



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

by David Nicholson RIBA IHBC

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

Date: 24 September 2013

TOWN AND COUNTRY PLANNING ACT 1990 as amended

THE ACQUISITION OF LAND ACT 1981

LONDON BOROUGH OF HARINGEY

APPLICATION FOR CONFIRMATION OF

THE LONDON BOROUGH OF HARINGEY (NORTHUMBERLAND DEVELOPMENT
PROJECT) (No.1) COMPULSORY PURCHASE ORDER 2012

Inquiry held on 12-15 March; 4, 16 and 18 April 2013

Site inspections were carried out on 17 April 2013

File Ref: NPCU/CPO/Y5420/70787

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Abbreviations

1990 Act	- the Town and Country Planning Act 1990
Archway	- Archway Sheet Metal Works Limited
CAC	- Conservation Area Consent
CD	- Inquiry Core Document [+ number]
CIL	- Community Infrastructure Levy Regulations 2010
Circular	- ODPM Circular 06/2004 "Compulsory Purchase & the Criche Down Rules"
Club	- Tottenham Hotspur Football Club
Council	- The Council of the London Borough of Haringey (the Acquiring Authority)
CPO	- The London Borough of Haringey (Northumberland Development Project) (No.1) Compulsory Purchase Order 2012
CPZ	- controlled parking zone
DAS	- Design and Access Statement
DEA	- Defined Employment Areas
ECHR	- European Convention on Human Rights
EH	- English Heritage
ES	- Environmental statement
EUV	- Existing Use Value
GLA	- Greater London Authority (The Office of the Mayor of London)
Green guide	- Football Licensing Authority's Guide to Safety at Sports Grounds 5th edition: 2008
ha	- hectares
IC	- Evidence-in-chief
INQ	- Inquiry document
LBC	- Listed Building Consent
LBH	- London Borough of Haringey
LPSP	- Local Plan: Strategic Policies
m	- million
NDP	Northumberland Development Project
Objectors	- Members of the Josif Family (Owners of CPO Plot 1) & Archway (Owner of CPO Plot 2)
Order lands	- The properties included within the CPO
ReX	- Re-examination
s16	- Section 16 of Appendix A to the CPO Circular
s106	- Section 106 of the Town and Country Planning Act 1990
scheme	- The scheme for the redevelopment of the site (including the Order lands)
SPD	- Supplementary Planning Document
THFC	- Tottenham Hotspur Football Club
Tribunal	- Upper Tribunal (Lands Chamber)
UDP	- Unitary Development Plan
XX	- Cross-examination

File Ref: NPCU/CPO/Y5420/70787

Lands at Paxton Road, High Road and Bill Nicholson Way, Tottenham N17

- The Compulsory Purchase Order (CPO) was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by the London Borough of Haringey on 30 July 2012.
- The Order is for the purpose of facilitating the carrying out of development, redevelopment or improvement of the land comprising the demolition of existing buildings and comprehensive redevelopment to provide a new stadium and ancillary uses such as Club museum; shop and offices for the Tottenham Hotspur Foundation; residential; college and/or health centre and/or health club uses; and public realm improvements which will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the North Tottenham area¹.
- The main grounds of objection are that: there are fatal legal defects; State aid would arise; the scheme does not conform to the adopted planning framework; its contribution to regeneration and well-being would be modest; the assessment of alternatives has been inadequate; and there have been no proper negotiations.
- When the Inquiry opened there were two remaining objections, the Josif family and Archway Sheet Metal Works Limited (Archway), who were jointly represented (the Objectors).

Summary of Recommendation: see Inspector's recommendations below

1. Procedural matters and statutory formalities

- 1.1 The Acquiring Authority, the Council of the London Borough of Haringey (LBH or the Council), confirmed at the Inquiry that, from its point of view, all statutory formalities had been complied with. However, the Objectors set out four alleged legal failures which I summarise below.
- 1.2 The Council requested modifications to the Order on 15 February 2013² to remove plots 3, 5, 6, 8 and 9 from the Order. The original map³ has therefore been superseded. There were four objections to the initial CPO. Three of these had interests in the plots which have been removed from the Order and were notified accordingly. Of the remaining plots, 4 and 7 comprise parts of the public highway for which the LBH is the Highway Authority. The Objectors own plots 1 and 2.
- 1.3 The Inquiry sat for 8 days in March and April 2013. I carried out accompanied site visits around the stadium and to No.500 White Hart Lane on 17 April 2013⁴. On the same day, I also made an unaccompanied site visit to the Emirates stadium and surrounding developments including Highbury Square, the site of the old stadium, and new developments to the south west⁵.
- 1.4 Before and during the Inquiry⁶ I was asked to make orders under Rule 7(5) of the Compulsory Purchase (Inquiries Procedure) Rules 2007 on the production of further information. Prior to opening⁷ I ruled that a QC's Opinion should be

¹ Core document (CD) number CDA1

² CDG14 and attached map

³ CDA2

⁴ Inquiry document (INQ) number INQ20A

⁵ Neate appendix SN23

⁶ By letter CDG10 and in Opening

⁷ Email dated 25 February 2013

covered by legal advice privilege. With regard to the other information, and although not necessarily my final word, I gave a provisional ruling that it was not clear that the information sought was necessary for me to reach my recommendation. However, I also pointed out that the more information is provided the more credibility could be given to any assertions made. During the Inquiry additional information was provided with regard to most of the information sought, some in redacted form.

- 1.5 With regard to the request to see the ex-Olympic stadium bid documents, I was similarly not initially persuaded that these would reveal anything beyond the obvious (that the Club was more committed to a larger, newer stadium than it was to its site in Tottenham). In any event, it transpired that release of these was not in the gift of the Club and, at the close of the Inquiry, the Objectors were pursuing these elsewhere⁸.

Alleged legal defects

- 1.6 The Objectors set out four alleged failures, which were read out when the Inquiry opened⁹ and summarised in closing¹⁰, and asserted that, if any of these alleged legal defects are of substance, they cannot be remedied by any confirmation of the CPO¹¹. In short, these allegations are that: the residential tenants of plot 1 were not served notice, those with rights of light were not served notice, the Council failed to consider the tenants' human rights, and the Council's Cabinet did not have the authority to make the CPO by virtue of its failure to meet its own pre-conditions.

- 1.7 The response to these is made in the Council's opening and closing submissions¹². This rejects all the allegations and argues that: the Objectors did not reveal the tenancy - which would be allowed to run its course anyway, and that the tenants were notified as soon as possible¹³, that notification of a CPO does not extend beyond the Order lands and that this is academic anyway as building on the modified Order lands¹⁴ would not give rise to issues of rights of light, that human rights would not be infringed as the tenancy would be unaffected, and it was well within the Cabinet's discretion to decide that the pre-conditions were met - which it did - and the CPO was valid in any event.

Alleged State aid

- 1.8 The Objectors claimed that there are numerous respects in which unlawful State aid arises but that they have only focused on two. These are 'infrastructure' aid and 'land transfer' aid. The allegations are set out in opening, in a legal Opinion with the Complaint to the European Commission (EC) and in closing¹⁵. The Council's responses are in its opening and closing submissions¹⁶. It argues that allegations of State aid are a separate matter, with nothing to do with the

⁸ INQ39A and 39B

⁹ Including reference to the Council's own 3 pre-conditions, set out in full in INQ1

¹⁰ INQ52 paragraphs 4 – 26; Neate appendix 19; ID52 paragraphs 27-28

¹¹ INQ1, paragraph 9

¹² INQ7 paragraphs 36-45 and INQ53 paragraph 175-196

¹³ INQ4

¹⁴ CDG14

¹⁵ INQ9 paragraphs 9-10, Neate appendix SN19, and INQ52 paragraphs 27-28

¹⁶ INQ7 paragraphs 46-52 and INQ53 paragraphs 197-206

merits of the CPO, and that the EC has decided that the public sector investment package (or infrastructure) did not amount to State aid. The Club asserted that even if State aid was involved, it would be able to repay any sums involved¹⁷. While the EC has drawn a preliminary conclusion¹⁸, this is not a definitive position and in due course Archway will advise the Secretary of State with regard to any further representations it may wish to make.

2. The Order lands and surroundings

- 2.1 The Order lands are sought to enable the Northumberland Development Project (NDP) to proceed. The NDP scheme extends from the High Road to the west, to Worcester Avenue to the east, and from Northumberland Park to the north, to Park Lane to the south. In all, it would cover some 11.46 hectares (ha) including highway land. It includes the Tottenham Hotspur Football Club (THFC or the Club) stadium. This would have 3 phases (see s3 below). Phase 1 to the north is underway. The Order lands, as modified, comprise Paxton Road and Bill Nicholson Way and the two Archway plots adjoining the north side of Paxton Road. These now amount to 0.55ha¹⁹.
- 2.2 There was no disagreement at the Inquiry that Northumberland ward is the most socially deprived ward in the Borough, which in turn is one of the most deprived boroughs in London, and that regeneration is needed.
- 2.3 The 3.6km long Tottenham High Road Historic Corridor comprises 6 individual but continuous conservation areas²⁰. The special interest of the corridor as a whole is derived from its evolution since Roman times²¹. The North Tottenham Conservation Area was originally designated in 1972. This is characterised by a range of buildings, including some early Georgian properties, which front directly onto the High Road creating a strong sense of enclosure²². There are also a number of much poorer quality 20th century buildings²³. The THFC stadium is a major landmark adjacent to the conservation area boundary. It is visible from the High Road and match day supporters have a significant influence on the area's character and appearance.²⁴
- 2.4 No.774 Tottenham High Road (Fletcher House) is a grade II listed building dating from the early 19th century. It is the sole survivor of three villas and steps back from the street behind its front garden. It is a handsome late Georgian residence but retains relatively little internal historic fabric²⁵. No.744 Tottenham High Road (Warmington House) is similar but with a stuccoed ground floor with later extensions. It is on the English Heritage (EH) *Register of Buildings at Risk*²⁶. At the time that the character appraisal was carried out, the length of High Road adjoining the NDP scheme as a whole included listed and

¹⁷ INQ53 paragraph 202

¹⁸ INQ42A and 42B

¹⁹ INQ13A and Design and Access Statement (DAS) CDE2 p13

²⁰ CDD1 paragraph 16.1.1-3

²¹ *The Tottenham High Road Historic Corridor Conservation Area Character Appraisal* (character appraisal) CDC21 section 3

²² See DAS photomontages CDE2 pp 22-25

²³ Ibid

²⁴ Ibid section 4

²⁵ English Heritage (EH) advice, 6 July 2010, CDG13 top of page 4

²⁶ Ibid paragraph 6 on page 4. See also DAS p130-134

unlisted buildings within the conservation area. A number of unlisted buildings have since been demolished (see below).

- 2.5 The existing, rectangular, stadium stands in the south east corner of the NDP site, to the south of Paxton Road and the Objectors' plots. It is partly obscured from the High Road by existing buildings along the road frontage. The oldest stand dates from 1934²⁷. The Club pointed out a number of defects with the existing stadium. For spectators these include poor facilities for the disabled and sight lines obscured by columns, including some in the lucrative corporate hospitality suites. There are also shortcomings in the facilities for players, the broadcast media and ground staff, and security, building management systems, waste recycling and offices, while the kitchens leave much to be desired.²⁸
- 2.6 Plots 1 and 2 of the Order lands are owned by the Josif family and/or Archway²⁹. Plot 1 is made up of Nos.1-3 Paxton Road, which are predominantly used by Archway for storage, and no.5 which is an occupied flat. Plot 2 comprises Nos.19-39 Paxton Road and is used for the manufacture of kitchen equipment and other metal fabrication with associated office and storage. Archway maintains that its current use is class B2. Both are immediately to the north of Paxton Road. The uncertainty about the future of the area was a reason for dismissing an appeal to redevelop Plot 1³⁰.

Other sites

- 2.7 No.500 White Hart Lane is a potential industrial site towards the west end of the road away from Tottenham High Road. It was offered to the Objectors, with planning permission for class B1 use, by THFC as a possible site for relocation.
- 2.8 Highbury Square has been successfully redeveloped and wider regeneration has taken place and is ongoing around the Emirates stadium. Down Lane Park and other potential alternative sites for a stadium are identified on INQ23; I was not asked to visit these and did not do so.

3. Scheme details

The Scheme

- 3.1 The original NDP scheme³¹ was submitted in hybrid form as: a full application for a new football stadium and a new supermarket to its north, an outline application for up to 200 residential units, conservation area consent to demolish unlisted buildings, and listed building consents (LBCs) to demolish Fletcher House and to alter - and partly demolish - Warmington House.
- 3.2 The NDP scheme has been planned in 3 phases. The Northern development, including a new superstore, commercial space and car parking, is well under way following a further planning permission³². The Order lands are not required for its completion. Consequently, it does not form part of the CPO scheme and

²⁷ Phillips paragraph 2.27

²⁸ Ibid paragraph 2.32-2.37

²⁹ Neate section 2

³⁰ Ibid paragraph 2.5

³¹ Including planning application ref. HGY/2010/1000 and conservation area and listed building consent applications ref. HGY/2010/1001, /1002 and /1003, CDD5

³² CDD15: HGY/2011/2350, granted on 29 March 2012

- is not dependent on it. Phase 2 would include a new 56,250 seater stadium, car parking and podium, and proceed on the basis of the original permission³³.
- 3.3 Phase 3, the proposed southern development, would include housing and a college and/or health centre and/or health club (Use Class D1 or D2). The proposed timescale for the southern development, phase 3, is to commence in 2019, after the new stadium is in use and the existing stadium has been demolished. This revised permission is in outline form³⁴.
- 3.4 None of the above applications were called in for determination by the Secretary of State. There were no representations from the Objectors to any of the applications for planning permission or heritage consent.
- 3.5 The design of the stadium would be oval in shape following recent examples of large stadia at the Emirates and elsewhere. It would accord with the latest version of the Football Licensing Authority's *Guide to Safety at Sports Grounds 5th edition: 2008* (known as the "Green Guide")³⁵. Its shape would also be similar to the ex-Olympics stadium except that the seating would come close to the centre of the pitch whereas that in the ex-Olympic stadium is further away to accommodate the running tracks. The new stadium would be adjacent to the High Road and be surrounded by a plinth intended for public use.
- 3.6 LBCs have been granted for the demolition of Fletcher House and for partial demolition and alterations to Warmington House; conservation area consents (CACs) were granted for the demolition of 12 unlisted buildings³⁶. While the latter demolitions have been carried out, the listed building consents are subject to conditions³⁷ requiring contracts to have been made for redevelopment before demolition begins. No listed building would be acquired by the Order. A planning obligation (see below) would secure the full repair of 2 listed buildings within the site which are currently on the EH 'Heritage at Risk' Register and provide a Heritage Fund for other heritage assets in the vicinity³⁸.
- 3.7 Restoration works to Warmington House are intended to convert it for use as offices for the Tottenham Hotspur Foundation. This is a charity set up to assist young people in the area. During the Inquiry I was shown a video presentation on the work of the Foundation³⁹. This uses sport and, in particular, the high profile nature of Premier League football to help improve quality of life and to create new opportunities for all sections of the local community. None of this evidence was challenged. Even on the Objectors' figures, the CPO scheme would generate 274 net additional jobs⁴⁰.
- 3.8 The stadium scheme is now at detailed design stage (RIBA stage D) with the architects KSS, who enjoy a reputation for stadium design, retained for this stage of the works⁴¹. An Indemnity and land agreement for phase 2⁴² stipulates

³³ INQ53 paragraph 25b

³⁴ CDD16: HGY/2011/2351, granted on 29 March 2012

³⁵ Collecott proof paragraph 4.11 and Design and Access Statement (DAS) p95

³⁶ CDF1 appendix B

³⁷ Condition 1 on each permission, CDD5

³⁸ CDD1 section 16.15

³⁹ Phillips appendix C

⁴⁰ Neate paragraph 8.33

⁴¹ Phillips in answer to Inspector's questions; Collecott IC

that disposal of interests in the site will be restricted to the purposes of the CPO.

Section 106 agreements (s106)

- 3.9 The original permission was not granted until a planning obligation by agreement, made under Section 106 of the Town and Country Planning Act 1990 (s106), had been completed⁴³. The agreement amounted to an obligation on THFC of over £16m⁴⁴ and included: a travel plan⁴⁵, transport and accessibility works, highway works - including a controlled parking zone (CPZ) extension with the aim of achieving a significant modal shift compared with the current arrangements, employment and skills packages, heritage and listed building obligations - including repairs and a heritage contribution of up to £200,000, education contribution, community health, and affordable housing.
- 3.10 However, the following February, a series of Council reports⁴⁶ identified funding issues with the scheme. It recommended a reduction in nearly all of the s106 funding obligations⁴⁷, together with a package from the Council and the Mayor of London⁴⁸, in order to improve the viability⁴⁹ of the scheme. In doing so, it considered *viability* as sufficient profitability to underpin borrowing and development costs and provide investors with a commercial return⁵⁰. It was resolved that a new s106 agreement should be completed, cancelling the earlier one⁵¹ and substituting terms which were very considerably less financially onerous. The report followed an announcement by the Mayor of London, on 16 January 2012, of a £41m funding and investment package for Tottenham, of which £18m was for Northumberland Park, being led by THFC⁵². It recommended that a revised s106 agreement should be considered by the Planning committee a week later. The new agreement is dated 29 March 2012 and is linked to the new permissions listed in the Third Schedule. A detailed comparison of the terms of the two agreements has been provided by the Objectors⁵³.
- 3.11 The report noted⁵⁴ that the existing s106 agreement required 50% affordable housing but that a new outline application proposed an increase to 285 new 1-2 bed dwellings all of which would be open market. It reasoned that although the new flats would be viable in themselves, overall viability would be greatly reduced by a requirement for affordable homes and that the land value from the new homes would be needed to support the cost of the stadium construction. Indeed, it observed that if the NDP scheme as a whole was not viable then no new homes would be built. The report went on to further justify the deletion of

⁴² CDG9 paragraph 16.3 p13. Definitions of 'approved purposes' at p2 and of 'third party interests' at p9 of CDG8

⁴³ CDD6, dated 20 September 2011

⁴⁴ Ibid and Neate appendix SN18

⁴⁵ Ibid Sixth Schedule, tied to the hotel and residential developments

⁴⁶ See CDD7 – CDD12.

⁴⁷ CDD11, paragraphs 1, 2.1-2.4, 4.1-4.8, 4.28 onwards and appendix 2, p18-19

⁴⁸ CDD7 paragraphs 2.2 and 7.2

⁴⁹ CDD11 paragraph 4.12 and redacted Grant Thornton Report, dated 1 February 2012, INQ41.

⁵⁰ INQ41 paragraph 3.2

⁵¹ CDD17, dated 29 March 2012, clause 4.2

⁵² CDD7 paragraphs 1.1 and 1.4, and INQ12 paragraph 40

⁵³ Neate appendix SN18

⁵⁴ CDD11, paragraphs 4.35-4.39

the requirement for affordable homes by reference to the high proportion of social housing in the ward and the potential for market housing to help to reduce social housing in the Borough and so to broaden the tenure mix in this part of Tottenham.

- 3.12 At roughly the same time, THFC became a private company as a further measure to help secure the required development finance⁵⁵. In response to concerns over viability, the Club, which is now privately owned⁵⁶, submitted a letter of comfort⁵⁷.

4. Background

- 4.1 A CPO was confirmed for development around Arsenal's Emirates stadium⁵⁸ in May 2004. I saw on my unaccompanied visit that there are significant areas of public realm around the stadium and that substantial regeneration of the area has taken place and is continuing.
- 4.2 As well as asking for detailed documentation, the Objectors have made unchallenged assertions that the Club bid for the ex-Olympic stadium and pursued legal action when it was not successful. They have also alleged that the Mayor agreed a financial contribution of £17m in favour of THFC to encourage it to withdraw its legal action⁵⁹. The funding was also criticised by some in the press at the time⁶⁰.
- 4.3 In considering the planning application, EH found⁶¹ that the proposals offer an appropriate balance between the wider substantial public benefits of the scheme and harm to the historic environment.
- 4.4 The Objectors accepted that the scheme would have some economic benefits but argued that these would be modest compared with the alternatives of: retaining the stadium and redeveloping the remaining cleared sites for employment, and relocating the stadium and redeveloping the whole site for employment⁶².

5. Planning framework

- 5.1 The National Planning Policy Framework (the *Framework*) was published in March 2012. Paragraph 133 of the *Framework* is particularly relevant to the consideration of designated heritage assets. This sets out two tests where

⁵⁵ Collecott paragraph 3.4

⁵⁶ Ibid paragraph 6.18: THFC is ultimately owned by ENIC International which is owned by discretionary trusts for which the families of Daniel Levy and Joe Lewis (through the Tavistock Group) are potential discretionary beneficiaries. Daniel Levy is the Executive Chairman of the football club. Paragraph 5.35: Tavistock Group is an international private investment organisation with investments Paragraph 5.38: Tavistock has considerable experience in delivering major international real estate projects

⁵⁷ Collecott appendices 11 and 12: from the Tavistock Group Inc., addressed in The Bahamas, dated 4 February 2013, confirming that the Tavistock Group Inc. is willing to provide such funding as may be necessary to ... deliver the new stadium; and from its bank, HSBC Private Bank (Suisse) S.A., dated 5 February 2013, that its principal has the financial capacity to provide up to £350m for ... the new Tottenham Hotspur stadium.

⁵⁸ Against the Inspector's recommendation, CDG18-20

⁵⁹ Neate paragraph 3.32

⁶⁰ Neate appendix SN17, including reports by some respectable newspapers, and the reference by the Leyton Orient chairman to a 'bung'.

⁶¹ In its letters dated 6 July 2010 and 12 August 2010, CDG13 p2, and CDG16

⁶² Neate paragraph 8.83

substantial harm or total loss is involved: either that the harm is necessary to achieve substantial public benefits, or that all of a list of specific criteria are met.

London Plan

- 5.2 The current version of the London Plan was published on 22 July 2011⁶³. Policy 3.3 recognises the pressing need for more homes in London and aims to provide a real choice for all Londoners in ways that meet their needs at prices they can afford. Policy 3.4 expects development to optimise housing output, within a relevant density range, taking into account local context and character; Policy 3.8B requires a range of housing choices in terms of the mix of housing sizes and types; Policy 3.9 promotes mixed and balanced communities and a more balanced mix of tenures particularly where social renting predominates. Policies 3.11 and 3.12 seek to maximise affordable housing provision while noting the need to encourage residential development, promote mixed and balanced communities and take account of viability. Policy 7.9 expects regeneration schemes to make use of heritage assets with their significance used as catalysts for regeneration.
- 5.3 The Greater London Authority (GLA) Stage II referral⁶⁴ found that the combination of financial viability and local demographic factors justified the exclusion of affordable housing and so the scheme could be supported by the London Plan (policies 3.9 and 3.12 in particular). Revised Early Minor Alterations to the London Plan were published for consultation in June 2012⁶⁵.

UDP

- 5.4 The Haringey Unitary Development Plan (UDP)⁶⁶ was adopted in July 2006. The Secretary of State's Direction⁶⁷ saved a large number of policies, including AC3, EMP3, EMP4 and site specific proposal (SSP)13 in Schedule 1.
- 5.5 No 'upper case' policy specifically refers to a stadium in Tottenham. However, linked to Policy AC3, UDP paragraph 1.13 identifies the area along the Tottenham High Road Regeneration Corridor as having severe environmental, economic and social problems and being in need of regeneration, and supports the expansion and redevelopment of the football club.
- 5.6 When the UDP was adopted, Policy EMP3⁶⁸ sought to protect the Employment Locations identified in Schedule 3 and on the Proposals Map, for employment generating uses. The northern part of the NDP includes Defined Employment Areas DEA8 and DEA20. Although none of the Order lands is within a DEA, the stadium in phase 2 would extend into them. UDP policy EMP3 was saved but has now been superseded by LPSP policy SP8.
- 5.7 Policy EMP4 allows for permission to be granted to redevelop land and buildings in an employment generating use subject to 3 provisos. These are that: a) the land or buildings are no longer suitable; and b) there has been an unsuccessful

⁶³ CDC6

⁶⁴ INQ12 paragraph 18

⁶⁵ CDC8

⁶⁶ CDC14

⁶⁷ CDC20, dated 15 July 2009

⁶⁸ CDC14 pp89-90 and committee report, 30 September 2009 CDD1 p18 s14.2

marketing campaign; or c) that redevelopment would retain or increase the number of jobs and result in regeneration benefits. The text does not specify whether the requirement is for [a and b] or c, or for a and [b or c]. Supporting paragraph 5.30 adds that non employment generating uses may be appropriate on part of the site where redevelopment would not give rise to a material loss of employment and that criterion c) will be dependent upon the proposed non employment generating use complying with other policies of the Plan.

- 5.8 Site specific proposal SSP13, for White Hart Lane Stadium, proposes expansion of the existing football stadium and mixed use development including residential. The allocation on the UDP proposals map does not extend as far north as is now proposed for the new stadium. Table 4.1 of the UDP provides indicative numbers for housing sites with 500 against SSP13. This table has not been saved⁶⁹. SSP13 on the proposals map encompasses the whole of the Order lands and phase 3.
- 5.9 UDP policies on design and heritage, including CSV6 and CSV7, largely replicate the national policies on these matters which were prevalent at that time.

LPSP

- 5.10 Haringey's Local Plan: Strategic Policies 2013-2026⁷⁰ (LPSP) was adopted on 18 March 2013⁷¹. The Mayor has confirmed that it is in general conformity with the London Plan. The LPSP supersedes a number of UDP saved policies, including AC3 (by SP1) and EMP3 (by SP8)⁷². Of particular relevance, LPSP Policy SP1 aims to focus growth in the most suitable locations, identifying Growth Areas and areas of Change, including Northumberland Park (which includes the redevelopment of Tottenham Hotspur Football Stadium).
- 5.11 LPSP policy SP2 sets a housing target for the borough taken from the London Plan. Subject to viability, it requires a borough-wide target of 50% affordable housing. Policy SP8 aims to secure a strong economy in Haringey and protect employment and industrial areas. White Hart Lane is identified as a Locally Significant Industrial Site. Paragraph 5.1.4 takes a more flexible approach to facilitate urban regeneration. Policy SP12 echoes the historic environment policy in the *Framework* but also emphasises its role in regeneration. LPSP policy SP12 supersedes UDP policies CSV1-3.
- 5.12 The retained supplementary planning document (SPD), adopted in 2008, give recommended dwelling mixes for private market and affordable housing⁷³.

Other policy

- 5.13 The NDP is within the Upper Lee Valley. The Upper Lee Valley draft Opportunity Planning Framework (OAPF)⁷⁴, produced by the Mayor and the GLA, is relevant to the NDP scheme, as are the 2012 *Plan for Tottenham*⁷⁵, and People Places &

⁶⁹ Accepted by Neate in XX

⁷⁰ CDC13

⁷¹ INQ38B

⁷² Listed in CDC13 pp150-156

⁷³ CDC17 s7

⁷⁴ CDC9 p146

⁷⁵ CDC19, particularly p146

Prosperity⁷⁶. The Community Infrastructure Levy (CIL) Regulations 2010 are relevant to the consideration of the s106 agreements. Section 237 of the Town and Country Planning Act 1990 is relevant to rights of light.

Compulsory purchase policy

5.14 Relevant policy includes The Planning & Compulsory Purchase Act 2004 (PCPA), Section 226 of the Town and Country Planning Act 1990 (as amended)⁷⁷, and ODPM Circular 06/04: *Compulsory Purchase and the Criche! Down Rules* (the Circular)⁷⁸. There must be a compelling case in the public interest, the purpose should sufficiently justify interfering with human rights, and acquisition should be by negotiation wherever practicable. The latter section sets out 4 factors to consider which are, in short: the adopted planning framework; the economic, social or environmental well-being of the area (s226(1A) of the 1990 Act); viability and funding; and whether the purpose could be achieved by other means. Some weight can be given to non-statutory planning documents⁷⁹. The well-being test is not limited to the Order lands. There is no particular degree of justification required and each case must be determined on its own merits. The Council's case must justify the interference with Human Rights⁸⁰.

6. The Case for the Acquiring Authority (the London Borough of Haringey) and for Tottenham Hotspur Football Club (the Club)

The main points are:

- 6.1 There is a compelling case in the public interest for the confirmation of the Order which is crucial to the regeneration of the Tottenham area.
- 6.2 The NDP has begun and 95% of the land has been acquired over the last 5 years. Four plots remain. Two are highway land; two are owned by the combined remaining Objectors. The scheme is capable of implementation.

Need for regeneration

- 6.3 Haringey ranks as one of the most deprived boroughs in the country. Tottenham, and Northumberland Park in particular, is the most deprived part of Haringey. It has high levels of crime, sickness, teenage pregnancy and benefit dependency together with low levels of home ownership, education and employment skills. The report⁸¹ on the riots in August 2011 highlighted the level of deprivation and the need for regeneration.

⁷⁶ CDC16, particularly p9

⁷⁷ Under s226(1)(a), the power to acquire land compulsorily is provided if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. Under s(1A) a local authority must not exercise this power unless it thinks that the development, re-development or improvement is likely to contribute to the achievement of the promotion or improvement of the (a) economic, (b) social, or (c) environmental, well-being of their area.

⁷⁸ CDB1 Circular 06/2004. Paragraphs 17 - 19, 21, 24 - 25, and sections 6 and 16 of Appendix A (s16) are particularly relevant.

⁷⁹ Circular 06/04 appendix A paragraphs 13 and 14

⁸⁰ Article 1 of the First Protocol to the European Convention on Human Rights (ECHR), and Article 8 of the Convention, and the Human Rights Act 1998

⁸¹ *It took another riot*, by Sir Stuart Lipton for the Mayor of London, CDG1

6.4 The UDP recognises the stadium redevelopment as a catalyst for regenerating the area⁸², as did the 2012 *Plan for Tottenham*. The latter expressly acknowledges that the area's regeneration will be spearheaded by the Club's stadium-led development scheme which will create a leisure destination for North London⁸³. It will be an employment generating use with regard to the objectives of UDP policy EMP3⁸⁴, which has now been superseded by LPSP policy SP8 in any event. The Mayor of London has endorsed the stadium redevelopment and its potential as a catalyst⁸⁵. Policy SP1 of the newly adopted LPSP promotes Northumberland Park as an area for change including redevelopment of the stadium.

Permitted NDP scheme

6.5 The Club has occupied its present site since 1889 and this was taken into account by EH⁸⁶. It is hugely significant as a local employer and visitor attraction, and its charitable arm⁸⁷ undertakes valuable community work. The existing stadium is at the end of its useful life, with poor facilities, and nothing like the capacity needed to meet demand and grow the business. The overall redevelopment would provide jobs, homes, a new public space and economic growth. The 3 phases would provide a superstore and parking, the stadium, the restoration of 4 heritage buildings and public space, and the southern development of 285 homes with class D uses. None of this was opposed by the Objectors at the planning application stages.

The Order

6.6 The Order was made for the comprehensive redevelopment to provide: a new stadium; residential, college/health uses; and public realm⁸⁸. The appropriate exercise⁸⁹ is not to revisit all the planning policy issues but to examine the scheme's regenerative benefits.

Circular 06/04: paragraph 16 of Appendix A – planning framework

6.7 Considerable weight should be given to the fact that planning permission has been granted for the scheme. There can be no doubt that the purpose for which the land would be acquired fits wholly within the planning framework for the area and with the recently adopted Policy SP1 for Northumberland Park⁹⁰.

6.8 The Objectors' evidence is misguided. The development plan should be read as a whole and it should not be necessary to revisit the planning merits of the scheme. Specifically, reference⁹¹ to the site specific proposal SSP13, allocating the northern part of the Order scheme as employment land in the UDP, ignores this and the fact that it has only been saved temporarily pending adoption of a Site specific DPD. It is true that the Order scheme would not deliver the

⁸² CDC14 page 34, paragraph 1.13

⁸³ CDC19 page 16

⁸⁴ Acknowledged by Neate in XX

⁸⁵ Garner paragraph 4.4; CDC9

⁸⁶ CDG13, CDG16

⁸⁷ The Tottenham Foundation

⁸⁸ CDA1 paragraph 1

⁸⁹ Confirmed in the Emirates Decision, CDG20 paragraphs 23 and 33-34

⁹⁰ Notice of adoption, dated 18 March 2013, INQ38B

⁹¹ By Neate

number of houses referred to in Table 4.1 of the UDP. However, this is only indicative, the Council's targets will still be met⁹², and Table 4.1 has not been saved⁹³. The Council considered that the planning application was compliant with Policy EMP3 for employment uses as it would generate jobs.

- 6.9 The Order scheme would also comply with Policy EMP4, as accepted⁹⁴, with its meaning now a matter of law⁹⁵. Policy EMP4 can be complied with if (c) is met through the increase in the number of jobs. The UDP did not require compliance with EMP3 and EMP4 but, even if it did, they are complied with and EMP3 has been superseded. The corresponding provision in the LPSP, Policy SP8, also supports local employment and regeneration aims and so, looked at in the round, this policy would be complied with as well. Finally, it should be noted that it is only part of the scheme which falls within the disputed designations. None of this northern part falls within the Order lands themselves.
- 6.10 The Objectors⁹⁶ next argue that the scheme fails to comply with London Plan policy 3.3 to maximise housing. However, Policy 3.4 of the London Plan requires regard to other factors and policies in the plan. Similarly, affordable housing policy specifically contemplates mixed use schemes. Within this context, the policies would be met by the housing provision. With regard to affordable housing, the GLA and the Council recognised the high proportion of social housing in the area and considered it appropriate that affordable housing should not be provided. There is no inconsistency of approach to that adopted in the *Cannon Rubber Factory*⁹⁷. In any event, the recommended dwelling mix is not a requirement of statutory policy.

Heritage

- 6.11 These matters were considered at length by EH and the Council⁹⁸. The objections raised were: loss of one listed building, harm to the conservation area, and the demolition of 12 buildings, of which 8 were locally listed. The latter 12 have been demolished for good reason and the argument is now academic. The *Framework*⁹⁹ has two tests: first that substantial harm is necessary; second that specific criteria are met. The Council and EH applied the first test, which is the same as in Policy HE9.2 of the former PPS5¹⁰⁰. EH accepted a minimum seating capacity of 56,250, that the alternatives had been examined and that the proposed configuration was reasonable. Subject to revisions, EH found the proposals struck an acceptable balance between identifiable harm to heritage assets and substantial public benefits¹⁰¹, including works to the remaining heritage assets. The suggested revisions were made¹⁰².

⁹² Dorfman in XX

⁹³ As accepted by Neate in XX

⁹⁴ By Dorfman in XX

⁹⁵ INQ49 *Tesco Stores v Dundee City Council* [2012] JPL 1078

⁹⁶ Neate paragraph 6.20 p66

⁹⁷ Report at CDG22

⁹⁸ See committee report CDD1 s16 pp24-35

⁹⁹ CDC4 paragraph 133

¹⁰⁰ Dorfman in XX

¹⁰¹ Further listed in evidence by Dorfman in XX

¹⁰² CDG15-17

There was no evidence at the Inquiry that any alternative scheme would have any lesser impact¹⁰³.

- 6.12 While the revised s106 agreement¹⁰⁴ omitted the £200,000 Heritage Fund contribution, this has not been cast aside but transferred to the Council and was not referred to as a deciding factor in any case.

Economic, social or environmental well-being

- 6.13 In terms of economic well-being, and allowing for the loss of existing jobs, the scheme will create several hundred permanent new jobs¹⁰⁵, as well as construction jobs, and so make a substantial contribution to the local economy. While there was disagreement over the suitability of 500 White Hart Lane as an alternative for the Archway business, the Objectors do not argue that it would be unable to find another site. Although the end users for the southern development have not yet been identified, this is not surprising given the timescale of 2019 and the Order lands are not required for this.
- 6.14 Even if it were true that the *multiplier effect*¹⁰⁶ would be greater with the 2011 s106 agreement, this should not prevent the Order being confirmed. There is no evidence that anyone would build such a scheme, and it was not suggested that the economic measures in the 2011 s106 were necessary for permission to be granted and so wrong for the Council to require them. On the Objectors' figures¹⁰⁷, more jobs would be created by the 2012 scheme. Even with the later s106 agreement, there would be a number of measures to assist employment in Tottenham¹⁰⁸. Increased householder expenditure from new housing and match day spending would boost the local economy and the stadium has the support of local businesses.
- 6.15 Finally, the stadium is expected to be the first phase, and a catalyst, towards the wider regeneration of the area being planned by the Council¹⁰⁹ and supported by the Mayor in the OAPF¹¹⁰. It is not surprising that hard evidence for this is limited in advance of the CPO being confirmed. Nonetheless, all these matters are significant contributors to the improved well-being of the area referred to by section 16(ii) of Appendix A to the Circular and even the Objectors acknowledged that they would contribute¹¹¹.

Social well-being

- 6.16 The Order scheme will introduce new market housing and new community event space. The new stadium will promote a sense of local pride in a way that other large scale development would not. It would also strengthen the role of the Tottenham Hotspur Foundation. The potential new healthcare facility would

¹⁰³ Neate in XX

¹⁰⁴ From CDD6 to CDD17

¹⁰⁵ Neate paragraphs 8.33 and 8.37-8.39

¹⁰⁶ Neate pp 99-100 paragraphs 8.34 – 8.35

¹⁰⁷ Neate table at the top of p108

¹⁰⁸ CDD17 schedule 4, s7, p37

¹⁰⁹ Garner paragraph 5.39 p18 onwards

¹¹⁰ CDC9 p146

¹¹¹ Neate in XX

address the area's health inequality¹¹². Some of the work of the Foundation would be lost if the stadium was relocated outside Haringey.

Environmental well-being

- 6.17 As well as bringing a substantial amount of vacant land back into use, the scheme would restore heritage buildings, and transform the area's appearance with a publicly accessible space around the new stadium. By pursuing an extension to the existing controlled parking zone (CPZ) around the stadium, the scheme would achieve a significant modal shift compared with the current arrangements.
- 6.18 The consented scheme would preserve the linear form of the High Street. The beautifully designed curve would allow the large modern building to touch the High Street without being too bulky. The public space would not detract from the conservation area or remove the form or function of the High Road while the difficult and unpleasant side streets would become an extraordinarily safe part of a new public realm. The new prominence of the stadium would not look like a gap. The historic terraces would be renovated and reused. Buildings which currently detract from the streetscene would be removed. Placing the stadium into the High Road was certainly a challenge but the overall scheme would be clever, beautiful and imaginative. The new stadium would be more immediately visible than the existing which is tucked away behind Bill Nicholson Way and a gated car park. It would have a strong presence, rather than being ugly and hidden, and would be integrated into the conservation area¹¹³.
- 6.19 Overall, the scheme would make a substantial contribution to economic, social and environmental well-being. While the benefits might not reach the magnitude of those at the Emirates stadium, that is not a good reason to disregard the benefits or to find against confirming the Order.

Viability

- 6.20 Viability is no longer contested¹¹⁴ and so there must be a reasonable prospect that the scheme will proceed, satisfying the third criterion at s16(iii) of Appendix A to the Circular. The Objectors argued that, while the scheme might be viable, the Club might not be committed to implementing it without a development agreement between the Club and the Council and that contested CPOs are not confirmed in the absence of a legal delivery mechanism. In fact, there are such cases¹¹⁵ and the massive investment made by the Club¹¹⁶ is commitment enough. Moreover, the Club would not be free to use the land for any other purpose as identified in the Phase II Indemnity Agreement.
- 6.21 The Objectors suggested other scenarios for regeneration, principally expansion of the existing stadium or an alternative location¹¹⁷, arguing that these would generate more employment. However, there is no evidence that either would be implemented. The Club has made it clear that it is not interested in

¹¹² Garner paragraph 5.31 p17

¹¹³ Dorfman XX Day 2

¹¹⁴ Neate in XX

¹¹⁵ INQ 29-31

¹¹⁶ £100m as at January 2013 – Dorfman IC and Collecott proof paragraph 4.29

¹¹⁷ Neate appendix 26

expanding its existing stadium. The Emirates stadium has 'raised the bar' in terms of space standards and spectator expectations and so expansion would not achieve the Club's aspirations. It will not happen.

- 6.22 Next is the fact that there are no alternative sites. Much was said about the Club's bid for the ex-Olympic stadium but this bid was rejected and that opportunity has gone to West Ham. It is no longer an alternative¹¹⁸. Sharing this stadium is out of the question as West Ham have agreed to use it as it is while THFC is clear that the existing structure doesn't work for football¹¹⁹. Sharing another stadium would be equally unfeasible. The most likely option would be the Emirates stadium but this is limited to 40 games a year and, as it seen as Arsenal's stadium, the fans would be very unlikely to go there in significant numbers¹²⁰.
- 6.23 Once the bid failed, the Club undertook Project Rafael¹²¹ to look for other sites. None was suitable. The Objectors argued that Down Lane Park might be suitable but that would be far more problematic than the Order site and could take years. Moreover, relocation would frustrate the Council's aspirations to regenerate the area. There is no alternative to achieving the proposed stadium behind the CPO and, if there were, it would not achieve the purpose of regeneration.

Circular 06/04: negotiation

- 6.24 It is normal for negotiations to be led by the developer (here, the Club)¹²² but there is also a file full of records of the regular reports to the Council of the negotiations¹²³. It is sensible for these to run alongside CPO procedures¹²⁴. The Club has done exactly this and acquired nearly all the land and successfully relocated 72 businesses. All except Archway. This indicates where the problem lies. The offer of No.500 White Hart Lane (with very significant betterment) as an alternative is a clear example of how hard the Club has tried. To cite this as 'bullying'¹²⁵ demonstrates how difficult Archway has been over negotiations.
- 6.25 The alternative scenarios would not result in a higher land value¹²⁶. Reference to Heron Quays West¹²⁷ is of little relevance as negotiations are always case specific. Moreover, the Inspector¹²⁸ was wrong to set out which interpretation of key value was correct¹²⁹.
- 6.26 What is clear¹³⁰ is that there is no prospect at all of the Objectors selling willingly without a huge ransom value. The Club has received an expert

¹¹⁸ Neate in answer to Inspector's questions

¹¹⁹ Collecott IC: the distance between the pitch and the seating is too great. It would not create the right atmosphere and from some seats it would not be possible to see the ball.

¹²⁰ Phillips in answer to Inspector's questions

¹²¹ INQ23

¹²² Laing IC

¹²³ Offered as evidence during the Inquiry but not sought

¹²⁴ Circular paragraph 24-25

¹²⁵ Laing's evidence

¹²⁶ Neate in answer to Inspector's questions

¹²⁷ INQ43, CPO ref. LDN23/E5900/6/4

¹²⁸ Me

¹²⁹ Katkowski QC in answer to the Inspector during closing submissions

¹³⁰ From Laing in XX

Opinion¹³¹ to the effect that the Objectors do not have a legitimate claim to ransom value. The Objectors have also obtained an expert Opinion¹³² which says otherwise. This is a matter that will never be agreed by negotiation and will have to be resolved by the Upper Tribunal (Lands Chamber) [the Tribunal] in due course (it can be asked to rule on whether the head of claim arises before dealing with quantum). Indeed, the Club has made repeated offers to ease relocation and to agree to resolution by the Tribunal. There is no tenable alternative to the CPO.

6.27 It is not for the Inspector or the Secretary of State to consider the question of key, or ransom, value – that is for the Tribunal. What can be considered is whether or not there is a reasonable prospect of acquisition by agreement. There is not. The CPO is the last, and only, resort.

6.28 Accusations of bullying are regrettable and desperate but not unusual. They are not substantiated but rely on third hand evidence. Although Mr Phillips is accused of bullying once, he has met the Objectors many times. Even if true, and all allegations have been rebutted, one error would not amount to unacceptable behaviour and no allegations have been made against the Council. Reasonable attempts have been made to acquire the Objectors' land by private treaty.

Circular 06/04: compelling case

6.29 Planning permission, listed building and conservation area consents have all been granted. There is, at the very least, a reasonable prospect of the Order Scheme proceeding. Substantial regenerative benefits were not challenged. Rather, the Objectors sought to show that other development might have greater benefits but with no evidence that these would come to fruition. Having regard to the legal principles which govern CPOs¹³³ and the factors in the Circular¹³⁴, there is a compelling case in the public interest which justifies the interference with private property. The Council asks that the Secretary of State confirm the CPO without delay.

7. The Case for the Objectors

The main points are:

7.1 Plots 1 and 2 of the Order lands are owned by the Josif family and/or Archway. Plot 1 is made up of Nos.1-3 and No.5 Paxton Road. Plot 2 of the Order lands comprises nos.19-39 Paxton Road. The Objectors comprise members of the Josif Family (Owners of CPO Plot 1) & Archway Sheet Metal Works Limited (Owner of CPO Plot 2). Archway runs a successful business on the larger of the two plots.

¹³¹ From Katkowski QC, Phillips Rebuttal appendix 6 pp3-21

¹³² From Guy Roots QC, included in INQ3

¹³³ *Sainsbury's Supermarkets Ltd. V Wolverhampton City Council* [2010] UKSC 1173

¹³⁴ Paragraph 16 to Appendix A to Circular 06/2004

7.2 The burden to be discharged by an Acquiring Authority was recently reaffirmed by the Supreme Court¹³⁵, approving judicial statements from long before the Human Rights Act 1998 (HRA). The established principles are broadly consistent with Circular 06/2004 and that there has to be a *compelling case in the public interest*. A CPO must be a matter of last resort, that is to say that all other possibilities must have been comprehensively tried and failed, and this burden is in no way reduced by the fact that Archway's plots are the only outstanding interests.

Commitment

7.3 There is no development agreement in place between THFC and LBH. The only rational explanation for this is that the Club does not want to be committed to develop the stadium. The only known examples of a contested CPO without a development agreement¹³⁶ were when the topic was not even considered and for a Pathfinder CPO involving public authorities. While THFC has made significant progress with the scheme, most of this had been spent before its attempts to secure the ex-Olympics stadium, and so little weight can be given to this expenditure as evidence of its commitment to Tottenham.

7.4 If the CPO is confirmed and the land transferred to THFC, the Crichel Down Rules would no longer apply¹³⁷. With nothing to prevent the CPO being implemented before a binding contract to construct the stadium, and nothing offering to require the land to be transferred back to Archway if the scheme is abandoned, THFC would acquire a 17 acre development site with no commitment to implement the stadium but free to carry out some other form of development¹³⁸ and a track record of walking away from such proposals¹³⁹.

Merits – planning framework

7.5 The Circular refers to 3 factors¹⁴⁰, the first of which is fitting in with the adopted planning framework. The framework is now the London Plan, the remaining saved UDP policies, and the LPSP. It should be noted that, first, this criterion refers to the whole development and not just the purpose of the CPO. It would be an error not to consider the merits, or otherwise, of the whole scheme as in the Arsenal Decision¹⁴¹. Second, the LPSP is plainly not *out of date*¹⁴² and so it is not necessary to consider non-statutory plans which should attract little weight in any event on account of their lack of systematic consultation.

7.6 Of the policies which should be considered, UDP policy EMP4 is particularly relevant. Some 25% of the proposed stadium would stand beyond the area identified for this in the saved SSP13 allocation and on land to be protected for employment. The proposals would conflict with EMP4 criterion a). Re-use of

¹³⁵ *Sainsbury's Supermarkets Ltd v. Wolverhampton City Council* [2010] UKSC 1173. See INQ52 paragraph 1 for relevant quotations.

¹³⁶ At Victoria INQ29/30 and Newcastle INQ31

¹³⁷ Part 2 of the Memorandum to Circular 06/2004, paragraphs 1-4.

¹³⁸ Mr Phillips and Mr Knibbs of LBH CDD9 paragraph 32, 13 February 2012. See also p15 CDD11

¹³⁹ As shown by the ex-Olympic stadium bid

¹⁴⁰ Paragraph 16 of Appendix A to Circular 06/2004

¹⁴¹ CDG20, paragraphs 26, 34, 36-42

¹⁴² As defined in paragraph 14 of Appendix A to Circular 06/2004

the site for employment purposes would provide far more jobs¹⁴³. In the LPSP, policy SP8 continues to specifically protect class B uses.

- 7.7 Next, there are serious policy breaches with regard to housing. The UDP anticipated 500 houses but the proposals would only provide 285 units and so fail to maximise housing. Under the LPSP¹⁴⁴, one third should be units of 3 bedrooms or more. Now this is likely to be 1-2 bed units aimed at 'city professionals'. Finally, in this area of high deprivation, 50% of these should be affordable¹⁴⁵. Under the revised s106 undertaking none would be. The Council's contention that the policies should not apply as there is a high concentration of social housing in the area is not supported by policy or recent examples such as the *Cannon Rubber* site¹⁴⁶ where 100% affordable housing was provided. Rather, the reason the requirement was dropped was for claimed non-viability, a matter which no longer applies given the availability of some £350m from the owners' funds¹⁴⁷.
- 7.8 The GLA's Stage II report¹⁴⁸ should be disregarded, given its decision to inject substantial funds toward the development, while the Stage I report identifies the breaches of policy. This was acknowledged by the Council¹⁴⁹ when it accepted that there would be a breach of LPSP housing policy SP2 and, by extension, a breach of the London Plan policies which policy SP2 reflects.
- 7.9 The demolition of Fletcher House would cause substantial harm to the area¹⁵⁰. The locally listed buildings, which made a positive contribution to the conservation area, have been demolished and cannot now be brought back again. However, the loss of the *strong sense of enclosure*¹⁵¹ could be remedied if a scheme came forward which did not introduce the bulk and alien design of the stadium into streetscene¹⁵². The Order scheme would not do so. Rather, it would introduce a building which would be oval rather than follow the building line, locally remove the historic street pattern, be much taller, introduce a gap and a new dominating presence.
- 7.10 The conservation area character appraisal notes that the THFC stadium is a major landmark which is visible from the High Road and match day supporters have a significant influence on the area's character and appearance. It follows that the loss of the stadium to Tottenham High Road would have a significant effect on the area's character.
- 7.11 The support of EH should be viewed in the context of its understanding that the stadium could only be built on the proposed footprint. It follows that the harm to the conservation area, and the loss of a listed building, are contrary to the development plan.

¹⁴³ Dorfman in XX

¹⁴⁴ The retained SPD, CDC17

¹⁴⁵ London Plan 3.11-3.12; LPSP policy SP2 and paragraphs 3.2.19-3.2.29

¹⁴⁶ CDG22

¹⁴⁷ From off-shore funds – see Collecott appendices 11 and 12

¹⁴⁸ INQ12

¹⁴⁹ Dorfman in XX, Day 2

¹⁵⁰ Ibid

¹⁵¹ Character appraisal CDC21 paragraph 4.2

¹⁵² See Neate p78 paragraph 6.70

Regeneration [promotion or improvement of the economic, social or environmental well-being of the area]

- 7.12 There is no dispute that regeneration of the area is needed, the question is what would be the right solution. Archway has its own proposals for increasing its workforce. The job growth from the CPO scheme would be modest, it would not compare with that at Arsenal, and would be speculative in any event. There is every likelihood that alternative development would come forward. Indeed, for the most deprived in the area the scheme would actually be a drag on regenerative potential. The Club claims no benefits for local people from the use of the stadium. It is more important to get the right solution here than to get an inadequate scheme which would displace a productive business.
- 7.13 The benefits for the Club alone and not part of the Council's normal investment, including the proposed CPZ¹⁵³, do not constitute a reason for using CPO powers¹⁵⁴. At Arsenal, against the Inspector's advice, the CPO was confirmed on the basis of the *comprehensive regeneration*¹⁵⁵. The City of Manchester Stadium made use of partnership agreements to maximise beneficial community impacts¹⁵⁶. The regeneration effects of a stadium should not be overestimated without robust evidence to support such claims¹⁵⁷. The potential benefits here are almost embarrassingly paltry. This is not a regeneration-led scheme, but a scheme for a football stadium with some modest benefits tacked on.
- 7.14 In any event, the case has not been made that the stadium would lead to meaningful regeneration of the area. The northern site is underway already, the southern housing would be market housing and the class D use is both very vague and some way off. The assertion of catalytic regeneration is just that, an assertion without supporting evidence. Viability is no longer challenged¹⁵⁸, but this does mean that the land has a huge value.

Other means

- 7.15 The purpose of the CPO is to construct the stadium, with related and ancillary development. The Club, and Council, have asserted that an enlarged stadium cannot be achieved to the south of Paxton Road. However, if the CPO is rejected, this is likely to be seriously investigated, as has happened before¹⁵⁹.
- 7.16 There has been no rigorous or systematic exercise looking for alternative solutions. The fact that the purpose of the CPO is a new stadium is a bad point.

¹⁵³ Dorfman in XX

¹⁵⁴ Arsenal decision letter, CDG20 paragraph 26

¹⁵⁵ Ibid paragraph 36: *more than 2,000 new homes; four new community health facilities; two new children's nurseries; a new computer learning centre; a new and larger sports facility; the relocation of the Queensland Multimedia Arts Centre; priority to Islington residents for up to 10,000 new season tickets; £500,000 for a new community development trust; £40,000 a year for community initiatives; more than 28,000 sq. m. of new business and commercial space; approximately 1,800 new full time opportunities for local trade and to train local unemployed people ; a new Waste Recycling Centre; a new depot for Council refuse lorries; new public open space and money towards its upkeep; up to £500,000 for improvements to three Council owned estates; improvements to public transport and traffic management estimated at more than £8 million and up to £500,000 to monitor the impact of large crowds attending the stadium and to identify possible mitigation measures.*

¹⁵⁶ Neate proof para 5.11

¹⁵⁷ Ibid paragraph 5.13-5.14

¹⁵⁸ Following Mr. Collecott's evidence and the willingness of the Club's owners to fund up to £350m

¹⁵⁹ Schemes for the enlargement up to a capacity of 48,000

The environmental statement (ES) is defective in this regard. The fact that the Club pursued the ex-Olympic stadium should have been reflected in the environmental impact assessment. The Inquiry is without a comprehensive assessment of the alternative development potential of the CPO site and the Club's surrounding land. The 'very high level brief'¹⁶⁰ to look for alternatives was undertaken in less than 3 weeks and hardly a genuine site search. In the longer term, there is likely to be more demand but also more sites available¹⁶¹.

Section 106 obligations

7.17 In short, there has been a very substantial transfer and dilution of obligations¹⁶² away from the developer. Regardless of the State aid issue, it is not in the public interest that the developer should be relieved of these obligations when it can, and should, fund them.

7.18 Contrary to the Council's claims that it would be *extremely challenging*¹⁶³ to promote residential and B1 use without the stadium, there is potential¹⁶⁴ if the stadium was built to the south of Paxton Road. In this case there would be 17 acres of flat, developable land and it would not be in the interests of the Club, the Council or the public to continue to sterilise this land. The lack of interest in the area is a consequence of the proposed stadium having blighted other proposals, such as Archways, for the last 10 years. Marketing would have been pointless. It is very likely that the Olympic bid documents, so far denied to the Objectors, will have evaluated the exit strategy from the site in the event that it had been successful. These documents should be disclosed.

Negotiations

7.19 Confirming the CPO should be the last resort in the event that negotiations fail¹⁶⁵. The Council cannot show that this point has been reached as it delegated the exercise to the Club. The key point is the reasonableness or otherwise. The Club has rejected any negotiation beyond the £1.675m existing use value (EUV)¹⁶⁶.

7.20 The Objectors' expert Opinion is clear that there could well be 'pre-existent' value. In the Heron Quays West report, the Inspector¹⁶⁷ noted, from the evidence, that *it is hard for the Council to make a convincing case that the Objectors' expectations were wholly unreasonable and so the Council did not negotiate within the terms of the Circular*. While the facts of that case are different, a parallel conclusion can be drawn.

7.21 It is open for the Secretary of State to conclude that the Acquiring Authority was unreasonable by refusing to contemplate other than EUV. The stage of last resort has not been demonstrated.

¹⁶⁰ Mr Phillips with reference to Project Rafael, INQ23

¹⁶¹ Canary Wharf Inspector's Report, paragraph, 138 INQ34

¹⁶² CDC6, CDD11-12 and CDD17 summarised at Neate paragraphs 315-318 and appendix 18

¹⁶³ Ms Garner in evidence

¹⁶⁴ See Neate scenarios 1 and 2

¹⁶⁵ Circular 06/2004 paragraph 24

¹⁶⁶ Stretton's valuation of 17 September 2010, Collecott appendix 4

¹⁶⁷ Me

Conclusions

7.22 The CPO should not be confirmed because:

- i) there are fatal legal defects and unlawful State aid would arise,
- ii) the scheme does not conform with the adopted planning framework,
- iii) its contribution to regeneration and well-being would be modest,
- iv) the assessment of alternatives has been inadequate,
- v) there has been no discussion other than on the basis of EUV.

8. Inspector's Conclusions

I have reached the following conclusions based on all of the above considerations, the evidence given at the Inquiry, and my inspection of the Order Lands, their surroundings and other sites. The references in square brackets [] are to earlier paragraphs in this report.

Procedural matters

- 8.1 The Council seeks confirmation of the Order subject to modifications. [1.2]
- 8.2 The alleged legal defects are matters for the Secretary of State. I agree with the Objectors that these refer to legal requirements which do not go to the balance of the merits of the CPO. Other than to highlight the possible implications, and the need for the Secretary of State to take his own legal advice on these matters, I make no recommendations on these. [1.6-1.7]
- 8.3 I make no comment on whether or not the allegations of State aid have any merit as these are not before me or the Secretary of State to determine. If proven, unlawful State aid could be recovered through the courts. Viability is no longer an issue and so proceedings with regard to State aid should not prevent a decision being taken on the CPO. However, I do comment on the matters raised with regard to these allegations insofar as they relate to the balance to be reached in assessing whether or not there is a compelling case in the public interest. [1.8]

There are 4 factors to be considered in the Circular and, like the parties, I will largely structure my conclusions to follow these factors. [5.14]

Planning framework

- 8.4 The planning context comprises the *Framework*, the London Plan, the saved UDP policies and the LPSP. In granting planning permission, the Council accepted that the planning framework as a whole supports the redevelopment of the stadium. In an earlier CPO decision, for a scheme which included the Emirates stadium, the Secretary of State found that it should not be necessary to revisit the planning balance. Nevertheless, the Objectors are entitled to question whether the purpose behind the CPO fits with the adopted planning framework, particularly in the light of any changes to the planning context. [5.5][6.6][7.13]
- 8.5 Considerable weight should be given to the requirement in the London Plan for housing and for affordable housing in particular. The scheme would only provide 285 units out of a figure of 500 dwellings in UDP policy SSP13. However, this is only an indicative number. LPSP policy SP2 sets a housing target for the borough taken from the London Plan. Subject to viability, it requires a borough-wide target of 50% affordable housing. [5.2-5.3][5.8-5.11]
- 8.6 Under the revised s106 agreement, there would be no affordable housing. The agreement was approved and signed by the Council on the basis of viability evidence at that time. Viewed in isolation, the lack of affordable housing would be contrary to the London Plan, the UPD and the LPSP. However, the GLA justified its support on the basis that the development as a whole would not otherwise proceed and that viability should be taken into

- account, as allowed for in the London Plan. The Council similarly found that, on balance, 100% market housing would be justified in order to provide financial support to the new stadium. The GLA and the Council also took the existing mix of tenures into account. [3.11][6.10][7.8]
- 8.7 It is evident from both the GLA's and the Council's reports that their findings were in the context of assessing the viability of the scheme as a whole. Since the second s106 agreement was made, and the further planning permission for Phase 3 was granted, the Club has shown that funding for the stadium is not an issue. I return to this matter below. [3.10][3.12]
- 8.8 The UDP employment policies aim to protect land for employment and industry. The stadium would infringe upon a DEA. The detailed provisions of Policy EMP4 are hard to interpret, if not ambiguous, and so their actual meaning can only be decided by the courts. However, as the wording is the Council's, it would be reasonable to interpret any ambiguity in favour of the developer, as indeed the Council did in granting the first planning permission. On this basis, even if only criterion c) is met, the scheme would comply with this policy. Even if I am wrong on this point, conflict with Policy EMP4 would not necessarily outweigh the overall balance in favour of the scheme complying with employment policies. The Council found that there would be a net addition to employment opportunities. [5.7][6.9][7.6]
- 8.9 LPSP policy SP8 supersedes UDP policy EMP3 and takes a more flexible approach to local employment areas in order to facilitate regeneration. The need to regenerate the area was not challenged; it was acknowledged that the scheme would generate employment. Even if re-use of the site exclusively for employment purposes could provide more jobs, this hypothetical eventuality does not negate the positive job creation that would be likely to follow from confirming the Order. Although UDP policy EMP4 has been saved, it will be updated in due course, and more weight should be given to policy SP8. [5.11][6.9][7.6]
- 8.10 Consequently, any technical breach of any employment policies in the UDP can be outweighed where there is a need for regeneration. The Council formed its view under the UDP. The position has been strengthened in favour of regeneration by the adoption of the LPSP and by the support for redevelopment in its policy SP1 in particular. Taken with the positive reference in favour of a stadium in UDP policy SSP13, the scheme would comply with the Local Plan with regard to the balance between the needs for employment land and regeneration. [5.8,5.10]
- 8.11 The scheme would result in the demolition of a listed building and so cause substantial harm to a designated heritage asset. The loss of unlisted frontage buildings would harm the character and appearance of the conservation area. On these points the scheme would conflict with the relevant elements of the development plan and the *Framework*. On the positive side, other listed buildings would be repaired and reused and there would be other heritage benefits through a new fund. The new stadium would be to a high standard and replace unsightly 20th century buildings. The Council and EH correctly applied the test at the time which was similar to paragraph 133 of the *Framework*. On balance, both EH and the Council were justified in finding

that the public benefits would outweigh the harm. The scheme would comply with heritage policies as a whole. [3.6-3.7][5.1][6.18][7.9]

- 8.12 Non-statutory policy, including the OAPF and 2012 *Plan for Tottenham*, also supports the scheme. While this should be given rather less weight in light of the recent adoption of the LPSP, the Circular identifies that non-statutory policy can still be given some weight in the balance. The *Plan for Tottenham* also gives credence to the claims that the scheme would act as a catalyst for wider regeneration. Limited weight should be given to the consultation document on a further revision to the London Plan. [5.13][6.4][7.5]
- 8.13 Considerable weight should be given to the fact that planning permission has been granted together with related consents. The Objectors did not raise any concerns at the application stages. The LPSP is right up to date and gives explicit support for the stadium. If there was any doubt that the original scheme was in accord with the development plan, and there was none in the mind of the Council at the time, then this must surely evaporate with the adoption of the LPSP. With the possible exception of affordable housing, the Order scheme is supported by the development plan as a whole and would therefore accord with the planning framework for the area. [6.6]

Economic well-being (regeneration)

- 8.14 There is no dispute that regeneration of the area is needed. The Club is a significant local employer and ensuring the well-being of the Club, through an improved stadium on the NDP site, would safeguard, and increase, employment by the Club. The Objectors have argued that job growth from the CPO scheme would be modest, would not compare with that at the Emirates stadium, and would be speculative in any event. Much of the case on this point therefore turns on whether the stadium would lead to meaningful regeneration of the area. [6.13][7.12]
- 8.15 Unchallenged evidence borne out by my site visit demonstrates that the standard and capacity of the existing stadium have fallen behind those of clubs it sees as its competitors and THFC is unlikely to improve its success rate without providing a better offer to its supporters. However, this is a business need for the Club and Phase 2, for a new and improved stadium, would initially be of benefit to the Club rather than the public. The Phase 1 development is already underway and so cannot count towards the benefit to be derived from the CPO. The public benefit mostly resides in the southern development, of 285 homes and class D use, and any catalytic effect that the entire scheme would have on the area as a whole. It would be wrong to give substantial weight to new healthcare facilities at this stage but reasonable to assume that a cleared site next to a new stadium would attract investment. [6.21][7.15]
- 8.16 Despite the absence of a development agreement, the evidence from the Club that the stadium would proceed without delay is persuasive. The fact that the housing would follow on later is largely a requirement of timing as, to ensure continuity of matches on the site, the new stadium would need to be largely completed before the old one could be demolished. Consequently, the housing in phase 3 would be delayed. In these circumstances, it is reasonable that full details have not been provided. The Council was satisfied that the housing would be viable. Indeed, the profit from the sale of the land

without any affordable housing requirement was seen by the Council as a way of financing, and so enabling, the development of the stadium.

[3.3][6.15][7.14]

- 8.17 Although Archway would be relocated, and noting both that it would have liked to have expanded on its current site and has not been persuaded by the offer of No.500 White Hart Lane, there is no evidence that the business could not be relocated or that the jobs could not be preserved. [6.24]
- 8.18 Further development, such as relocating the railway station and redeveloping the route from it to the stadium, would be speculative. Nonetheless, some weight should be given to the possible benefits from the claimed *multiplier* or catalyst effect. The Circular does not restrict the concept of well-being to the area subject to the Order. There has been a much wider regenerative effect around the Emirates stadium. The argument that an alternative, equally speculative, development might lead to even greater regeneration is not really the point. The scheme would be likely to both promote and improve the economic well-being of the area and that counts in its favour. [6.4][6.14][7.14]
- 8.19 Finally on this point, following the revised s106 agreement, the economic regeneration would be heavily dependent on new infrastructure, the cost of which would now be met by public funds. I return to this matter below.

Social well-being

- 8.20 The Objectors have pointed to the limited nature of the benefits when compared with those around the Emirates stadium. However, even if this were the case, the test is not a comparative exercise. Any increased sense of local pride would be limited compared with that as a result of the existing stadium but perhaps would be significant compared with the harm to social well-being in the event that the Club were to move away. There is little evidence that a new stadium would strengthen the role of the Tottenham Hotspur Foundation beyond what might happen anyway. While the potential new healthcare facility could address the area's health inequality, this is uncertain and a long way off. Nevertheless, the scheme would bring investment, employment and new housing. [6.5][7.13-7.14]
- 8.21 On the other hand, it is difficult for the Council to claim significant benefits to social well-being from the Club's scheme when the expensive infrastructure provisions would be met from public funds. The change in the proposed housing tenure from 50% affordable to all market housing would reduce the benefits even further. The 100% provision of affordable housing at the nearby *Cannon Rubber* site also suggests that the Council regards affordable housing as important even where there is a poor social mix. [6.10][7.7]
- 8.22 For these reasons, the public funding of infrastructure and the absence of any affordable housing substantially reduces the contribution the scheme would make to social wellbeing.

Environmental well-being

- 8.23 The scheme would bring a substantial amount of vacant land back into use but this is to overlook the reason it is empty. Although listed building consent has been granted for the demolition of Fletcher House, a condition

- prevents this taking place until the stadium is ready to proceed. Confirming the CPO would therefore lead to harm through the total loss of a listed building. This harm would be offset by the benefits of restoring Warmington House, repairing other listed buildings and providing a fund for other heritage buildings. [6.17-6.18][7.9-7.10]
- 8.24 The unlisted buildings cannot be replaced and there has undoubtedly been some sense of erosion of the significance of the conservation area, through the loss of frontage buildings, which could, in theory, be reinstated. The existing stadium would be demolished. Instead there would be a new presence in the gap in the historic streetscene. This erosion to the conservation area, together with the loss of the listed building, would harm both these heritage assets. [6.11][7.11]
- 8.25 The stadium promises to be a high quality piece of architecture within the surrounding open spaces forming an attractive area of townscape. It would be wrong to view the loss of the existing stadium as harming the conservation area without considering the potential benefits of a new presence. One of the aims of the new stadium is to rival those of other clubs, such as Arsenal and West Ham, and so there is a strong likelihood that it would be completed to a high or very high standard and sufficient funds are available. The conservation area appraisal identifies the use of the stadium as part of its character and the scheme would transform the area's appearance with a publicly accessible space around the new stadium. Many of the existing poor quality 20th century buildings would be removed. Overall, the substantial harm through the loss of a listed building and the harm to the conservation area would be offset by the heritage benefits and the improvements to the character of the area by the stadium and regeneration. [6.18][7.9]
- 8.26 Despite substantial harm through the demolition of a listed building, EH found that the planning balance should be in favour of the scheme. Although EH did not have the CPO argument before it, and did not consider any alternatives, there is no reason to reach a different conclusion on heritage matters with regard to the environmental well-being. The Objectors are correct to say that EH only looked at the proposed footprint but, as no other position for the stadium on this site is likely to proceed (see below), it was not wrong to do so. [6.11][7.11]
- 8.27 On the other hand, a sizeable contribution to the fund for heritage has now been transferred to the Council. There is no reason why EH should take a different view on the benefits wherever the funds would come from. Nevertheless, it is hard to justify giving much weight, in a CPO Decision, to the public interest from a fund which would be paid for by the public. Rather, this would be a case of double counting the benefit as justifying both the heritage loss and the CPO benefit. [3.9][6.12][7.11]
- 8.28 The travel plans associated with the s106 agreement aim for modal shift away from the private car particularly through an extended CPZ. This would be in the public interest through the reduction in carbon emissions. However, with the new s106 agreement, this would be funded by the Council/GLA. This is another matter on which the degree of public benefit is related to the degree of public finance. [3.9][6.17][7.17]

Viability and funding

- 8.29 There is now no dispute between the parties that the scheme would be viable. In reaching this consensus, the parties were referring to the ability of the Club to fund and deliver the scheme, i.e. its feasibility, rather than its profitability as derived from financial models. [3.10][3.12]

AFFORDABLE HOUSING

- 8.30 The new evidence on viability, or rather deliverability, also has a bearing on compliance, or otherwise, with affordable housing policies. The Council, and the GLA, were justified, on the basis of financial modelling, in dropping the affordable housing requirement from the original planning permission as reflected in the revised s106. Despite the Club's new funding, it is not evident that planning policy requires affordable housing if the scheme would not be financially viable, in the sense of being profitable, even if it were to be deliverable. [3.11][5.3][5.11]

- 8.31 However, the permission for Phase 3, granted on the same day as the revised s106, was only for the southern development not the whole scheme. By the Council's own estimate, the southern development would be viable in itself. The Objectors acknowledged that the Club could pay for infrastructure, if any State aid was found to be involved, and there is little doubt that it could similarly cover the cost of affordable housing. The purpose of the CPO is related to the permissions for both the stadium and the revised southern development. Taken as a whole, the Council was entitled to omit the affordable housing requirement as otherwise the entire scheme would not be financially viable. However, this is not the same as justifying the omission from the Phase 3 planning permission. The position with regard to compliance with affordable housing policy is therefore complicated: the scheme as a whole would comply but Phase 3 would not. [1.8][3.11]

- 8.32 The evidence is contradictory as to whether the GLA and the Council are so concerned about the mix of housing in the area that they would deliberately forego an affordable housing contribution if it were not for the need to make the stadium viable, and so ensure that the Club would not leave Tottenham. It seems unlikely. The original s106 Agreement would not have prevented the Council granting a further permission with an affordable housing requirement of less than 50% if it wanted to, or if viability re-emerged as an issue. However, it would have allowed it to do so without its hands being tied by the viability argument, which no longer applies. [3.11]

COMMITMENT

- 8.33 Archway has criticised the lack of a development agreement and suggested that THFC would be free to carry out some other development. I accept that the Indemnity Agreement would probably not be enforced in the event of a cleared site and no prospect of a stadium. Nonetheless, I heard no persuasive evidence to show that the value of the site, without a stadium and in this deprived ward, would warrant the time, effort and expense put into its assembly. Consequently, this suggestion is not really credible. While the owners may be experienced property developers, it remains highly unlikely that the cleared site would be developed for any other purpose than a new stadium. [3.12][6.20][7.3-7.4]

- 8.34 The lack of a development agreement is unusual, and much of the investment in site assembly might be recovered if the Club went elsewhere. Nevertheless, it is unlikely that the Club would go to the trouble of acquiring the land in this part of Tottenham, and pursuing a CPO, without an intention to redevelop the site for its highly prized goal of a new stadium. There is a better than reasonable prospect that the scheme will proceed even without a development agreement. [6.20][7.3]
- 8.35 Moreover, the Objectors confirmed in evidence that the only other likely uses for the site would be similar to the existing or last uses so there would be no significant increase in value compared with the costs of acquisition. In the event that the stadium could not be delivered, the Club would doubtless try to cut its losses but it is very unlikely it would look to any alternative development if the site was successfully cleared. Therefore little weight should be placed on the lack of a development agreement. On balance, the evidence at the Inquiry suggested that the new owners, including the Club's long standing executive chairman, are fully committed to the scheme. [6.20][6.25][7.3][7.12]

Alternatives

- 8.36 The bid for the ex-Olympic stadium, and subsequent litigation, demonstrates that the need for a new stadium is a higher priority for the Club than remaining in Tottenham, but that is not to say that they would not prefer both a new stadium and for it to remain at its traditional home. The only realistic reasons that the Club would move are if there was a readily available alternative or if the CPO were to fail. However, the ex-Olympic site, which was on offer, has gone to West Ham and there are no other empty stadia around. A once-in-a-lifetime bid for the ex-Olympic stadium is hardly a track record of abandoning its home in Tottenham. [4.2][6.22][7.3]
- 8.37 The alternative sites considered, including Down Lane Park, would also be very likely to involve CPOs and to entail an even longer timescale than the current scheme, which is now far advanced. Without any planning permission or LPA support, they would be even more doubtful. [2.8][6.23][7.16]
- 8.38 Archway has argued that, if the CPO is rejected, redevelopment to the south of Paxton Road is likely to be seriously investigated, as has happened before. However, the motivation for the new stadium is tied up with the Club's aspirations. Even if a slightly larger stadium were possible, the evidence was that it would be 'sub-optimal', would not satisfy the Club's ambitions, and so would not happen. It is far more likely that the Club would look for another site, however difficult and lengthy that might be. [6.21][7.15]
- 8.39 If the Objectors succeed in obtaining the ex-Olympic stadium bid documents for the Secretary of State these may flesh out the options for the existing site. It is certainly likely that if the Club had moved it would try and cut its losses by developing the existing site. However, the Club's bid was unsuccessful and its brief exercise looking into alternatives confirmed to the Club's satisfaction that there were no better sites. The fact that it was a high level search is not surprising since the Club has been acquiring lands which make up the scheme site for over 5 years with no other alternatives under consideration except for the ex-Olympics site. [6.22][7.3]

8.40 The Objectors' allegations that the ES was defective in this regard comes a little late, as planning permission has been granted, and the matter of alternatives has now been addressed, even if only briefly. The evidence shows that sharing a stadium is not a viable option. [7.16]

Negotiations

8.41 The key considerations are the reasonableness or otherwise of the parties and whether there was negotiation wherever practicable. The Objectors have repeatedly sought key value while the Club sought to negotiate on the basis of existing use value (EUV). Although it did offer to consider unrealised potential site value and disturbance costs (shadow period losses), and any other relevant issues, the Club maintained that the key value issue was only capable of resolution by reference to the Tribunal. Both sides took their stance on the basis of expert legal Opinions. For the Club, theirs argues that, in the 'no scheme' world, the Archway land could only have EUV as there is no other scheme. The original planning permission predates the CPO Order and the Opinion for Archway claims that, as land was being acquired for the stadium proposals long before the CPO came into force, the Archway land had a 'pre-existent' value. [6.26][7.19]

8.42 It is not for me, or the Secretary of State to comment on which of these Opinions may be right (this is a matter for the Tribunal) but only to comment on whether the parties acted reasonably in negotiations. It cannot have been unreasonable for either side to follow the expert advice it had received. The difference between EUV and key value (or premium, ransom, hope, or marriage value) is enormous. Even if, as the Objectors claim, there were early instances of bullying tactics and limited involvement from the Council during the process, the opposing views meant that there was never going to be any chance of meaningful negotiation. [6.27][7.19]

8.43 Reference was made to the arguments over key value in the Heron Quays West report. Contrary to the Club's interpretation, this did not set out which interpretation of key value was correct but only judged whether or not the parties were acting reasonably in reaching the stance they took. Judicial Review had already delegated to the Inquiry the responsibility for discussing non-compliance with the Circular. That is what happened. There was evidence of the site's potential as part of a much larger development, that the developer had withheld information on its future intentions, and failed to make a convincing case that the objectors' expectations for key value were unreasonable. It followed that the Council had not made serious efforts to negotiate within the terms of the Circular. [6.24][7.20]

8.44 This is a nuance which cannot now be tested in Court, as the Order was returned around a year after the report was submitted. However, the finding was not on whether there was key value but on the parties' efforts to negotiate in the light of what they knew about the potential for the site and the specific facts of that case. [6.24][7.21]

8.45 The position here is rather more balanced. Although information on the Club's alternative proposals for the site, in the event that it had won the bid for the ex-Olympic stadium, is not before the Inquiry, the Club has always been open about its intentions for a new stadium. There is little evidence that the Objectors' belief that either of their alternative scenarios, including

the relocation of the stadium elsewhere and the redevelopment of a cleared site, would be likely to lead to a significant uplift in value of the Objectors' land. [4.2][6.25][7.20]

- 8.46 Nevertheless, both sides have expert Opinions to support their views. Consequently, whether or not the Club pursued a bullying stance early on, and regardless of the Council's close involvement or otherwise, neither side could be said to have been acting unreasonably when there was virtually no prospect of agreeing even the basis of any negotiations. Moreover, whether or not the site at No.500 White Hart Lane would be a suitable alternative, the acquisition by the Club and the offer to help Archway to relocate there helps to demonstrate a conscientious effort to negotiate. [6.26][6.28][7.21]
- 8.47 There are therefore few parallels with Heron Quays West. The Council was not unreasonable in its approach to negotiations with Archway and pursuing a CPO was therefore the last resort. Even if some parts of the process were flawed, efforts at negotiation have gone as far as they reasonably could have done and, on account of conflicting expert advice, there was little likelihood of reaching agreement before the Inquiry. Consequently neither side was unreasonable in its behaviour.

Conclusions on the factors in Circular 06/04

- 8.48 For the above reasons, with the possible exception of affordable housing following the new evidence on viability, the purpose of the Order would accord with the planning framework for the area and with s16(i) of the Circular. Confirmation of the CPO would allow the Order lands to be redeveloped and, if undertaken and subject to the caveats above, the scheme would improve the economic, social and environmental well-being of the area in accordance with s16(ii). The relocation of the stadium, in the event the CPO is not confirmed, would not be in the public interest. Financial deliverability is no longer challenged and there is a better than reasonable prospect that the scheme would proceed. A convincing case has been made that no adequate alternative sites or means exist that could achieve the purpose of the Order. The CPO would therefore satisfy s16(iii-iv) of the Circular.

Human Rights

- 8.49 The compulsory acquisition of the Order lands would amount to interference with regard to the ECHR. The Circular confirms that land should only be taken where the public benefit would outweigh the private loss. As the scheme stands, much of this would be paid for by the public purse on account of the revised s106 agreement. This shift in funding considerably reduces the extent to which the scheme would be in the public interest and I have taken this into account in reaching my overall conclusions. [5.14]

Justification in the public interest

- 8.50 For the above reasons, the scheme would accord with the powers in s226 of the 1990 Act. However, having regard to the ECHR and the Circular, the extent that the scheme would currently receive funds from the LBH and the GLA has a bearing on whether there would be a compelling case in the public interest. [5.14][6.29][7.22]

- 8.51 Due to the revised s106 agreement, the principle benefit would be for a private business while the public benefits of regeneration would be at a considerable cost to the taxpayer, and there would be no affordable housing. The s106 concessions were made by the Council in the context of the claim that the stadium would not be viable and that the Club might move away. Viability is no longer at issue and this casts serious doubt on whether the scheme would comply with development plan policies on affordable housing. [3.10][7.17]
- 8.52 While the Council has changed its mind about the need for affordable housing, this was in the context of the risk that the stadium would not go ahead. The decision at the *Cannon Rubber* site at least suggests that in a different context it might have decided differently, as it did the first time around. The same applies to the GLA Stage 2 referral. Following new evidence, the Council should, at the very least, have a chance to look at this again in the knowledge that the scheme would be viable with or without affordable housing. [5.3][6.7][7.7]
- 8.53 The support of EH was predicated on a fund to support the surviving heritage assets. The transfer of responsibility for the Heritage Contribution from the Club to the Council should not be a decisive factor. However, although a relatively small sum, it does illustrate the point about whether public benefits, in this case needed to outweigh the harm to, or loss of, a listed building, would meet the definition of 'substantial' if the benefits come at public expense. [3.9][6.12][7.11]
- 8.54 At the Inquiry, I asked what mechanism would be available to deal with the State aid issue if it went against the Club. While I was told that the Club could afford to pay whatever was necessary in this eventuality, I had not received a reply on how this could be arranged before the close of the Inquiry. Regardless of the question of State aid, for there to be a compelling case in the public interest, the current onus on public funds should be corrected. The issue of public financing of the scheme arises largely out of the revised s106. [3.10-3.11]

Section 106

- 8.55 In closing, the AA suggested that the fact that the second s106 agreement does not include the financial contributions in the original s106 agreement means that they were not necessary for permission to be granted. However, while some elements might merit further detailed examination, the Council has not been challenged over their inclusion in the original s106 agreement with regard to the tests in either the CIL Regulations or the *Framework*. The intention is that the infrastructure works would still be carried out but would be largely paid for indirectly by the GLA. The decision to grant permission in 2012 was predicated on viability. This is no longer an issue in terms of deliverability of the stadium. On its own, Phase 3 was always likely to be viable. [6.14][7.7]
- 8.56 In short, the Objectors are entitled to argue, following the new evidence on viability/deliverability, that the source of funding for the parts of the scheme which would be of public benefit goes to the heart of whether or not the scheme would be in the public interest. [7.17-7.18]

Overall Conclusions

- 8.57 The CPO Circular requires a compelling case in the public interest. The public benefit must, on merit, outweigh the private loss such as to justify the interference with Human Rights. Factors should include the planning framework, the well-being of the area, financing, and whether alternatives exist. There should be negotiation wherever practicable.
- 8.58 With the exception of affordable housing provision in the revised southern development, the scheme would accord with the development plan. There is a compelling case with regard to the well-being of the area but, for each strand of this test, most of the public benefits would depend on an injection of public funds. Specifically, the economic benefits would rely on the Council or the GLA for new infrastructure, the social benefits would be heavily diluted by the lack of any affordable housing, and the bill for the environmental benefits of a heritage fund and extended CPZ would switch to the taxpayer. Viability, in the sense of deliverability, is no longer an issue. There was little serious effort at negotiation by either party once established positions had been set but, given the expert advice on both sides, this cannot amount to a criticism of either.
- 8.59 For the above reasons, as matters stood at the end of the Inquiry, what could amount to a compelling case in the public interest would fail to meet this hurdle on account of the need for public funds. Consequently, the benefits would not outweigh the interference with the specific human rights under the ECHR, in which case the Order should not be confirmed. On the other hand, now that deliverability is not at issue, if the Council were able to reach a further s106 agreement to revert to the original planning obligation, then the balance would shift in favour of confirming the Order.

9. Inspector's recommendations

CPO Ref: NPCU/CPO/Y5420/70787

- 9.1 In the absence of a further planning obligation, I recommend that the Order should not be confirmed.
- 9.2 In the event that the Secretary of State is minded to confirm the Order, I recommend that he should canvass the Council advising it that he is minded to confirm the modified Order subject to the Council and the Club entering into a revised s106 agreement, to be tied to the planning permissions listed in the Third Schedule, cancelling the second agreement and reinstating the package of measures originally required, including the requirement for affordable housing. Subject to receipt of such an agreement, I would recommend that the Order should be confirmed with modifications, as the letter dated 15 February 2013, to remove plots 3, 5, 6, 8 and 9 from the Order.

David Nicholson

INSPECTOR

APPEARANCES

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Tim Corner QC instructed by the Council of the London Borough of
Christopher Katkowski QC Haringey (LBH) and Tottenham Hotspur Football Club
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They called

Marc Dorfman	LBH
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Paul Phillips	THFC
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FOR THE OBJECTORS:

Christopher instructed by Paul Winter, solicitor for the Josif
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He called

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Nigel Laing	Nigel Laing Associates, Wellington TA21 0EE

CORE DOCUMENTS

- A The Order and Publication/Notification*
- CDA1 The London Borough of Haringey (Northumberland Development Project) (No 1) Compulsory Purchase Order 2012
- CDA2 Order Plan
- CDA3 Statement of Reasons (including disc of appendices)
- CDA4 Notice of the making of the Order served on Qualifying Persons
- CDA5 Notice of the making of the Order published in Haringey Advertiser and Tottenham and Wood Green Journal
- CDA6 Notice of the making of the Order posted on the Order Land
- CDA7 General Certificate in Support of the Order dated 4 September 2012
- CDA8 Protected Assets Certificate in Support of the Order dated 4 September 2012
- B Statutory Provisions*
- CDB1 Section 226 Town and Country Planning Act 1990
- CDB2 The Compulsory Purchase (Inquiries Procedure) Rules 2007
- C Policy documents*
- CDC1 ODPM Circular 06/2004 Compulsory Purchase and the Crichel Down Rules
- CDC2 DCLG Circular 04/2010 Compulsory Purchase and the Crichel Down Rules (amendment to 06/2004)
- CDC3 DCLG Circular 01/2008 The Compulsory Purchase (Inquiries Procedure) Rules 2008
- CDC4 National Planning Policy Framework
- CDC5 English Heritage Conservation Principles Policy and Guidance (2008)
- CDC6 The London Plan
- CDC7 Consultation on Early Minor Alterations to the London Plan February 2012
- CDC8 Consultation on Early Minor Alterations to the London Plan June 2012
- CDC9 Extracts from the Upper Lee Valley Draft Opportunity Area Planning Framework (GLA, 2012)
- CDC10 Housing Supplementary Planning Document (GLA 2012)
- CDC11 Shaping Neighbourhoods: Play and Informal Recreation Supplementary Planning Document (GLA, 2012)
- CDC12 Accessible London Achieving an Inclusive Environment Supplementary Planning

- Guidance (GLA, 2004)
- CDC13 London Borough of Haringey Local Plan: Strategic Policies (to be adopted by the Council in February 2013)
- CDC14 Extracts from London Borough of Haringey Unitary Development Plan (Development Management Policies) as amended following adoption of Local Plan: Strategic Policies. Policies: G2 – G8, G10, UD1 – UD9, HSG1, HSG 9, HSG 10, EMP 1 – 3, CSV 1- 8, TCR 1 – 2, M3 – 4, M10.
- CDC15 Extract from London Borough of Haringey Draft Sites Allocation Development Plan Document (2010) (Page 33)
- CDC16 People, Places and Prosperity (Haringey Regeneration Strategy) (LBH, 2008)
- CDC17 London Borough of Haringey Housing Supplementary Planning Document (adopted 2008)
- CDC18 Extracts from Haringey Development Management Draft Development Plan Document (2010) DMP 1, 9, 10, 13 – 16, 20 – 22, 25, 30, 32
- CDC19 A Plan for Tottenham (LBH, 2012)
- CDC20 Saving Direction in relation to saved UDP policies
- CDC21 Tottenham High Road Historic Corridor Conservation Area Character Appraisal
D NDP Scheme permissions and related documents
- CDD1 Report to LBH Planning Sub-Committee 30 September 2010 in respect of applications to grant planning permission and accompanying listed building consents and conservation area consent for the NDP Scheme
- CDD2 Minutes of LBH Planning Sub-Committee 30 September 2010 resolving to grant planning permission and accompanying listed building consents and conservation area consent for the NDP Scheme
- CDD3 Report to LBH Cabinet to seek authority “in principle” to use its compulsory purchase powers (and powers under Section 237 of the TCPA 1990) in order to support the NDP Scheme 16 November 2010
- CDD4 Minutes of LBH Cabinet meeting 16 November 2010 resolving “in principle” to use its compulsory purchase powers (and powers under Section 237 of the TCPA 1990) in order to support the NDP Scheme
- CDD5 Planning permission and accompanying listed building consents and conservation area consent for the NDP Scheme dated 20 September 2011 (LBH refs HGY/2010/1000; HGY/2010/1001; HGY/2010/1002; HGY/2010/1003)
- CDD6 Section 106 Agreement dated 20 September 2011
- CDD7 Report to LBH Cabinet 7 February 2012 in respect of North Tottenham funding issues
- CDD8 Minutes of LBH Cabinet meeting 7 February 2012 in respect of North Tottenham funding issues
- CDD9 Report to LBH Planning Sub-Committee 13 February 2012 to amended Northern Development phases of the NDP Scheme
- CDD10 Report to LBH Planning Sub-Committee 13 February 2012 to amended Southern Development phases of the NDP Scheme
- CDD11 Report to LBH Planning Sub-Committee 13 February 2012 and to amend the proposed NDP Scheme Section 106 Agreement dated 13 February 2012
- CDD12 Minutes of LBH Planning Sub-Committee 13 February 2012 resolving to grant planning permissions for amended Northern Development and Southern Development phases of the NDP Scheme and to amend the Section 106 Agreement dated 13 February 2012
- CDD13 Report to LBH Cabinet 20 March 2012 seeking authority to make a Compulsory Purchase Order to support the NDP Scheme dated 20 March 2012.
- CDD14 Minutes of LBH Cabinet meeting 20 March 2012 resolving to make a Compulsory Purchase Order to support the NDP Scheme dated
- CDD15 Planning permission for amended Northern Development phase of the NDP Scheme dated 29 March 2012
- CDD16 Planning permission for amended Southern Development phase of the NDP Scheme dated 29 March 2012
- CDD17 Revised Section 106 Agreement dated 29 March 2012

<i>E</i>	<i>NDP Scheme Application Documents - Original Permission (HGY/2010/1000)</i>
CDE1	Planning Statement (including appendices)
CDE2	Design and Access Statement
CDE3	Environmental Statement: Chapter 12 (Society and Economics)
CDE4	Environmental Statement Parameter Plans (Volume 3, Appendix A) Revised Southern Development Permission (HGY/2011/2351)
CDE5	Planning Statement
CDE6	Design and Access Statement
CDE7	Environmental Statement: Addendum
CDE8	Outline Travel Plan in support of 2010 application
CDE9	The NDP Regeneration Strategy prepared by Hunt Dobson Stringer
CDE10	NDP revised Northern Development Planning Application and Decision Notice
CDE11	NDP Application for Conservation Area Consent (May 2010)
CDE12	NDP Application for Listed Building Consent (May 2010)
CDE13	Extracts from ES submitted in support of the 2010 Planning Application (transport, project and alternative light and heritage chapters)
CDE14	Extracts from TA in support of 2010 application
CDE15	Relevant extracts from documents in support of 2011 applications
<i>F</i>	<i>Statements of Case</i>
CDF1	LBH Statement of Case (including disc of appendices)
CDF2	Archway and Josif Family Statement of Case
<i>G</i>	<i>Other Documents</i>
CDG1	It Took Another Riot (Mayor of London's Independent Panel on Tottenham, 2012)
CDG2	Citizens' Inquiry into the Tottenham Riots (North London Citizens, 2012)
CDG3	NDP Draft Relocation Strategy (2008)
CDG4	Haringey Retail and Town Centres Study (2008)
CDG5	Tottenham Hotspur Foundation Project Portfolio (2012)
CDG6	UEFA Club Licensing and Financial Fair Play Regulations (2012)
CDG7	CABE Tall Buildings Guidance (2007)
CDG8	Phase One CPO Indemnity Agreement dated 23 June 2011
CDG9	Phase Two Supplemental CPO Indemnity and Land Agreement dated 25 June 2012
CDG10	Archway's request for an order under rule 7(5) of the Compulsory Purchase (Inquiries Procedure) Rules 2007 dated 8 February 2013
CDG11	Assersons response dated 13 February 2013
CDG12	Archway's letter to DCLG dated 14 February 2013
CDG13	English Heritage response dated 6 July 2010
CDG14	Letter from London Borough of Haringey to the National Planning Casework Unit dated 15 February 2013 requesting a modification to the Order and amended Order Plan
CDG15	English Heritage direction as to the granting of Listed Building Consent with covering letter dated 11 August 2010
CDG16	English Heritage response letter dated 12 August 2010
CDG17	English Heritage notification under section 14(3) Planning (Listed Building and Conservation Areas) Act 1990 dated 3 December 2010
CDG18	Inspector's Report to the Secretary of State in respect of the London Borough of Islington (Ashburton Grove and Lough Road, Islington) Compulsory Purchase Order 2002 (the "Arsenal CPO")
CDG19	Secretary of State "Minded to Confirm" letter in respect of the Arsenal CPO dated 12 December 2003
CDG20	Secretary of State letter confirming the Arsenal CPO dated 19 May 2004
CDG21	Europa Press Report on State Aid dated 6 March 2013
CDG22	Report to LBH Planning Sub-Committee 28 January 2013 in respect of proposed redevelopment of the former Cannon Rubber Factory
CDG23	Evolving London: The Future Shape of the Capital (GVA, Spring 2012)
CDG24	Letter of support for Original Permission from Tottenham Traders Partnership
CDG25	Letter of support for Original Permission from North London Business dated 9 June 2010

INQUIRY DOCUMENTS

- INQ1 Submissions on legal defects – Christopher Lockhart-Mummery QC
- INQ2 Email dated 11 March 2013 from Keith Murray to Paul Phillips
- INQ3 Letter dated 8 March 2013 from Nigel Laing to Keith Murray
- INQ4 Letter dated 5 March 2013 from LBH to residential tenants at 5 Paxton Rd
- INQ5 Letter of 13 February from Assersons to NPCU
- INQ6 Letter of 15th February from Assersons to NPCU
- INQ7 Opening Submissions of Tim Corner QC
- INQ8 Opinion No 2 of James Maurici on State Aid issues
- INQ9 Opening Submissions of Christopher Lockhart-Mummery QC
- INQ10 Assured Shorthold Tenancy, 5 Paxton Road, dated 5 May 2010
- INQ11 Letter from UK Rep dated 30 August 2012
- INQ12 GLA Stage II Report dated 12 March 2012
- INQ13 Agreed Schedule of Areas
- INQ13A Revised Agreed Schedule of Areas
- INQ14 Letter from LBH to Archway dated 30 January 2012
- INQ15 Letter from CLG to LBH dated 2 December 2010 – HGY/2010/1000
- INQ16 Letter from CLG to LBH dated 14 March 2012 – HGY/2011/2350
- INQ17 Letter from David Lammy MP to NPCU dated 4 March 2013
- INQ18 Letter from Sir Stuart Lipton to NPCU dated 7 March 2013
- INQ19 Letter from GLA to NPCU dated 13 March 2013
- INQ20 Site Visit Schedule and Map
- INQ20A Revised Site Visit Schedule 2
- INQ21 Note re: CPO Indemnity Phase 2 Agreement and restrictive covenant on Order Land
- INQ22 CDD13 – exempt paras 7.10 and 7.11
- INQ23 Project “Rafael” sites list
- INQ24 Paul Phillips slides – evidence-in-chief
- INQ25 Inquiry Timetable
- INQ 26 Email dated 15 March 2013 from Terry Knibbs confirming measurement of land north of Paxton Road
- INQ 27 Paul Phillips’ evidence in chief speaking notes sections 5 and 6
- INQ28 Note on public open space provisions in Section 106 Agreement dated 29 March 2012 (CDD17)
- INQ 29 Letter dated 6 October 2011 re City of Westminster Victoria CPO – Secretary of State approval.
- INQ 30 Inspector’s Report re City of Westminster Victoria CPO dated 13 July 2011
- INQ 31 Secretary of State’s decision dated 19 May 2010 and Inspector’s report dated 17 March 2010 re Newcastle Upon Tyne Scotswood CPO
- INQ 32 Appendices 5 and 6 (exempt items) from CDD13
- INQ 33 Fig. 16.1 from Stadium Planning Application Transport Assessment
- INQ 34 Capacities of existing stadium following grant of planning permissions.
- INQ 35 Letter dated 2 April 2013 from Keith Murray to Nigel Laing.
- INQ 36 Summary of property and planning costs by year prepared by Matthew Collecott.
- INQ 37 Design Development note prepared by Paul Phillips.
- INQ 38A Report of the Cabinet to Council dated 18 March 2013 re: Adoption of Haringey’s Local Plan Strategic Policies.
- INQ 38B Notice of Adoption of Haringey Development Plan – 18 March 2013.
- INQ 39A Exchanges by letter and email between Paul Winter & Co and Richard Max & Co concerning DCMS and request for Olympic Bid papers.
- INQ 39B Letter from Treasury Solicitor to Richard Max & Co dated 21 March 2013 re: request to DCMS.
- INQ 40 Email exchange between Paul Phillips and Peter Josif – 3 May 2011.
- INQ 41 Redacted Grant Thornton Report dated 1 February 2012.
- INQ42A Letter from EU Commission to Permanent UK Representative dated 1 March 2008
- INQ42B Letter from UK to Brussels dated 9 April 2013

- INQ42C EC letter to Paul Winter & Co 15 April 2013 [includes unredacted version of INQ 42B]
- INQ43 Letter from CLG to Tower Hamlets dated 15 February 2011 and Inspector's report
- INQ44 Tom Bingham – extract from "The Rule of Law"
- INQ45A SN 18 with Council's comments
- INQ45B Archway's response to Council's comments on SN18
- INQ46 Section 72 of Listed Building Act 1990
- INQ47 Note on 500 White Hart Lane (paragraphs 1 and 2 only)
- INQ48A Letter from Nigel Laing to Keith Murray dated 16 April 2013
- INQ48B Letter from Keith Murray to Nigel Laing dated 18 April 2013
- INQ48C Email from Nigel Laing to Keith Murray dated 18 April 2013
- INQ49 Tesco Stores v Dundee CC [2012] JPL 1078 – 1092
- INQ50 Saintry v Minister of Housing and Local Government (1964)15 P & CR 432 – 434
- INQ51 Petticoat Lane Rentals Ltd v Secretary of State for the Environment and Another (1971) 22 P & CR 703 – 710
- INQ52 Closing Submissions of Christopher Lockhart-Mummery QC [corrected] for Archway
- INQ53 Closing Submissions of Tim Corner QC and Christopher Katkowski QC [corrected] for LBH and THFC