works in isolation from all the other matters on which agreement must be reached before the scheme can proceed.

Modification of CPO No 1 and reliance on S237

5.22 Fenwick has suggested that the position could be secured for the AA and the DPs by means of a combination of a modification to CPO No 1 and reliance on S237. The lease provisions which the AA and DPs consider are not, or may not be, covered by S237 are the provisions found in sub-clauses 5(1) and 5(4)(a)²⁸. These are:

- i) The covenant for quiet enjoyment.
- ii) That the bus station must remain in its present location.
- iii) That the existing car parking ratio must be maintained if BXSC is extended.
- iv) That the common facilities²⁹ cannot be substantially modified or varied if BXSC is extended.

5.23 S237 permits the interference with an interest or right to which the section applies, that being any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; or a breach of a restriction as to the use of land arising by virtue of a contract³⁰. It is acknowledged that this provision is often used in urban redevelopment proposals to override rights to light, rights of way and restrictive covenants. However the provisions above constitute positive obligations on the lessor to do, or not to do, certain things. There is at least material uncertainty as to whether these provisions are properly described as rights or advantages which are annexed to Fenwick's demise, or whether they adversely affect other land.

5.24 It is not accepted that interest is widely defined to include a right over land including that granted under a lease. The effect of S237 is to authorise an interference with a right or interest subject to the payment of compensation, rather than permanently extinguish or vary it. The provision in the first part of clause 5(4)(a) that the lessor may not make any substantial variation, modification or addition to the approved plans without the approval of the

²⁸ Fenwick's underlease (also referred to in the representations as a lease) is at Appendix 5 in Document FEN/GC/4b.

²⁹ The common facilities are defined in clause 9 of the underlease

³⁰ The AA's initial arguments in respect of S237 are set out in Document AA/INQ/14.

principal traders (which include Fenwick), such approval not to be unreasonably withheld, does not apply in relation to the four provisos above, a point which appears to be acknowledged in the lease summary prepared by Fenwick's solicitors³¹. If that is right, then Fenwick's submission that the substantive effect of clause 5(4)(a) is restrictive cannot be sustained. S237 does not provide the requisite certainty that interference with the provisions in sub-clauses 5(1) and 5(4)(a) would be authorised.

- 5.25 Insofar as the proposed modifications to CPO No 1 are concerned³², Fenwick's preferred version which would exclude its interests from those to be acquired, would be insufficient to address all of the matters identified in the lease (above, para 5.22). The addition to the interests to be acquired of the right on land north of the A406, other than Fenwick's store, to carry out, use, repair and maintain works notwithstanding conflict or interference with the underlease, serves to underline the difficulties that the AA and DPs face in terms of the conflict that would arise when the scheme is built with provisions of the lease that do not, or at least may not, fall within the matters covered by S237.
- 5.26 It is not accepted that rights to carry out, use, repair and maintain the permitted works notwithstanding that such works may conflict or interfere with any provision or right contained in or granted under the lease fall within the scope of S13. S.13(1) enables authorities to purchase compulsorily new rights over land, but this does not, on the face of it, authorise the creation of new rights that override rights or other provisions contained in a lease.
- 5.27 The CPO Guidance refers to the prospect of amendments to an order being made by way of modification, but the nature of such amendments is not specified and it may merely refer to the exclusion of land and not, for example, to the substitution of rights for land acquisition. The exclusion of land may well in many cases amount to a substantial modification, but what is proposed here has to go beyond that because, as all parties accept, implementation of the scheme cannot be achieved without direct physical intervention in Fenwick's demise.
- 5.28 The AA is not aware of any authority to show that modifications of the kind proposed would be lawful. It is significant that neither Mr Chase nor Mr Bullock, on behalf of Fenwick, was able to cite any case where S237 has been successfully relied on to override provisions of the kind found in clauses 5.1 and 5.4 of the lease, or where S13 rights have been acquired with that effect. Therefore it is maintained that there is genuine and significant doubt about whether the Secretary of State has the power to modify CPO1 in the manner proposed. But even if he has, the AA and DPs do not accept that the modifications would provide certainty that the scheme could be implemented.
- 5.29 Nor is it accepted that Fenwick's undertaking, even setting aside the difficulty that it has been given on a conditional basis, is sufficient to ensure that the scheme can be undertaken without the need to include Fenwick's lease in CPO1. The undertaking purports to confer rights on the AA and DPs to carry out, use, repair and maintain any works authorised by reserved matters approvals given under the S73 permission (or by a further permission) notwithstanding any

³¹ See section 15 of Appendix 7, Document FEN/GC/4b.

³² Fenwick's proposed modifications to CPO1 No 1 are set out in Document FEN/INQ/22.

provisions in the lease with which they might otherwise conflict. The AA and the DPs are unaware of any other case (whether concerning a CPO or otherwise) in which such an undertaking has been accepted by the parties as being binding on and enforceable against a lessee of property, or has been found to be effective in overriding rights and privileges granted by a lease. There is a fundamental uncertainty in relation to the legal interaction between the proposed modifications and undertaking on the one hand, and the provisions of the lease on the other. The proposed rights in the undertaking provide that these shall have effect as if the works were authorised under clause 5(4)(a) of the lease, but in order to give legal effect to such an outcome the lease would normally require variation, and there is no authority of which the AA is aware that decides that this can be lawfully achieved in this way.

5.30 The AA's position remains that the necessary rights could only be granted by way of agreement between the parties which incorporate appropriately documented legally binding commitments to grant the necessary rights and to waive the application of the provisions contained in sub-clauses 5(1) and 5(4)(a) of the lease. There is at the least material uncertainty about the lawfulness of what is proposed, and it is not considered appropriate to expect this kind of legal issue to be decided in the context of a CPO. The only way to achieve the resolution of these uncertainties, without agreement, is to confirm CPO No 1 without modification. The CPO1 development is a massive project that will cost around £1.4 billion in total, and will require new third party investment to be secured³³. One key objective therefore is to de-risk the project as far as possible, and, whilst in general terms the project represents a prime development opportunity, any uncertainties about whether it can be delivered will introduce risks about which potential investors will have concerns. The DPs will also need to be certain that their building contractor will be able to secure access to the existing centre in order to carry out the works.

The Schedule 1 works

a) Connections at each trading level to the new multi-storey car park

5.31 These are works which the DPs have agreed in principle; but the AA submits that this is not a necessary part of showing a compelling case in the public interest for confirmation of the CPO, and that these works cannot be treated in isolation from the other matters that are under discussion and need to be resolved before the scheme proceeds.

b) Accessibility between the lower ground floor of the multi-storey car park and the parking floor above to include an escalator, and valet parking on the lower ground floor

5.32 The DPs are prepared to continue to discuss inclusion of an escalator, but the practicality, necessity and commercial implications of providing an escalator remain to be resolved. Otherwise the position is as in respect of the connections between the store and car park (above, para 5.31).

c) A connection for pedestrians from the east end of the bus station to the east end of the shopping centre

³³ See paragraphs 4.6-4.9, Document AA/MM/1.

- 5.33 This is not agreed in principle or in detail, and it is not a necessary part of the scheme for the purposes of confirming compulsory powers. Whilst a possible route for a pedestrian link has been put forward on behalf of Fenwick³⁴, this has not been designed to a sufficient level of detail to be able to demonstrate that an eastern pedestrian route is technically feasible and can be provided in a manner that complies with relevant statutory requirements including the Building Regulations. There is also a genuine and legitimate concern on the part of the CPO No 1 DPs that the proposed link could compromise the quality of the retailers at lower ground floor level whom they wish to attract to this part of the scheme. This in turn could materially affect its investment value.
- 5.34 In any event, great care has been taken to balance pedestrian flows around the centre and from the new bus station and the car parks. From the bus station there would be an attractive, signed and safe route directly into the centre from the west end of the pedestrian peninsula to the route adjacent to the new Marks & Spencer store and thence into the south mall. The conclusion that the balance of routes across the centre from the car parks and bus station is very good is reinforced by consideration of the internal walking distances. In particular, from the bus station Fenwicks will in fact be slightly closer than John Lewis³⁵; and if a notional shopper were to walk from the bus station into the centre the proposed west route would take them into the south mall by Marks & Spencer, from where it is intended that the Fenwick store would be immediately and prominently visible. A secondary route from the eastern side of the bus station to the eastern part of the centre would be available, around the side of the proposed hotel and thereby joining one of the main entrance routes from the east car park.
- 5.35 Nor would Fenwick's proposed route be as attractive as the proposed primary route, passing between the bus lanes and the wall of the southern multi-storey car park and then across a service area into the side of the south mall, instead of past the Marks & Spencer shopfront and then between the shopfronts on either side of the south mall. Furthermore the proposed east route would put pedestrians and bus traffic into potential conflict. On behalf of Fenwick, Mr Bird refers to a capacity of up to 2,750 pedestrians per hour³⁶, and Mr Orchard confirmed that on average 141 buses will use that exitway per hour.
- 5.36 The planning agreement provides for the provision of the bus station and identifies its key objectives. These include that it must be a world class facility representing the best practice for bus design in London; that routes should be direct and obvious; and that the design should minimise pedestrian conflict to allow people to get where they want to without endangering themselves. Indicative drawings showing the layout incorporating those objectives and minimum and maximum dimensions are provided within the planning agreement. These plans were agreed following discussions with TfL. Whilst TfL has not ruled out Fenwick's proposal, it has not required or sought to secure this link.
- 5.37 Some form of link is likely to be feasible, however its final form and convenience will be a matter for detailed design, and will have shortcomings in comparison

³⁴ A connection from the eastern end of the bus station is shown in figure 6 and appendix C of Document FEN/DB/3b.

³⁵ Plan 4 in Appendix 7, Document FEN/DL/2b.

³⁶ Document FEN/INQ/15.

to the convenient, safe, commodious and western route which gives direct access to the centre and provides Fenwick with a direct route that is in fact slightly shorter than that to John Lewis. Rather than arriving in a main square, the eastern route would pass through a relatively narrow corridor, through rear service areas (which will have to be resolved), past fire escapes and access to the bus drivers' facilities.

- 5.38 It is not accepted that there would be any actual benefit in the public interest through the provision of the eastern link. As a means of increasing the use of public transport the eastern link as a measure is insignificant when seen in the context of the scheme. The scheme involves the investment of £300 million in highways infrastructure, the delivery of a world class bus station, enhanced bus services, enhanced cycle and pedestrian connectivity from the local area, and it brings substantial transport benefits without the link.
- 5.39 The eastern link is a design preference promoted by Fenwick to bring about benefits primarily in its own commercial interest. It does not have the support of the DPs or TfL at this stage, and was not promoted or required by those bodies, despite both seeking to design the shopping centre and bus station to be of the highest quality and maximise the use of sustainable transport and the attractiveness of the centre.

Acquisition of Fenwick's interest

- 5.40 There remains the question of what would happen in the unlikely event that agreement is not reached with Fenwick before the Secretary of State makes his decision, and if CPO No 1 is confirmed without modification and the powers in it are exercised such that Fenwick's leasehold interest is acquired by the AA. It is clear from the evidence that all parties consider it to be strongly in their interests that Fenwick should remain as a principal trader and anchor tenant in the refurbished and extended shopping centre. Therefore, as evidenced by the draft Agreement that the Council and DPs submitted to the inquiry³⁷, if Fenwick's interest is acquired compulsorily then the Council and/ or the DPs will offer Fenwick a new lease on reasonable commercial terms for a term at least as long as the existing lease.
- 5.41 Fenwick would be under a duty to take reasonable steps to mitigate their loss as a result of the acquisition of their lease, and this would include attempting to agree reasonable terms for a new lease. If they did not act reasonably, or if the Council and/ or DPs did not offer reasonable terms, this could have significant compensation implications. It is anticipated therefore, that in such circumstances the terms of a new lease would be agreed by the parties. It would also be the AA's and the DPs' intention to act in such a way as to ensure that Fenwick's occupation was not interrupted by the acquisition of their interest and the time taken to agree a new lease, for example by allowing them to hold over or granting an appropriate licence. The uncertainties that would arise if Fenwick's interest were to be acquired are strongly outweighed by the much greater risks to scheme delivery if the lease were excluded from CPO1.

Objection by Swishbrook, C B Ferster, & R Altmann (CPO No 1 – plots 262, 264-267, 274)

³⁷ See clause 3.3(c) in Document AA/INQ/13.

The package of highway works

- 5.42 The highway improvements at the A5/A407 junction are a necessary and integral part of the regeneration scheme. This is one of nine gateway junctions on the strategic road network identified as requiring improvement to accommodate the scheme³⁸. The improvements have detailed planning permission, and their delivery is tied into the wider regeneration project. The proposed improvements require the objectors' land, and they are a necessary part of the proposed development.
- 5.43 The junction scheme is part of a strategic package of improvements to the network through the gateway junctions, which are inter-related and have been assessed rigorously as a package. A strategic model based on Saturn was combined with a public transport and demand model, which was then combined with LINSIG analysis. The model was iterated until the results and identified improvements converged and the network operated satisfactorily. The detailed junction design process has been informed by recent modelling work, and a new model has been created, run and iterated – the Detailed Design Model (DDM). Mr Orchard confirmed that the conclusions arising from the further work affirmed the need for the junction improvements.
- 5.44 Swishbrook's highways witness criticised the assumptions used. But the assumptions used were those agreed by the relevant authorities, notably TfL. The proposed highway works were re-considered in the light of up-to-date traffic conditions through the S73 application and the Consolidated Transport Assessment (CTA - CDs C21 & C19). No alternative analysis has been put before the Secretary of State.

The A5/ A407 junction

- 5.45 The junction improvements are substantial³⁹. The detailed junction operation (i.e. signal timing/phasing, road line markings etc) have been assessed and adjusted through detailed technical design in consultation with TfL. Currently, due to the off-set arrangement of the junction, the A407 signals cannot run at the same time. The proposals straighten up the junction allowing two-way simultaneous movement with a significant increase in flows through the junction. Additional capacity is also provided through the additional lane on the eastern arm and an increased radius on the north-east corner.
- 5.46 The CTA shows that in 2026 without the development traffic but allowing for background growth (Do Minimum (DM) scenario) that the junction would be operating greatly over-capacity at peak times, with degrees of saturation (DoS) of 146.1% and 196.6%⁴⁰. With the improvements in place and taking account of development traffic (Do Something scenario) all arms would operate with DoS of 100% or less. The queues in the DM scenario are up to 180 passenger car units (PCUs) with delays of 958 seconds. The conclusion of the CTA flowing from these figures is that the junction performs vastly better in the DS scenario. The DDM is the most up-to-date TfL approved modelling work. It shows that with the gateway junction improvements and with development traffic the

³⁸ Paragraphs 3.2 & 3.12 of CD C18.

³⁹ The proposed junction layout is shown on the plan at Appendix 7.2.3 in Document AA/JSO/02.

⁴⁰ Tables 2.34-2.37 of Appendix IV to CD C19 give model outputs for the A5/ A407 junction in 2026.

junction is predicted to operate satisfactorily in 2031 with the busiest arm in the busiest peak showing a DoS of 92%.

- 5.47 A further analysis undertaken by the AA's highways witness shows three scenarios: (1) existing layout with Do Minimum flows; (2) existing layout with Do Something flows; and (3) the Do Something flows with the Do Something junction improvements⁴¹. These results have not been iterated. The picture is clear: in (1) the junction has 3 out of 4 arms operating with negative practical reserve capacity (i.e. over 90% DoS) in am and pm peaks; in (2) there is a substantial worsening of the operation of the junction in the pm peak (overall practical reserve capacity (PRC) of -25.5%), Saturday moves from a PRC of +12.7% to -3.4%, and equally importantly the junction is operating well over its practical capacity in am and pm peaks; in (3) there is a substantial improvement; the am peak of -9.2% becomes +15.8%, the pm peak of -25.5% becomes +10.9%, and on Saturday -3.4% becomes +24.8%. This analysis performed on a consistent basis, and seeking to iron out alleged inaccuracies by Swishbrook's highways witness, makes clear that the junction performs badly in the DM scenario, would become worse with the development traffic, but that with the proposed works the junction would operate satisfactorily.
- 5.48 It is common to assess junction performance by reference to their degree of saturation. This approach is endorsed in the TfL modelling guidelines⁴², which explain that delays begin to increase exponentially where the DoS exceeds approximately 85%. Swishbrook's highways witness, however, has put forward no means of identifying reasonable bounds for the assessment of the junction and how it operates.
- 5.49 The improvements will bring benefits for public transport and for pedestrian safety. The junction is well-used by buses. The A5 contains a bus lane northbound that stops short of the junction. There is a proposed bus lane southbound in the A5 Corridor Study. The A407 has no bus lanes. The junction is an all-movement junction. Buses and cars compete for the capacity within the junction. Increasing the capacity and the flows will therefore bring benefits for both users. If the capacity is not increased but allowed deliberately to operate as a restraint, this would hinder buses passing through the junction, increasing journey times and reducing the attractiveness of the routes.
- 5.50 Swishbrook's land is required to deliver the junction improvements that are a necessary and integral part of the scheme: they are considered by the relevant highway authorities to be necessary to mitigate the scheme. If the junction were omitted then a new planning permission would be required. The AA's highways witness explained that the basis of any such application would have to be an assessment of the network at the end date but without the junction improvements.
- 5.51 In order to uphold this objection and exclude the objectors' land from CPO1, the Secretary of State should be satisfied not only that the junction improvements are not a necessary part of the scheme, but also that if the objectors' land were excluded there would be no impediment to the rest of the scheme proceeding. It is the AA's position that excluding the objectors' land from CPO No 1 would

⁴¹ This analysis is presented in Document AA/INQ/27.

⁴² Section 2.6.1.4 in Part B of Document AA/INQ/28.

introduce such substantial uncertainty about whether, and when, the project might be able to proceed, that the Secretary of State should not uphold the objection even if he considers that the need for the junction works has not been demonstrated. Considerable work would be needed to support an application to undertake the development without complying with the conditions on the S73 Permission that relate to the A5/ A407 junction works, and the necessary changes to the relevant provisions of the planning agreement.

- 5.52 It is the unchallenged evidence of the AA's highways witness that it would take many months to undertake and to complete the iterative modelling work that would be required in order properly to assess the implications for the rest of the highway network, of the omission of the junction improvements at Cricklewood Lane/ Cricklewood Broadway. The objectors have said that, had they been given access to the traffic models, they could have done the necessary modelling work themselves. Sight of the models was not requested until 28 April 2016. Even if it had been practicable and reasonable for the models to be given to Swishbrook's highways consultants in early May, the results of the modelling work would not have been available until a long time after the inquiry had closed.
- 5.53 The most important point is that the outcome of that process is not known. In particular, it is not known whether there would need to be changes to the works proposed at any of the other gateway junctions, or other alterations to the network, in order to accommodate traffic that may be diverted from the Swishbrook junction onto other routes as a result of leaving it as it is. Such further work, quite aside from the amount of time and cost that it would have required, is not necessary because of the fact that the scheme for the purposes of which the Orders have been made has planning permission and includes the works at the Swishbrook junction. The public interest does not require the planning merits of the scheme as a whole, or of individual elements of it, to be re-examined in the context of a proposed compulsory acquisition of land, except to the extent necessary to assess whether the purposes of the acquisition could be achieved by other means. The significant delays to the project which would be the inevitable result of acceding to this objection, and the uncertainties about whether the project could proceed at all, are matters that are highly material to the decision whether or not to confirm CPO1.

Other matters

- 5.54 The frontages of Swishbrook's premises (plots 264-267) are included within the primary shopping frontage of Cricklewood town centre in the DPD (above, para 3.7). However the DPD states that its policies will not apply to the development of the Brent Cross Cricklewood Regeneration Scheme unless and until further policies come forward which change that situation, and that has not yet happened.
- 5.55 The A5/A407 junction improvements, and therefore the Swishbrook frontage, are part of the BXC scheme; therefore the policies in the DPD relating to it do not strictly apply. There is in any event no evidence that the loss of the shops along this frontage would cause any material harm to the centre.
- 5.56 Reference was made by Swishbrook to the potential conversion and extension of the building to provide residential accommodation (Document SFA/16). Conversion may require the Council's prior approval as to the transport impacts

of the development since it appears that no parking provision can be made on site. However the position is not known, since the material that would be required under DPD Policy DM17 to support an application under the GDPO for a prior approval determination is not available. Similarly no details are available about a possible residential extension scheme. Whilst residential development would not be ruled out as a matter of principle, the number of units that could be provided is uncertain. Even if a residential conversion and extension scheme could be achieved which provided 18 units, this would be extremely modest compared with the number of new units that BXC as a whole would provide.

- 5.57 It has been suggested that the Swishbrook building is a non-designated heritage asset. The building is not locally listed, and the suggestion that the building is of interest because it is one of Burtons' few remodelling projects of its type is unproven. Such interest as the building may possess is in any case only above the ground floor, which possesses no apparent relics of the original shopfront.
- 5.58 The junction works are an integral and necessary part of the overall project, and the other considerations raised do not outweigh the need to acquire Swishbrook's interest in order to deliver it.

Objection by MA Hussain, M Hussain and F Hussain (CPO No 1 – plot 264)

- 5.59 The objectors occupy three shop units in the Swishbrook building. The reason for the acquisition is the need to carry out the approved A5/ A407 junction improvements. This has been addressed in response to Swishbrook's objection.
- 5.60 The AA has both offered assistance in finding replacement premises, and has made without prejudice offers of heads of terms. There are three potential retail locations within to which the shops might relocate – Cricklewood Broadway itself, Walm Lane and Childs Hill. Whilst it is accepted that the availability of alternative premises (especially in a corner location) is limited, and that Childs Hill in particular is a quieter location in retail terms, if alternative premises are found and the businesses suffers a loss in trade then (subject to proof) compensation would be payable. If the businesses have to close down because alternative premises cannot be found, then compensation would be payable on a business extinguishment basis. The circumstances are no different from any other situation where land is proposed to be compulsorily acquired in order to facilitate development which is in the public interest.

Objections by Whitefield Estate Residents (plots in CPOs Nos 1 & 2)

Brent Cross Cricklewood Regeneration Scheme

- 5.61 The masterplan for BXC has undergone a process of evolution over many years. This process started with the proposal to extend the shopping centre that was ultimately rejected by the Secretary of State in the early 2000s. The Council's view was that comprehensive regeneration which encompassed land on both sides of the A406 had to be achieved, and that an expansion of the shopping centre was only justifiable in the context of the creation of a new town centre which included not just retail but also commercial and residential development on a large scale and in a manner that created an entirely new place. It is the AA's view that the masterplan principles could not be achieved without the living bridge or if Whitefield Estate were to be left in place.

The living bridge

- 5.62 The plots in the Whitefield Estate that are included in CPO1 are necessary in order to facilitate the provision of the living bridge. This is an integral and necessary part of the BXC project, which will assist in securing policy objectives of creating a new town centre that straddles the A406 and comprehensive regeneration across the whole of the BXC area.
- 5.63 The design of the living bridge addresses the environmental challenges involved in providing an attractive and pleasant crossing of the very busy A406 by including high sides that will protect it from views of and noise from the traffic, and by making it sufficiently wide to create a feeling of space, variety and visual interest that people living on both sides of it will want to use⁴³. It is a fundamental part of the solution to the problem that the scheme has to overcome if it is to be successful: how can the areas to the north and south of the A406 be physically brought together in a way that overcomes the existing physical barriers, so that they can work together as a single town centre in which all the open spaces, commercial and retail uses and the new housing function as parts of an integrated whole?
- 5.64 The residents have suggested that the bridge could be moved further to the west to avoid taking any part of the estate for its construction. However moving the bridge further to the west is not feasible. On its west side, and on the south side of the A406, the location of the bridge is constrained by the position of the link road to Tempelhof Bridge and its junction with Tilling Road and Claremont Avenue, and by the start of the A406 Staples Corner flyover⁴⁴. The bridge supports also need to be as far north as possible due to the change in levels and so as to minimise the length of the span across the A406.
- 5.65 The living bridge would be aligned on a strategic walking and cycling route between Clitterhouse playing fields and BXSC, where it would land on the west side of the new bus station. On the north side of the A406, the space between Tempelhof Bridge and the Living Bridge needs to be sufficient to accommodate the new Marks & Spencer store⁴⁵, which will be one of the three main anchor stores in the enlarged centre and which must, in terms of the functioning of the retail centre, be located here. It was suggested that a consequence of the bridge would be the loss of part of a site of local importance for nature conservation (SLINC). However this was a matter that was addressed at the planning application stage.

Comprehensive regeneration and alternatives

- 5.66 The Whitefield Estate forms an integral and necessary part of the masterplan for the comprehensive regeneration of the BXC area. If the Estate were to remain, the delivery of the new east-west route from the proposed new Thameslink station to Brent Cross underground station, plot 27 for the provision of around

⁴³ The living bridge is illustrated in figure I of Document AA/BA/4 and Appendix 4.5.3 in Document AA/JHSO/02.

⁴⁴ The position of these roads and the living bridge is shown on the plan at Appendix 4.5.1 in Document AA/JSO/02.

⁴⁵ The position of the Marks & Spencer store is shown in the right hand illustration in figure 15 of Document AA/BA/4.

400 new homes and a new foodstore at ground level, and plot 28 for the relocated Whitefield Secondary School, which would benefit from being sited adjacent to the improved facilities in Clitterhouse playing fields, would not be delivered as proposed. The Estate lies at the proposed intersection of two main routes and its removal from the CPOs would adversely affect connectivity.

- 5.67 Furthermore the inclusion of the remainder of the Eastern Lands in the regeneration project would be very difficult to achieve. Even if a different regeneration project that excluded the Whitefield Estate were to be drawn up, tested, and found to be deliverable, it would fall very far short of achieving the key policy objective of securing comprehensive regeneration through a single coherent development project, and would not achieve the level of social, economic and environmental benefits of the S73 scheme. Furthermore, a new planning policy framework would have to be put in place, and thereafter planning permission secured for a different scheme. This would inevitably delay the delivery of much needed new homes, as well as the regeneration of the area in a broader sense, by a number of years. Argent Related's successful bid was for the opportunity to deliver the BXS development, and the separation of the new town centre from the rest of the Eastern Lands by the retention of the Whitefield Estate could affect their participation in the project. The purpose for which the AA proposes to acquire the Whitefield Estate properties could not be achieved by any other means than the compulsory purchase process.
- 5.68 A scheme that included the retention of the Whitefield Estate was not expressly considered. However alternatives were considered as the masterplan evolved and the removal of the Estate from the current masterplan would not be compatible with the achievement of comprehensive regeneration, given that it occupies a critical location in the BXC area.
- 5.69 Ms Choudhury put forward a proposal for making new homes affordable⁴⁶. The costs therein do not appear to take account of the large investment required in infrastructure, the servicing of the cost of capital, professional fees, land acquisition and design. It is not accepted that the documentation for this proposal is correct. Her proposal was made at a very late stage in the process⁴⁷, and it is unrealistic and does not merit further investigation.
- 5.70 Alternatives in a broader sense were considered in the Committee report for the S73 planning application. The report concluded that, in the absence of the proposed scheme, piecemeal applications would be likely to be made which would neither achieve the comprehensive regeneration of the area nor the creation of a new town centre in line with planning policy.

Rehousing existing residents

- 5.71 Condition 1.10 of the S73 permission requires the developer of any phase or sub-phase to receive approval for a Residential Relocation Strategy (RRS CD C14)) which sets out appropriate arrangements for the relocation of residents in the Whitefield Estate to the replacement units before any development of that phase/ sub-phase can begin⁴⁸. The arrangements for relocation need to be in

⁴⁶ The section in Document NC/3 entitled *Addressing the Housing Crisis* and Appendix 4 in Document NC/4.

⁴⁷ Ms Choudhury's initial statement and appendices (Documents NC/1 & 2) were submitted on 9 June 2016, day 10 of the inquiry.

⁴⁸ The Residential Relocation Strategy has been prepared and is at CD C14.

accordance with the parameters and principles set out in the Revised Development Specification & Framework (CD C18). Condition 1.11 requires the relevant replacement homes to be delivered prior to the demolition of those units on the existing estate. The AA would seek to ensure that residents are re-located (if they so choose) to appropriate alternative homes on at least equivalent terms.

- 5.72 CPO1 would result in the demolition of 85 homes. CPO 2 requires the demolition of the three tower blocks containing 132 homes. The Rosa Freedman Centre is included within CPO1. It contains 25 sheltered housing units. The residents are being rehoused in accommodation suitable for their individual needs elsewhere in the Borough. Sixteen residents have already moved, and the remaining residents were expected to move by September 2016. Each tenant will receive a home loss payment and relocation costs. The remainder of the CPO1 homes contain a range of secure tenants, freehold owners, and leaseholders. There are no freehold homes in CPO2; instead there are 95 secure tenants and 40 leaseholders.
- 5.73 In respect of CPO1, a detailed housing survey assessed the needs of individual households. This (together with the requirement to rehouse resident freeholders and leaseholders) gave rise to a need for 46 units to be provided. Reserved matters approval was granted in 2015 to provide 47 units on plots 53 and 54 (known as the Brent Terrace triangles) (CD C7), which would provide the replacement accommodation. Approval was also granted in 2015, under condition 4.2 of the S73 permission, for an amendment of phasing by reassigning these plots from phase 1 (south) to phase 1 (north) to assist the relocation of residents from Whitefield Estate (CD C45)⁴⁹. In respect of CPO2, a detailed housing needs survey was undertaken in March 2016, which will inform the application for reserved matters approval for the replacement homes. Since their appointment as the Council's joint venture partners for BXS, Argent Related have identified the area where the replacement housing is proposed. The mix and size of the units will be developed to meet the requirements of the RRS and ensure that all relocated residents are offered accommodation appropriate to their needs.
- 5.74 Secure tenants will be offered accommodation which at least meets their needs, and the accommodation will be offered on terms at least equivalent to their existing tenancy, to be managed by the relevant registered provider. The rents will be 'Barnet rents', that is rents set initially at the same level as existing, and then linked to the consumer price index until the rent converges with the registered provider's rents (subject to any legislation controlling the rents). There is also protection in relation to service charges for the first five years, after which these will be assessed and managed by the Registered Provider. In addition, all Council tenants will receive a home loss payment (currently £5,300), as well as disturbance payments to meet the costs of relocation. Tenants will be allocated units approximately nine months prior to their move so that they can be involved in the decoration and fitting of their new homes.
- 5.75 Investment owners will receive full compensation but give rise to no re-housing needs. Non-resident homeowners are entitled to a basic loss payment,

⁴⁹ The location of plots 53 and 54 is shown on the plan for phase 1A (north) in Document A/INQ/8.

calculated as 7.5% of the market value subject to a maximum of £75,000 (as of October 2014 and this is subject to statutory changes). The RRS provides for those freeholders and leaseholders who occupy their units. They will be offered a new property in BXC either to buy outright or through shared equity. Full open market value in the absence of the scheme will be paid for existing interests, which can be rolled into the new property. In addition, resident owners will be entitled to a statutory home loss payment, calculated as 10% of the market value up to a maximum of £53,000, which could be put towards a new flat. Disturbance compensation will be paid to address all reasonable relocation costs. No rent will be paid on the part of the property which the resident does not own. The homeowner will have the potential to purchase the remainder of the home over time although they are not obliged to do so. The RRS provides for a minimum entry requirement to be established, which cannot be greater than 50% of the value of the new home.

- 5.76 To support the relocation process, the AA has appointed a resident independent adviser (RIA). The RIA is instructed to provide impartial advice to all Whitefield Estate residents, to establish an equitable service in direct response to the diverse needs of the residents, to establish a consultation framework, and to assist residents to engage in planning the decanting programme. In addition to the RIA, a steering group was established in 2011 comprising tenants, leaseholders and freeholders to engage with the CPO1 development partners. It is envisaged that this group will develop into a Housing Partnership Board as the development progresses. In relation to succession rights the strategy is intended to permit a family home to be passed on to direct relatives who reside at the property. The strategy is to protect the family home, rather than an investment.

Affordable housing

- 5.77 The affordable housing provision is controlled through conditions on the S73 permission and the planning agreement. The scheme must deliver a minimum of 15% of the dwellings in each phase as affordable units. Therefore, as a minimum, approximately 1,125 affordable units would be provided. However the planning agreement provides for a cumulative target of 30% affordable housing across the whole development, which would deliver approximately 2,250 affordable homes, and phase specific indicative targets are also provided. The level of affordable housing to be provided in each phase will be determined through a viability review to reflect prevailing circumstances, although the maximum amount of affordable housing that any phase may be required to deliver is 50%.
- 5.78 The S73 permission and its controls would deliver a substantial number of affordable units, and the mix and tenure would be fixed to meet the Borough's specific affordable housing needs. There is also in place a detailed review system to increase the amount of affordable housing delivered, based on the viability of the scheme as it progresses with a cumulative target of 30%. This seeks to maximise the provision of affordable housing whilst ensuring the delivery of the scheme as a whole.

Brent Terrace Triangles

- 5.79 These two areas of land will accommodate those residents of the Whitefield Estate who are to be displaced by CPO1 (above, para 5.73). The indicative

phasing plan⁵⁰, approved under the S73 permission, identifies the triangles (plots 53 and 54) for residential use. The planning issues raised in the objections were addressed in the context of the outline and reserved matters applications. Both triangles are areas of open space. It was concluded that, given the increase in the overall amount of open space in the development and the significant improvement in its quality, the loss of these areas to housing was acceptable. Other detailed matters, including the management of construction impacts and the delivery of the new open space, the loss of the hedgerow fronting the triangles, accessibility to bus services and the impact on parking in Brent Terrace, have also been addressed.

Consultation and fairness

5.80 The allegations fall into 3 categories:

- (i) That the shared equity/ rehousing arrangements are unfair (addressed above, paras 5.71-5.76).
- (ii) That residents were not properly consulted about the scheme.
- (iii) That the inquiry process has not been fair.

5.81 Insofar as (iii) is concerned, this appears to stem from a lack of understanding of the inquiry process and the respective obligations of the parties under it. Much of the objectors' evidence was submitted after the date fixed for this at the pre-inquiry meeting (26 April 2016). The AA's evidence was submitted voluntarily a week early, on 17 April; but well before then, through the publication of the CPOs themselves with their accompanying Statements of Reasons, and through the AA's Statements of Case, objectors were well aware of the AA's case and therefore of the matters they should cover in evidence. They then had an opportunity to respond in rebuttal evidence to the AA's evidence. This was due a week before their scheduled appearance at the inquiry but even this deadline in several cases was not met. When material from objectors was received the AA made every effort to respond to it expeditiously.

5.82 Ms Choudhury in particular has been given every latitude, and neither she nor any of the other residents can have a legitimate complaint about the fairness of the inquiry process. Ms Choudhury's allegation that there have been numerous procedural errors in the CPO /inquiry process is unfounded.

5.83 Turning to point (ii), there is no evidence to suggest that any statutory consultation requirement has not been met, not merely in relation to the CPO process but also in relation to the planning applications and before then the Local Plan documents and other material (such as the DF) relating to the BXC project. In relation to the DF, two substantial sets of consultation were undertaken in 2004 and 2005.

Objection by Mr & Mrs Barker (CPO2 – plot19)

5.84 Mr & Mrs Barker's representations include complaints about their treatment by the Council over a number of years but these matters are not relevant to the decision on the CPO. Plot 19 has always been within the BXC regeneration

⁵⁰ Parameter plan 029 in CD C28. The plan is referred to in condition 4.1 of the S73 permission.

area, and within the area covered by the 2010 and S73 planning permissions. The uses shown on the approved parameter plans relating to the S73 permission are retail/leisure, any permitted uses and residential, plus infrastructure. Argent Related's current intentions are to introduce a new garden square on and in the vicinity of the objectors' land, so that the land is now likely to be required for that purpose, together with parts of the buildings proposed for plots 16 and 17, part of the High Street and part of the tertiary route to the south-west. There is no reason why these changes to the approved indicative material should not be given effect through the appropriate applications. The objectors' land is essential to the delivery of BXS: if it were left out of CPO2, a hole would appear in the scheme, and there is no realistic way in which it could be developed around that.

- 5.85 There have been negotiations with Mr & Mrs Barker, but the parties are still a long way apart on value, and it is clear therefore that there is a significant risk that it will not be possible to acquire the objectors' land by agreement before the project starts and the land is required.
- 5.86 The question of consultation on the draft DF was raised during the course of Mr & Mrs Barker's objection. Consultation was undertaken in line with the Council's practice and procedures for this type of document, and whilst Mr & Mrs Barker may not have received a direct communication about the 2004 draft, the document was widely publicised in the local area, online and in the media.

Objection by Mr Welby

- 5.87 Relevant matters concerning traffic impacts, bus routes and the environment on the living bridge have been addressed in the AA's evidence.

Objection by Mr Cox

- 5.88 Mr Cox referred to the decision of the Supreme Court in *R (Moseley) v LB Haringey [2014] UKSC 56*. That case concerned consultation by the London Borough of Haringey on its proposed Council Tax Reduction Scheme, which was found to be inadequate. By contrast there is no evidence in the present case that statutory or common law requirements concerning consultation on any of the processes that have led to the CPOs being made were inadequate.
- 5.89 Mr Cox acknowledged that confirmation of the CPOs would not be unfair because of recent actions, but he argued that there had been earlier unfair behaviour, from 2001 to the mid-2000s, relating to the preparation of the UDP and Development Framework. This claim is rejected, but, in any event, any allegation that the consultation carried out in relation to these had been unlawful should have been made at the time. The same applies to the Council's consideration of and grant of permission for the two outline planning applications.

Written objections

- 5.90 John Lewis, Marks & Spencer and Waitrose continue to rely on their written evidence and objections pending final agreement being reached with the DPs about the terms under which they would occupy their stores during and following construction of the scheme. Agreement on the terms of an undertaking has been reached with Marks & Spencer, and it is expected that an agreement will be signed, enabling their objection to be withdrawn. There are

no outstanding substantive issues, and Marks & Spencer will be able to continue trading from their existing store until their new store is ready for occupation.

5.91 Undertakings have been provided in respect of Waitrose and John Lewis which include provisions (a) not to implement the powers in CPO1 if and when agreement is reached that will enable the scheme to be undertaken without breaching the traders' rights under their leases, and (b) to undertake the scheme in a manner that will enable them to continue to trade during the construction period⁵¹. Agreement with John Lewis, Waitrose and Marks & Spencer appears likely to take place before the decision on the CPOs is made, but without the ability to acquire these retailers' leasehold interests as a last resort there would be a significant risk that one or more of them could delay the scheme by holding out for terms that were not commercially reasonable.

5.92 In relation to other written objections, the position is as follows:

(i) Transport for London. A joint statement between the Council, TfL, London Bus Services Ltd, Standard Life and Hammerson⁵² confirms that an agreement in relation to the bus station has been completed, and that once the necessary property agreements (on which discussions are ongoing) have been settled and exchanged, TfL and London Bus Services will withdraw their outstanding objection.

(ii) North London Waste Authority is not a qualifying objector, but an undertaking has been given⁵³ which guarantees continued access to and egress from their property off Tilling Road.

(iii) HI (Brent Cross) Ltd (CPO1 plots 104, 105, 108). An undertaking has been given in relation to maintenance of adequate car parking for the Holiday Inn hotel and the provision of access for coaches and deliveries⁵⁴. At the time the Order was made, it was necessary to include the whole of the hotel premises in it, but since then further work has been undertaken, the whole of the site is no longer required, and heads of terms have been agreed with the objector. An agreement based on these is being drafted and it is expected that this will lead to the withdrawal of the objection.

(iv) Kingsley Way Charitable Trust (CPO1 plots 236, 236a, 237). Following further design work it has been found that only a part of the site is needed to secure improvement of the A406 westbound off-slip⁵⁵. An undertaking has been given in respect of the effect of the road works on the objector's land⁵⁶. Agreement leading to withdrawal of the objection is expected to be reached shortly.

(v) Brent Cross shopping centre tenants (CPO1). The justification for the inclusion of these interests remains that the many differences between the tenants' leases in terms of the rights and other provisions they contain, combined with the fact that reserved matters for the shopping centre works still have to be worked up and submitted, means that unless the leases remain in CPO1 there is

⁵¹ Documents AA/INQ/42 & 43.

⁵² Document OO/1/21d.

⁵³ Document AA/INQ/36.

⁵⁴ Document AA/INQ/51.

⁵⁵ Document AA/JSO/06, paragraph 2.5.

⁵⁶ Document AA/INQ/50.

a significant risk that the scheme will be delayed or prevented from proceeding by the existence of the tenants' rights and other lease provisions. The DPs have given an undertaking to all those tenants who would not need to move⁵⁷, and this includes undertakings in relation to the construction phase of the project.

(vi) 111 Highfield Avenue Management Company & Others (CPO1 Plot 244). A small part of the forecourt of 111 Highfield Avenue is needed to provide a footway in connection with the realignment of Brentfield Gardens/ Highfield Avenue, and it is necessary to remove the footway crossing and prevent parking on the forecourt to achieve satisfactory visibility for drivers travelling around the bend⁵⁸. The realignment is part of a scheme to alter the A41/ A406 junction which would remove strategic road traffic from Brentfield Gardens, creating a significant environmental improvement.

(vii) Pampa Holdings Ltd (CPO1 plots 254 & 255). Works to improve the junction of Cricklewood Lane/ Claremont Road require part of the forecourt at 1 Claremont Road. Rights are sought over an adjacent area to enable the construction of a footway.

(viii) Hope Construction Materials Ltd (CPO2 plot 23). The objector's lease expires in June 2019 and there are no renewal rights⁵⁹. Since lodging its objection the company has entered into negotiations in respect of an alternative site. The AA now owns the freehold and it is in a position to facilitate early release from the lease if this would assist the objector in a move to alternative premises.

Conclusion and overall balance

5.93 The benefits of the BXC project are clear. If both CPOs are not confirmed, the project will not take place and the benefits will not be achieved. The benefits are:

- (i) A new, attractive and vibrant town centre.
- (ii) Thousands of new jobs.
- (iii) Around 7,500 attractive, modern homes, many of which will be affordable.
- (iv) Improved education and health facilities.
- (v) An extended and modernised shopping centre with new shops, restaurants, cinema and hotel.
- (vi) A new bus station.
- (vii) A new Thameslink rail station.
- (viii) Improved road, cycling and pedestrian infrastructure and connectivity across the area.
- (ix) New commercial floorspace.

⁵⁷ Document AA/INQ/46.

⁵⁸ Document AA/JSO/01, section 7.5.

⁵⁹ Document AA/PA/1, paragraph 6.32.

(x) Visual and other environmental improvements through the carrying out of sustainable, high quality development.

5.94 Both the CPO1 and CPO2 developments are likely to be delivered if the CPOs are confirmed. Hammerson/SLI and Argent Related have the resources, expertise, experience and commitment to deliver the developments. The Property Development Agreement and Project Agreement between the AA and the CPO1 and CPO2 DPs respectively have been agreed⁶⁰. The conclusion of these agreements is very important because it means that legally binding arrangements are in place to secure the delivery of both the CPO1 and CPO2 developments. Both agreements, as is usual for a project of this kind, contain conditions that have to be satisfied or waived before the developers are obliged to undertake their respective development projects. The need to satisfy or waive these conditions is not likely to present any impediment to project delivery.

5.95 The principal disbenefits of the scheme are:

- (i) The displacement of existing residents to new homes, most of which will be within the BXC area.
- (ii) The displacement of existing businesses.
- (iii) Environmental and other impacts, including during construction.

In relation to these, measures have been and will be put in place to mitigate the effects on existing residents and businesses that are to be displaced. The environmental and other impacts of the scheme have also been addressed through the S73 permission. The DPs have committed through undertakings to manage the impacts of the construction phase on shopping centre tenants, and the more detailed documentation prepared by Mace that has been provided to the principal traders demonstrates that these impacts can be managed satisfactorily⁶¹. In addition to addressing considerations arising under the Human Rights Act, the AA has given express consideration to its duties under the Equality Act 2010.

5.96 Insofar as the main considerations set out in the CPO Guidance are concerned, the AA submits as follows:

- (i) Paragraphs 2,16. Given the size of the project, the number of interests included in the Orders, and the period of time over which the project will be delivered, reasonable and proportionate efforts have been made to acquire those interests by agreement.
- (ii) Paragraph 12. The AA has given careful consideration to whether the purposes for which the Orders have been made justify the interference with the human rights of those affected by them. That interference is justified because there is a strongly compelling case in the public interest for confirming the Orders, on the basis of the massive regenerative benefits which they will bring.
- (iii) Paragraph 13. The AA has a clear idea, on the basis of the relevant planning policies and the S73 Permission, the reserved matters approvals and S96A

⁶⁰ Documents AA/INQ/48-49A.

⁶¹ See, for example, Document FEN/INQ/3.

approvals granted to date, of how it intends to use the land included in the Orders.

(iv) Paragraph 14. The necessary resources are available to secure the delivery of both the CPO1 and CPO2 developments.

(v) Paragraph 15. There are no planning or other impediments to delivery.

(vi) Paragraph 74. There is a detailed planning framework in place for BXC, which comprises the London Plan, the Local Plan, the Development Framework and the S73 permission.

(vii) Paragraph 76 (first factor). The purpose for which the land included in the Orders is being acquired fits closely with the Local Plan.

(viii) Paragraph 76 (second factor). The CPO1 and CPO2 developments will not only themselves provide very significant social, economic and environmental well-being benefits, but will also facilitate the delivery of the whole of BXC, including the new Thameslink station, which constitutes one of London's largest and most important regeneration projects and which will accordingly deliver well-being benefits of greater than local significance.

(ix) Paragraph 76 (third factor). There is no alternative means of achieving the purpose for which the Orders have been made.

5.97 The Secretary of State is accordingly asked to confirm the Orders as made.

6. Overview of the Objections

6.1 The number of objections submitted to the CPOs and remaining following withdrawals is summarised in the following table.

	CPO 1	CPO 2
Relevant objections ⁶²	71	38
Late objections from qualifying persons	0	1
Withdrawn	21	4
Remaining objections from qualifying persons ⁶³	50	35
Non-statutory objections in response to notices of CPOs	1	5

⁶² CD D5 is a schedule of objections to CPO No 1. It lists 73 objections, but one is from an existing objector (No 43), and another is from a non-qualifying person (No 3). There were, therefore, 71 relevant objections to CPO No 1. CD E5 is a schedule of objections to CPO No 2. It lists 44 objections, but one relates to CPO No 1 (No 42), and five are from non-qualifying persons (Nos 8, 21-23 and 44). There were, therefore, 38 relevant objections to CPO No 2.

⁶³ The remaining objections from qualifying persons other than Ms Choudhury, are listed in Schedule 1 to this report.

Late non-statutory objections	4	3
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- 6.2 A number of objections from non-qualifying persons were received in response to the notices of the CPOs. A resident of Whitefield Estate who submitted a relevant objection to CPO2 also objected to CPO1 (OBJ/1/3). Similarly four qualifying persons who made relevant objections to CPO1 also objected to CPO2 (OBJ/2/8, 22, 23 & 44). In addition an objection to CPO2 has been submitted by a group of residents of Whitefield Estate known as Whitefield Residents (OBJ/2/21). The group itself is not a qualifying person, although residents of the estate generally fall within this category, and each of the four individuals who appeared at the inquiry on behalf of the group is a qualifying person⁶⁴.
- 6.3 Four parties submitted late objections at the inquiry, each of which relates to both CPOs. Ms N Choudhury is a resident of Whitefield Estate, and a qualifying person in respect of CPO2⁶⁵. The other objections to both CPOs were made by Brent Terrace Residents Association, Brent Transport Users Group, and Mr J Cox.

7. Withdrawn objections

CPO1

- 7.1 The objections by DSG Ltd (plot 111, Document WD/1/40), Community Foods Ltd (plot 80, Document WD/1/44), and Mr R Wass (plot 148, Document WD/1/62) were withdrawn before the inquiry opened. During the inquiry itself, a further 15 relevant objections to CPO No 1 were withdrawn:
- Network Rail Infrastructure Ltd (plots 27, 258, 259, Document WD/1/1),
 - GB Railfreight (plot 63, Document WD/1/4),
 - Billaze Ltd (plots 264, 265, Document WD/1/5),
 - Highways England (plots 1, 2, 6-8, 12, 20-24, 69-71, Document WD/1/7),
 - Eastern Power Networks Plc (plots 332, 341, 439, Document WD/1/14).
 - Office Holdings Ltd (plots 406, 419, 457, Document WD/1/18),
 - Lewis Properties (1985) Ltd (plot 81, Document WD/1/26),
 - Honeyglen Properties Ltd (plot 216, Document WD/1/27),
 - Select Service Partners (Plots 370, 373, 418, Document WD/1/31),
 - Motors Properties (Trading) Ltd (plot 40, Document WD/1/34),
 - General Motors UK Ltd (plot 40, Document WD/1/35),

⁶⁴ One of the representatives of Whitefield Residents who appeared at the inquiry, Mr Mevada, is identified in table 1 of CPO No 2 as a lessee and occupier of property in the order lands. The other three representatives are not so identified, but, in Document AA/INQ/56, the AA acknowledges that, if they are resident at the properties to which they have referred, they are also qualifying persons.

⁶⁵ Ms Choudhury is a resident of a dwelling within the order lands of CPO No 2. She is not identified in table 1 of the CPO, but in Document AA/INQ/56, the AA acknowledges that, if she is resident at the property to which she has referred, she is a qualifying person.

- Now Motor Retailing Ltd (plots 40, 41, Document WD/1/36),
- Topsy-Turvy World (Brent Cross) Ltd and Topsy-Turvy Day Nursery Ltd (plot 96, Document WD/1/41),
- National Grid Electricity Transmission Plc and National Grid Gas Plc (Document WD/1/50),
- The Carphone Warehouse Ltd (plot 407, Document WD/1/63)
- Zurich Assurance (plots 222, 2225, Document WD/1/70).

7.2 Two further objections were withdrawn immediately following the closure of the inquiry. The objection by C & J Clark was withdrawn by a letter dated 27 July 2016 (plots 332, 341, 439, Document WD/1/15), and that by the National Westminster Bank was withdrawn by a letter dated 28 July 2016 (plots 267, 268, 326, 328, Document WD/1/2).

CPO2

7.3 Four relevant objections to CPO2 were withdrawn during the inquiry: Network Rail (Document WD/2/1), Eastern Power (Document WD/2/9), Lewis Properties (plot 26, Document WD/2/27), and National Grid (Document WD/2/43).

8. Statutory objections the subject of inquiry appearances

CPO1 plots 262-267: 162-168 Cricklewood Broadway, 2b & 2c Cricklewood Lane, Edward Close

Swishbrook Ltd, C B Ferster & R Altmann (OBJ/1/51 & OBJ/2/44)

Case for the Objectors

The Objectors' interests

8.1 Swishbrook Ltd is a family firm which has a long lease on the premises at Nos 162-168 Cricklewood Broadway and Nos 2b & 2c Cricklewood Lane. The freehold is owned by C B Ferster & R Altmann who are family members. Plots 264-266 comprise the building at the junction of Cricklewood Broadway and Cricklewood Lane, and plots 262 & 263 cover Edward Close, the passage on the north-east side of the building. The objection also relates to plot 267 (162 Cricklewood Broadway) in respect of which rights are sought to enter on the land in connection with the demolition of the objectors' building and the construction of a replacement. To the extent that justification for acquisition of the objectors' interests relies on CPO2, there is an objection to this Order also.

Modification sought

8.2 The modification sought is the deletion of plots 260-281 which relate to the alteration of the Cricklewood Broadway/ Cricklewood Lane junction (Document SFA/15). In the event that CPO1 is not modified as sought, there is agreement in principle on an undertaking by the AA to grant the objectors a continued right of access from the new highway boundary to their remaining property at No 162 Cricklewood Broadway and to consult on the design of works⁶⁶.

⁶⁶ The draft undertaking is included in Document SFA/15.

CPO2

- 8.3 Given that the junction works are identified as part of the critical infrastructure on which development in the CPO2 Order lands depends, an objection is maintained to that Order.

Implications for the planning permission and Core Strategy

- 8.4 Condition 1.29 incorporates the junction works plan ref 1024-D into the S73 permission. Condition 20.10 requires the works to be in place before any part of the development south of the A406 is occupied. However phasing can be amended, and the commencement of phase 1A North has already been adjusted by a S96A minor amendment. The S106 agreement requires the DPs to fund the junction works, and requires the necessary consents to be achieved. Altering the planning permission and planning agreement would not be impossible. It is accepted that a considerable amount of work would be involved, but this does not amount to an overriding reason in the public interest for taking the objectors' land, if there is no need to do so in order to achieve satisfactory conditions on the highway network.
- 8.5 In the event of the Secretary of State confirming CPO1 subject to the proposed modification, there would be a clear mandate for the scheme overall, which would be a highly material consideration to take into account in deciding whether it was necessary to review the Core Strategy. There is no policy which specifically requires the junction works, and the general endorsement of the BXC development would render a review of the Core Strategy on this point academic. If the CPO were not confirmed at all, in response to other objections, the question of the junction works would not arise. Either way, the potential need to consider a review of the Core Strategy does not amount to an overriding reason in the public interest for taking the objectors' land.

Whether the junction works are necessary to make the BXC development acceptable in planning terms

- 8.6 Condition 20.10 was brought forward from the 2010 permission, and the reason given in both documents is *to mitigate the congestion impacts of the proposed development on these junctions*. TfL's consultation response on the S73 scheme referred to a decrease in London traffic flows in general, and where this was not the case peak hours were likely to be a function of spare capacity as much as demand. However the report on the application did not assess whether the junction works are the minimum required for the mitigation of impacts which would otherwise be severe, and whether the condition was still necessary.
- 8.7 The imposition of condition 20.10 was not substantiated by specific transport evidence. Mr Orchard, for the AA, asserts that the junction works would deal with congestion⁶⁷. However there is no evidence of current conditions, and the CTA is founded on baseline conditions dating from 2005. It appears that the

⁶⁷ Paragraph 6.7.2, Document AA/JSO/01.

basis for the junction works is that the network must work at least as well following implementation of BXC development as it would if the development were not provided. This nil detriment approach is not the same as that set out in paragraph 32 of the National Planning Policy Framework (NPPF).

- 8.8 The figures in the objectors' and the AA's LinSig tables should not be regarded as absolute calculations of the numbers of vehicles that could pass through the junction. Differences identified between the LinSig models have been referred to by the AA as non-material⁶⁸, although Mr Axon, for the objectors, has calculated that they range from 6% to 78%⁶⁹. He also calculated that the proposed works would increase the junction capacity by 7.7%, well within the range of differences referred to as non-material. This increase in capacity is slight. The underlying LinSig model has not been subject to iteration, which increases the likelihood that the junction would experience restrained demand. It is not considered that the benefits of increased capacity warrant acquisition of the objectors' property.
- 8.9 The degree of public disadvantage is not the loss of the opportunity of the BXC scheme, but a measure of administrative inconvenience associated with traffic remodelling and the consequential S73 and S106 processes. The weight afforded to administrative inconvenience in the balance should be reduced since it could have been avoided by engagement with the objectors.

Whether there is a policy requirement for the junction works

- 8.10 The junction works are not specifically mentioned in the UDP or the Core Strategy. In the DF there are references to an indicative map, but the land take for junction improvements is not clearly set out⁷⁰. The approach of the DF to highways infrastructure is predicated on the principle that any impacts must be mitigated. This approach is markedly different from that in paragraph 32 of the NPPF, which is that development should only be prevented on highway grounds if its residual impacts are severe. Only slight weight should be given to the DF, and the Development Plan policies which derive from it, since their underlying basis is not consistent with the relevant part of the NPPF.

Whether there is a physical need for the junction works

- 8.11 There is no evidence of a problem for pedestrians. The A5 Corridor Study reveals that the Cricklewood Lane uncontrolled arm is the arm with the best accident record⁷¹. It is not accepted that the junction could be operated on a two phase basis, rather than on a three phase basis as at present.
- 8.12 Similarly there is no evidence that buses are disadvantaged by the current junction layout. Bus lanes and stops bring them close to the head of the queue on the A5, and the A5 Corridor Study proposes to extend the southbound lane closer to the junction. This is simply a matter of reallocating roadspace, and it does not require the physical works proposed. Whilst the proposed works would allow more vehicles through the junction in a shorter time, that would not

⁶⁸ Paragraph 1, Document AA/INQ/27.

⁶⁹ Mr Axon, evidence in chief.

⁷⁰ Figure 23 of the DF identifies, in diagrammatic form, the A5/ Cricklewood Lane junction as a location for pedestrian environment and junction improvement.

⁷¹ The extract from the A5 Corridor Study (paragraph 1.3.17) in Appendix 1 of Document SFA/6 gives details of accidents involving pedestrians at the junction.

necessarily favour buses. Priority to buses is determined by signal-setting, and that could occur at present.

- 8.13 There is no policy imperative for the establishment of nil detriment to peak period car driver convenience. TfL's modelling guidelines do not establish that junctions predicted to operate at 90% or more DoS need to be expanded. TfL favours iterated, multi-modal simulation models which consider wider networks and use degrees of saturation for fine tuning. The Mayor has stated that journey times and the performance of corridors and networks provide a more detailed measure of the impact of traffic schemes rather than degrees of saturation at individual junctions⁷². Nor is there evidence that traffic would seek alternative routes without the junction works.
- 8.14 The objectors' highways witness considers the likely operation of the unaltered junction to be within reasonable bounds for the following reasons. He had seen no evidence that convenience to pedestrians, cyclists or public transport users would be jeopardised without the works. Journey time is a more meaningful measure than degrees of saturation, and there should be scope for the junction to be reorganised by means of signal setting. Because of the complex nature of the network, flows will, when iterated, smooth out. As a sense check, it is calculated that, on the basis of the CTA LinSig models, the junction works would provide capacity for an additional three vehicles per minute, whereas the reworked versions of the model indicate one additional vehicle every two minutes. The difference in capacity is minimal and within daily variations.

Whether the economic, social and environmental costs should be overridden by any public benefit

- 8.15 Acceding to the objection does not mean the demise of the BXC scheme, and the public benefits of the works should, therefore, be judged on their own merits. The effect of the junction works in transport terms would be minimal. There is no policy basis for deciding that commercial occupation at Cricklewood Broadway/ Cricklewood Lane could be disrupted, but that residential occupation at Cricklewood Lane/ Claremont Road could not. Cricklewood is a district centre and the objectors' land is within a primary shopping frontage. Development Plan policy for BXC expects the scheme to complement other centres. Removing part of a primary shopping frontage and displacing class A occupiers would not fulfil this complementary role, and the claimed public transport benefits do not rely upon the works.
- 8.16 The objectors' property is a striking building, which is of some historical interest as an early example of branding⁷³. It is appropriate to treat it as an undesignated heritage asset. There is potential for residential use of the upper floors, and the building could be extended to provide further accommodation. Additional town centre housing would be in line with the NPPF and is a factor to take into account. There would be a social cost in compulsory acquisition, which would affect not only the objectors, but also the occupants and their employees. Taking all factors into account, the high threshold of justification for the use of compulsory purchase powers has not been crossed.

⁷² Answer to a question to the Mayor, 16 September 2015, Document SFA/7.

⁷³ See Swishbrook's statement of case (SFA/16).

CPO1 part of plot 264: 168 Cricklewood Broadway

Mr M A Hussain (OBJ/1/24)

Case for the Objector

- 8.17 Mr M A Hussain submitted an objection to CPO1 jointly with Mr F Hussain and Mr M Hussain. Each is a tenant of a separate ground floor unit at No 168 Cricklewood Broadway⁷⁴. Mr M Hussain occupies the corner unit at the junction of Cricklewood Broadway and Cricklewood Lane (Phone City). Both the other units have frontages to Cricklewood Lane: the adjacent unit (I Love Candy) is occupied by Mr F Hussain and the third unit (Motobella Barbers) is occupied by Mr M Hussain.
- 8.18 The units are required for highway works at the junction of Cricklewood Broadway and Cricklewood Lane. However neither of these roads is a major route to BXSC. The main access routes to the centre are the A41, the A406 and the M1. Traffic would continue to be restricted to one lane in each direction at the railway bridge over Cricklewood Lane, and it is not considered that the scheme would improve traffic flow. There is only a problem when buses are stopped on each side of the road, and this could be addressed by repositioning one of the stops. There is no compelling case in the public interest for the acquisition of the units.
- 8.19 Compulsory purchase would result in the loss of the business, which has been operating since 1998. The shop has a prime corner location, and it would not be possible to relocate to a similar position in the immediate area. Mr Astbury for the AA had referred to possible alternative locations at Walm Lane and Child's Hill. However he acknowledged that Walm Lane is not as prominent and Child's Hill is quieter than the corner position at Cricklewood Broadway/Cricklewood Lane.

CPO1 plots 300, 329, 349, 442, 461, 462: Store 3, Brent Cross Shopping Centre

Marks & Spencer Plc (OBJ/1/68)

Case for the Objector

- 8.20 Marks & Spencer has leasehold interests in respect of its store in BXSC, and it has the right to use service yard unit Y1 and a customer collection point (in plot 329). The company is concerned about the loss of its store by compulsory acquisition, or, if not acquired, the inability to service it in the new scheme in the absence of a replacement. It is also concerned about the impact of construction operations.
- 8.21 Agreement has substantially been reached on the heads of terms for an agreement between the Objector, the DPs and the AA which would address the concerns raised. The AA would undertake not to exercise compulsory purchase powers if an agreement is subsequently reached which would give effect to the

⁷⁴ The letter of objection states that the objectors have interests in plots 264-266. Plot 265 is 2c Cricklewood Lane and plot 266 is 2b Cricklewood Lane. These properties are in the same block as 168 Cricklewood Broadway, but at the inquiry Mr M A Hussain made it clear that the units occupied by the objectors are solely at 168 Cricklewood Broadway.

heads of terms, but that is not documented. Hammerson has engrossed the agreement, and a solicitor's undertaking has been given that Standard Life will sign.

- 8.22 If the works to BXSC begin, when Marks & Spencer loses its service yard (plot 329), this would pass to the developer under the terms of the agreement, and the company would have no protection other than relying upon Hammerson. There would be no recourse even if the temporary servicing arrangements fail because the redevelopment ceases. In the current proposal Marks & Spencer is left exposed.
- 8.23 The Marks & Spencer store is one of the anchor stores in BXSC. The viability of the project, the possibilities of obtaining third party investment, and the likelihood of the scheme proceeding within a reasonable timescale would be undermined if anchor stores were lost or construction work were to cause substantial damage to the business. In the absence of agreements with the anchor tenants, there can be no certainty that the resources would be made available to undertake the development in a reasonable timescale.
- 8.24 Unless agreements are reached with the anchor stores, the development of BXSC will not take place, the benefits anticipated will not be achieved, and there will be no compelling case in the public interest for the acquisition of any land. If the agreement is completed, Marks & Spencer will withdraw its objection to CPO1.

CPO1 plots 310, 358, 444: Store B, Brent Cross Shopping Centre

Fenwick Ltd (OBJ/1/22)

Case for the Objector

Modifications sought

- 8.25 Fenwick is the lessee and occupier of store B in BXSC. The Company does not object to the principle of the BXC scheme promoted through CPO1 or in particular the proposed extension to the BXSC covered by the S73 planning permission. However acquisition of Fenwick's is not necessary and is disproportionate to anything required for the proposed works; confirmation of the Order including that interest would be contrary to the CPO Guidance and in breach of the company's human rights.
- 8.26 It is accepted that work would be required affecting the exterior of the Fenwick building. There are several options available as part of the confirmation of CPO1, none of which require acquisition of the leasehold interest:
- i) CPO1 could be modified to enable the required rights to be acquired for the works⁷⁵. The modification would provide a straightforward right to carry out and use the works pursuant to the S73 permission; it would be within S13 of the 1976 Act as a right to be acquired for planning purposes under Part IX of the 1990 Act; indeed, it follows the formulation in clause 2.3 of the AA's draft agreement (Document AA/INQ/13), in substance repeated in clauses 2.1.1-3 of the AA and DP's undertaking (Document AA/INQ/34).

⁷⁵ Fenwick's suggested modifications are set out in Document FEN/INQ/22. They are addressed in detail in Annex 3 to Document FEN/INQ/20.

The rights proposed are not temporary, but rights can be acquired under S13 for a limited purpose⁷⁶.

- ii) Fenwick has made an undertaking to grant the rights required for the works to be undertaken (Document FEN/INQ/26). An undertaking by deed is contractually enforceable by the parties to whom it is given and can be registered as a land charge; it would be binding on Fenwick and its successors in title; it specifically declares that it is to have effect, notwithstanding any contrary provisions in the lease. The grant of rights pursuant to the undertaking would be conditional on the exclusion of the leasehold interest from the Order and on the AA and DPs undertaking to include the schedule 1 works. The form of schedule 1 enables the extent of the works to be determined by the Secretary of State.
 - iii) It would also be open to the Secretary of State to modify the Order to include the rights in addition to the provision of the undertaking. The undertaking would not cease to operate as a result of the Order confirming the equivalent rights, and it would be binding on Fenwick.
- 8.27 Part IX of the 1990 Act provides the right for an authority to construct and use works in accordance with planning permission on land which it has acquired or appropriated for planning purposes, notwithstanding that it involves interference or conflict with a right or restriction⁷⁷. S237 is included in Part IX for that purpose, and applies where the works would involve interference with an interest or right to which the section applies, or a breach of a restriction as to the user of land arising by virtue of a contract. That provision would be sufficient to override the restrictions under the lease pursuant to clause 5(4)(a) or any conflict with rights reserved under the lease to use the common facilities. Any breach of the covenant as to quiet enjoyment of the demised building under clause 5(1) of the lease would in any event be directly authorised by the acquisition of the right under the Order. Whilst there is no need for any undertaking, that put forward addresses any possible conflict with the lease. Should there be any residual concern in this respect a further right is included in the modification schedule, which would directly address the exercise of the powers on other land to be acquired under the Order, notwithstanding any conflict with restrictions or other provisions under the lease.
- 8.28 It is considered that without the works listed in schedule 1 of the undertaking the case for the Order is flawed in not fully and necessarily supporting sustainable accessibility for the centre or its effective and successful trading when extended. In the absence of an undertaking in respect of these works, the Order should not be confirmed.
- 8.29 Fenwick seeks an assurance that the code of construction practice, required by condition 8.1 of the S73 permission, should include specific provision for customer and staff access and parking, servicing and delivery/customer collection during the construction period. The AA and the DPs have provided an assurance that, if they carry out the works, they will provide a servicing and delivery/collection plan for the premises during that period, and maintain so far

⁷⁶ The scope of rights under S13 of the Local Government (Miscellaneous Provisions) Act 1976 is addressed in detail in Annex 5 to Document FEN/INQ/20.

⁷⁷ This matter is addressed in detail in Annex 2 to Document FEN/INQ/20.

as practicable access, servicing and delivery/collection and parking for the store (Document AA/INQ/34). Fenwick is content with that assurance.

- 8.30 The undertaking provided by the AA and DPs covers the rights which Fenwick has offered to provide. Whilst there is no difficulty in granting and waiving the rights concerned by means of a legally binding commitment, clause 2.1 qualifies this by the phrase *which for the avoidance of doubt may include a deed of grant, a deed of variation to the Lease or a new lease*, and that it is to be to the *reasonable satisfaction of the Council*. There is no problem in a deed of grant, but, if the AA seeks a variation of the lease or a new lease, it should explain what is required and why. The note from Nabarro LLP⁷⁸, sets out the AA's position that Fenwick's lease must be retained in the Order until *agreement is reached on all outstanding matters (including commercially confidential ones)*. Fenwick has no open statement from the AA as to what these commercially confidential matters may be, and is unable to respond to them. Unexplained and unjustified commercial objectives should have no place as part of a case in support of compulsory acquisition.

The works to the Fenwick store

- 8.31 Justification for CPO1 depends on the S73 scheme, and the relevant planning purposes are those within the scope of that permission. Although the S73 permission allows flexibility within its conditions, it is agreed that any reserved matters must be within its scope having regard to the relevant parameter plans. That would not include the redevelopment of the Fenwick store. The works would essentially be limited to the exterior of the Fenwick building. They are in effect accommodation works to enable the store's integration with the extension as part of what is known as Scheme L. In fact, there is already extensive agreement as to the nature of the required works and their extent⁷⁹. That includes the specific construction methodology for the Fenwick store and the approach to the elevational treatment. There is also agreement on the formation of entrances to the store at the southwest corner connecting with the new mall and for the accesses to the new multi-storey carpark. It is common ground that there would not need to be any physical alteration to the servicing provision. There does not need to be any alteration of the building for utility diversions. Whatever the final resolution for the EPN substation may be, it is not suggested that that would have any effect on the store as such.
- 8.32 Inevitably there would be disturbance during the carrying out of the overall scheme, but there is nothing that should lead to an interruption of trading. Indeed, as the DPs and the AA propose, it is crucial to the scheme that Fenwick is able to continue to trade throughout the construction period. In fact, as demonstrated by the construction strategy in the Mace report (Document FEN/INQ/3), there is no reason why Fenwick should not be able to continue to trade, since any effect inside the store would be limited to the local working areas close to where the external works are carried out. That would involve a margin up to some 2m deep, which would be temporarily screened off from the remainder of the store. This would be typical of refurbishments carried out to

⁷⁸ Note on modifications proposed by Fenwick to CPO1, in Document FEN/INQ/17a.

⁷⁹ The DP's floor plans for Scheme L and Fenwick's proposed amendments are in Appendices 2 and 4 of Document FEN/DL/2b. Fenwick's sketch elevations and floor plans of the south-west store entrance are in Document FEN/INQ/13.

major stores. It has been suggested that some work to the structure of the Fenwick building may be required. At most that might be for the multi-storey car park connection at the lower ground floor level of the eastern wall, depending whether the structural frame continues through into that level or whether there is a load bearing wall. In any event, it is not suggested that this brings with it any constructional implications or difficulties that affect the overall character or extent of the works required. The rights referred to above would cover the necessary works.

8.33 The works proposed are peripheral works with limited access affecting a major store of some 18,736m², and subject to a lease with over 80 years to run. It is neither necessary nor proportionate to expropriate the whole of that leasehold interest to enable these limited refurbishment and alteration works to be carried out. It is not considered that the AA has carried out a detailed examination of the case for acquisition of the Fenwick lease and the alternatives. In response to a question from the Inspector, Mr McGuinness explained that the AA and DPs had been advised that a CPO covering the whole of BXSC provided the best protection in negotiating variations to existing leases for the development to be implemented. It has been accepted by Mr Astbury that there was no report or advice considering whether rights could have been used to carry out the works in respect of the Fenwick store⁸⁰.

The case for acquisition

8.34 It is considered that the AA's case comes down to a proposition that the acquisition of the whole leasehold interest is necessary because the terms of the lease could otherwise prevent the works being carried out and used, or at least that there is uncertainty in that respect. In the light of the rights that could be provided under the Order if modified and those included in the undertaking, the claim that it is none the less necessary in the public interest and proportionate to acquire the whole of the leasehold interest requires some very specific and well-founded basis.

8.35 The lease is a long lease for 125 years and of significant value: it is to be distinguished from a standard occupational lease at a rack rent. The terms were agreed so as to accommodate possible future extension of the shopping centre and alteration of the Fenwick building over the 125 year term. That has been effective, with a major extension of BXSC in 1995-96⁸¹, as well as extensions to the store, including most recently in 2014. The evidence is that the lease accommodated those changes satisfactorily and that it otherwise works well and without problems.

8.36 Fenwick's long leasehold interest is important to provide the security and certainty for investment and other decisions. Major investment and trading decisions to the value of over £54m have relied on the leasehold interest and the company would seek to continue to operate in this way. In this regard, the DPs have reached agreement with the Council in respect of their own long leasehold interest⁸².

⁸⁰ Mr Astbury, evidence in chief.

⁸¹ The northern extension was opened in two phases in 1995 and 1996, following the grant of planning permission in 1994. Details are given in Document AA/INQ/31.

⁸² The leasehold interests of the DPs are summarised in para 2.2 of Document AA/MM/1: Clause 15 of the property development agreement (AA/INQ/48 & 48A) refers to variations of the leasehold interests.

- 8.37 Fenwick is acknowledged to have been central to the success of BXSC from the outset. It has maintained the highest standards in store operation and refurbishment, and it has been proactively engaged in the scheme to extend the centre. Designs for refurbishment and integration have been commissioned, which are reflected in scheme L⁸³. With retention of the lease as future security, Fenwick intends to continue to proactively support the highest standards of integration and refurbishment for delivery of the scheme to extend BXSC, including the new entrances and elevational treatment. With the retention of the lease and the provision of the rights, the works will be delivered in full. The only factor that blurs that prospect is the threat to the leasehold interest.
- 8.38 In clause 2.1 of their undertaking to Fenwick (Document AA/INQ/34), the AA and DPs have included a requirement either for commitments which may include unspecified variations to the existing lease or a new lease on a similar basis. The AA should demonstrate in evidence what it says is unsatisfactory, and it should not rely on unspecified generalities. It is maintained that with the provision of the rights offered there is no need for any further variation in the lease provisions and no ground for uncertainty.
- 8.39 Fenwick's responses to points raised by the AA are as follows:
- i) Insofar as the south-west entrance is concerned, there is no need for any extension in the demise. The original concept plans from Mr Leonard showed a canopy/fascia projecting out at this corner to face down the mall on the upper ground floor, but that is consistent with the retention of the shutter/demise line. Scheme L does not show any extension at this point. In any event, even if there were to be a physical extension, there is no reason for any alteration in the lease terms, let alone expropriation of the whole leasehold interest. The extension would be for public circulation and as such part of the common facilities. The repair and insurance covenants would apply as to any other part of the common facilities and the landlords would recover their costs through the service charge.
 - ii) There is no requirement for an adjustment of the repair and third schedule responsibilities. The lease provisions are drafted to accommodate changes in the relevant areas and the shopping centre as a whole.
 - iii) Clause 2(9) of the lease provides right of access so as to apply to the extended centre.
 - iv) The restrictions in clause 5(4)(a)⁸⁴, including the provisos relating to the location of the bus station and the car parking ratio, would be met by the grant of the rights as proposed, and/or under S237 insofar as it imposes a restriction on use or works pursuant to planning permission.
 - v) The covenant for quiet enjoyment would be addressed as part of the rights that would be included by modification of the Order or through the undertaking.
 - vi) The portico on the southern elevation of the Fenwick building is proposed to be removed as part of the elevational treatment. At that point part of the demise would, as a result of the refurbishment works, be physically outside the external façade of the store and would form part of the area open to the public. That

⁸³ Appendices 3 & 4, Document FEN/DL/2b.

⁸⁴ Fenwick's lease is at Appendix 5 in Document FEN/GC/4b.

situation would have no effect on the repairing obligations, so that Fenwick would continue to be directly liable subject to the landlords' responsibility to maintain the structure of the shopping centre. In any event this matter could be dealt with by a supplemental lease or agreement.

vii) The signing of the Fenwick store at the end of the mall would be in the interest of the good management of the centre as whole and would not require any variation of the lease.

- 8.40 Nothing has been demonstrated where there would be any ground for uncertainty as to the ability to deliver and use the works having regard to the rights which can be included in the Order and/or as subject to the undertaking. The lease terms are consistent with the delivery of the works pursuant to the rights which have been proposed and offered. There is no further variation that has been identified or shown to be required in the public interest or otherwise. Moreover the responses of Mr McGuinness (to the Inspector) and Mr Astbury (in cross-examination) indicate that there has been no consideration of the situation where the powers of compulsory purchase are exercised to expropriate Fenwick's leasehold interest.
- 8.41 There have been confidential discussions to seek to settle the objection, but they have not enabled settlement to be achieved. Fenwick has been open and consistent in its position, but the AA and the DPs have not said openly what new lease terms, if any, they are proposing. In this situation it would be impractical to judge where reasonableness lies. In the final analysis the question would be answered by the Lands Chamber, which would be many years after the powers had been exercised. In the meantime the scheme would be blighted by uncertainty as to the future occupation of the Fenwick store, including the prospect of very considerable compensation liability. That would inevitably undermine confidence in the centre for existing and prospective traders and investors, with potentially the loss of one of the three principal traders, and for retaining existing and attracting new custom, quite apart from direct impact on the economic and employment opportunities created by Fenwick. This uncertainty and the consequent threat to delivery of the scheme is engendered by the AA's insistence that it must acquire the leasehold interest for reasons which, so far as they have been revealed, are considered to be without substance. If this is essentially driven by some wish to establish the best negotiating position, that would be outwith the scope of Part IX of the 1990 Act and should be disregarded. The same would apply to any undisclosed commercial matters.
- 8.42 All of the matters set out in schedule 1 of Fenwick's undertaking are required to accommodate the proposed works. Insofar as they mitigate what would otherwise be the loss caused to Fenwick, that would be brought into account as part of the assessment of compensation. For example, the connections to the multi-storey car park are required for the centre as a whole including the extension. The new entrances to the Fenwick store are required to ensure connection from the car park to the various levels within the extended BXSC. The new elevations are required because of the need to integrate the existing centre with the new extension. The link to the bus station is required to ensure that there is proper accessibility to the east end of the centre. Hence, while these provisions may well have a role in the overall assessment of compensation, there is no basis for suggesting that Fenwick should be

contributing to their cost, in the absence of which its leasehold interest has to be acquired.

- 8.43 The AA's case may come down to the assertion that the compulsory purchase powers to acquire the Fenwick leasehold as last resort provides the certainty that the works can be delivered. However there should be a rational or objective basis for concluding that there is uncertainty. It is Fenwick's case that there is no evidence to demonstrate that there would be uncertainty with the leasehold remaining in place and the acquisition of rights to carry out and use the works.

The Schedule 1 works

The escalator

- 8.44 The inclusion of an escalator between the lower ground floor of the new multi-storey car park and the floor above is important to the operation of BXSC in providing convenient and direct access from the car park through the Fenwick store. The reservation expressed by Mr McGuinness concerns whether it could be physically accommodated. Mr Leonard gave expert evidence on this, and he was confident that the escalator could be provided. Moreover the AA's concern has been addressed by the addition of the qualification *so far as reasonably practicable as part of the approved design* to item (b) in schedule 1.

The bus station link

- 8.45 On the earlier layout plans in 2013 and between then and 2015 a link was shown, running direct from the eastern end of the bus station to the mall⁸⁵. Access is still needed at this point. It is not simply a matter of the distance involved in the diversion to the west or to the east. It is as much the perception of a direct and convenient link together with the flexibility which it provides for those arriving by bus in accessing the different parts of the centre.
- 8.46 This is not as such a new link, because the AA's proposals include an access to the bus station from the east⁸⁶. This is however circuitous and involves crossing the entry and exit lanes for the car park. It is considered that there would be a significant element of bus passengers who would wish to access the east end of the centre. For the functioning of the centre as a whole and this mode in particular provision should be made if that is feasible. That is reinforced by the fact that this would also conveniently connect with arrivals by foot from the other side of the North Circular Road across bridge B4, who could then directly access the bus station via the public lifts without diverting into the mall to its western end. Whilst feasibility needs to be confirmed as part of a detailed design and the relevant standards, it cannot be said at this stage that there is any convincing technical or other reason why a link could not be included in the scheme.
- 8.47 Mr McGuinness referred to advice that the link would be likely to have a negative impact on rental values, since it was planned to have aspirational retailers close to Fenwick, who would draw their principal trade from car borne customers. There is, however, no evidential support in terms of rental

⁸⁵ See note and drawing 1 in Document FEN/INQ/16.

⁸⁶ See the plans of the bus station in Appendix A of Document AA/JSO/04.

comparison or other empirical evidence. With a potential pool of 4,000 persons arriving at or leaving from the bus station in a Saturday peak hour that stream of potential business should not be discouraged.

- 8.48 Although TfL has not objected to the exclusion of the eastern pedestrian link, its role has been to secure proper provision for the bus station. The inclusion of this important link should be required subject to the approval of TfL and the relevant planning and other approvals. The modal shift to sustainable means and in particular the use of the bus station is crucial to the transport strategy for CPO1 and the BXSC proposals in particular. Further the shopping centre needs to be supported to ensure that it thrives as a whole. To the extent that the link is denied, the transport strategy will be damaged and the prospects for the successful trading of the centre as a whole eroded.
- 8.49 The undertaking is made conditional by clause 2.2(b) on the AA and the DPs undertaking that subject to obtaining planning and other approval the scheme shall not be implemented otherwise than to include the works set out in schedule 1. The undertaking only takes effect on the confirmation of the Order either to exclude the leasehold or to modify it to include the rights. The Secretary of State will also have considered whether or not any item in schedule 1 should be required to be included as part of the works. Thus the effect of this undertaking will only be to include the works which the Secretary of State has concluded should be included. Hence it would be reasonable for the AA and the DPs to give the undertaking without prejudicing their case. In any event the Secretary of State is able to secure the scheme without any reliance on the undertaking by modifying the Order to include the rights set out in the proposed modification schedule (Document FEN/INQ/22).
- 8.50 The second cross-undertaking at clause 2.2(b)(ii) is probably unnecessary as it is simply to confirm that the grant of the rights will not technically constitute a breach of the lease covenants. Since the rights are granted for the benefit of the landlords, it is not expected that the AA or the DPs would take the benefit of the rights and then claim that there was a technical breach of the lease.

Conclusions

8.51 Fenwick seeks⁸⁷:

- a) Modification of CPO1 to exclude the Fenwick leasehold interest⁸⁸.
- b) If necessary, CPO1 should be modified to include the rights set out in the schedule of proposed modifications.
- c) It is appropriate that schedule 1 to Fenwick's undertaking should include the items set out there, but if the Secretary of State should come to a different view, that should be stated in the decision.
- d) The items in schedule 1 to Fenwick's undertaking should be required to be included in the works through an undertaking by the AA before the Order is confirmed.

⁸⁷ Fenwick's proposals are set out in paragraph 57 of Document FEN/INQ/20.

⁸⁸ The proposed modifications are set out in Documents FEN/INQ/22, 24 & 25.

CPO2 part of plot 8: 2 Norden Point, Claremont Road

Ms N Choudhury

Case for the Objector

- 8.52 Ms Choudhury is an occupier of a flat in Norden Point, which is one of the tower blocks on the Whitefield Estate. Her objection concerns not only her flat, but acquisition of properties on the estate generally.
- 8.53 Resident owner occupiers would lose their full property rights by the move to shared equity, which would impact on the home owners' sense of security and well-being. Those who wish to reinstate their full property rights are likely to end up in debt. Leaseholders and freeholders should have equivalent property rights on any replacement homes.
- 8.54 Public housing policy should serve the needs of the ordinary citizens of London by providing them with genuinely affordable homes. The building of 7500 homes is welcomed, but in the proposed scheme 85% would not be affordable. Given their likely high price, these properties would not be available to most Londoners. There is concern that the arrangements for affordable housing would still require a financial commitment which would be difficult to support for people on a median London salary. It is considered that affordable homes could be built less expensively if construction were the responsibility of the Council and use was made of its own land.
- 8.55 Modification of both CPO1 and CPO2 is sought to retain most of the existing dwellings on Whitefield Estate, including at least two of the tower blocks, if equivalent property rights would not be made available. The intended layout could be adjusted to achieve this⁸⁹. Existing residential buildings could be modified by works such as recladding and the addition of entrance canopies to assist them to blend in with the new surroundings. It is considered that this approach would result in cost savings. Consideration should be given to reducing the size of the scheme to reduce the impact of pollution from traffic. The design should be improved, with the construction of some high-rise buildings and the retention of existing green space. Another suggestion would be for development of Whitefield Estate to be undertaken by a community group. Replacement dwellings should be provided near to existing properties.
- 8.56 Whilst the idea of regeneration is welcomed, demolition is a threat to the security and life chances of the ordinary citizens. If people have to leave London their life chances will be lower, and it is considered that their children will grow up with less chance of obtaining a job. The AA has not presented a compelling case that the CPOs would be in the public interest. Moreover it is considered that there has been a lack of information for residents which has led to uncertainty. It is alleged that the CPO process has favoured the developers at the expense of the interests of the residents of Whitefield Estate and the public generally. Confirmation of CPO2 would involve a violation of residents' human rights.

⁸⁹ Ms Choudhury has put forward a suggested modification to the intended layout in Appendix 3 to Document NC/4.

CPO2 plot 19: 112 Brent Terrace

Mr & Mrs Barker (OBJ/2/32)

Case for the Objectors

- 8.57 Mr & Mrs Barker are the owners of 112 Brent Terrace. The premises, which comprise an industrial building and yard, were operated as a smelting works until 1999. The site is currently rented to Jesus House who use it for storage.
- 8.58 The family smelting business developed at Brent Terrace and became extremely successful. However in 1995 the Council announced a development scheme which cast doubt over its future. This caused worry to Mr Barker who has subsequently suffered from ill-health. In 1997 it was decided to close the business as the banks would not lend money for necessary investment because of the redevelopment scheme and the prospect of compulsory purchase⁹⁰.
- 8.59 Since 2001 the property has been rented out with difficulty and below market value, for which it is considered the AA bears responsibility. The basis of a deal had been agreed in 2013, but permission for survey work was withdrawn since it appeared that efforts were being made to acquire the property in an inappropriate way. In 2014 only basic land value was offered. Since CPO2 was made in 2015, the objectors' solicitors and valuer have attempted to pursue matters with the AA, but without success.
- 8.60 Since the BXC project was first put forward, about 20 years ago, it has had a damaging effect on the objectors' lives. It has adversely affected their business, their income, Mr Barker's health and, they believe, his reputation. In that regard reference was made to purported allegations concerning Mr Barker's financial affairs.
- 8.61 The objectors consider that they have not been treated fairly during the CPO process. Reference is made to several procedural irregularities, including arrangements concerning the date of the pre-inquiry meeting, service of the AA's statement of case and the relevant date letter⁹¹. There is also concern about lack of consultation and that allowance has not been made for Mr Barker's medical condition, which prevented him taking part in the inquiry⁹². It is disputed that the objectors were consulted on the emerging DF in 2003-04.
- 8.62 An offer was made on the opening day of the inquiry, but there have been no proper negotiations although the property has been available for purchase. The CPO is unnecessary as the objectors are willing participants. The objectors believe that they have been treated unfairly. CPO2 should not be confirmed, given the manner in which the process has been undertaken. If the CPO is modified to exclude plot 19, Mr & Mrs Barker will withdraw their objection⁹³.

⁹⁰ The background to the objections and the matters raised are set out in Documents JKB/1, 4 & 6.

⁹¹ The objectors' concerns are set out in a letter dated 16 February 2016 from Burges Salmon to the National Planning Casework Unit, Appendix 11a, Document JKB/2.

⁹² A letter from Mr Barker's doctor referring to his ability to take part in the inquiry is at Appendix 15 in Document JKB/2.

⁹³ The objectors' position is stated in a letter dated 28 June 2016, Document JKB/5.

9. Statutory objections the subject of written representations – CPO 1

Plots 23, 25-27, 33, 38: Land, buildings and railway arches at Adrian Avenue Plots 41-43: Land north and north-west of West End Vauxhall, North Circular Road

George McIntosh, Francis & Juanita O'Brien (OBJ/1/16)

Case for the Objectors

9.1 Mr McIntosh and Mr & Mrs O'Brien are the owners of land at Adrian Avenue and to the north and north-west of the nearby West End Vauxhall garage. The objectors do not oppose the principle of the scheme, but they are concerned about the following aspects. There has been insufficient information and consultation. The objectors are prepared to facilitate highway improvements without the need for compulsory acquisition of their land. Part of the objectors' land would be left without an access. As there would be no alteration to the railway line, there is no justification to acquire the railway arches. The businesses at the property provide services to the local community and would not be in competition with those at the extended BXSC, nor would they detract from core regeneration objectives. It is considered that the benefits of using the land have not been demonstrated. There are no suitable alternative premises for the businesses operating from the land: they employ about 30 people, and would be threatened with extinguishment. The AA has not sufficiently attempted to negotiate reasonably in advance of obtaining CPO powers: no offers have been received, nor has there been any assistance in finding alternative premises.

Plot 27: Railway Arch 4, Adrian Avenue

MH Costa Construction Ltd (OBJ/1/69)

Case for the objector

9.2 MH Costa Construction is the lessee and occupier of Railway Arch 4 on Adrian Avenue (in plot 27). It is considered that there has not been proper consultation concerning the CPO and development scheme, and that the AA has not engaged in negotiation to agree terms for the acquisition or use of the land without resort to compulsory purchase. The AA has not properly explained why its development objectives could not be achieved without plot 27. Alternative premises were identified in 2014, but the offer of relocation was withdrawn on the basis that this would be premature. In consequence the objector questions the AA's ability to fund the CPO. The AA has not sufficiently justified interfering with the human rights of the objectors.

Plot 77 and plots covering Tilling Road and the A406: Access to Hendon rail transfer station – Brent Terrace and other highways

North London Waste Authority (OBJ/1/23)

Case for the Objector

- 9.3 The North London Waste Authority (NLWA) has a service rights interest in plot 104 (land west of the Holiday Inn)⁹⁴. However its objection relates to access to the Hendon rail transfer station. The rail transfer station itself is situated outside the Order lands (and those of CPO2), but road access is via the northern part of Brent Terrace which is within CPO1. The AA has submitted an undertaking which provides that the NLWA and London Waste Ltd will not be prevented from having access and egress to and from the transfer station (Document AA/INQ/36). Paragraph 8 of the recitals refers to the implementation of temporary one-way traffic control measures along Brent Terrace (north) to facilitate construction of a new junction with Tilling Road.
- 9.4 The NLWA is concerned about disruption to its operations and the ability of the constituent boroughs to access the transfer station for waste disposal as a result of the CPO1 development works and the traffic control measures⁹⁵. It requests that the AA guarantees access and egress to and from the transfer station to enable the NLWA to carry out its statutory duties and for the constituent boroughs and their contractors to dispose of waste. In addition the NLWA seeks advance notice of road closures and abnormal load, traffic management plans relating to works which would affect the rail transfer station, and effective communication on works which may lead to a delay in the movement of waste disposal vehicles.

**Plot 82: Part of 115 Brent Terrace
Plot 83: Cardiff House, Tilling Road**

Browning Jones & Morris Ltd (OBJ/1/17)

Case for the Objector

- 9.5 Browning Jones & Morris is the owner of plots 82 & 83, and an occupier of plot 83. The objector does not oppose the principle of the scheme, but it is concerned about the following aspects. There has been insufficient information and consultation. It is considered that the benefits of using the land have not been demonstrated. There are no suitable alternative premises for the objector's plumbers merchants business, which would be threatened with extinguishment. About 50 people are employed on the objector's land, and there is a threat to their livelihood. The AA has not sufficiently attempted to negotiate reasonably in advance of obtaining CPO powers: no offers have been received, nor has there been any assistance in finding alternative premises.

⁹⁴ See the AA's response concerning objection OBJ/1/23 in Document AA/1NQ/12.

⁹⁵ NLWA commented on the draft undertaking in its letter of 27 June 2016 (Document OO/1/23b). The provisions referred to are included in the final document.

Plot 103: Land, car park and access road to Brent South Shopping Park

Arcadia Group Ltd and Burton/ Dorothy Perkins Properties Ltd (OBJ/1/55)

Case for the objector

9.6 The objector operates a store on Brent South Shopping Park, which is outside the Order lands. Plot 103 includes part of the access road to the shopping park, and Burton/ Dorothy Perkins has a right of access over the plot in respect of unit 7. Arcadia relies on uninterrupted access for its business, and any interference could cause severe damage. There is no indication of the nature or duration of any interference with the access, nor of measures to alleviate such interference or for alternative provision. It has not been demonstrated that there is a sufficiently compelling case to justify interfering with Arcadia's rights under the European Convention on Human Rights.

Plot 103: Land, car park and access road to Brent South Shopping Park

Costa Ltd (OBJ/1/58)

Case for the objector

9.7 Costa operates a store on Brent South Shopping Park, which is outside the Order lands. Plot 103 includes part of the access road to the shopping park, and Costa has a right of access over the plot in respect of Unit 10. The objection is made on the grounds set out in the objection of Arcadia (above, para 9.6).

Plot 103: Land, car park and access road to Brent South Shopping Park

Sportsdirect.com (OBJ/1/25)

Case for the Objector

9.8 The objector operates a store on Brent South Shopping Park, which is outside the Order lands. Plot 103 includes part of the access road to the shopping park, and Sportsdirect.com has a right of access over the plot in respect of unit 4. In April 2016, the objector's agent advised that it was anticipated that agreement could be reached with the AA, but until then the objection would remain. No subsequent communication has been received.

9.9 The developer has indicated that access to the car park and some perimeter land would be taken. No details have been provided as to how the works would be managed to minimise disruption to access to the car park. The loss of some parking spaces could have a significant impact on the ability of Sportsdirect to trade, particularly in conjunction with the general disruption to the surrounding highway network.

Plot 103: Land, car park and access road to Brent South Shopping Park

TK Maxx (OBJ/1/38)

Case for the Objector

9.10 The objector operates a store on Brent South Shopping Park, which is outside the Order lands. Plot 103 includes part of the access road to the shopping park, and TK Maxx has a right of access over the plot in respect of unit 3. The

objector does not oppose the principle of the scheme, but it is concerned about the following aspects. There has been insufficient information and consultation. No demonstration has been provided of the level of disruption to the access, and it has not been possible to assess the effect of this on the business. However the CPO poses a threat to the livelihood of the people employed at the store, who number about 80. It is considered that the benefits of affecting the objector's right of access have not been demonstrated. The AA has not sufficiently attempted to negotiate reasonably in advance of obtaining CPO powers.

Plots 104, 105, 108: The Holiday Inn, Tilling Road

HI (Brent Cross) Ltd (OBJ/1/28)

Case for the Objector

- 9.11 The objector is the owner and occupier of plots 104, 105 & 108, excluding the elevated section of Tempelhof Avenue which crosses plot 105. Discussions have taken place with the AA and Hammerson concerning possible terms of settlement. However a draft agreement does not properly reflect the heads of terms which had been agreed, and the objection remains.
- 9.12 It is evident from the drawings produced for the AA and the DPs, and from the AA's statement of case (CD D6), that the extent of land required, primarily in connection with the new Tempelhof Bridge and realignment of the link to Tilling Road, is limited to parts of the hotel car park. No grounds are stated in either the statement of reasons (DC D4) or the statement of case for acquisition of the interests in the hotel in their entirety. Acquisition and closure of the 154 bedroom hotel would not be in the best interests of the economic wellbeing of the area.
- 9.13 The proposed works would require a substantial portion of the hotel car park to be occupied temporarily, with the permanent loss of some 38 spaces and the coach bay. The availability of suitable and sufficient parking space is essential for the operation of the hotel. If guests and visitors were unable to park there would be damage to the business and its reputation, and potentially significant local traffic and parking difficulties. HI (Brent Cross) objects to the loss of land and interference with its access, unless an undertaking is given to ensure that the hotel could operate without significant interference during and following completion of the works. An undertaking is required which would provide for the availability of sufficient parking spaces during the construction period, permanent replacement parking space, consultation on the timing of construction work and the working methods, and agreement on compensation provisions.

Plot 137: 6 Claremont Way

Gwen Gonzales (OBJ/1/48)

Case for the objector

- 9.14 Gwen Gonzales is the lessee and an occupier of the maisonette at 6 Claremont Way. Ms Gonzales is satisfied with the information about the area where the new homes would be built and the type of replacement homes to be provided. However she is concerned that she has not been provided with enough

information about the financial arrangements, particularly concerning shared equity.

Plot 138: 8 Claremont Way

Maria Jaramillo (OBJ/1/46)

Case for the objector

9.15 Maria Jaramillo is the lessee and an occupier of the maisonette at 8 Claremont Way. An objection to CPO1 was submitted on her behalf by Sawyer Fielding which set out the following grounds for opposing the CPO:

1 – Social. The scheme would not contribute to the social well-being of the area.

2 – Environmental. The scheme would not contribute to the environmental well-being of the area. There would be insufficient replacement of open space. The increased amount of housing, retail development and reconfiguration of the road network would pose a threat to wildlife.

3 – Sustainable development – housing density. Far more houses would be built than demolished, and the increase in density would be excessive.

4 – Insufficient housing for people affected by the CPO. The number of dwellings proposed as replacement accommodation would be insufficient to meet the needs of existing residents.

5 – Shared equity. Insufficient information has been provided on the arrangements for shared equity provision, and there is concern about the likely level of the purchase prices. Brent Terrace is not considered to be a suitable location for the replacement dwellings: the road would not cope with additional traffic and parking demands.

6 – Affordable housing. The proposed level of 15% affordable housing is too low.

7 – Viability. A financial viability report should be made available to enable an assessment as to the appropriateness of the level of affordable housing.

8 – Sustainable development – transport infrastructure. The increase in density would put a strain on the local transport infrastructure. There would be a cumulative problem due to other major developments.

9 – Ability to sell. Properties should be purchased within a reasonable period of time, whereas it is understood that acquisition is not intended for 18-24 months. During this period the vendor would only be able to sell on the open market at a reduced price.

10 – Consultation. Consultation has been insufficient: that undertaken in 2006 and 2007 is no longer valid because of the passage of time. There was consultation for the S73 application, but this would have been limited in its scope.

11 – Local services. Many local services, such as healthcare and education, are overstretched, and, notwithstanding some additional provision, this situation could be exacerbated by the development.

12 - The living bridge. The bridge could be relocated, removing the need for demolition of properties on Whitefield Avenue.

Plot 142: 16 Claremont Way

Jacqueline Davey (OBJ/1/39)

Case for the objector

9.16 Jacqueline Davey is the lessee and an occupier of the maisonette at 16 Claremont Way. The objection has been submitted by Sawyer Fielding and is made on the 12 grounds set out in the objection of Ms Jaramillo (above, para 9.15).

Plot 142: 16 Claremont Way

John Davey (OBJ/1/10)

Case for the Objector

9.17 John Davey is an occupier of the maisonette at 16 Claremont Way. He is concerned about the position of the living bridge. There is insufficient information about the cost and design of replacement housing. The proposed location for this housing would be close to the railway and it would not have good access to a bus route. There is insufficient information about a major waste facility in the area, the type of shops proposed, and healthcare facilities. He agrees that redevelopment is needed, but this should be planned with the local community.

Plot 146: 1 Whitefield Avenue

Helen Pitsillis (OBJ/1/11 & OBJ/2/8)

Case for the Objector

9.18 Helen Pitsillis is the owner and an occupier of the house at 1 Whitefield Avenue, which is on that part of the Whitefield Estate in CPO1. An objection has been submitted by Sawyer Fielding and is made on the 12 grounds set out in the objection of Ms Jaramillo (above, para 9.15). Ms Pitsillis has also submitted objections herself to CPO1 and CPO2 in which she makes the following points. She wishes to continue to live in this community, and is concerned about the environmental effects of the development, including increased traffic, pollution and noise, and the loss of existing green spaces. There is no compelling case for CPO powers, which have not been used as a last resort.

Plot 153: 8 Whitefield Avenue

Pamela Lawrence (OBJ/1/42)

Case for the objector

9.19 Pamela Lawrence is the owner and an occupier of the house at 8 Whitefield Avenue. The objection has been submitted by Sawyer Fielding and is made on the 12 grounds set out in the objection of Ms Jaramillo (above, para 9.15).

Plot 155: 10 Whitefield Avenue

Maedeh Anvarijamalabad & Mehdi Mohammadzadeh (OBJ/1/71)

Case for the objector

9.20 Maedeh Anvarijamalabad & Mehdi Mohammadzadeh are the tenants and occupiers of the house at 10 Whitefield Avenue. They object to the loss of their home, and any replacement should be no more expensive and equivalent in size.

Plot 161: 16 Whitefield Avenue

Ewa Dec (OBJ/1/13)

Case for the Objector

9.21 Ewa Dec is an occupier of the house at 16 Whitefield Avenue. She argues that the living bridge should be repositioned, and is concerned that there is insufficient information about the replacement dwellings, including the shared equity arrangements.

Plot 161: 16 Whitefield Avenue

Marek Dec (OBJ/1/45)

Case for the objector

9.22 Marek Dec is the owner and an occupier of the house at 16 Whitefield Avenue. The objection has been submitted by Sawyer Fielding and is made on the 12 grounds set out in the objection of Ms Jaramillo (above, para 9.15).

Plots 166, 168: 11 Anderson Court, Whitefield Avenue

Audrey Williams (OBJ/1/37)

Case for the objector

9.23 Ms Williams is the tenant and an occupier of the flat at 11 Anderson Court (in plot 168) and of a shed in plot 166. She objects to the CPO on the ground that she has not been given any guarantee that her new home would meet her housing needs.

Plot 167: 6 Anderson Court, Whitefield Avenue

Abdallah & Amal Ata (OBJ/1/9)

Case for the Objector

9.24 Abdallah & Amal Ata are lessees and occupiers of the flat at 6 Anderson Court. Whitefield Estate should remain, and that would not affect the goal of regeneration. The living bridge is not vital for regeneration as there would be other bridges across the North Circular Road. Consultation has been inadequate, and there is insufficient information about replacement accommodation. They are concerned about the financial implications of moving to replacement accommodation. Relocation close to the main railway line would be unsatisfactory.

Plot 173: 11 Dyson Court, Whitefield Avenue

Joe Chi-Chao Lin (OBJ/1/67 & OBJ/2/23)

Case for the objector

9.25 Joe Chi-Chao Lin is an occupier of the flat at 11 Dyson Court (in plot 173). There is insufficient information about the size of the replacement housing, and the objector is concerned about the cost and tenancy arrangements. Brent Terrace is not an appropriate location for the replacement housing, particularly due to the nature of the road. There is concern about the loss of green space. The redevelopment scheme would affect traffic and public transport would be less convenient in relation for the replacement housing. This residential area should not be demolished. Meiling Lin, who occupies the same flat, is disabled and has difficulty in walking.

Plot 173: 11 Dyson Court, Whitefield Avenue

Meiling Lin (OBJ/1/66 & OBJ/2/22)

Case for the objector

9.26 Meiling Lin is the tenant and an occupier of the flat at 11 Dyson Court (in plot 173). The objection is made on the grounds set out in the objection of Joe Chi-Chao Lin (above, para 9.25).

Plot 178: 1 Rawlinson Court, Whitefield Avenue

Pauline Prior (OBJ/1/8)

Case for the Objector

9.27 Pauline Prior is the tenant and occupier of Flat 1, Rawlinson Court. Her objection is set out in the same terms as that of Ewa Dec (above, para 9.21).

Plots 236, 236a & 237: Land between the North Circular Road and Oakfield Court (formerly 17-35 Brentmead Place)

Trustees of the Kingsley Way Charitable Trust (OBJ/1/12)

Case for the Objector

9.28 The Trustees are the owners of the yard situated between the North Circular Road and Oakfield Court⁹⁶. The CPO is unnecessary to ensure that the BXC development is acceptable in planning terms. The highway improvements covered by the S73 permission provide a workable, safe and satisfactory layout⁹⁷. There is no evidence that alternative proposals have been considered within the adopted highway and/ or land covered by the S73 permission. Any acquisition should be reduced to the amount required to deliver highway works. The proposed scheme would only require about 29% of the site, and this would be reduced to 12% with use of a retaining wall instead of an embankment⁹⁸.

⁹⁶ In table 1 of CPO1 the trustees are also identified as the lessees of plot 237 and TfL is identified as an owner of plot 236a as highway authority and in respect of highway signage.

⁹⁷ The approved highway layout is shown on the plan at Appendix B in Document OO/1/12b.

⁹⁸ Plans showing the land required from the objectors' site for construction of the proposed highway works with an embankment and with a retaining wall are at Appendices C & D respectively in Document OO/1/12b.

Reduction of the land-take to that actually required would enable the objectors to promote residential development on the remaining part of their site. The site is well-located for housing and an access has been devised which would be compatible with both the S73 and the proposed highway layouts. Acquisition would breach the Trustees' right to peaceful enjoyment of their land under Article 1 of the First Protocol of the European Convention on Human Rights.

Plot 244: 111 Highfield Avenue

111 Highfield Avenue Management Company & Others (OBJ/1/64)

Case for the objector

9.29 111 Highfield Avenue is occupied as flats. Plot 244 is the forecourt of the building which is used for parking. The management company is the owner, lessee and occupier of the land, over which the occupiers of the flats have rights of access. It is considered that there has not been proper consultation concerning the CPO and development scheme, and that the AA has not engaged in negotiation to agree terms for the acquisition or use of the land without resort to compulsory purchase. The AA has not properly explained why its development objectives could not be achieved without plot 244.

9.30 The land provides access to and parking for 111 Highfield Avenue: insufficient details have been provided to demonstrate that adequate access would be provided after acquisition. Without parking facilities, the use of the property would be seriously affected. No offer of alternative parking has been made. The AA has not sufficiently justified interfering with the human rights of the objectors.

Plots 254, 255: 1 Claremont Road

Pampa Holdings Ltd (OBJ/1/72)

Case for the objector

9.31 1 Claremont Road appears to be occupied as flats. Plots 254 & 255 are part of the open area to the front and side of the building. Pampa Holdings are the owner and occupier of the land. It is considered that there has not been proper consultation concerning the CPO and development scheme, and that the AA has not engaged in negotiation to agree terms for the acquisition or use of the land without resort to compulsory purchase. The AA has not properly explained why its development objectives could not be achieved without plots 254 & 255.

9.32 The plots form part of the parking area for the property, without which its use and enjoyment would be severely affected. Plot 255 extends across the frontage, and there are no details as to how vehicular access would be gained if the AA acquires rights over this land. No offer of alternative parking has been made. The AA has not sufficiently justified interfering with the human rights of the objectors.

**Plots 264-266: 164-168 Cricklewood Broadway, 2b & 2c Cricklewood Lane
RAL Ltd (OBJ/1/53)**

Case for the objector

9.33 RAL Ltd is a lessee of 164-168 Cricklewood Broadway (plot 264) and 2b & 2c Cricklewood Lane (plots 266 & 265). It operates the greater part of the ground floor as an amusement arcade/ adult gaming centre, trading as Quicksilver. The objector does not wish to be deprived of its interest in the property. The AA has not demonstrated that the proposed alteration to the junction of Cricklewood Broadway/ Cricklewood Lane is necessary, or that a satisfactory scheme could not be carried out without acquisition. In any event only a small portion of the property would be required permanently for the junction alteration. There is no evidence that that part of the property could not be demolished, leaving the remainder in place.

9.34 There is concern that no suitable property would be available if the Order were confirmed. If removal of the property is necessary, provision should be made for a replacement unit on that part of the site not required. RAL would be prepared to surrender its interest subject to compensation and an agreement for the offer of a lease of a new unit.

9.35 The Order should not be confirmed without the exclusion of the property, or the power of compulsory purchase being limited to that part of the property required for the junction works, or the exercise of the powers being subject to a legal agreement concerning the lease of a new unit. It has not been demonstrated that there is a sufficiently compelling case to justify interfering with RAL's rights under the European Convention on Human Rights.

Plots 282, 334-336, 435, 460: Store A and service yard U, Brent Cross Shopping Centre

John Lewis Properties Plc & John Lewis Plc (OBJ/1/20)

Case for the Objectors

9.36 John Lewis Properties Plc holds a leasehold interest in store A, which is operated by John Lewis Plc. Forced acquisition of the store would result in its closure with the loss of around 730 jobs and a key anchor tenant. Moreover the CPO would not allow the developer to undertake the intended scheme, which includes retention of the John Lewis store. Acquisition of a part of the store would result in material detriment, such that the AA should take the entirety of the interest or none of it. It is understood that the scheme would require significant building works: the disruption involved would necessitate careful management through a bilateral commercial agreement and carefully programmed works. The costs involved could not be met without a commercial agreement, and consequently the store would close.

9.37 Whilst the DPs and the AA acknowledge the need to mitigate the impact of the CPO, the detailed redevelopment arrangements, access rights, phasing programmes and letting agreements necessary to achieve that mitigation can only be achieved by a wholly different arrangement and scheme of delivery.

Inclusion of the store within the CPO is not justified and is premature. The undertaking by the AA and the DPs to the objectors (Document AA/INQ/42⁹⁹) seeks to set parameters within which commercial negotiations should take place rather than simply undertake not to acquire part of the objectors' property. The continued presence of John Lewis in BXSC is dependent on a commercial agreement which should confirm the terms of the new lease and how trading at the store would be protected. Clauses 2.2-2.4 of the undertaking are inadequate when John Lewis is expected to occupy smaller re-ordered premises.

Plots 295, 332, 377, 418: Units E6 & B4, Brent Cross Shopping Centre

Signet Group Ltd (OBJ/1/52 & 56)

Case for the objector

9.38 Signet has submitted two separate objections. Firstly in respect of Unit E6 in BXSC (plot 295) where it is the tenant and occupier, trading as Ernest Jones, and for which premises it has the right to use service yard unit Z15 (in plot 332). Secondly in respect of Unit B4 (plot 377), where it is a lessee and the occupier, trading as H Samuel, and for which premises it has the right to use service yard unit W16 (in plot 418). The objector does not wish to be deprived of its interest in the properties. The AA has not demonstrated that the acquisition of Signet's interest is necessary for the alterations and extension to BXSC, and the Order is premature. It has not been demonstrated how servicing and access arrangements would be affected if the properties were retained. There is concern that no suitable properties would be available if the Order were confirmed. Signet is represented in many prime locations and provision should be made for replacement units within the development. The AA has not demonstrated that regeneration of the land to the south of the North Circular Road would not be achieved without CPO1. Insufficient efforts have been made to purchase the leasehold interests. It has not been demonstrated that there is a sufficiently compelling case to justify interfering with Signet's rights under the European Convention on Human Rights.

Plots 301, 365, 418: Units F1 & B16, Brent Cross Shopping Centre

Holland & Barrett Retail Ltd (OBJ/1/29 & 30)

Case for the Objector

9.39 Holland & Barrett has submitted separate objections in respect of Unit F1 in BXSC (plot 301) where it is the tenant and occupier, trading as Holland & Barrett Ltd, and in respect of Unit B16 (plot 365) where it is a lessee and the occupier, trading as GNC (Health & Diet Centres Ltd). The company also has the right to use service yard unit W16 (in plot 418).

9.40 The AA has failed to engage adequately with the objector and has failed to have regard to the objector's interest. The proposal does not acknowledge the contributions which the businesses provide or make provision for their relocation. Article 1 of the First Protocol of the European Convention on Human Rights is engaged, and there would be violation of the Objector's rights unless

⁹⁹ John Lewis's agent commented on the draft undertaking in its letter of 30 June 2016 (in Document OO/1/20b). The provisions referred to are included in the final document.

there is provision of property to enable relocation or compensation sufficient to overcome the effect of being deprived of potentially valuable business.

Plots 317, 418: Unit D13, Brent Cross Shopping Centre

Vision Express (UK) Ltd (OBJ/1/73)

Case for the objector

9.41 Vision Express is the lessee and occupier of Unit D13 in BXSC (plot 317), and it has the right to use service yard unit W12 (in plot 418). It is not necessary to acquire all of the land and buildings to carry out the scheme, including the premises occupied by Vision Express. The modification of service rights could be dealt with under the normal occupancy arrangements. The extent of the Order is excessive.

Plots 320, 404, 419, 454: Store 1, Brent Cross Shopping Centre

WH Smith Retail Holdings Ltd (OBJ/1/65)

Case for the objector

9.42 WH Smith is a lessee, tenant and occupier of Store 1 in BXSC (plots 320, 404, 454), and it has the right to use service yard unit V1 (in plot 419). The objector does not wish to be deprived of its interest in the property. The AA has not demonstrated that the acquisition of WH Smith's interest is necessary for the alterations and extension to BXSC, and the Order is premature. It has not been demonstrated how servicing and access arrangements would be affected if the property is retained. Any temporary loss of parking may result in a reduction in trade.

9.43 There is concern that no suitable property would be available if the Order were confirmed. WH Smith is represented in many prime locations and provision should be made for a replacement unit within the development. The AA has not demonstrated that regeneration of the land to the south of the North Circular Road would not be achieved without CPO1. Insufficient efforts have been made to reach agreement with the objector. It has not been demonstrated that there is a sufficiently compelling case to justify interfering with WH Smith's rights under the European Convention on Human Rights. Discussions have taken place with the AA, which have resulted in the preparation of draft heads of terms for an agreement, but these have not been agreed. The Order should not be confirmed until or unless a legal undertaking is in place which will provide that WH Smith's interest is not to be acquired, and that agreed measures will be taken to ensure that there will be uninterrupted access, servicing and means of escape, and that the impact of the proposed works on the objector's property will otherwise be mitigated.

Plots 326, 332: West Court, Brent Cross Shopping Centre

Costa Ltd (OBJ/1/57)

Case for the objector

9.44 Costa is the tenant and occupier of West Court¹⁰⁰ in BXSC (plot 326), and it has the right to use service yard unit Z23 (in plot 332). The objection is made on the grounds set out in the objection of Signet (above, para 9.38).

Plots 329 & 355: Unit C12, Brent Cross Shopping Centre

Telefonica UK Ltd (OBJ/1/6)

Case for the Objector

9.45 Telefonica UK Ltd is the tenant and occupier of Unit C12 (plot 355) and has the right to use service yard unit Y12 (in plot 329). Telefonica argues that there would be an unacceptable loss of existing properties in BXSC and a loss of jobs. Demand for additional floorspace is unproven, and there would be significant disruption during construction. There would be a detrimental effect on the existing centre. There is insufficient evidence that the scheme is deliverable, and its timely implementation and economic and regeneration benefits are not proven. In any event, the purpose of the CPO can be met without acquisition of Telefonica's premises: there is no compelling case in the public interest which would justify the proposed interference.

Plots 332, 337, 436: Unit C1, Brent Cross Shopping Centre

Arcadia Group Ltd and Top Shop/ Top Man Properties Ltd (OBJ/1/47)

Case for the objector

9.46 Top Shop/ Top Man Properties is the tenant and occupier of Unit C1 in BXSC (plots 337 & 436), and it has the right to use service yard units Z7a and Z7b (in plot 332). The objection is made on the grounds set out in the objection of Signet (above, para 9.38).

Plots 332, 340, 438: Unit N17/C2, Brent Cross Shopping Centre

River Island Clothing Co Ltd (OBJ/1/49)

Case for the objector

9.47 River Island is the lessee and occupier of Unit N17/C2¹⁰¹ in BXSC (plots 340 & 438), and it has the right to use service yard units Z16 and Z17 (in plot 332). From initial discussions it is understood that River Island's operations would not be affected, but if the CPO were implemented the business could be extinguished. The proposals and the impact on the objector's business and rights are uncertain. If the only impact on the business were to be disruption to the car park arrangements, compulsory acquisition would be disproportionate.

¹⁰⁰ Referred to as Court 1 in the letter of objection.

¹⁰¹ The letter of objection refers to River Island's upper ground floor accommodation as Units N7 & C2. However it is identified as Unit N17/C2 in both table 1 and plan 5 of the Order.

Plots 359-362, 445, 463: The Supermarket, Brent Cross Shopping Centre

Waitrose Ltd (OBJ/1/19)

Case for the Objector

9.48 Waitrose is the tenant and occupier of a store in BXSC (plots 359, 360, 362, 445 & 463), and it has the right to use service yard unit X2 and a customer collection point (in plot 361). Acquisition of the store would extinguish the business and result in the loss of almost 150 jobs and an important local food shopping destination. There is no proper explanation as to why Waitrose's interests are included in the CPO: it is understood that the store is not required to be taken to deliver the proposed scheme.

9.49 The AA's evidence indicates that the store is not required, and clause 2.2 of the undertaking by the AA and Hammerson (Document AA/INQ/43) envisages that the store would remain in operation during the carrying out of the development. The purpose of clause 2.1 (which is an undertaking not to implement the Order in certain circumstances) appears to be an attempt to curtail the claim of compensation. The submission of the undertaking confirms that the store is not required for the scheme. Waitrose is willing to co-operate with Hammerson during construction of the new works, and has been involved in negotiations on a non-movers agreement. This agreement would be contingent on a new lease being granted to Waitrose, the drafting of which was being negotiated during the course of the inquiry.

Plots 364, 376, 418: Units N11, B5 & B6, Brent Cross Shopping Centre

JD Sports Fashion Plc (OBJ/1/32 & 33)

Case for the Objector

9.50 JD Sports Fashion has submitted separate objections in respect of Unit N11 in BXSC (plot 364) where, trading as Blacks Outdoor Retail, it is the tenant and occupier, and in respect of Units B5 & B6 (plot 376) where, trading as JD Sports Ltd, it is also the tenant and occupier. The company also has the right to use service yard units W7 & W26 (in plot 418). Both objections are set out in the same terms as those of Holland & Barrett (above, paras 9.39-9.40).

Plot 367: Unit B12, Brent Cross Shopping Centre

Hutchison 3G UK Ltd (OBJ/1/61)

Case for the objector

9.51 Hutchison 3G UK Ltd, trading as Three, is the tenant and occupier of Unit B12 in BXSC (plot 367). The objection is made on the grounds set out in the objection of WH Smith (above, paras 9.42 & 9.43).

Plots 404, 405, 419: Store 1 and Unit A8, Brent Cross Shopping Centre

All Saints Retail Ltd (OBJ/1/54)

Case for the objector

9.52 All Saints is a lessee and occupier of Store 1 (plot 404), and the tenant and occupier of Unit A8 (plot 405) in BXSC. The company also has the right to use

service yard unit V1 (in plot 419). The objection is made on the grounds set out in the objection of Signet (above, para 9.38).

Plots 418, 427: Unit S4, Brent Cross Shopping Centre

Gourmet Burger Kitchen (OBJ/1/60)

Case for the objector

9.53 Gourmet Burger Kitchen is a lessee and the occupier of Unit S4 in BXSC (plot 427), and it has the right to use service yard unit W39 (in plot 418). The objection is made on the grounds set out in the objection of WH Smith (above, paras 9.42 & 9.43).

Plots 419, 421: Unit S1, Brent Cross Shopping Centre

Pizza Express Restaurants Ltd (OBJ/1/59)

Case for the objector

9.54 Pizza Express is a lessee and the occupier of Unit S1 in BXSC (plot 421), and it has the right to use service yard unit V28 (in plot 419). The objection is made on the grounds set out in the objection of WH Smith (above, paras 9.42 & 9.43).

Various plots within CPO1

Transport for London and London Bus Services Ltd (OBJ/1/21)

Case for the Objectors

9.55 The CPO includes land in the freehold and leasehold ownership of the objectors and other land which is owned and managed by them. Agreement has been reached on highway matters: the AA has agreed not to compulsorily acquire its interest in the land included in the Order except for certain agreed plots. Accordingly TfL's objection in respect of highway matters has been withdrawn.

9.56 The outstanding objection concerns the inclusion of Brent Cross bus station in the CPO. London Bus Services is a lessee and occupier of the bus station (plot 330) and of the adjacent rest room (in plot 331). An agreement has been completed between the objectors, the AA and the DPs, which provides comfort to the objectors that the AA would not exercise powers under the Order in respect of London Bus Services's interests in plots 330 & 331 if property agreements for the relocation of the bus station have been concluded. Those agreements for surrender of the existing bus station and for the lease of the proposed new bus station had not been finalised by the close of the inquiry, and the objection concerning the bus station remained.

9.57 TfL has a duty to provide safe, integrated, efficient and economic transport services in Greater London. Compulsory purchase of the bus station would adversely affect TfL's ability to provide these services. Compulsory acquisition is unnecessary as a contractual mechanism exists for relocation, and TfL would be willing to agree amendments to that lease to account for development over the bus station. Alternatively TfL is willing to enter a new agreement for a lease with the DPs.

- 9.58 Compulsory acquisition of the bus station would leave TfL unable to ensure that suitable management and maintenance arrangements are in place. It would create the risk that the bus station could become a less attractive environment which in turn could mean that there would be less use of public transport. At its most extreme, there is the risk that TfL could be denied access to the bus station or that the bus station could become unsafe. In either eventuality TfL would be unable to operate buses from the existing or new bus station.
- 9.59 Any reduction in the quality or frequency of bus services would undermine the commitments to enhance public transport made through the S73 permission and the S106 agreement. The modal shift assumed in highway design would not be achieved, and the highway system would be unlikely to have sufficient capacity to meet demand, thereby threatening the successful regeneration of BXC.

10. Statutory objections the subject of written representations – CPO 2

Plot 5: 10 Whyhcote Point, Claremont Road

Galabina Yordanova (OBJ/2/20)

Case for the objector

10.1 Galabina Yordanova is the tenant and occupier of the flat at 10 Whyhcote Point (in plot 5). Insufficient information has been provided about the project, in particular about the replacement housing and its tenancy arrangements. There is concern about the cost of the new housing, and there would not be enough affordable homes. The proposed development would damage the environment through diversion of the River Brent and the construction of new roads. It would also cause disruption and distress to residents. The living bridge should be relocated. There is concern about emissions from the waste handling facility, and the rail freight facility would increase traffic and pollution. Existing green spaces should be retained. There is a need for health centres and a public hospital, rather than a private hospital. Parking charges should not be introduced at BXSC, nor a controlled parking zone on Whitefield Estate. The CPO would infringe the human rights of the objector's family and of residents on the Estate.

Plot 5: 13 Whyhcote Point, Claremont Road

Susan Iglesias (OBJ/2/26)

Case for the objector

10.2 Susan Iglesias is the tenant and an occupier of the flat at 13 Whyhcote Point (in plot 5). Insufficient information has been provided about the project. She is concerned that replacement housing would not be provided on the same terms as existing housing. A choice of accommodation should be provided. Offers of compensation have not been acceptable. The CPO would infringe the objector's human rights.

Plot 5: 17 Whyhcote Point, Claremont Road

Belinda Bardon (OBJ/2/16)

Case for the objector

10.3 Belinda Bardon is the lessee and occupier of the flat at 17 Whyhcote Point (in plot 5). She is a pensioner and would be unable to obtain a mortgage because of her age; she is also disabled and needs a flat which is adapted to her needs. Insufficient information has been provided about the development and the arrangements for, and cost of, replacement accommodation. There is concern about the risk from contaminated land. The waste handling facility could increase air emissions, and the rail freight facility is expected to increase traffic and air pollution. There is concern about the effect on green spaces. The living bridge should be relocated so that the Whitefield Estate can remain intact: in any event construction of the bridge should not require the demolition of the three tower blocks (Whyhcote Point, Clare Point & Norden Point). CPO powers have not been exercised as a last resort, and the Order is premature.

Plot 5: 18 Whyhcote Point, Claremont Road

Son Htut Maung Maung Kyi (OBJ/2/40)

Case for the objector

10.4 Son Htut Maung Maung Kyi is the lessee and an occupier of the flat at 18 Whyhcote Point (in plot 5). The objection is made in similar terms to the objection of Belinda Bardon apart from the latter's personal circumstances (above, para 10.3).

Plot 5: 25 Whyhcote Point, Claremont Road

James Foley (OBJ/2/5)

Case for the objector

10.5 James Foley is a tenant and occupier of the flat at 25 Whyhcote Point (in plot 5). The position of the living bridge would damage the local community and lead to a loss of land for affordable housing. There is concern that the tenancy arrangements in the replacement accommodation would not be comparable to those currently in force. There is a lack of information about the location and design of the new housing.

Plot 5: 25 Whyhcote Point, Claremont Road

Sabine Foley (OBJ/2/6)

Case for the objector

10.6 Sabine Foley is a tenant and occupier of the flat at 25 Whyhcote Point (in plot 5). She is concerned that the tenancy arrangements in the replacement accommodation would not be comparable to those currently in force.

Plot 5: 34 Whyhcote Point, Claremont Road

Natasha Mulcahy (OBJ/2/18)

Case for the objector

10.7 Natasha Mulcahy is the tenant and occupier of the flat at 34 Whyhcote Point (in plot 5). She is concerned that insufficient information has been provided about replacement housing, referring specifically to tenancy arrangements, cost, location, design and size.

Plot 6: 2 Clare Point, Claremont Road

Rekha Bhagwan & Hemal Bhagwan¹⁰² (OBJ/2/38)

Case for the objectors

10.8 Rekha Bhagwan is the lessee of the flat at 2 Clare Point (in plot 6). Both objectors are occupiers of the flat. The initial objection was submitted by Sawyer Fielding and is made on grounds 1-11 set out in the objection of Ms Jaramillo (above, para 9.15).

10.9 The following additional points were made in the statement of case. There has been insufficient information about the development, including the replacement housing. The waste handling facility would increase emissions, and the rail freight facility would lead to more traffic and air pollution. There is also concern about contaminated land. The living bridge would not necessitate the demolition of the three tower blocks on Whitefield Estate. The objectors are concerned about the cost of affordable housing and the level of offers for existing dwellings. There is no compelling case for CPO powers, which have not been used as a last resort.

Plot 6: 10 Clare Point, Claremont Road

Pam & Frank Junghanns (OBJ/2/2)

Case for the objector

10.10 Frank Junghanns is the tenant and Pam & Frank Junghanns are the occupiers of the flat at 10 Clare Point (in plot 6). They are concerned that tenancy arrangements in the replacement accommodation will be less favourable than those they currently have. They object to the location of the living bridge. The project would result in excessive traffic and cause pollution.

Plot 6: 13 Clare Point, Claremont Road

Giorgia Bonfili (OBJ/2/4)

Case for the objector

10.11 Giorgia Bonfili is the tenant and an occupier of the flat at 13 Clare Point (in plot 6). The CPO poses a threat to the exercise of right to buy options, and there is concern that the tenancy arrangements in the replacement

¹⁰² The initial objection was submitted by Rekha Bhagwan, but a statement of case was submitted jointly with Hemal Bhagwan.

accommodation would not be comparable to those currently in force. There is a lack of detail about the new housing.

Plot 6: 13 Clare Point, Claremont Road

Rufus Holingbery (OBJ/2/31)

Case for the objector

10.12 Rufus Holingbery is an occupier of the flat at 13 Clare Point (in plot 6). He has special needs, and depends on his mother's support. His mother has applied to buy the flat, and it is important that this application is successful for the stability of their family home. There is concern that the tenancy arrangements in the replacement accommodation would not be comparable to those currently in force. There is a lack of detail about the new housing. Alternatively the living bridge should be built elsewhere to avoid affecting homes and the objector's life.

Plot 6: 21 Clare Point, Claremont Road

Kamala Chohan (OBJ/2/24)

Case for the objector

10.13 Kamala Chohan is the tenant and an occupier of the flat at 21 Clare Point (in plot 6). Insufficient information has been provided about the project, in particular about the replacement housing and its tenancy arrangements and cost.

Plot 6: 22 Clare Point, Claremont Road

Moshe Glater (OBJ/2/33)

Case for the objector

10.14 Moshe Glater is the lessee of the flat at 22 Clare Point (in plot 6). The objection has been submitted by Sawyer Fielding and it includes grounds 2-4 and 6-11 set out in the objection of Ms Jaramillo (above, para 9.15). As the objector is a non-resident owner, he would not be entitled to a shared equity arrangement, and he would be unable to replicate his investment potential in another nearby property. The objector would not qualify for a capital gains tax exemption. If the property were acquired by the AA rather than the developer, a non-resident owner would be entitled to receive rollover relief, providing an opportunity to defer payment of tax.

Plot 6: 25 Clare Point, Claremont Road

Fatma Husseyin (OBJ/2/36)

Case for the objector

10.15 Fatma Husseyin is the lessee of the flat at 25 Clare Point (in plot 6). The objection has been submitted by Sawyer Fielding and is made in the same terms as the objection of Mr Glater (above, para 10.14).

Plot 6: 32 Clare Point, Claremont Road

Eileen J Touil (OBJ/1/3 & OBJ/2/3)

Case for the Objector

10.16 Eileen Touil is a tenant and occupier of a flat on that part of the Whitefield Estate in CPO2, and she objects to both CPOs. She is not opposed to a regeneration scheme, but makes several particular criticisms. If the Living Bridge were relocated, for example to Staples Corner, there would be no need to demolish homes for it. Insufficient detail has been provided about shared equity and assured tenancies. More information is needed about bus routes, medical facilities, the relocation of occupants of the tower blocks, the relocation of schools, shops in the extended BXSC, and protection for residents during construction. A new bus station is needed and parking charges should be introduced at BXSC. The community's needs should be taken into account if people are to lose their homes.

Plot 8: 2 Norden Point, Claremont Road

Ferdous Choudhury (OBJ/2/11)

Case for the objector

10.17 Ferdous Choudhury is the lessee and an occupier of the flat at 2 Norden Point (in plot 8). The objection is made on the grounds set out in the objection of Son Htut Maung Maung Kyi (above, para 10.4).

Plot 8: 3 Norden Point, Claremont Road

Manjuben Lad (OBJ/2/19)

Case for the objector

10.18 Manjuben Lad is the lessee and an occupier of the flat at 3 Norden Point (in plot 8). The objection is made in similar terms to the objection of Son Htut Maung Maung Kyi (above, para 10.4). In addition, Mrs Lad mentions that she is disabled and has health problems: she requires ground floor accommodation.

Plot 8: 7 Norden Point, Claremont Road

Florence Omolara Oluwo (OBJ/2/10)

Case for the objector

10.19 Florence Omolara Oluwo is the lessee and occupier of the flat at 7 Norden Point (in plot 8). The objection is made in similar terms to the objection of Son Htut Maung Maung Kyi (above, para 10.4).

Plot 8: 8 Norden Point, Claremont Road

Cecilia Woyongo (OBJ/2/25)

Case for the objector

10.20 Cecilia Woyongo is the tenant and occupier of the flat at 8 Norden Point (in plot 8). She is concerned that insufficient information has been provided about replacement housing, referring specifically to tenancy arrangements and cost.

Plot 8: 17 Norden Point, Claremont Road

Samer Nehme (OBJ/2/7)

Case for the objector

10.21 Samer Nehme is the lessee and an occupier of the flat at 17 Norden Point (in plot 8). The objection is made in similar terms to the objection of Son Htut Maung Maung Kyi (above, para 10.4).

Plot 8: 18 Norden Point, Claremont Road

Bhikhalal Mevada (OBJ/2/12)

Case for the objector

10.22 Bhikhalal Mevada is an occupier of the flat at 18 Norden Point (in plot 8). The objection is made in similar terms to the objection of Son Htut Maung Maung Kyi (above, para 10.4).

Plot 8: 18 Norden Point, Claremont Road

Harsha Mevada (OBJ/2/13)

Case for the objector

10.23 Harsha Mevada is an occupier of the flat at 18 Norden Point (in plot 8). The objection is made in similar terms to the objection of Son Htut Maung Maung Kyi (above, para 10.4).

Plot 8: 18 Norden Point, Claremont Road

Sachin Mevada (OBJ/2/14)

Case for the objector

10.24 Sachin Mevada is a lessee and occupier of the flat at 18 Norden Point (in plot 8). The objection is made in similar terms to the objection of Son Htut Maung Maung Kyi (above, para 10.4).

Plot 8: 18 Norden Point, Claremont Road

Bhavika Mevada (OBJ/2/15)

Case for the objector

10.25 Bhavika Mevada is a lessee and occupier of the flat at 18 Norden Point (in plot 8). The objection is made in similar terms to the objection of Son Htut Maung Maung Kyi (above, para 10.4).

Plot 8: 25 Norden Point, Claremont Road

Real Homes Ltd (OBJ/2/34)

Case for the objector

10.26 Real Homes is the lessee of the flat at 25 Norden Point (in plot 8). The objection has been submitted by Sawyer Fielding and is made in the same terms as the objection of Mr Glater (above, para 10.14).

Plot 8: 26 Norden Point, Claremont Road

Flerida Sanchez (OBJ/2/29)

Case for the objector

10.27 Flerida Sanchez is the tenant and an occupier of the flat at 26 Norden Point (in plot 8). Regeneration is welcomed, but there are objections concerning replacement accommodation and parking. Insufficient information has been provided about replacement housing, with specific reference made to tenancy arrangements, cost and location. It is not known whether secure parking would be available for residents. There is concern about the implications for parking if building work commences on part of the Estate whilst Norden Point is still occupied.

Plot 8: 28 Norden Point, Claremont Road

Olatokunbo Benson (OBJ/2/17)

Case for the objector

10.28 Olatokunbo Benson is the lessee of the flat at 28 Norden Point (in plot 8). The objection is made in similar terms to the objection of Son Htut Maung Maung Kyi (above, para 10.4).

Plot 8: 30 Norden Point, Claremont Road

Mariam Amin (OBJ/2/28)

Case for the objector

10.29 Mariam Amin is the lessee and an occupier of the flat at 30 Norden Point (in plot 8). The objection is made in similar terms to the objection of Son Htut Maung Maung Kyi (above, para 10.4).

Plot 8: 32 Norden Point, Claremont Road

Investpond Ltd (OBJ/2/35)

Case for the objector

10.30 Investpond is the lessee of the flat at 32 Norden Point (in plot 8). The objection has been submitted by Sawyer Fielding and is made in the same terms as the objection of Mr Glater (above, para 10.14).

Plot 8: 38 Norden Point, Claremont Road

Raschid Jaffrey (OBJ/2/39)

Case for the objector

10.31 Raschid Jaffrey is a lessee of the flat at 38 Norden Point (in plot 8). The objection is made in similar terms to the objection of Son Htut Maung Maung Kyi (above, para 10.4). In addition Mr Jaffrey mentions that he is disabled and requires ground floor accommodation.

Plot 8: 40 Norden Point, Claremont Road

Mohammed Alam, Shelena Begum & Pavel Alam (OBJ/2/30)

Case for the objectors

10.32 Mohammed Alam & Shelena Begum are tenants of the flat at 40 Norden Point: all three objectors are occupiers of the flat. The benefit of regeneration is acknowledged, but there are concerns about replacement housing. Insufficient information has been provided about the financial arrangements, location and type of accommodation. The redevelopment would cause disruption to travel and there would be a negative impact on wildlife and green spaces. As there would be other bridges over the North Circular Road, the living bridge would be insignificant, and there is no need to relocate families to enable construction. There is concern about the quality of land intended for new residential development.

Plot 8: 43 Norden Point, Claremont Road

Ian Redgrave (OBJ/2/37)

Case for the objector

10.33 Ian Redgrave is the lessee and occupier of the flat at 43 Norden Point (in plot 8). The objection has been submitted by Sawyer Fielding and is made on grounds 1-11 set out in the objection of Ms Jaramillo (above, para 9.15).

Plot 23: Cricklewood Concrete Plant, Brent Terrace

Hope Construction Materials Ltd (OBJ/2/41)

Case for the objector

10.34 Hope Construction Materials Ltd is the lessee, tenant and occupier of Cricklewood Concrete Plant on Brent Terrace¹⁰³. The objector does not wish to be deprived of its interest in the property. There is concern that no suitable property would be available if the Order were confirmed. It cannot be said that it is not possible to acquire the site by agreement. It has not been demonstrated that there is a sufficiently compelling case to justify interfering with Hope Construction Materials's rights under the European Convention on Human Rights.

11. Other Submissions opposing the Acquiring Authority

11.1 Each of these objections was the subject of an inquiry appearance.

Whitefield Residents (OBJ/2/21)

Case for the objectors

11.2 Although Whitefield Residents is not a qualifying person, the individual residents who appeared on its behalf have this status, as do residents of the estate generally. Whitefield Estate comprises a variety of dwellings in CPOs 1 and 2 (above, paras 2.8 & 2.12). In addition to the objection submitted collectively, several residents submitted individual objections to the CPOs. The Residents Group does not object to a fair and well thought out/planned regeneration scheme. However it opposes the CPOs since these would result in the loss of

¹⁰³ Plot 23 is referred to as Units 2& 3 McGovern's Yard, Claremont Way Industrial Estate in table 1 of the CPO.

homes, break up the community, and there is concern that homes on the redeveloped site will not be affordable.

- 11.3 The living bridge would affect dwellings on the estate¹⁰⁴. However other options could have been pursued. A new building has been proposed between the Holiday Inn and the living bridge¹⁰⁵, but it is contended that the bridge could be built on unused land between the estate and the Holiday Inn, without the need for space on the estate. Moreover the case for the bridge is not persuasive. The Tempelhof Bridge would link the developments on either side of the North Circular Road, and it is not accepted that the living bridge would be an attractive route and place to use.
- 11.4 There is concern about the arrangements for replacement homes. Insufficient information has been provided, and it is not considered that the proposals would provide residents with a choice about where they would live and the type of accommodation available. Residents are also concerned about the financial and parking arrangements. Displacement from an area where residents have lived for a long time would involve an emotional cost. It is important that residents receive an amount which would enable the purchase of a property in this area.
- 11.5 Clarefield Park lies to the west and north of Whitefield Estate and is contained by the Order. It is a SLINC, and a 2008 Council report on the RA referred to long-term negative impacts of local significance to biodiversity as a result of the loss of this site (Document WR/MM3). Little weight appears to have been given to the effect of the scheme on the SLINC.
- 11.6 The AA argues that all of the BXC scheme has to be undertaken. Whitefield Estate appears to have been included because it would unlock value for an expensive scheme. However the case is being put forward on the basis of the living bridge. Consideration does not appear to have been given to excluding Whitefield Estate from the CPOs and using the land more intensively. The estate could be regenerated without being part of the overall BXC redevelopment, without the use of CPO powers, and without wholesale demolition. The need to acquire the residents' homes is disputed, and the benefits of the Orders do not justify interfering with the human rights of the residents. There is not a compelling case in the public interest to confirm the Orders

Brent Terrace Residents Association

Case for the objector

- 11.7 Brent Terrace is a long cul-de-sac, which faces the railway. On the east side of the road are two triangular areas of open space, known as the Brent Terrace triangles. As part of the proposed development, 47 dwellings would be built on the triangles, increasing the number in Brent Terrace by nearly 50%. On the other side of Brent Terrace, a new road would be built between the existing houses and the railway, along with new residential blocks of flats. In consequence the existing houses would be overlooked on both sides. The quiet,

¹⁰⁴ The illustrative masterplan (plan 5 in CD/F2) shows the relationship between the living bridge and the Order lands.

¹⁰⁵ See the plan for phase 1C in Document AA/INQ/8.

green space of the triangles would be replaced by a long and narrow linear park between Brent Terrace and the new road. There would be a total change to the character of the area.

- 11.8 Residents have objected to development of the triangles since 2006. The form of development now being put forward differs from what was understood to be proposed. The density of development has increased, and three storey housing, rather than two storey, is being put forward. Additional housing will exacerbate parking problems, and it will be difficult for refuse vehicles to manoeuvre. The hedgerow along the frontage of the triangles would be damaged, and at the same time regeneration of Clitterhouse playing fields and Claremont open space would mean loss of access to these green spaces.
- 11.9 The triangles would be poor building sites due to their awkward shape and difficult access. Construction is expected to last for up to two years, which would cause disruption and pollution. The triangles have always been green spaces. The new linear park would be next to a busy road: it would be noisier and less safe than the quiet triangles.
- 11.10 Whitefield residents moving to the new development would not experience an equivalent environment. The nearest bus stop would be much further, and some older people do not feel comfortable using the alleys which provide an alternative to the long walk along Brent Terrace. There would be little garden space with the new dwellings, and it is understood that there would be management and service charges. Freeholders and leaseholders on Whitefield Estate do not have to pay such charges. Moreover the prices being offered would not be enough to purchase a similar property without participating in the shared equity scheme.
- 11.11 Consultation has taken place, but timescales have been short and not all of the documentation has been complete or readily available. The extent of consultation has varied for different applications. There is concern about the Council's role as both planning authority and supporter of the development.
- 11.12 The living bridge would be of no transport value since it would not be used for public transport or private vehicles. There would be no cycle link to the north, and there would be other pedestrian bridges. There would be no green space value as the bridge would cross the A406 which is a source of pollution.

Barnet Transport Users' Association

Case for the objector

- 11.13 It is considered that the proposal does not adequately address all routes to the extended BXSC, and that it does not properly cater for traffic. The proposed Thames link station would be some distance from BXSC. Only a limited number of people use Brent Cross underground station to travel to and from the shopping centre, and few people make the connection by bus from Finsbury Park station. The living bridge would be too wide, and it would not provide sufficient shelter from adverse weather conditions. Concern is expressed about the loss of homes, and the cost of replacement housing. Additional bus stops with disabled access are required between the living bridge and the pedestrian bridge. The decision to leave the European Union could lead to reduced spending levels, and the scheme should be reassessed.

John Cox

Case for the objector

- 11.14 Mr Cox is a resident of Brent, an adjacent local authority. He considers that neither CPO should be confirmed as there are alternatives to the BXC scheme. The AA is promoting CPOs in case they are needed, which goes beyond usual practice. There is no compelling case for the use of CPO powers. It is considered that the scheme could not proceed without planning difficulties and substantial disproportionate financial risk to the AA. If the scheme were to collapse, there is a possibility of intervention by the Mayor of London, involving better use of public land for affordable housing. The Orders represent a form of state aid and subsidy, a criticism which also applies to Section 106 agreements.
- 11.15 Delivery of the development facilitated by the CPOs would result in harmful environmental effects. Residential building could start at the southern end of BXC, and commercial development further north could provide a wide range of employment by designating or retaining strategic industrial land. Large scale retail development should only follow after a more sustainable transport plan is devised. There is not an urgent need to refurbish and extend BXSC. The living bridge would perform little transport function. The Eastern Lands pedestrian bridge should be wider, include a segregated cycle path, and have access ramps on desire lines on both sides of the North Circular Road. Road capacity improvements are likely to be taken up by BXSC, increasing the risk that later phases of the BXC scheme would not be fully built.

12. Inspector's Conclusions

12.1 The numbers in square brackets [] refer to earlier paragraph numbers.

12.2 The DCLG Guidance on compulsory purchase process (paras 74 & 76) refers to certain factors which may be considered in deciding whether to confirm a CPO, and I have used these as the structure for the majority of the remainder of this report. The compulsory purchase process is not an opportunity to revisit the planning merits of the scheme for the regeneration of BXC which received outline planning permission in 2014.

The planning framework

12.3 Both CPOS 1 and 2 concern the acquisition of land for a mixed-use scheme, involving retail development, community facilities, housing, leisure development, and infrastructure and highway works. In addition CPO1 refers to office, hotel, industrial, storage and distribution uses. The Order lands are situated predominantly in the northern part of the RA [2.2].

12.4 There is a long-standing commitment for regeneration in the Brent Cross Cricklewood area, with the DF having been adopted as Supplementary Planning Guidance in 2004 [3.9], and policies concerning the RA included in the UDP, which was adopted in 2006 [3.8]. Regeneration of this area is an objective of planning policies at a local, Borough and London-wide level. The London Plan identifies Cricklewood/Brent Cross as an opportunity area, where substantial employment and residential development should take place [3.2]: upwards of 2,700 dwellings and 10,000m² of business floorspace are proposed in the development zones which comprise the Order lands¹⁰⁶. The extension of BXSC and the creation of a new town centre in that part of the RA would be consistent with Policy 2.16 which identifies Brent Cross as a strategic development centre with a retail function of greater than sub-regional importance [3.3]. The London Plan also recognises the potential for office development, and business uses are envisaged in that part of the Station Quarter covered by CPO1¹⁰⁷, on the opposite side of the North Circular Road to the extended BXSC.

12.5 The Core Strategy makes specific reference to the promotion of comprehensive redevelopment of the RA [3.5]. Policy CS2 is consistent with The London Plan in promoting BXC as a major focus for new homes and jobs, which are important components of the scheme put forward for the Order lands. In similar vein, saved policies of the UDP seek comprehensive development of the RA. The UDP also refers to the creation of new jobs and homes, and the development of a new town centre [3.8]. Extension of BXSC to provide not only retail floorspace, but also leisure facilities, together with offices, hotel accommodation and a new bus station would form the basis for the new town centre, straddling the North Circular Road, and this mix of uses is within the scope of the S73 permission for the Order lands [4.2].

12.6 Policy C1 of the UDP seeks comprehensive development in accordance with the DF. The mix of uses put forward for the Order lands aligns with the strategic

¹⁰⁶ Brent Cross West, Brent Cross East, the Market Quarter, and parts of the Eastern Lands and the Station Quarter are in CPOs 1 & 2. Appendix 5 of the Revised Development Specification and Framework for the S73 application (CD C18) gives a breakdown of floorspace and dwelling numbers by development zones.

¹⁰⁷ See parameter plans 0004 & 005, CD C28.

principles of the DF, illustrated in figure 1. In addition to housing and employment uses and the establishment of a new town centre, these principles include a commitment to the provision of affordable housing, new bridges across the North Circular Road, a new bus station, improvements to the River Brent, the provision of new public open space, and a fully accessible street network [3.9]. These policy intentions are addressed by the permitted outline scheme, and reserved matters have been approved for infrastructure works in phase 1A of the scheme [4.4], which fall within the Order lands.

12.7 Policies in The London Plan and the Core Strategy identify a clear need for additional housing, including affordable housing, [3.4, 3.6]. Construction of a significant number of new dwellings on the Order lands would assist in fulfilling these strategic and local policy intentions.

12.8 Highway works are proposed to the junction of Cricklewood Broadway and Cricklewood Lane, and a scheme for these works was approved as part of the S73 permission. The scheme would affect several properties in CPO1, which are included within the primary shopping frontage of Cricklewood town centre in the Development Management Policies DPD [3.7]. However, whilst Policy DM11 seeks to safeguard the extent of primary shopping frontage, the development management policies do not currently apply to the BXC scheme. Accordingly the loss of a part of the primary shopping frontage would not conflict with this part of the Development Plan.

12.9 The scheme for which the CPOs are sought, and the particular purposes for which the Order lands would be acquired, are entirely consistent with the policy objectives in the Development Plan and the DF to bring about comprehensive redevelopment in Brent Cross Cricklewood, involving the provision of a substantial number of new homes and jobs, and a new town centre. I conclude that the purposes for which the land would be acquired fits in with the Development Plan, and with the DF, which, as supplementary planning guidance, provides further detail to policies in the Development Plan.

The wellbeing of the area

Economic wellbeing

12.10 The DF identifies inner and outer impact zones covering and around the RA. In both there is a lower proportion of people working full-time than the national rate, and data from the 2001 census recorded an unemployment rate of 6.7% in the inner impact zone, compared to 5% across England & Wales¹⁰⁸. The DF also refers to pockets of high local unemployment, with the rate in some inner impact zone wards above the average for London.

12.11 The RA lies in a strategic location in north-west London. Several main transport routes run within and alongside it, namely the M1, the A5, the A406, and the A41 roads, and the Midland Mainline railway [2.2]. It also embraces the regional shopping centre of Brent Cross. The opportunity to promote the RA as a major focus for the creation of new jobs, as part of a mixed-use regeneration scheme, is recognised in the Development Plan and the DF [3.2, 3.9].

¹⁰⁸ Employment data relating to the RA is included in section 3 of the DF.

- 12.12 Within the Order lands, new jobs would be created in the extended BXSC, the retail/ leisure uses in the Market Quarter, and the adjacent part of the Eastern Lands, and in the business uses in the north-eastern part of the Station Quarter. The AA calculates that over 3,000 full-time equivalent jobs would be created as a result of the extension to the shopping centre alone¹⁰⁹. Key highways infrastructure, including alterations to the junctions of the A406 with the A5, the M1 and the A41, road access to BXCS and into the area south of the North Circular Road, and the new bus station, which would be constructed within the Order lands, are within phase 1 of the scheme¹¹⁰. These works are important not only for development on the Order lands, but also for implementation of components of the scheme, including business and employment uses, elsewhere within the RA.
- 12.13 CPO1 includes the interests in BXSC. The proposed scheme does not involve the redevelopment of the existing shopping centre, but the construction of an extension to the south, together with multi-storey car parks to the west and east¹¹¹. Whilst some occupiers would be required to vacate their premises to enable the development to proceed, most would not be affected in this way. The programme of works to integrate the extension with the existing centre had not been finalised at the time of the inquiry, and occupiers have a variety of rights. There is concern by the AA and the DPs that, if agreement about rights cannot be reached, there would be uncertainty as to whether the works could be carried out [5.92(v)], and consequently the whole of BXSC has been included in CPO1.
- 12.14 Nevertheless several objections express concern that the compulsory purchase process could result in the closure of their business operation in BXSC. Fenwick acknowledges that the scheme involves certain alterations to its store, which would remain in its existing position [8.31]. Whilst an undertaking has been provided which refers to the Order not being implemented, this is conditional upon commitments by Fenwick which may include variation to the lease or a new lease [8.30]. If agreement is not reached on such matters, Fenwick points to potential uncertainty concerning the future of its store at Brent Cross [8.41]. John Lewis has commented in similar terms in respect of the provisions of a undertaking not to implement the Order, and has pointed out that closure of its store would result in the loss of about 730 jobs [9.36 & 9.37]. The third anchor tenant, Marks & Spencer, also referred to the potential loss of its store [8.20 & 8.23]. Several other objectors (for example WH Smith [9.42 & 9.43] and Holland & Barrett [9.40]) refer to potential loss of premises and express concern about the opportunity to relocate.
- 12.15 It is clear from the representations that it is intended that most existing businesses would remain in BXSC. Individual undertakings to Fenwick, John Lewis and Waitrose each provide for non-implementation of the Order [5.16 & 5.91]. Although this provision is on a conditional basis, the undertakings also specify that, if no rights, waivers or acknowledgements concerning the works to extend the shopping centre have been granted by the lessees within six months following confirmation of the Order, and the Order is implemented, the AA and/ or the landlords will offer a new lease on reasonable commercial terms. I

¹⁰⁹ CD D4; CPO1 Statement of Reasons, para 8.2.2.

¹¹⁰ CD D4; CPO1 Statement of Reasons, para 5.3.

¹¹¹ See plans of scheme L in Appendix 3 of Document AA/MM/2.

acknowledge that the parties concerned may approach this scenario from differing perspectives. However it would be in the interests of both lessor and lessee to achieve a successful outcome involving continued occupation of BXSC. A separate undertaking in respect of 77 interests makes it clear that none is required to move from the centre [5.92(v)]. On the information before me I consider it unlikely that confirmation of CPO1 would result in a significant loss of existing businesses and jobs from BXSC.

- 12.16 Business premises at Adrian Avenue, Brent Terrace, Claremont Way Industrial Estate, and Cricklewood Lane/ Cricklewood Broadway would be directly affected by the redevelopment scheme. The AA has stated its intention to helping the occupiers to find alternative premises, and it has commissioned an organisation which specialises in providing support to businesses to assist in this process¹¹². A number of properties on Brent Terrace have been acquired by the AA since the CPOs were made (plot 81 in CPO1 and plots 22, 23 & 26 in CPO2)¹¹³. In addition an agreement has been reached to facilitate the relocation of Community Foods from its premises in Brent Terrace (plot 80 in CPO1) and the company has withdrawn its objection [7.1]. Not all businesses may be able to relocate. The inquiry heard from Mr Hussain who is concerned about the loss of his shop at 168 Cricklewood Broadway (part of plot 264 in CPO1). Although the AA pointed to possible alternative locations, it acknowledged that they were not in as prominent or busy a position as the existing shop, and Mr Hussain considered that compulsory purchase would result in the loss of the business [8.19]. Should this occur, compensation for extinguishment would be payable.
- 12.17 CPO1 includes the Holiday Inn on Tilling Road (plot 108). At the time that the Order was made it was considered necessary to include the whole of the hotel [5.92(iii)]. However it became apparent during the inquiry that the construction of the replacement Tempelhof Bridge and the realignment of the associated roads around the Holiday Inn would only require adjustments to the hotel parking area and would not affect the building itself [9.12]¹¹⁴. The AA's undertaking provides that the AA would only implement the Order in respect of that part of the Holiday Inn property identified on a plan, and this excludes the hotel building [5.92(iii)]. Accordingly the future of the hotel is not at risk from the CPO process.
- 12.18 At Staples Corner a car dealership occupies plot 40 (CPO1) between the A5 and the A406. This land is included in the CPO to achieve reconfiguration of the junction, but the AA considers that the business would be able to remain operational¹¹⁵. Objections submitted from parties with an interest in the dealership have been withdrawn following agreement on matters relating to the CPO [7.1]. I have no reason to doubt that the car dealership could remain operational if the CPO were confirmed.
- 12.19 Objections have been submitted by a number of occupiers of Brent South Shopping Park [9.6-9.10]. The retail units themselves are outside the Order lands, but the access road and part of the car park are included in plot 103 of CPO1. Objectors are concerned that disruption of access could adversely affect

¹¹² Document AA/CS/1, paragraphs 9.50 & 9.51.

¹¹³ Document AA/INQ/44.

¹¹⁴ A plan of the highway works is at Appendix 7.6.2 in Document AA/JSO/02.

¹¹⁵ Paragraph 9.19, Document AA/CS/1.

their businesses. Plot 103 is required to enable the widening of Tilling Road and the construction of a new road to the east¹¹⁶. However the AA has explained that access to the car park would be maintained at all times¹¹⁷. In similar vein, the AA has given an undertaking to NLWA that access to and from its site off Brent Terrace (North) would be maintained [9.3]. Whilst temporary traffic control measures on Brent Terrace may cause some disruption to vehicle movement, this should not prevent the effective operation of NWLA's site.

12.20 CPO1 includes land used as a storage yard between the North Circular Road and Oakfield Court (plots 236, 236a & 237). Alterations to the A406/ A41 junction, including the widening of the westbound A406 off-slip road, would affect the yard. The AA has acknowledged that the whole of the plots is not required for the highway works and has given an undertaking that it would only implement the CPO in respect of part of the land identified on a plan [5.92(iv)]. Although this would reduce the extent of the storage yard, the owners of the yard are interested in pursuing residential development on the land [9.28]. Consequently I do not consider that the redevelopment scheme would result in loss of the existing business operation on the land.

12.21 Notwithstanding assistance provided by the AA, some existing businesses may not relocate following acquisition of their premises. On the other hand, the redevelopment proposals on the Order lands are expected to provide a substantial number of new jobs in retail, leisure and business uses. Significantly, the construction of key infrastructure would be fundamental to the establishment of other employment uses elsewhere in BXC. I find that the redevelopment scheme would make a significant contribution to the economic wellbeing of the area.

Social wellbeing

12.22 There is a need for a considerable level of additional housing both in London as a whole and in Barnet. The BXC redevelopment scheme is expected to provide about 7,500 homes overall [5.93], of which at least about 1,800 would be built on the Order lands¹¹⁸. This number greatly exceeds the 217 units on the Whitefield Estate, which are included in CPOs 1 & 2. Moreover, phase 1A North includes the provision of 46 dwellings on the Brent Terrace triangles as replacements for those dwellings in Whitefield Estate included within CPO1¹¹⁹. The provision of housing on the Order lands would make an important contribution to Barnet's ten year target of 23,489 additional dwellings in the London Plan [3.4] and the fifteen year figure of 28,000 dwellings in the Core Strategy [3.6].

12.23 Swishbrook suggests that the upper floors of its building at 162-168 Cricklewood Broadway have potential for residential use and that the building could be extended to provide further accommodation [8.16]. The statement of case refers to the provision of nine flats within the building using permitted

¹¹⁶ A plan of the highway works is at Appendix 7.1.1 in Document AA/JSO/02.

¹¹⁷ Paragraph 7.1.3, Document AA/JSO/01.

¹¹⁸ Document AA/PS/1, paragraph 8.11. There are higher figures in: the zonal floorspace schedule (Appendix 5 in CD C18) gives a total of 2,736 dwellings in BX East, BX West and the Market Quarter, the building zones of which fall almost entirely within the Order lands; and in Mr Gibbs's evidence (Appendix D, Document AA/AG/2), which gives an indicative total of 2,569 dwellings but includes some land outside CPOs 1 & 2..

¹¹⁹ Reserved matters approval has been given for 47 dwellings: at the inquiry Mr Wyld explained that only 46 of these are now required as replacement accommodation.

development rights and to a further nine as a new build scheme. The necessary information to assess whether permitted development rights apply and the merits of a housing scheme in this location is not before me. In any event, the suggested addition to the housing stock is considerably smaller than the number of dwellings which would be provided on the Order Lands [5.56].

- 12.24 Development on the Order Lands would also bring forward a significant number of affordable dwellings, for which there is a clear need in the Borough with 5,500 to be provided by 2025/26 [3.6]. The planning agreement includes an indicative target of 30% affordable housing (excluding the Whitefield Estate replacement units) across the development, with a minimum provision of 15% for each phase. Accordingly phase 1 would provide at least 270 affordable dwellings, an increase above the number of properties which would be lost on Whitefield Estate. If the indicative target is achieved for this phase, there would be a significant increase in the level of affordable housing in this part of BXC.
- 12.25 Many of the objectors who are residents of Whitefield Estate have expressed concerns about the move to replacement accommodation. Common themes include concerns about the cost of accommodation, implications of the shared equity scheme, tenancy conditions, and the availability of information [8.54, 8.55, 9.14-9.27, 10.1-10.32, 11.2, 11.4]. The RRS requires the replacement units to be ready for occupation before existing dwellings are demolished [5.71]. Insofar as secure tenants are concerned, rents for replacement dwellings will initially be set at the level for existing properties, provided that they are of equivalent size. Where there is a difference in size, the new rent would be set at the average level for that size of property on Whitefield Estate¹²⁰. Over time rents are expected to converge with those set by the registered provider [5.74]. Council tenants would be offered a tenancy at least equivalent to that for their existing accommodation. Specific concerns had been raised about succession and the availability of the right to buy scheme [10.11]. The RRS provides that secure tenants would be offered a retained right to buy, and at the inquiry the AA's housing witness indicated that succession rights were expected to be available to close relatives who were resident in the property concerned [5.76]. One of the principles governing the relocation of Council tenants is that their specific needs are to be taken into account. This commitment addresses the concerns raised by existing secure tenants in this regard [10.12]. Private tenants would not be eligible for rehousing within the BXC scheme, and any homelessness applications would be considered by the Council as part of its statutory responsibilities in this regard.
- 12.26 Resident leaseholders and freeholders will be eligible for a replacement property in BXC. The RRS provides for a shared equity scheme whereby the value of existing property would be rolled over into the new dwelling. No rent would be payable on the portion of the new property not owned by the occupier, and there would be the opportunity, but not a requirement, to purchase this portion over time [5.75]. Although the RRS refers to a minimum entry requirement of 50% for the shared equity scheme, the AA explained at the inquiry that this would be a matter for the developer, and the witness for BXS

¹²⁰ Document AA/PS/1, paragraph 5.14.

DM has explained that within the CPO2 lands there would be no minimum percentage of equity required to be purchased¹²¹.

12.27 The AA has provided details of its consultation programme concerning the relocation of residents from Whitefield Estate [5.76]. Notwithstanding the evidence of this programme, an oft-repeated complaint made in objections is that insufficient information has been provided about the new housing and the arrangements for its occupation. Not all details were available at the time of the inquiry: whilst reserved matters have been approved for the replacement dwellings for that part of Whitefield Estate in CPO1, the same stage had not been reached for the replacement dwellings in respect of CPO2. Information relating to individual units would be contingent on the availability of a detailed scheme. Nevertheless, the AA should make every effort to ensure that the content of the RRS is widely disseminated amongst existing residents. With that caveat, I do not consider that the relocation arrangements established by the AA would be detrimental to existing residents.

12.28 Demolition of Whitefield Estate and relocation of the residents would disrupt an existing community [11.4]. Although replacement dwellings for residents within CPO1 would be grouped together on the Brent Terrace triangles, this scheme would only provide for occupants of 46 of the existing 85 dwellings, since private tenants would not be accommodated. This circumstance would also apply to relocation from that part of the estate in CPO2. Whilst secure tenants and resident freeholders and leaseholders would have the opportunity to remain in the locality, the existing community, and the networks and relationships between households, would be disrupted.

12.29 The overall scheme includes a range of community facilities, certain of which would be within the Order lands [5.93(iv)]. The new secondary school would be a replacement for Whitefield Secondary School and as such it would not represent an additional facility in itself. However it may accommodate library space, and two police units are proposed, one within Brent Cross East and the other in the Market Quarter¹²². The key highways infrastructure which would be built on the Order lands would be of importance in supporting the development of other community facilities in the wider BXC area.

12.30 Improvements to accessibility are an integral part of the BXCX scheme [5.90]. I have already referred to the implementation of key highway infrastructure as part of phase 1 (above, paras 12.12). The new bus station would be utilised by some additional services, including a link via the new town centre to the proposed station on the Midland Mainline¹²³. There has been considerable adverse criticism by residents on Whitefield Estate of the proposed living bridge [11.3]. However the provision of an attractive and screened bridge over the North Circular Road, as part of a longer walking and cycling route, would considerably improve accessibility between Brent Cross and the area to the south for pedestrians and cyclists [5.63 & 5.65].

12.31 The disruption which would be an inevitable consequence of the demolition of Whitefield Estate and the relocation of its residents would have an adverse

¹²¹ Document AA/AG/1, paragraph 4.39.

¹²² Document AA/TW/1, paragraph 3.60.

¹²³ CD C21, figure 13.1.

effect on the community. Additionally, although the RRS would make adequate arrangements for secure tenants, freeholders and leaseholders, private tenants would not be eligible for rehousing as part of the BXC scheme. These disbenefits are clearly outweighed by the contributions which would be made to housing provision in general and affordable housing in particular, together with the improvements to community facilities and accessibility. Overall I conclude that the redevelopment scheme would contribute positively to the social wellbeing of the area.

Environmental wellbeing

12.32 The RA is extensive and varies in its environmental quality. Several areas of open space provide a pleasant contrast to the surrounding built form, but there are also parts of lower environmental quality. Within the Order lands, the extensive areas of surface parking around BXSC, the untidy nature of much of the industrial/ commercial area on Brent Terrace (north) and Claremont Way Industrial Estate, with some open storage and on-street parking, and the physical barrier of the North Circular Road are all features which detract from the local environment.

12.33 It is intended to create a more coherent urban structure, with a series of development zones intended to have distinct characters, whilst forming part of the overall redevelopment. Improved links across the North Circular Road would enable the new town centre to be established on both sides of this major route, and the living bridge is intended to be a link in a chain of public spaces throughout the development. Although details of most parts of the intended development have yet to be finalised, the framework set out in the parameter plan (CD C28), the design and access statement (CD C27), and the design guidelines (CD C29) all point to a high quality townscape. Fundamental to the scheme is a series of open spaces, including within the Order lands. These include a riverside park along the realigned River Brent¹²⁴. The AA's design witness pointed out that the scale of the project would allow a huge investment to be made in the quality of the physical environment, and I have no reason to disagree with this assessment¹²⁵.

12.34 Certain specific environmental concerns have been raised by objectors. Swishbrook has suggested that the building at 162-168 Cricklewood Broadway (plots 264 & 267 CPO1) merits consideration as an undesignated heritage asset [8.16]. The greater part of the building (Nos 164-168) is proposed for demolition, whilst CPO1 seeks to acquire rights in respect of No 162. The building was formerly a Burtons clothing store, and was remodelled in the Art Deco style. Although referred to as an early example of 'branding', Burtons' stores were established throughout the country, and there is no evidence that buildings of this type are few in number, or that the building in Cricklewood is of particular significance compared to others erected by the company. At ground floor level the elevations to Cricklewood Broadway and Cricklewood Lane have been altered by the installation of contemporary shop fronts and fascias, and the mansard which is evident on part of the south-west elevation does not complement the strong vertical lines of the remainder of the building above ground floor level. I note that, in cross-examination, Mr Wyld for the AA

¹²⁴ See parameter plan 011 in CD C28.

¹²⁵ Document AA/BA/1, paragraph 6.9.4.

acknowledged that the building could appropriately be treated as a heritage asset. That is a view I do not share. The building has been unsympathetically altered at ground floor level and it does not appear as a coherent visual entity in the street scene. This adverse effect is emphasised by the prominent position which the building occupies at the junction of Cricklewood Broadway and Cricklewood Lane. I find that this building does not merit recognition as an undesignated heritage asset, and, in line with the S73 permission, I do not consider that the demolition of Nos 164-168 Cricklewood Broadway would represent an unacceptable change in the town centre.

12.35 The Brent Terrace triangles are two areas of open space, both of which are under grass cover. Although the triangles are not within the Order lands they are the location of the replacement housing for residents of Whitefield Estate whose properties are covered by CPO1 [2.2]. They are immediately opposite the existing dwellings on Brent Terrace, and a footway provides a link from the southern triangle to other housing on Clitterhouse Road. It is clear from the representations of Brent Terrace Residents Association that these areas of informal open space are valued by the local community [11.7-11.9]. Use of this land for housing is shown on parameter plans 004 & 005, and accordingly the principle of the loss of the open space was considered as part of the S73 planning application. Moreover the scheme provides for at least 33.76ha of open space in the RA, an increase of about 8.5ha above the existing level¹²⁶. The Residents Association has pointed out that improvements to Clitterhouse playing fields and Claremont open space are included in phase 1A (north) together with the housing development on the triangles, reducing access to green space [11.7]. Overall, however, the increase in the quantity and quality of open space, including a new linear park on the west side of Brent Terrace outweighs the temporary reduction in access as the scheme is implemented.

12.36 A 2008 Council report on the RA referred to long-term negative impacts of local significance to biodiversity as a result of the loss of Clarefield Park SLINC [11.5]. The environmental statement accompanying the S73 application reiterated that the loss of the SLINC would have a negative impact of local significance¹²⁷. However there would be compensation in the form of two nature parks, green and brown roofs, and green corridors. Taking into account mitigation measures, no significant adverse effects on nature conservation are predicted in the long-term. There is nothing before me to lead to a different conclusion.

12.37 The major redevelopment scheme proposed provides an opportunity to significantly upgrade the built environment of the area, without causing undue detriment to nature conservation interests. Accordingly, I find that the redevelopment scheme would make an important contribution to the environmental wellbeing of the area.

¹²⁶ Document AA/TW/1, paragraph 3.67.

¹²⁷ Document C5, paragraphs 11.6.32 & 11.6.33.

Possible impediments

Planning permission

- 12.38 Paragraph 75 of the CPO Guidance explains that it may not always be feasible or sensible to wait until planning permission has been obtained before proceeding with the Order. In this case, the S73 outline planning permission was granted in 2014 [4.2], prior to the making of both CPOs 1 & 2. As part of the permission a series of parameter plans, together with a revised design & access statement, revised development specification & framework and revised design guidelines were approved. These plans and documents provide the framework within which reserved matters should come forward. An associated planning agreement contains a range of requirements and restrictions, including obligations to provide critical infrastructure in phases 1 and 2 of the redevelopment scheme [4.3].
- 12.39 Reserved matters have already been approved for phases 1A (north) and 1A (south) [4.4]. These cover key infrastructure and the replacement dwellings for Whitefield Estate residents living in the CPO1 Order lands. At the date of the inquiry, a reserved matters application for an alternative design for the replacement Tempelhof Bridge remained undetermined. There is, however, an acceptable approved scheme for this bridge.
- 12.40 The Order lands primarily include development within phase 1, but some plots within phases 2, 6 and 7 are also within this part of the RA¹²⁸. Conditions 1.1-1.3 of the S73 permission prescribe timescales within which reserved matters for all phases of the scheme should be submitted. Given that outline planning permission has been granted and that the programme of preparing detailed designs for components of the overall scheme is underway, there is no obvious reason why the remaining reserved matters approvals for those parts of the scheme within the Order lands should not be forthcoming.

Funding and viability

- 12.41 Development of the Order lands would be brought forward separately for Brent Cross North and Brent Cross South. The CPO1 Development Partners, responsible for progressing phases 1A (north) and 1B (north) are Hammerson plc and Standard Life Investments (SLI) [5.5]. Hammerson has a portfolio of retail property valued at about £9billion, whilst Standard Life had assets under management of £253.2billion in March 2015. Since mid-2012, the DPs have incurred expenditure of about £55million on the scheme, and they expect to spend a further £115million prior to the start of work on site. This represents a considerable financial commitment, and I acknowledge that it is a strong indication of the Development Partners' intention to deliver the scheme. Other investors will be sought as the scheme progresses, and both companies have experience of delivering projects in this way. There would also be public investment in the infrastructure works. The DPs have confirmed to the Council that they are able to finance the costs of the project, and the viability condition in the property development agreement requires the DPs to confirm that the project would meet a target return [5.6]. Whilst the funding and viability

¹²⁸ See parameter plan 029, CD C28.

conditions can be waived, there is no substantive evidence before me to counter the AA's position that these conditions can be achieved.

12.42 Argent Related is the Council's development partner for the CPO2 lands, and a part of the area covered by CPO1 [5.8]. Of the two development companies Argent provides development and asset management services to property related projects, and Related Companies has a portfolio of assets valued at over \$20 billion. A project agreement has been prepared which includes viability and funding conditions. Land acquisitions are to be funded by BXS LP, and the funding of infrastructure and plot construction is expected to involve other investors. Although the viability and funding conditions can be waived, given the evidence of Argent Related's access to national and international funders, and Related Companies's financial strength, I anticipate that financial resources will be available to proceed with the Brent Cross South part of the redevelopment.

12.43 Several queries were raised by Whitefield Residents about the funding of the scheme. However there is no substantive evidence before me to cast doubt on the arrangements made to finance the development and the track record of the CPO1 Development Partners or of Argent Related in respect of Brent Cross South. I conclude that funding would be available, both for acquisition of the interests covered by CPOs 1 & 2, and for carrying out the intended redevelopment on the Order lands, and that the scheme would be financially viable.

CPO1 – Retention of anchor tenants in BXSC

12.44 It is the intention that the three anchor tenants would be retained in BXSC. I do not doubt that the loss of any one of these stores would be a serious blow to the successful implementation of the proposal to extend and refurbish the shopping centre. I have already referred to the undertakings given to Fenwick and John Lewis which provide for non-implementation of CPO1 on a conditional basis or the offer of a new lease (above, para 12.15). In the latter scenario it would be in the interests of both lessor and lessee to achieve a successful outcome involving continued occupation by the anchor tenant.

12.45 It is intended that the third anchor tenant, Marks & Spencer, would move to a new store. It is the AA's evidence that outline terms have been agreed for this move¹²⁹, and Marks & Spencer refer to agreement having been substantially reached on heads of terms which would address its concerns [8.21]. In view of the progress which has clearly been made between the parties, I anticipate that it is likely that the agreement will be finalised. I consider it unlikely that any of the anchor tenants would leave due to the CPO process and the associated arrangements for extending BXCS.

CPO2 – Relationship to the proposed railway station

12.46 A new railway station is proposed to the west of the Order lands. In response to my question, Mr Gibbs, for the AA, explained that the Brent Cross South proposals (within the Order lands) had been developed on the basis that the station would be provided. A funding commitment of £97million has been made by the Government towards the station, with the remaining monies required to

¹²⁹ Document AA/MM/5, paragraph 3.

be borrowed by the Council¹³⁰. However delivery of the station is also dependant on CPO3¹³¹. At the time of the inquiry, the AA had resolved to make this further CPO, but the outcome of the process cannot be predicted.

Conclusions on possible impediments

12.47 There is clear evidence that funding would be available to deliver the BXC scheme on the Order lands. Although plans for Brent Cross South element are associated with provision of a new station on the Midland Mainline, which in turn is contingent on a further CPO, there is nothing before me to indicate that they would be dependent on that infrastructure. I do not consider that impediments exist to implementation of the redevelopment scheme on the Order lands.

Achievement of purposes by other means

12.48 The purposes of both Orders are to bring about the development, redevelopment or improvement of the Order lands by way of a mixed-use scheme. The Order lands cover a substantial area of land to the north and south of the North Circular Road. There are no alternative proposals for the comprehensive development of the land covered by either CPO1 or CPO2. Several objectors, however, have suggested alternative proposals in respect of part of the Order lands, and I consider these below.

CPO1 – Fenwick Store, BXSC

12.49 Fenwick does not object to the principle of the scheme to extend BXSC [8.25]. Moreover it acknowledges that there is substantial agreement about the extent of the proposed works as they would affect the store, which would adjoin the extension to the shopping centre [8.31]. Insofar as its store is concerned, Fenwick considers that the works to build the extension and to integrate it with the existing BXSC could be achieved without acquisition of its leasehold interest, referring instead to S203 of the 2016 Act¹³², modification of CPO1 to provide for the acquisition of rights, and its undertaking to the AA and Hammerson [8.26].

12.50 There is disagreement between Fenwick and the AA as to whether the works affecting the Fenwick store could be carried out by relying on the statutory powers in S203 of the 2016 Act. S203 authorises work to be undertaken on land which has been acquired by a specified authority or appropriated by a local authority for purposes relating to the purposes for which it was acquired or appropriated, notwithstanding that it involves interference with an interest or right or a breach of a restriction. The disagreement centres on provisos in Fenwick's lease concerning the covenant for quiet enjoyment (clauses 5(1)), and the position of the bus station, the parking ratio, and modification of the common facilities (clause 5(4)(a)) [5.22]. It is Fenwick's position that clause 5(4)(a) sets out a restriction on the ability of the lessor to make any substantial variation, modification or addition to the approved plans [8.27], in that the approval of the principal traders (which include Fenwick) is required except where certain provisos apply. For its part, the AA argues that the provisos in

¹³⁰ Document AA/CS/1, paragraphs 5.15-5.17.

¹³¹ Document AA/CS/3, paragraph 2.1.

¹³² Sections 203-206 of the Housing & Planning Act 2016 replaced S237 of the Town & Country Planning Act 1990 on 13 July 2016, after closing submissions had been made on behalf of Fenwick and the AA. References in the reports of the cases to S237 should be read as applying to S203 of the 2016 Act.

clauses 5(1) and 5(4)(a) are positive in nature, and that the provisos in clause 5(4)(a) are separate from the restriction in the first part of the clause [5.24].

- 12.51 The interpretation of clause 5(4)(a) is a matter of law, but in my view the provisos referred to by the parties should be read with the first part of the clause. It is common ground that the S73 scheme would interfere with the position of the bus station, the parking ratio, and the common facilities. Whilst that would bring these matters within the ambit of the restriction whereby approval is required, it seems to me that the provision concerning maintenance of the parking ratio is a positive requirement rather than a restriction. The provision for quiet enjoyment in clause 5(1) is an entitlement of the lessee subject to its obligations being met, and can also be seen as a positive requirement of the lessor.
- 12.52 The AA questions whether the rights in the lease come within the scope of S203. Insofar as S203(1)(b) is concerned, I have already referred to the dispute as to whether the works would involve a breach of restriction as to the user of land. In the alternative, the AA does not accept that an interest under S203(1)(a) necessarily includes a lease, since this term is not referred to in subsection (2) [5.21]. However S336 defines land as including any interest in or right over land, which on its face would include leasehold interests. A further disagreement concerns whether interference with an interest or right would provide for extinguishment. Whilst the AA implies that that would be the consequence of the works [5.21], Fenwick argues that there is nothing to demonstrate that continuation of the rights would inhibit the development of the proposed scheme. I consider that there is insufficient certainty concerning the application of S203 in this case, and that in consequence it could not be relied upon to overcome Fenwick's rights in relation to land beyond its demise.
- 12.53 The proposed modifications to CPO are set out in Document FEN/INQ/22. They include acquisition of the right to enter store B for all purposes in connection with the carrying out, use, repair and maintenance of works pursuant to the S73 scheme [8.51]. An additional right is also included (although not considered necessary by Fenwick), to carry out works on other land notwithstanding that this may conflict or interfere with rights contained in Fenwick's underlease.
- 12.54 The rights specified would provide for the building works which would affect the perimeter of the Fenwick store. Paragraph 40 of the CPO Guidance explains that the power of modification is to be used sparingly and not to rewrite orders extensively. The proposal, relating to three plots in an extensive CPO, would not be contrary to this intention. There is specific reference in the Guidance to the inclusion of additional land if all the people who are affected give consent [5.27]. Accepting the definition of land as including interest and rights therein, the rights offered would be consistent with this reference, Fenwick being agreeable to the proposed modification. In any event, there is nothing in paragraph 40 to the effect that the addition (or exclusion) of rights cannot be subject of a modification.
- 12.55 An additional right would provide for works outside Fenwick's demise which would conflict or interfere with provisions of the lease. The purpose of this proposed modification is to address the rights in clauses 5(1) and 5(4)(a) (above, para 12.50). There is a need to address these provisions, and I have

reservations about reliance on S203. I share the concern of the AA, however, that the modification is written in extremely broad terms, and it does not specify the rights at which it is directed [5.25].

12.56 There is, moreover, disagreement as to whether the acquisition of the rights proposed would properly fall within the scope of S13 of the 1976 Local Government (Miscellaneous Provisions) Act. The AA contends that whereas S13 enables the acquisition of new rights, this does not authorise the overriding of existing rights [5.26]. I note that the draft agreement prepared by the AA included a provision in similar terms¹³³. Although that was the intended format for a deed I see no reason why a modification to a CPO could not apply in a similar way. Interpretation of the scope of S13, however, is a legal matter.

12.57 I turn now to the undertaking provided by Fenwick. That undertaking is conditional on the extension of BXSC including the works listed in schedule 1, provided that the Secretary of State does not consider them to be unnecessary [8.26(ii), 5.13]. The undertaking grants rights for the carrying out of the development the subject of the S73 permission insofar as this affects Fenwick's interest under its lease, and specifically provides that the rights override any potentially conflicting provisions in the lease. I note that these provisions follow the same formulation used by the Council in a draft agreement. The AA's position is that the undertaking is insufficient to resolve any conflict between the grant of rights and the lease, and that an agreement is needed incorporating legally binding commitments to grant the rights and to waive the application of the provisions in clauses 5(1) and 5(4)(a) of the lease [5.27]. I shall return to this below after considering the schedule 1 works sought by Fenwick.

12.58 The schedule 1 works are concerned with connectivity to and around the Fenwick store. At present access to the store is at lower and upper ground floors levels from the surface car parks on its south and east sides [2.4] and from the malls within the centre. Shoppers are, therefore, able to use the external accesses from the car parks to visit the store itself and/ or as a route to the rest of BXSC. The latest plans for the extension of the shopping centre (scheme L¹³⁴) include a multi-storey car park on the east side, adjacent to the Fenwick store. The existing surface car park to the south would be displaced by new building.

12.59 Fenwick currently trades from three of its four floors, with the second floor being used for offices, storage and plant. It is contemplating the possibility of providing an additional trading floor at this level. The first item in the schedule 1 works is the provision of connections from the multi-storey car park to each trading level of the Fenwick store. This has been agreed in principle by the DPs [5.31]. I consider that this is an important component in achieving satisfactory connectivity into the eastern part of the extended centre, given Fenwick's function as part of a route to the adjacent malls in addition to being a destination in its own right.

12.60 Provision of an escalator between the lower ground floor of the car park and the parking floor above, is sought to encourage the flow of shoppers to the

¹³³ Document AA/INQ/13, clause 2.3(b).

¹³⁴ Document DL/2b, Appendix 2.

lower ground floor of the centre. Scheme L shows only a half floor in the multi-storey car park at this level, which Fenwick considers would best be used for valet parking. I anticipate that there would be pedestrian access between floors in the car park, and there is no clear evidence before me that reliance on a lift, for example, would materially diminish pedestrian movement to the lower ground floor in comparison to an escalator. Nevertheless I note that the DPs are prepared to consider inclusion of an escalator, although the AA makes the point that practical and commercial implications of this would need to be resolved [5.32]. Whilst the lower ground floor may be a convenient location for the valet parking service, given its reduced size, there is no clear reason to indicate its importance to the scheme.

- 12.61 At first floor level, Fenwick seeks the construction of an external walkway between the multi-storey car park and the new mall to the south-west of the store. This walkway would provide access between that car park and the food and drink outlets on the mall at times when the shops are closed. Scheme L, however, includes another multi-storey car park in the extension and adjacent to the new mall, and I anticipate that pedestrian access from other car parks at BXSC would be possible without using the shopping malls and Fenwick store as a route. The proposed walkway would provide additional convenience, and is agreed in principle by the DPs, but it does not seem to me to be an essential part of the new development.
- 12.62 The extension would include malls on three levels to the south-west of the Fenwick store, providing a link to the new Marks & Spencer store, the bus station and the living bridge. The south-west corner of the store would be the focal point at one end of the malls, and formation of a series of entrances here would assist in the integration of the extension with the existing shopping centre. In the absence of an entrance to the store at first floor level, there would be no onward connectivity at this end of the mall. Detailed arrangements would need to be negotiated, but it is not intended that the trading area or demise of the store would be extended into the common areas. Again the DPs are supportive of the proposal, and I consider that formation of new entrances at the south-west corner of the Fenwick store would play an important role in ensuring the effective operation of the extended centre.
- 12.63 The final item included in the schedule 1 works is the provision of a pedestrian link between the eastern end of the new bus station and the lower ground floor mall to the south-west of the Fenwick store. This is a matter on which there was considerable discussion at the inquiry. Although under the scheme L proposals it would be possible to travel on foot between the eastern end of the new bus station and the eastern entrance to the extended shopping centre, the route would not be direct and would involve crossing not only the vehicular access to the bus station but also the entry and exit lanes for the multi-storey car park above [5.31, 8.46]. The signed route for people arriving at BXSC by bus would be from the western end of the bus station from where a footway would lead directly into the southern mall [5.34]. From this point, there would be no great difference in distance between the Fenwick store at the north-east corner of the centre and the John Lewis store at the north-west corner. Whilst there may be a perception that the route to the north-east is indirect, based on the Scheme L plans, the Fenwick store would probably appear prominent earlier on emerging from the bus station footway. A link from the eastern end of the bus station would enhance connectivity, providing the opportunity for a

connection with footbridge B4 [8.46]. However the route suggested by Fenwick would be narrow past the side of the car park access, the relationship with rear service areas would need to be resolved, and the movement of pedestrians across the entrance to the bus station would be a potential source of conflict. I do not consider that these shortcomings justify the provision of an additional pedestrian link between the bus station and the malls.

12.64 Whilst the AA has reservations about reliance on the undertaking (above, para 12.57), Fenwick maintains that it would be enforceable by the parties to whom it was given, and that it would be binding on Fenwick [8.26]. Resolution of this disagreement is a legal matter, although I note that it is not unusual for undertakings by deeds to be used to prevent the implementation of extant planning permissions.

12.65 In any event I have concerns about reliance on the undertaking to enable works affecting Fenwick's interest to be carried out. I have found that two of the items included in the schedule 1 works (connections between the Fenwick store and the adjacent multi-storey car park, and the formation of new entrances at the south-west corner of the store) would be important elements in ensuring a satisfactory level of connectivity within the extended shopping centre. Parameters for detailed design are typically included in outline planning permissions. In this case, the parameters do not include these matters. Their requirement by means of the undertaking would place constraints on the design which has not been finalised, and should further design work render these schedule 1 works inappropriate, variation of the undertaking would be outside the control of the AA or the DPs.

12.66 Fenwick also seeks an undertaking from the AA that the schedule 1 works would be included in the development before CPO1 is confirmed [8.51]. The AA has made it clear that it does not consider that these are matters to be resolved in the context of the CPO process [5.17]. It has already provided an undertaking to Fenwick which does not include the schedule 1 works [5.16], and I do not consider that there is a realistic prospect of a further, more onerous, undertaking being secured.

12.67 I have identified several matters of law for the Secretary of State to consider. For the reasons given above, my view is that none of the options put forward by Fenwick can be relied upon to provide the necessary certainty that the works to deliver the extension to BXSC could proceed.

CPO1 – Other units at Brent Cross Shopping Centre

12.68 In addition to Fenwick, other tenants at BXSC who have submitted objections to the CPO, including John Lewis and Waitrose, argue that it is not necessary for their premises to be acquired in order to deliver the scheme to extend the centre [9.37, 9.48 9.49]. Whilst some premises, such as John Lewis are located adjacent to the position of the proposed extension or the new multi-storey car parks, others such as WH Smith and Pizza Express are well away from these parts of the centre. In addition to construction of the extension, it is intended that the existing centre would be refurbished. The units inside the centre have been included in the CPO to facilitate these physical works of integration. In addition acquisition may be necessary in the absence of agreement on any lease restrictions which could interfere with the development proposal.

CPO1 – Land at Cricklewood Broadway/ Cricklewood Lane

12.69 Plots 260-281 are included in CPO1 with the purpose of enabling alterations to be made to the junction of the A5/ A407 (Cricklewood Broadway/ Cricklewood Lane/ Chichele Road). The proposal would involve the demolition of the properties at 164-168 Cricklewood Broadway (plot 264) and 2b & 2c Cricklewood Lane (plots 265 & 266): works would be required to the existing highway, a staircase on Cricklewood Lane, and rights are sought in respect of 2 Cricklewood Lane (plot 260) and 160 & 162 Cricklewood Broadway (plots 267 & 268) to enable the demolition and the construction of a new staircase and a new building to be carried out. Swishbrook has objected in respect of 162-168 Cricklewood Broadway, 2b & 2c Cricklewood Lane and Edward Close (plots 262-267), arguing that it is not necessary to carry out the proposed highway works [8.11-814]. RAL also has interests in plots 264-266, and similarly contends that the scheme at the A5/ A407 junction is not necessary [9.33]. On this basis modification of CPO1 to exclude all the land affected, plots 260-281, is sought [8.2].

12.70 The S73 permission included alterations to the A5/ A407 junction. This is one of nine junctions for which details were approved as part of the S73 permission¹³⁵ [5.42]. These junction alterations form a strategic package of highway works, and it is clear from the CTA that they have been considered together¹³⁶. They are put forward in the CTA as mitigation measures which are necessary to support the end-state development¹³⁷, and condition 20.10 of the S73 permission (CD C3) prevents the occupation of any part of the development to the south of the North Circular Road (the A406) before the practical completion of the A407/ A5 junction works [5.51]. The AA argued that omission of the junction works at the A5/ A407 would necessitate revisiting the modelling exercise to identify any consequential effects on the other gateway junctions [5.52]. Whilst Swishbrook's highways witness acknowledged that the impact elsewhere should be considered, he had not been able to model this scenario. In his judgement, the impact would not be significant, given his views of the extent of movement into this area from the rest of the network and that limited additional capacity would be provided. However there is no detailed evidence before me of the likely impact elsewhere on the network as a consequence of the omission of one part of a package of highway works.

12.71 I turn now to consider the A5/ A407 junction itself. There was much discussion at the inquiry about the modelling work undertaken. The S73 Transport Report (CD C21) was based on the BXC transport model and the LinSig detailed junction model. Both the AA's and Swishbrook's highways witnesses reviewed the performance of the LinSig model, and the AA prepared a set of results for the junction from the updated model [5.47, 8.8]. I note that these results have not been iterated, but they are useful in providing an indication of the position in 2026 if there were no change in layout and no development traffic (scenario 1), if the layout at the junction were unchanged,

¹³⁵ The approved scheme is shown in figure MA2, Document SFA/5. A larger scale plan submitted by the AA (Document AA/JSO/02, Appendix 7.2.3) shows some detailed changes, but would still involve the demolition of the properties in the Cricklewood Broadway/ Cricklewood Lane block.

¹³⁶ See sections 4 & 6 of the CTA (CD C19).

¹³⁷ CD C19, paragraph 10.2.

but with development traffic (scenario 2), and with the proposed layout and development traffic (scenario 3).

12.72 In scenario 2, the DoS increases only slightly in the AM peak on both arms of the A407 from 97% to 98% and it falls from 99% to 96% on the A5 south. TfL Traffic Modelling Guidelines point out that delay begins to increase exponentially above 85% DoS [5.45], and on all arms the DoS would exceed 85% in the AM peak. In the PM peak, whilst the model predicts reductions on the A407, increases in DoS from 72% to 113% and from 95% to 109% are given for the A5 north and the A5 south respectively, and the Saturday peak has increases in all arms, with significant changes from 80% to 93% on Cricklewood Lane and from 79% to 91 % on Chichele Road. The PRC falls significantly from -7.5% to -25.5% in the PM peak and from 12.7% to -3.4% on Saturday. Scenario 3 shows an improvement across the board with no predictions for DoS to exceed 85%. Significant reductions at all times are given for DoS on the A5 south.

12.73 Swishbrook cautioned against placing undue reliance on DoS, and in particular referred to the importance of consideration of journey times [8.13]. I agree that journey time is an important measure, but there is no detailed assessment before me on this basis. The CTA does give average delay times at the junction for 2026. In the Do Minimum scenario these range from 164.8 to 643.5 seconds in the AM peak and from 99.9 to 958.5 seconds in the PM peak¹³⁸. All arms show significant reduction in delay in the Do Something scenario although I am mindful of Swishbrook's criticism of inconsistencies in the modelling between these scenarios, and that there is no assessment of the Do Something scenario leaving the layout of this junction unchanged. The TfL Guidelines make clear the relevance of DoS in assessing junction performance. The reworked modelling has not been subject to iteration, and I acknowledge that the figures should not be treated as a definitive representation of the future situation. Nevertheless they do indicate that the performance of the junction in its existing form would worsen due to the development traffic, and that a material improvement would result from the proposed alteration.

12.74 I do not consider that it would be appropriate to retain the existing junction layout on the basis that an element of constraint would be acceptable in this part of the network, particularly as this would adversely affect the movement of buses (where there are no bus lanes), contrary to an objective of the BXC scheme to encourage the use of more sustainable forms of transport [3.9]. I note that there is a bus lane on the northbound approach on the A5 and that one is proposed on the southbound approach [5.46]. Whilst these should enable buses on those arms to move reasonably easily through the junction, there are no bus lanes on the A407 approaches, which are also bus routes.

12.75 It has been calculated by Swishbrook's highways witness that the remodelled junction would provide capacity for an additional three vehicles per minute [8.14]. That would be a relatively modest change, but it derives from a particular exercise using PM peak flows from the CTA for the Do Minimum and Do Something scenarios and maintaining the PRC of the existing layout¹³⁹. I note that Swishbrook comments that this number of vehicles would not

¹³⁸ CD C19, Volume 2 Appendix IV, tables 2.34 & 2.35.

¹³⁹ CD C19, table 2.35 in Volume 2, Appendix IV.

necessarily pass through the junction, and, given the constraints of this exercise, I have reservations about its value in this case.

12.76 As part of the junction works, the pedestrian crossing on the Cricklewood Lane arm would be signalised. The A5 Corridor Study records one accident of slight severity involving a pedestrian during the 70 months study period up to December 2013 [8.11]. At the inquiry, the AA's highways witness advised that he was not aware of any problems arising from the crossing in its existing form. Whilst signalisation would be an improvement, I do not consider that pedestrian safety is a factor which provides material support for the scheme.

12.77 There is evidence that the junction performs unsatisfactorily at present, and that implementation of the proposed works would result in a marked improvement. Of equal importance is the inclusion of the scheme in the package of highway measures which are an integral part of the S73 regeneration project. I do not consider that omitting the realignment of the A5/A407 junction from the BXC scheme would represent an appropriate alternative form of development, even disregarding the need for a further planning application and variation of the planning agreement [5.48].

CPO2 – Whitefield Estate

12.78 Whitefield Residents object to the acquisition and demolition of Whitefield Estate [11.2]. I heard that the possibility of preparing a redevelopment scheme in which the estate was retained had not been considered. However the estate occupies a key position in the RA. It lies at the intersection of routes which would provide links between Clitterhouse playing fields and adjacent residential areas to the south, BXSC to the north, the new railway station and business development to the west, and the education, health and leisure facilities to the east [5.63]. Whilst, as acknowledged by Mr Orchard for the AA, an alternative link to the east could be devised without going through the estate, that would not contribute to the establishment of a clear and straightforward route running from the new station at the western side of the RA to the Eastern Lands by the A41. The new crossing of the North Circular Road via the living bridge would be part of the north-south route through the estate.

12.79 The focal point of the new town centre on the south side of the North Circular Road should be around the intersection of the important routes through this part of the RA. Retention of the estate would not only impede connectivity, but it would also be an obstacle to the establishment of a town centre embracing this central position on the south side of the A406. Moreover the continuing presence of the estate would disrupt and fragment the redevelopment, in contrast to the coherent urban structure which is envisaged in the parameter plans and the revised design & access statement. A consequence of such a variation to the overall scheme would be the necessity to seek a further planning permission with inevitable attendant delay. It would also represent a significant change to the basis on which Argent Related became involved in Brent Cross South [5.67], and removal of Whitefield Estate from the Order lands could, therefore, affect the successful delivery of regeneration in this area.

12.80 Ms Choudhury advocates a variation on the position of the Residents group. She seeks the retention of most dwellings, including at least two of the tower blocks, rather than the whole estate [8.55]. In practical terms, the implications

of retaining most of the dwellings would not be materially different from excluding the estate as a whole from CPOs 1 & 2, and such an approach would still threaten connectivity and the creation of a coherent urban structure. Adjustments to the intended layout would not overcome these fundamental problems.

12.81 I have also considered the suggestion from Ms Choudhury that development of the estate be undertaken by a community group [8.55]. Apart from the potential disruption to the intended pattern of development, there is no evidence to demonstrate that such an approach would be a practical option as part of the overall redevelopment scheme, or, indeed, that there is a community group willing to take such a proposal forward.

12.82 I turn now to consider the living bridge, which is the subject of strong opposition from Whitefield Residents (as a group and individually) and others [11.3, 11.12]. Construction of this bridge requires the acquisition of dwellings included in CPO1. The living bridge has been designed as a wide, sheltered and attractive crossing of the North Circular Road for pedestrians and cyclists [5.63]. As such it would not duplicate the role of the replacement Tempelhof Bridge further to the west, which would simply provide facilities for pedestrians and cyclists in addition to other traffic. Construction of a bridge catering specifically for pedestrians and cyclists, and designed to mitigate the intrusive effects of the main road, would play an important role in ensuring good connectivity between BXSC and other development zones, and it is fundamental to achieving a unified town centre. I heard suggestions that the bridge should be repositioned further to the west, so as to avoid affecting dwellings on Whitefield Estate. However on the south side of the North Circular Road a new road (Claremont Avenue) and the approach to Tempelhof Bridge, and on the north side the connection of the road over Tempelhof Bridge to a roundabout junction would prevent movement of this infrastructure further west, together with the start of the flyover at the A406/ M1 junction [5.64]. It should also be noted that the position of the living bridge would provide a direct connection to the new bus station [5.65]. The position of the living bridge is tightly constrained, and, having regard to other infrastructure, I do not consider that there is the opportunity to construct this facility clear of the CPO1 Order lands.

Other matters

CPO1 - Effect on forecourts at 111 Highfield Avenue and 1 Claremont Road

12.83 No 111 Highfield Avenue is occupied as flats and plot 244 comprises the forecourt which is used for parking [9.30]. As part of the measures to improve the A41/ A406 junction, strategic road traffic would be removed from Brentfield Gardens which would become continuous with Highfield Avenue. Acquisition of the forecourt is required to enable the provision of an adequate footway on the bend, and to prevent parking there to ensure visibility for drivers negotiating the bend [5.92(vi)]. I appreciate that loss of the forecourt parking would represent a significant inconvenience to residents of the flats. However the improvement of the A41/ A406 junction, which as part of a package of gateway junction works, is fundamental to delivering the regeneration scheme, and the environmental improvement due to the removal of strategic road traffic justify the retention of plot 244 in CPO1.

12.84 The forecourt at 1 Claremont Road is also used for parking [9.32]. However only a relatively small area of 12m² (plot 254) is proposed for acquisition as part of improvements to the junction of Cricklewood Lane and Claremont Road [5.92(vii)]. Plot 255 is larger, but its inclusion in the CPO is simply to secure the right of entry in connection with the construction of a footway. I do not consider that the acquisition of land and rights would adversely affect parking provision at the property.

CPO1 – Brent Cross bus station

12.85 When the inquiry closed there was an outstanding objection from TfL and London Bus Services in respect of the existing Brent Cross bus station and associated rest room (plots 330 & 331). However an agreement had been reached that CPO powers in respect of these plots would not be exercised if agreements for the relocation of the bus station had been concluded [9.57]. Whilst this had not yet occurred, a joint statement from the objectors, the AA and the DPs anticipates conclusion of the property agreements [5.92(i)], and explains that as soon as the agreements for surrender in respect of the existing bus station and for the lease of the new bus station have been exchanged the objection will be withdrawn.

Adequacy of consultation and negotiation

12.86 Complaints about the adequacy of consultation and negotiation were made by several objectors. I have already referred to concerns raised in this regard by residents of Whitefield Estate [12.27].

12.87 Mr & Mrs Barker's objection in respect of plot 19 in CPO2 concerns this matter. Their smelting business closed in 1999, as the investment necessary to adapt to market changes could not be secured due to the prospect of the redevelopment scheme and compulsory purchase, and I have been made aware of the effect of the redevelopment proposals on Mr Barker's health [8.58]. The property is available for purchase. There have been certain contacts with the AA in recent years, but the objectors consider that they have been treated unfairly in these discussions, and they claim that no satisfactory offer has yet been made [8.59-8.62].

12.88 I appreciate that Mr Barker's ill-health is associated with worry about his property. However the concerns raised in the objection are not directly relevant to the decision on confirmation of the CPO. Although they state that if the land is excluded from the CPO they will withdraw their objection¹⁴⁰, Mrs Barker said in her statement that *our property has always been available to purchase*¹⁴¹. They do not challenge the purposes of CPO2 or maintain that the land should be retained as an industrial yard. Concerns by the objectors about their treatment by the AA should be pursued separately from the CPO process. If no agreement on price can be reached, the CPO Guidance (paragraph 54) explains that the basis for compensation is open market value and certain other payments.

12.89 Hope Construction Materials states that it does not wish to be deprived of its interest in plot 23 in CPO2, but it also maintains that it cannot be said that it is not possible to acquire the site by agreement [10.33]. However the objector's

¹⁴⁰ Document JKB/5.

¹⁴¹ Document JKB/4, final page.

lease expires in June 2019 and there are no renewal rights. Concern has been expressed about relocation, but I have read that since lodging its objection the company has entered negotiations in respect of an alternative site [5.92(viii)]. As the AA owns the freehold it could facilitate early release from the lease to assist in a move to alternative premises. Should compulsory purchase result in the loss of the business, compensation for extinguishment would be payable.

State aid

12.90 Mr Cox argues that the Orders represent a form of state aid [11.13]. However, as the Orders would simply empower the AA to acquire land, they cannot themselves constitute state aid.

Overall conclusions

12.91 The Order Lands would be acquired for the purposes of the S73 permission, a major mixed-use regeneration scheme in the Brent Cross Cricklewood area. The scheme is wholly consistent with the planning framework for the area, including the Development Plan and the DF. It would play a major role in fulfilling the policy objectives of The London Plan, the Core Strategy, the UDP and the DF concerning the RA.

12.92 As a consequence of redevelopment, there would be disruption to the residents of Whitefield Estate, and private tenants would not be eligible for rehousing under the Residential Relocation Strategy. It is possible that some existing businesses which are required to relocate may not find suitable alternative premises, and the scheme would involve the loss of a SLINC. On the Order lands alone, however, there would be significant benefits due to the construction of new housing, improvements to community facilities and accessibility, the provision of a large number of new jobs, and the upgrading of the local environment. Moreover the provision of key infrastructure on the Order Lands would pave the way for development to take place elsewhere within the RA. The benefits arising from the scheme on the Order Lands would be considerable, and they would clearly outweigh the negative consequences. The regeneration of this part of BXC would make a substantial contribution to the economic, social and environmental wellbeing of the area.

12.93 Funding would be available to deliver the redevelopment scheme on the Order Lands. I am aware that the proposals for Brent Cross South have been prepared on the basis of the new railway station, which itself is contingent on a third CPO. Whilst the outcome of that process will not be known for some time, there is nothing before me to indicate that the development of the Order Lands could not proceed without the station. There are no impediments which call into question the ability for the scheme to be delivered.

12.94 Several alternative proposals have been put forward for parts of the Order Lands. Notwithstanding the matters of law related to Fenwick's proposals for extension of BXSC without the acquisition of its leasehold interest, I do not consider that they would enable the benefits of the comprehensive regeneration of the area to be achieved. It is, however, clear that the whole of plots 108, 236, 236a and 237 in CPO1 are not required for the development (above, paras 12.17 & 12.20). Subject to the exclusion of these small areas of land, the purposes for which the land is proposed to be acquired could not realistically be achieved by any other means.

12.95 The purposes for which the Order Lands would be acquired and the benefits of the scheme justify interfering with the human rights of those with an interest in the land affected, under the provisions of the European Convention on Human Rights as incorporated into UK law by the Human Rights Act 1998. A number of objectors have made reference to their disability or ill-health, mainly in respect of rehousing requirements. Disability is a protected characteristic, and, in accordance with the public sector equality duty, I have had due regard to the need to advance equality of opportunity between persons who share a protected characteristic and those who do not share it. I conclude that there is a compelling case in the public interest for the confirmation of both CPOs, subject to the exclusion of parts of plots 108, 236, 236a and 237 from CPO1.

13. Recommendations

13.1 I recommend that The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No 1) 2015 be confirmed subject to the following modifications:

- i) The omission of that part of plot 108 that is not coloured pink on the plan attached to Document AA/INQ/51.
- ii) The omission of those parts of plots 236, 236a and 237 that are not coloured pink or blue on the plan attached to Document AA/INQ/50.
- iii) The substitution of *Caren Bettina Ferster* for all references to *Caren Bettina Frester* in respect of plots 262 and 264-267 in Table 1.

13.2 I recommend that The London Borough of Barnet (Brent Cross Cricklewood) Compulsory Purchase Order (No 2) 2015 be confirmed without modification.

Richard Clegg

INSPECTOR

APPEARANCES

FOR THE ACQUIRING AUTHORITY:

Mr N King QC & Mr G Williams of Counsel	Instructed by Eversheds LLP
They called Ms C Shaw	Commissioning Director for Growth & Development, LB of Barnet.
Mr M J McGuinness BSc(Hons) MRICS	Development Director, Hammerson plc.
Mr A Gibbs MISE CEng	Partner, Argent (Property Development) Services LLP.
Mr B Allies MA DipArch RIBA RIAS FRSA OBE	Partner, Allies & Morrison.
Mr J S Orchard BSc CEng MICE MIHT MCI Arb	Director, AECOM.
Mr T Wyld BSc(Hons)	Principal Planning Officer, RE (Regional Enterprise) Ltd.
Mr P J Murphy MTCP MRTPI	Director, Quod Planning.
Mr S J Slatford BA(Hons) MRTPI	Senior Director, Nathaniel Lichfield & Partners.
Mr P Shipway Mr P Astbury BEstMan MRICS	Strategic Housing Lead, LB of Barnet. Group Partner and Head of Compulsory Purchase, Carter Jonas LLP.

FOR FENWICK LTD:

Mr R Purchas QC	Instructed by King & Wood Mallesons LLP.
He called Mr D J Leonard	Director, Leonard Design Architects.
BA(Hons) BArch(Hons) RIBA	
Mr M A Fenwick	Chairman, Fenwick Ltd.
Mr D R Bird BSc CEng MICE	Director, Vectos.
Mr H J W Bullock BSc FRICS FRTPI	Chairman, Gerald Eve LLP.
Mr G F Chase FRICS CArb FRSA FInstCPD	Chairman, Chase & Partners LLP.

FOR WHITEFIELD RESIDENTS:

Ms N Jaffrey	Resident of Whitefield Estate.
Mr M Mangi	Resident of Whitefield Estate.
Mr S Mevada	Resident of Whitefield Estate.
Ms P Lad	Resident of Whitefield Estate.

- 30 Holland & Barrett Retail Ltd trading as GNC (Health & Diet Centres Ltd).
- 32 JD Sports Fashion Plc trading as Blacks Outdoor Retail.
- 33 JD Sports Fashion Plc trading as JD Sports Ltd.
- 37 Audrey June Williams.
- 38 TK Maxx.
- 39 Jacqueline Davey.
- 42 Pamela Lawrence.
- 45 Marek Dec.
- 46 Maria Jaramillo.
- 47 Arcadia Group Ltd and Top Shop/ Top Man Properties Ltd.
- 48 Gwen Gonzales.
- 49 River Island Clothing Co Ltd.
- 51 Caren Bettina Ferster, Renata Altmann and Swishbrook Ltd.
- 52 Signet Group Ltd and Ernest Jones.
- 53 RAL Ltd.
- 54 All Saints Retail Ltd.
- 55 Arcadia Group Ltd and Burton/ Dorothy Perkins Properties Ltd.
- 56 Signet Group Ltd and H Samuel.
- 57 Costa Ltd (Court 1, Brent Cross Shopping Centre).
- 58 Costa Ltd (Unit 10, Brent South Shopping Centre).
- 59 Pizza Express (Restaurants) Ltd.
- 60 Gourmet Burger Kitchen.
- 61 Hutchison 3G UK Ltd.
- 64 111 Highfield Avenue Management Company Ltd and Others.
- 65 WH Smith Retail Holdings Ltd.
- 66 Meiling Lin.
- 67 Joe Chi-Chao Lin.
- 68 Marks & Spencer Plc.
- 69 M H Costa Construction Ltd.
- 71 Maedeh Anvarijamalabad and Mehdi Mohammadzadeh.
- 72 Pampa Holdings Ltd.
- 73 Vision Express (UK) Ltd.

DOCUMENTS WITHDRAWING OBJECTIONS TO CPO 1 (WD/1/)

- 1 Network Rail Infrastructure Ltd.
- 2 National Westminster Bank.
- 4 GB Railfreight.
- 5 Billaze Ltd.
- 7 Highways England.
- 14 Eastern Power Networks Plc.
- 15 C & J Clark.
- 18 Office Holdings Ltd.
- 26 Lewis Properties (1985) Ltd.
- 27 Honeyglen Properties Ltd.
- 31 Select Service Partners.
- 34 Motors Properties (Trading) Ltd.
- 35 General Motors UK Ltd.
- 36 Now Motor Retailing Ltd.
- 40 DSG Retail Ltd.
- 41 Topsy-Turvy World (Brent Cross) Ltd and Topsy-Turvy Day

- Nursery Ltd.
- 44 Community Foods Ltd.
- 50 National Grid Electricity Transmission Plc and National Grid Gas Plc.
- 62 Robert Wass.
- 63 The Carphone Warehouse Ltd.
- 70 Zurich Assurance.

OBJECTIONS IN RESPONSE TO NOTICE OF CPO 2 (OBJ/2/) * denotes non-statutory objection

- 2 Pam & Frank Junghanns.
- 3 Eileen J Touil.
- 4 Giorgia Bonfili.
- 5 James Foley.
- 6 Sabine Foley.
- 7 Samer Nehme.
- 8 Helen Pitsillis.*
- 10 Florence Omolara Oluwo.
- 11 Ferdous Choudhury.
- 12 Bhikhalal Mevada.
- 13 Harsha Mevada.
- 14 Sachin Mevada.
- 15 Bhavika Mevada.
- 16 Belinda Bardon.
- 17 Olatokunbo Benson.
- 18 Natasha Mulcahy.
- 19 Manjuben Lad.
- 20 Galabina Yordanova.
- 21 Residents of Whitefield Estate.*
- 22 Meiling Lin.*
- 23 Joe Chi-Chao Lin.*
- 24 Kamala Chohan.
- 25 Cecilia Woyongo.
- 26 Susan Iglesias.
- 28 Mariam Amin.
- 29 Flerida Sanchez.
- 30 Mohammed Alam, Shelena Begum and Pavel Alam.
- 31 Rufus Hollingbery.
- 32 John and Kathryn Barker.
- 33 Moshe Glater.
- 34 Real Homes Ltd.
- 35 Investpond Ltd.
- 36 Fatma Husseyin.
- 37 Ian Redgrave.
- 38 Rekha Bhagwan.
- 39 Raschid Jaffrey.
- 40 Son Htut Maung Maung Kyi.
- 41 Hope Construction Materials Ltd.
- 44 Caren Bettina Ferster, Renata Altmann and Swishbrook Ltd.*

DOCUMENTS WITHDRAWING OBJECTIONS TO CPO 2 (WD/2/)

- 1 Network Rail Infrastructure Ltd.
- 9 Eastern Power Networks Plc.
- 27 Lewis Properties (1985) Ltd.
- 43 National Grid Electricity Transmission Plc and National Grid Gas Plc.

ACQUIRING AUTHORITY'S WITNESS DOCUMENTS (AA/ /)¹⁴³

- AG/1 Mr Gibbs's proof of evidence.
- AG/2 Appendices to Document AA/AG/1.
- AG/4 Mr Gibbs's rebuttal evidence in response to Document Mr & Mrs Barker.
- BA/1 Mr Allies's proof of evidence.
- BA/2 Appendices to Document AA/BA/1.
- BA/4 Slides from powerpoint presentation.
- CS/1 Ms Shaw's proof of evidence.
- CS/3 Ms Shaw's note with appendix in response to Inspector's questions on 18 May.
- CS/4 Ms Shaw's rebuttal evidence in response to Mr & Mrs Barker's evidence.
- JSO/1 Mr Orchard's proof of evidence.
- JSO/2 Appendices to Document AA/JSO/1.
- JSO/4 Mr Orchard's rebuttal evidence in response to Documents FEN/DB/3a & 3b.
- JSO/5 Mr Orchard's rebuttal evidence in response to Documents SFA/3 & 4.
- JSO/6 Mr Orchard's rebuttal evidence in response to Document OO/1/12a.
- MM/1 Mr McGuinness's proof of evidence.
- MM/2 Appendices to Document AA/MM/1.
- MM/4 Mr McGuinness's rebuttal evidence in response to Fenwick's evidence.
- MM/5 Mr McGuinness's rebuttal evidence in response to Documents M&S.
- MM/6 Mr McGuinness's rebuttal evidence in response to Waitrose's evidence.
- MM/7 Mr McGuinness's rebuttal evidence in response to John Lewis's evidence.
- PA/1 Mr Astbury's proof of evidence.
- PA/2 Appendices to Document AA/PA/1.
- PA/4 Mr Astbury's rebuttal evidence in response to Marks & Spencer's evidence.
- PA/5 Mr Astbury's rebuttal evidence in response to Mr & Mrs Barker's evidence.
- PM/1 Mr Murphy's proof of evidence.
- PM/3 Mr Murphy's rebuttal evidence in response to Fenwick's evidence.

¹⁴³ Summary proofs were numbered, but have not been listed as inquiry documents.

- PS/1 Mr Shipway's proof of evidence.
- PS/2 Appendices to Document AA/PS/1.
- SS/1 Mr Slatford's proof of evidence.
- SS/3 Mr Slatford's rebuttal evidence in response to Mr & Mrs Barker's evidence.
- TW/1 Mr Wyld's proof of evidence.
- TW/2 Appendices to Document AA/TW/1.
- TW/4 Schedules of applications for phases 1A (North) & 1A (South).
- TW/5 Mr Wyld's rebuttal evidence in response to Whitefield Residents evidence.
- TW/6 Mr Wyld's rebuttal evidence in response to Swishbrook's evidence.
- TW/7 Mr Wyld's rebuttal evidence in response to Mr & Mrs Barker's evidence.
- TW/8 Mr Wyld's rebuttal evidence in response to the Trustees of the Kingsley Way Charitable Trust's evidence.

ACQUIRING AUTHORITY'S OTHER INQUIRY DOCUMENTS (AA/INQ/)

- 1 Mr King's and Mr Williams's opening submissions.
- 2 Letter dated 16 May 2016 and appendices from Eversheds concerning the statutory requirements for CPO No 1.
- 3 Letter dated 16 May 2016 and appendices from Eversheds concerning the statutory requirements for CPO No 2.
- 4 Summary of position on objections at the opening of the inquiry.
- 5 Note by Nabarro LLP, Brent Cross Shopping Centre Property Development Agreement and Associated Document Revisions.
- 5A Revised version of Document AA/INQ/5.
- 6 Note by Gowling WLG, Brent Cross South – Document Overview.
- 7 Note on negotiations with statutory undertakers.
- 8 Indicative phasing plan and phase 1 plans.
- 9 Page 1 of application form for S73 proposal.
- 10 Site visit itinerary for 20 May 2016.
- 12 Responses to Inspector's queries of 13 May 2016.
- 13 Draft deed of agreement between Fenwick, the AA, and the Development Partners.
- 14 Note on Section 237 of The Town and Country Planning Act 1990.
- 15 Pedestrian routes between underground stations and Fenwick store.
- 16 Email exchange between Mr McGuinness and Transport for London concerning the proposed bus station.
- 17 Proposed shopping centre roof plan.
- 18 Extracts from The London Plan and Core Strategy concerning housing target timeframes.
- 19 Email exchange dated 7 June 2016 between Eversheds and Berwin Leighton Paisner concerning the Inspector's queries in respect of Transport for London.
- 20 Response to Document NC/1.
- 21 Report on reserved matters application ref 15/03312/RMA for infrastructure works within phase 1A (North).
- 22 Planning permission ref 15/07836/EIA for highway works and associated development at the A406 westbound off-slip and

- adjacent land and 111 Highfield Avenue. Approval of non-material amendment ref 15/07898/NMA to planning permission ref F/04687/13 for the comprehensive mixed-use redevelopment of the Brent Cross Cricklewood Regeneration Area.
- 23 Brent Cross Development – Highway Forecasting Report, AECOM, 2015.
- 24 Brent Cross Cricklewood – G113 Transyt Map – Stage 3 Validation Report, URS, 2014.
- 25 Letter dated 14 June 2016 from Mr Wyld to Mr Murphy concerning matters to be included in applications to discharge conditions attached to planning permission ref F/04687/13.
- 26 Letter dated 15 June 2016 from Mr Murphy to Mr Wyld in response to Document AA/INQ/25.
- 27 Mr Orchard’s commentary on Vectos’s LinSig model and AECOM’s corrections to the model.
- 28 Extracts from Traffic Modelling Guidelines, Mayor of London and Transport for London.
- 29 Extracts from the Development Management Policies DPD.
- 30 Introduction to the Schedule of Buildings of Local Architectural or Historic Interest, LB of Barnet.
- 31 Note on the 1994 extension to Brent Cross Shopping Centre.
- 32 Response to Document NC/3.
- 33 Annex 1 of report - Future Planning of the Cricklewood Eastern Lands Consultation Outcomes, Cabinet meeting of 11 October 2005.
- 34 Undertaking by the AA and the Development Partners to Fenwick Ltd.
- 35 Draft undertaking by the AA and the Development Partners to Fenwick (comparison version).
- 36 Undertaking by the AA to NLWA and Londonwaste Ltd.
- 37 Report to the Council’s Cabinet meeting on 26 April 2016; Cricklewood, Brent Cross and West Hendon Development Framework.
- 38 Schedule of responses to objections to CPO No 1 in the AA’s evidence.
- 39 Schedule of responses to objections to CPO No 2 in the AA’s evidence.
- 41 Undertaking by the AA and Hammerson (Brent Cross) Ltd to National Westminster Bank Plc.
- 42 Undertaking by the AA and the Development Partners to John Lewis Properties Plc and John Lewis Plc.
- 43 Undertaking by the AA and Hammerson (Brent Cross) Ltd to Waitrose Ltd.
- 44 Note on property acquisitions.
- 46 Undertaking by Hammerson (Brent Cross) Ltd to Brent Cross Shopping Centre Tenants.
- 47 Extracts from Barnet’s Development Management Policies DPD.
- 48 2016 property development agreement relating to development at Brent Cross and Cricklewood (redacted and unsigned).
- 48A Extracts from deed of variation of CD C20.
- 49 Draft project agreement relating to the redevelopment of Brent Cross South.

- 49A Project agreement relating to the redevelopment of Brent Cross South - dated front page and page signed on behalf of the AA.
- 50 Undertaking by the AA and the Development Partners to the Trustees of the Kingsley Way Charitable Trust.
- 51 Undertaking by the AA and the Development Partners to Ribbon Hotels Group (UK) Ltd and HI (Brent Cross) Ltd.
- 52 Undertaking between the AA, the Development Partners, R Altmann, C B Ferster and Swishbrook Ltd.
- 53 Report to the Planning Committee on reserved matters application for residential development on land off Brent Terrace.
- 54 CPO No 2 indemnity agreement (unsigned).
- 54A CPO No 2 indemnity agreement – dated front page and page signed on behalf of the AA.
- 55 Deed of variation to CPO No 1 indemnity agreement (unsigned).
- 55A Deed of variation to CPO No 1 indemnity agreement – dated front page & page 1 and page signed on behalf of the AA.
- 56 Responses to Inspector’s queries from written representations session.
- 57 Mr King’s and Mr Williams’s closing submissions.
- 58 Email dated 20 July 2016 from Eversheds in response to Document FEN/INQ/27.

ACQUIRING AUTHORITY’S WRITTEN RESPONSES (AA/RESP/)

- 1 Response to Document IP/3.
- 3 Response to objection 53, CPO No 1.
- 4 Response to objections 59 – 60 and 65, CPO No 1.
- 5 Response to objection 28, CPO No 1.
- 6 Response to objections 4 and 31, CPO No 2.

SWISHBROOK, C B FERSTER & R ALTMANN’S DOCUMENTS (SFA/)

- 1 Miss Ellis’s opening statement.
- 2 Appendices to Document SFA/1.
- 3 Mr Axon’s proof of evidence.
- 4 Appendices to Document SFA/3.
- 5 Mr Axon’s supplementary proof of evidence.
- 6 Appendix to Document SFA/5.
- 7 The Mayor of London’s answer, dated 16 September 2015, to a question concerning junction capacity.
- 8 Extract from the LinSig 3.1 User Guide.
- 9 Extracts from Traffic Modelling Guidelines, Transport for London.
- 10 Extract from Travel in London Report 4, Transport for London.
- 11 Extract from Travel in London Report 8, Transport for London.
- 12 Email dated 17 June 2016 from Ashtons to the AA concerning Edward Close.
- 13 Extracts from the Development Management Policies DPD.
- 14 Miss Ellis’s closing submissions.
- 15 Letters dated 5 July 2016 from Ashtons Legal concerning a modification to CPO No 1 and new rights.
- 16 Statement of case for Swishbrook, C B Ferster & R Altmann.

FENWICK'S WITNESS DOCUMENTS (FEN/ /)

DB/3a	Mr Bird's proof of evidence.
DB/3b	Appendices to Document OBJ/1/22/DB/3a.
DB/3c	Mr Bird's rebuttal evidence.
DL/2a	Mr Leonard's proof of evidence.
DL/2b	Appendices to Document OBJ/1/22/DL/2a.
DL/2c	Mr Leonard's rebuttal evidence.
GC/4a	Mr Chase's proof of evidence.
GC/4b	Appendices to Document OBJ/1/22/GC/4a.
GC/4c	Mr Chase's rebuttal evidence.
HB/5a	Mr Bullock's proof of evidence.
HB/5b	Appendices to Document OBJ/1/22/HB/5a.
HB/5c	Mr Bullock's rebuttal evidence.
MF/1a	Mr Fenwick's proof of evidence.
MF/1b	Appendices to Document OBJ/1/22/MF/1a.
MF/1c	Mr Fenwick's rebuttal evidence.

FENWICK'S OTHER INQUIRY DOCUMENTS (FEN/INQ/)

- 01 Mr Purchas's opening statement.
- 1 Graph of sales and footfall at Brent Cross Shopping Centre.
- 2 Bundle of emails concerning sales and footfall at Brent Cross Shopping Centre.
- 3 Brent Cross Development – Impact on Fenwick Store, Document produced by Mace.
- 4 Fenwick lease provisions assessment for order scheme works.
- 5 Photographs of frontages of Apple and Carphone Warehouse stores.
- 6 Erratum report on the section 73 planning application.
- 7 Statement of case of HI (Brent Cross) Ltd, and Brent Cross Development – Hotel notes, Document produced by Mace.
- 8 Letter dated 20 May 2016 from King & Wood Mallesons to Nabarro LLP and draft deeds of agreement and undertaking.
- 9 Extracts from the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981.
- 10 Letters to the Inspector from Eversheds and King & Wood Mallesons and email exchange between Nabarro LLP and King & Wood Mallesons concerning Fenwick's objection.
- 11 Extracts from Inclusive Mobility, Department for Transport.
- 12 Extract from Part M of the Building Regulations.
- 13 Bundle of illustrations and plans of the south-west corner of the Fenwick store.
- 14 Slides presented by Mr Leonard.
- 15 Note on pedestrian link at the eastern end of the bus station.
- 16 Plans showing the relationship of the proposed bus station to the extended shopping centre.
- 17 Email dated 8 June 2016 from King & Wood Mallesons to Nabarro LLP with order modifications, draft undertaking and draft agreement proposed by Fenwick.
- 17a Emails dated 22 & 24 June 2016 between Eversheds and King &

- Wood Mallesons, with attachments, concerning a draft undertaking to Fenwick and order amendments proposed by Fenwick. Fenwick's revised proposed order modifications and revised draft undertaking.
- 18 Pedestrian Comfort Guidance for London, Mayor of London and Transport for London, 2010.
 - 19 Transport points to be included within a statement of common ground.
 - 20 Mr Purchas's closing submissions.
 - 20a Authorities bundle accompanying Document FEN/INQ/20.
 - 21 Letter dated 12 July 2016 from King & Wood Mallesons to the Inspector concerning Documents FEN/INQ/22-25.
 - 22 Fenwick's revised modifications schedule.
 - 23 Note on proposed modifications to CPO No 1.
 - 24 Proposed modified extracts of CPO No 1.
 - 25 Proposed modified maps for CPO No 1.
 - 26 Undertaking by Fenwick to the AA and Hammerson (Brent Cross) Ltd.
 - 27 Email dated 20 July 2016 from King & Wood Mallesons to the Programme Officer concerning S237 of the Town & Country Planning Act 1990.

MS CHOUDHURY'S DOCUMENTS (NC/)

- 1 Ms Choudhury's statement.
- 2 Appendices to Document NC/1.
- 3 Ms Choudhury's revised statement.
- 4 Appendices to Document NC/3.
- 5 Email dated 15 June 2016 from Ms Choudhury to the AA concerning the rehousing of Residents of the Whitefield Estate.
- 6 Ms Choudhury's closing submissions.

MR & MRS BARKER'S DOCUMENTS (JKB/)

- 1 Mr Barker's statement.
- 2 Appendices to Document JKB/1.
- 3 Mr Church's proof of evidence¹⁴⁴.
- 4 Mrs Barker's statement.
- 5 Letter dated 28 June 2016 from Mr & Mrs Barker.
- 6 Mr & Mrs Barker's statement.
- 7 Email dated 5 July 2016 from Mrs Barker concerning consultation on the Cricklewood, Brent Cross and West Hendon Development Framework.

WHITEFIELD RESIDENTS' DOCUMENTS (WR/)

- 1 Ms Jaffrey's opening submissions.
- 2 Mr Mangi's statement.
- 3 Ms Lad's closing statement.

¹⁴⁴ Mr Church did not appear at the inquiry, and his proof is considered as a written statement.

- MM1 Report by Waterman Energy, Environment & Design Ltd concerning condition 4.2 of the Section 73 planning permission.
- MM2 Extract from report to the Planning Committee on reserved matters application for residential development on land off Brent Terrace.
- MM3 Extracts from report of the Head of Planning & Development Management on Brent Cross Cricklewood Regeneration Area, 2008.
- MM4 Addendum report on the Section 73 application to the Planning & Environment Committee.
- MM5 Revised draft chapter of UDP Review on Cricklewood, West Hendon & Brent Cross Regeneration Area.
- MM6 Extract from Biodiversity Action Plan for Hertfordshire.
- MM7 Extract from Environmental Statement Further Information Report on Phase 1A (North) Reserved Matters Applications, Waterman Energy, Environment & Design Ltd.
- MM8 Notice of approval concerning details for condition 4.2 of the Section 73 planning permission.
- MM9 Brent Cross Cricklewood Thameslink Station – Full Business Case Summary.
- MM10 Statement of case of HI (Brent Cross) Ltd.
- MM11 Extract from Appendix A to ODPM Circular 06/2004¹⁴⁵.
- MM12 Article entitled Geoff Wright takes a bow.
- MM13 Reading Borough document on Section 278/ 38 agreements.
- MM14 Extract from Appendix A to ODPM Circular 06/2004¹⁴⁶.
- MM15 Extract from the AA's statement of reasons for CPO No 1.
- MM16 Extracts from The Regeneration of Cricklewood & West Hendon, Consultation document, 2001.
- MM18 Explanatory report by Quod on reserved matters application for Phase 1A (North).
- MM19 Extracts from EIA Scoping Report on Phase 1A (North) Reserved Matters Applications, Waterman Energy, Environment & Design Ltd, 2014.
- MM20 Extract from Brent Cross Cricklewood EIA Scoping Report, Environmental Resources Management, 2006.
- MM21 Extract from Environmental Statement Further Information Report Figures on Phase 1A (North) Reserved Matters Applications, Waterman Energy, Environment & Design Ltd.
- MM22 Extract from Brent Cross Cricklewood Regeneration Area – Over-arching Scheme of Investigation, Waterman Energy, Environment & Design Ltd.
- MM23 Extract from Brent Cross Regeneration Scheme – Bat Survey Report for Phase 1A (North), Waterman Energy, Environment & Design Ltd.
- MM24 Extract from Environmental Statement Further Information Report Appendices on Phase 1A (North) Reserved Matters

¹⁴⁵ ODPM Circular 06/2004 was cancelled as a result of the publication of the DCLG document - Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion.

¹⁴⁶ See footnote 145.

- SM/1 Applications, Waterman Energy, Environment & Design Ltd.
Bundle of photographs of Whitefield Estate and surrounding area.
- SM/2 Emails between Mr Mevada and Capita concerning the acquisition of dwellings.

INTERESTED PARTIES' DOCUMENTS (IP/)

- 1 Ms Emmanuel's statement for Brent Terrace Residents Association.
- 2 Mr Welby's proof of evidence for Barnet Transport Users' Association.
- 3 Mr Cox's objection.
- 4 Mr Cox's proof of evidence.
- 5 Appendices to Document IP/4.

DOCUMENTS RELATING TO OTHER OBJECTIONS (OO/ /)

- 1/12a Statement of evidence of Mr N Marshall for Trustees of the Kingsley Way Charitable Trust.
- 1/12b Appendices to Document OO/1/12a.
- 1/19a Proof of evidence of Mr J Rennie for Waitrose Ltd.
- 1/19b Letters dated 10 June & 6 July 2016 from Dentons concerning the objection from Waitrose Ltd.
- 1/20a Proof of evidence of Mr J Collins for John Lewis Properties plc and John Lewis Plc.
- 1/20b Letters dated 14 & 30 June 2016 from Dentons (with enclosures) concerning the objection from John Lewis Properties plc and John Lewis Plc.
- 1/21a Proof of evidence of Mr J Adams for Transport for London and London Bus Services Ltd.
- 1/21b Appendices to Document OO/1/21a.
- 1/21c Letters dated 27 May & 27 June 2016 from Berwin Leighton Paisner concerning the objection from Transport for London and London Bus Services Ltd.
- 1/21d Joint statement of the AA, Transport for London, London Bus Services Ltd, and the Development Partners.
- 1/23a Proof of evidence of Mr A Lappage for the North London Waste Authority.
- 1/23b Letter dated 27 June 2016 from the North London Waste Authority.
- 1/28 Letters dated 29 June & 5 July 2016 from Dentons concerning a draft agreement in respect of the Holiday Inn.
- 1/68a Statement of evidence of Mr A M Chase for Marks & Spencer Plc.
- 1/68b Appendices to Document OO/1/68a.
- 1/68c Proof of evidence of Mr K Plank for Marks & Spencer Plc.
- 1/68d Appendices to Document OO/1/68c.
- 1/68e Statement of evidence of Mr P J Stone for Marks & Spencer Plc.
- 1/68f Appendices to Document OO/1/68e.
- 1/68g Position statement by Mr Harwood for Marks & Spencer Plc.

OTHER DOCUMENTS

- O1 Note of pre-inquiry meeting.
- O2 Joint statement of anchor tenants. Submitted at the pre-inquiry meeting by Mr Purchas.
- O3 Bundle of documents concerning requests for information from the AA. Submitted at the pre-inquiry meeting by Mr Purchas.
- O4 Email dated 24 February 2016 from the AA in response to latest request in Document O3.
- O5 Queries from the Inspector relating to written representations and objector status.
- O6 Email dated 2 July 2016 from Mr G Dokic to Eversheds concerning plot 258 in CPO No 1.
- O7 Letter dated 6 May from Mrs C Wilkins withdrawing from petition submitted with Document OBJ/2/21.