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

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

Date: 10 February 2014

**London Borough of Hammersmith and Fulham
(Shepherds Bush Market Area)
Compulsory Purchase Order 2013**

Inquiry opened on 17 September 2013

File Refs: APP/NCPU/CPO/H5390/71854

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Shepherds Bush Market Area Compulsory Purchase Order 2013

- The Compulsory Purchase Order was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by the London Borough of Hammersmith and Fulham.
- The primary purpose of the Order is to facilitate the redevelopment and regeneration of Shepherds Bush Market (the "Market") and adjoining area to contribute towards significant social, economic and environmental improvements.
- The main grounds of objection are summarised in Annex 2 of the Council's Statement of Case (core document CD43) and in the cases reported on in this Report.
- When the Inquiry opened there were 132 remaining statutory objections and 103 non-statutory objections. No objections were withdrawn before the Inquiry opened; two statutory objections were withdrawn during the course of the Inquiry and 1 late statutory objection (obj 124) was lodged during an adjournment.

Summary of Recommendation: That the Order be not confirmed

1. PROCEDURAL MATTERS AND STATUTORY FORMALITIES

1.1 Statutory Formalities

1.1.1 It was confirmed at the Inquiry that all statutory formalities had been complied with. There were no representations to suggest otherwise. The convening notice was read out Mr David Elvin QC.

1.2 Inquiry Programme

1.2.1 The Inquiry sat for 10 days: 17-20 September, 23-27 September and 25 November. An accompanied visit to inspect the Order lands and surrounding area was carried out on 11 September. The visit started at the Uxbridge Road end of Shepherds Bush Market, continued through the market, to Market Lane, the former Spring Grove Laundry site and ended at the Lime Grove Hostel. The inspection included visits to properties on Goldhawk Road - Nos. 34 (Best Grills), 36-38 (Arrow Electrical Trade and Discount Centre), 40 (Rostomia), 42 (Zippy's Diner), 44 (Classic Textiles) and 48 (Cookes Pie and Mash). The main parties agreed to my suggestion of an inspection of Nos 50—52 Goldhawk Road without being accompanied by a representative from the Council. This was carried out on 10 October 2013 in the company of the programme officer. I took the opportunity to view the Order lands and surrounding area in the light of the evidence heard at the Inquiry. As requested, I visited the Saturday and Sunday markets at Old Spitalfields¹.

1.2.2 The Inquiry was adjourned until 25 November to enable all parties to consider the judgement due to be issued by Mr Justice Lindblom. The judgement relates to a judicial review of the outline planning permission granted by London Borough of Hammersmith and Fulham (LBHF or the Council) for the Shepherds Bush Market area. The challenge was brought by a number of the Goldhawk Road shopkeepers² and the judgement was issued on 9 October 2013 (ID60). The application was dismissed and

¹ Inspector's Note – the visits took place on Saturday 5 October and Sunday, 8 December

² ID34 – Skeleton Argument of behalf of the claimants

permission to appeal was refused (ID60A). An application for leave to appeal was filed on 29 October¹.

- 1.2.3 The Inquiry was informed (by me in open Inquiry and by the programme officer to individuals approaching her outside the Inquiry) that written material submitted after the closing would be forwarded directly to the Secretary of State. I understand from the programme officer that closing submissions by the Shepherds Bush Market Tenants' Association (SBMTA) were emailed after the Inquiry closed. I have not seen the document and requested that it be forwarded to the Secretary of State. All other written and oral submissions made on behalf of the SBMTA have been taken into account and the material points recorded in Section 7 of this Report.

Objections, Withdrawals and Modifications

- 1.3 The schedule of objections forms Core Document (CD) 40. The Secretary of State should note that there is some duplication in the schedule. That is because some objectors submitted duplicate objections to cover their full interests. Thus, Manjeet and Dalbit Virk have been given 3 objection numbers (Obj 1, 2 and 3), as they own multiple interests (Order land nos: 1/31, 1/41 and 2/81). Furthermore, a number of stallholders appear twice in the list: once as individual objectors and then as party to the standard letter of objections. The duplicate objections are highlighted in yellow in the schedule.
- 1.4 During the Inquiry, Transport for London (TfL) confirmed by letter dated 18 September 2013 (WD/2) that London Underground Ltd. (LUL) had exchanged contracts with Orion Shepherds Bush (Market) Limited (OSBL or Orion) for a part-freehold and part-leasehold acquisition of LUL's interests². The contract is conditional upon dismissal of the judicial review to quash the planning permission and confirmation of the CPO³.
- 1.5 As the contract is not due to be completed until February 2014⁴, the Council requested that the extent of the Order lands not be modified, as this would require substantial changes to the ownership information in the schedule (see letter from Ashfords dated 24 November 2013 ID78). There are many other interests in the LUL land and it would not be appropriate to remove the LUL land from the Order, until the contract has been implemented.
- 1.6 On 18 September 2013, Throgmorton Investments Limited (not identified as a formal objector) confirmed that contracts had been exchanged to sell the freehold interest of 42 Goldhawk Road (Order land no: 3/183) to Orion⁵. However, the tenant of the property, Mr Cakici, maintains his objection (Obj 18). By email dated 25 September 2013 (WD/3) Mr Bardini withdrew his objection⁶.

¹ ID61 and 61A- Application for leave to appeal and leave to appeal skeleton argument

² Order land nos: 1/01-1/32, 1/34-1/37, 1/39-1/45, 1/48-1/51, 1/54, 1/56-1/59, 1/61-1/64, 1/67-1/73, 1/75-1/77, 2/75, 2/77-2/81, 2/83, 2/131, 3/126, 3/127, 3/131-3/146, 3/148-3/176, 3/190 and new rights at 4/206

³ ID27 - Note prepared by LBHF explaining the position with LUL

⁴ Mr Horn in evidence

⁵ WD/1 - Letter from Throgmorton Investments Ltd.

⁶ Obj 117 and Obj 09 - Order land nos: 1/73, 1/75, 2/75, 1/66 and 1/69

- 1.7 The Notting Hill Housing Trust (NHHT) (Obj 29) presented its case to the Inquiry. By letter dated 22 November (WD/4), the NHHT explained that its objections would be overcome by modification of the Order in the terms sought. The modifications are described in paragraphs 8.1.3 of this Report.
- 1.8 London Power Networks PLC (LPN) has 3 leasehold substations at plots 1/15, 2/82 and 3/147 (CPO Plans CD41). LPN was served with formal notice of the making of the CPO but did not submit an objection. Because LPN is a statutory undertaker, its position was addressed in the Statement of Reasons (CD42). Orion's architects have been in discussion with UK Power Networks and a location for a modern replacement substation is incorporated into the redevelopment scheme. LPN has not objected nor requested an undertaking for the replacement provision. LBHF considers that relocation of equipment can take place through normal developer/undertaker arrangements and has not requested that LPN's interests be excluded from the Order¹.
- 1.9 In the light of the objections withdrawn and the interests acquired, I was asked to modify the Order Schedule in accordance with ID76. That is the basis on which this Report is drafted.

2. THE ORDER LANDS AND SURROUNDINGS

2.1 The Order Lands²

- 2.1.1 This amounts to some 2.12 Ha of a mix of market, residential, and shop premises and includes a large area of undeveloped land. The Order land comprises the following main elements:
- The Market – This extends on a narrow strip of land from Goldhawk Road to the south to Uxbridge Road to the north. There are some 137 separate retail pitches. They are housed in the railway arches (the Hammersmith and City Line), in stalls occupying the central spine of the market and shops stretching along the eastern side of the market. The latter comprise a mix of masonry structures (shop nos 9-20 are in freehold ownership) and canopied stalls³. The market trades in an assortment of food and non-food goods – fashion, jewellery, pets, fabrics and household goods amongst others⁴.
 - Parade of shops at 30-52 Goldhawk Road – These occupy a terrace of two storey plus basement Victorian buildings. The buildings are in private ownership. The mix of businesses comprises restaurant/take-aways, fabric shops, electrical shop and shoe store⁵. Some are occupied by the owners (Nos. 36, 38, 44, 48 and 50/52) and others by lessees or tenants (Nos. 30, 32, 34, 40, 42 and 46). While the ground floors of the individual properties are used for Class A1 or A3 businesses, the

¹ ID52 – Note on the position with LPN

² Core Document (CD) 41 – CPO Plans and CD25 – Design and Access Statement page 9: Modelled Overview

³ CD25 – Design and Access Statement, images on pages 17 and 25. Also see CD52 – Quarterbridge Report Appendix 1 for images of the market

⁴ CD72 – Trader Analysis Plan

⁵ CD25 – Design and Access Statement, images on page 25

remaining floors have been adapted to suit the occupiers' needs and comprise a mix of retail, storage, food preparation and even residential. There are self-contained residential units at Nos. 34 and 42 for instance.

- The service road at the rear of the Goldhawk Road parade is in unknown ownership.
- The former Spring Grove laundry site – This is undeveloped land cleared of buildings connected with the previous use. It is sandwiched between the eastern edge of the market and the terrace of residential properties on Pennard Road¹ to the west. The land is owned by LBHF with a sale option agreement entered into with Orion.
- Market Lane Hostel and flats – A modern building located to the south of the laundry site. It comprises 12 flats and a 15-bed hostel owned by the Peabody Trust and managed by Broadway Homelessness and Support. The accommodation is to be re-provided in the Lime Grove Hostel. The developer² exchanged a sale and purchase agreement with the Trust which will complete after the condition to move residents to Lime Grove has been met.
- Market Lane Broadway Day Centre³ – A modern building owned by Broadway Homelessness and Support and used as a facility for homeless people. The developer holds an option agreement over the site.
- Lime Grove Hostel and 47 Lime Grove⁴ - These are sited to the west of the market. The properties are in the freehold possession of the Notting Hill Housing Trust (NHHT). Lime Grove Hostel has been unoccupied since 2010. No.47 forms part of the terrace of houses on Lime Grove. It is used as a single dwelling by the NHHT. The developer has entered into a binding contractual arrangement with NHHT and LBHF to fund the refurbishment contract.
- Electricity sub-stations which need to be relocated (see paragraph 1.8 above).

2.2 The Surrounding Area⁵

2.2.1 The town centre of Shepherds Bush is focussed around Shepherds Bush Green, to the north of which is the Westfield shopping centre⁶. To the south of the Green is a smaller, recently upgraded shopping centre (West 12). The town centre extends eastwards along the main thoroughfares of Uxbridge Road and Goldhawk Road. Shops beyond the immediate vicinity

¹ CD25 – Design and Access Statement, images of the market on page 25

² Orion has been granted outline planning permission for redeveloping the Shepherds Bush Market land

³ CD25 – Design and Access Statement, images on page 25

⁴ OBJ-29-2 – Mr Cornwall-Jones' Appendix 3, photographs of the hostel and 47 Lime Grove

⁵ ID2 – Existing Plans of Shepherds Bush Market, drawing no: APL_020

⁶ A large urban shopping centre

of the Green generally comprise small scale independent outlets occupying the ground floor in a mix of two, three and four storey buildings¹.

- 2.2.2 North West of the market is New Shepherds Bush Market and separated from it by the railway viaduct. This is smaller than the main market, retailing in fruit, vegetables, cooked foods and household goods and furniture. It is not dissimilar in retailing terms to the main market. The New Shepherds Bush Market is neither included in the Order lands nor does it form part of the application for redevelopment as described below (paragraph 3.2.1).
- 2.2.3 Shepherds Bush Market station is on Uxbridge Road to the north of the entrance to the market. The Shepherds Bush theatre recently relocated from the Green to the former Shepherds Bush library building, which abuts the north eastern edge of the market². Pennard Mansion is a five storey residential block immediately to the east of 30 Goldhawk Road and marks the start of the more ornate terrace of properties at the corner of Pennard Road³. Away from the main road networks, the area comprises predominantly residential terraced properties, interspersed with a mix of commercial premises.

3. LOCAL PLANNING POLICY AND PLANNING HISTORY

3.1 Planning Policy

- 3.1.1 Relevant development plan policies for the area are contained in the London Plan (CD2) and the Hammersmith and Fulham Core Strategy (CD3). The former marks White City as an Opportunity Area and describes it (Annex 1) as: *"An area undergoing substantial change within which completion of strategically significant new retail provision at Westfield has raised the status of Shepherds Bush to a Metropolitan town centre....Development should promote the vitality of the town centre, particularly in the Shepherds Bush Market area, and complement the viability of other west and central London centres."*
- 3.1.2 Revised Early Minor Alterations to the London Plan were published in October 2013.
- 3.1.3 Shepherds Bush town centre is one of three centres identified in Strategic Policy C of the Core Strategy, where regeneration of Shepherds Bush Common and the market is important to the strategy for this centre, and where diversity and distinctiveness are encouraged in the shopping mix. The text refers to regeneration of Shepherds Bush Market as a key proposal to strengthen the western part of the town centre, as a way of strengthening the convenience offer in Shepherds Bush and assist in meeting local needs.

¹ The following images give a flavour of Goldhawk Road and Uxbridge Road: CD25 – Design and Access statement page 25 photos 17 and 18, ID/4 – Illustrative Plan, page 23 Goldhawk Road façade and ID/2 – Existing Plans of Shepherds Bush Market, drawing no: APL_020

² CD25 – Design and Access statement page 17 photo 3

³ ID2 – Existing Plans of Shepherds Bush Market, drawing no: APL_020

- 3.1.4 A regenerated market is referred to again in the Strategic Policy for the White City Opportunity Area (WCOA), featuring in the Regeneration Area Strategies chapter of the Core Strategy. Shepherds Bush Market is identified as one of 3 strategic sites in the WCOA and is covered by Policy WCOA3¹. The policy is designed to deliver regeneration of the market and other adjacent land to create a vibrant mixed use town centre development of small shops, market stalls, leisure uses, residential and possibly offices. The land envisaged for the scheme encompasses the market, former laundry site and the Broadway/Peabody premises. The justification text to the policy explains that inclusion of the Goldhawk Road properties is beneficial because a development would be opened up to Goldhawk Road. Any developer will be expected to negotiate relocation of the current traders within the scheme. Development is also expected to encourage small independent retailers and accommodate existing market traders.
- 3.1.5 Policy WCOA3 expects regeneration and any development of the market and adjacent land to accord with the Shepherds Bush Market Supplementary Planning Document (SPD) (CD11). The SPD was adopted on 27 October 2010 and quashed in the High Court on 25 May 2012 (referred to as *Wakil 1*)². The challenge to the SPD by the Goldhawk Road shopkeepers succeeded on 2 grounds. The Council has not sought to replace the SPD or resurrect it in another form, such as a Development Plan Document (DPD).
- 3.1.6 The draft WCOA Planning Framework (WCOAPF) (CD4) was adopted by the Council on 23 October 2013 (ID50A)³. It recognises that the Core Strategy aims to guide future development of the adjacent land in a way that will also regenerate the market, which has suffered from lack of investment and reduced footfall. The market is identified as one of 3 retail anchors in Shepherds Bush town centre alongside West 12 and Westfield, adding to the diversity of the retail offer. The Council's aspirations for the market and adjacent land (as set out in Policy WCOA3 of the Core Strategy) and the fact of outline permission for refurbishment of the market (including provision of 212 residential units) are recorded.
- 3.1.7 The WCOAPF recognises that the redevelopment scheme will repair and improve the market's physical fabric, expand the diversity of retail and *".....crucially maintains existing traders and provides them with the security to ensure the market can continue to operate without interruption and serve existing customers and communities."*
- 3.1.8 Under Policy 3.3 of the London Plan, the Mayor identifies a pressing need for more homes in London. In terms of affordable housing, Policy 3.13 expects affordable homes to be delivered on a development of the scale proposed but Policy 3.12 allows for viability of a development to be taken into consideration when negotiating levels of affordable housing. Policy H2 of the Core Strategy aims for a target of 40% affordable homes across the Borough but also allows for viability to be taken into account when negotiating for an appropriate number and mix of such homes.

¹ CD3 – Core Strategy Policy, page 56

² CD13 – *Wilkie J, in R Abdul Wakil (t/a Orya Textiles) v London Borough of Hammersmith and Fulham and Others* [2013] 1 P&CR 13

³ ID50A and ID50B – Adoption notice and adoption notice showing changes to the WCOAPF

3.2 Planning History

- 3.2.1 The planning position of most relevance to considering the merits of the Order is the outline planning permission granted by the Council on 30 March 2012 (CD20) on land covering the market, Broadway and Peabody centres, former laundry site, land adjoining the former library and 30-52 Goldhawk Road. The outline application sought approval for access, layout and scale. Broadly, the scheme proposes the following:
- Demolition of existing buildings.
 - Refurbishment and enhancement of the market.
 - Construction of new buildings ranging from 2-9 storeys (plus basement) to provide 212 residential units and up to 14,052 sqm of non-residential floorspace comprising, market/retail floorspace, food and drink uses and associated servicing facilities and ancillary uses. The development is to be accommodated in four blocks A-D (see parameter plans ID/3) and provide 194 flats, 13 mews style houses and 5 live/work units.
 - Landscaping and public amenity spaces
 - Up to 85 vehicular and 457 cycle parking spaces.
- 3.2.2 The development is planned in 9 phases and is expected to last approximately 3 years. The most up to date proposal is for some traders to be relocated temporarily on the laundry site, to enable trade to continue during the construction period¹.
- 3.2.3 In the completed development the north/south pedestrian link will be maintained with continuing access to the market from Goldhawk Road and Uxbridge Road. Access to the residential blocks and the mews houses would be from the market and Pennard Road respectively. All servicing is to be from Goldhawk Road. Public spaces are proposed along the market at the northern end adjacent to the Bush theatre, in the centre and towards the southern section. The route through the market would be accessible at all times, whereas currently the 6-day market is locked when not operational. The scheme includes upgrades to market surfaces and shopfronts, enhanced lighting and security, new open spaces within the market, and improvements to stalls, canopies and services².
- 3.2.4 The new dwellings are to be retained for private market sale. Following independent verification of the developer's viability assessment³, the Council accepted that the development could not afford to provide affordable homes. The value delivered by the residential accommodation is required to fund the upgrade and enhancement of the market (estimated at £4.4m in 2012 see ID/38). A review mechanism is included in the accompanying s106 planning obligation⁴. Thus, a viability review at detailed

¹ ID59B – Method statement – Temporary arrangements during works

² CD26 – Design Guide, provides an indication of the spirit of the overall scheme and level of design quality

³ CD31 – Assessing Viability report by Lambert Smith Hampton, February 2012

⁴ CD21 – s106 Schedule 5

application stage is to be carried out with a view to delivering affordable housing, should that become a viable possibility.

3.2.5 Schedule 15 of the s106 is aimed at protecting the market traders through a series of commitments ranging from rent freezes during construction to provision of a business continuity fund¹. Schedule 16 is designed to provide a package of assistance to Goldhawk Road businesses to facilitate temporary or permanent moves to alternative locations and relocation to the new development, if desired. A contribution of £6.86m is included in the s106 towards upgrading the market, relocation of Lime Grove Hostel and highway works.

3.2.6 Other minor and major applications and permissions granted locally are outlined in Mr Butler's proof of evidence (LBHF-3 paragraphs 6.1- 6.8). An application for redevelopment of 45A and 47A Goldhawk Road has been submitted to the Council², but this had not been determined by the time the Inquiry closed.

4. THE CASE FOR THE COUNCIL AND THE DEVELOPER

4.1 The case on behalf of the CPO promoters set out below includes responses to the full range of individual and collective objections to the Order. Responses to individual objections³ are identified only where it is necessary to do so. The Council's broad responses to the objections can be found in Annex 2 to its Statement of Case (CD43).

The material points are:

4.2 Whether the purpose of the CPO fits in with the adopted planning framework

4.2.1 The CPO is jointly promoted by the Council and the developer. The Council has made the Order to regenerate the area of Shepherds Bush Market and to secure its future in the long-term. The scheme is intended to facilitate regeneration of the market through a mixed-use development designed to "improve and expand the [Market's] trading space, increase the variety within the market area, and establish a long-term management plan to promote and sustain the market³." The intention is to re-establish the market as a popular, sustainable and attractive London street market and a successful component of the Shepherds Bush Town Centre, which is coming under increasing competition from other developments within the Borough.

4.2.2 The primary purpose of the Order is to facilitate the redevelopment and regeneration of Shepherds Bush Market and adjoining area to contribute towards significant social, economic and environmental improvements⁴. The primary aim of regenerating and improving the Shepherds Bush Market Area accords with the general terms of the following strategic policy framework:

¹ The Council provided an explanation of Schedule 15 in ID/27

² ID14 – Design and Access Statement

³ CD90 - Developer's Charter, paragraph 1.0.2

⁴ CD42 – Statement of Reasons

- The London Plan allocates Shepherds Bush as a Metropolitan Town Centre. As part of its strategic policy direction, the Plan expects development to promote the vitality of the town centre, particularly in the Shepherds Bush Market Area.
- The market is designated in the Core Strategy (CD3) as a strategic site and also forms the western boundary of the Shepherds Bush Town Centre¹. The market is seen as an important and distinctive part of the town centre's offer, attracting trade from a wide area. Nearly a quarter of shoppers in Shepherds Bush visit the town centre to buy specialist ethnic food products and 8% to specifically visit the market.
- The Core Strategy regards regeneration of the Shepherds Bush Market as a priority which will improve the attraction of Shepherds Bush Town Centre, revive the economic and cultural health of the town centre and position the market as a major attraction in the area.
- Policy WCOA3 outlines that regeneration of the market and other adjacent land should create a vibrant mixed-use town centre development of small shops, market stalls, leisure uses, residential and possibly offices.
- The WCOAPF (ID50B) recognises that the long-term viability of Shepherds Bush Town Centre can be achieved by enhancing the attractiveness of the historic town centre based on its existing 3 retail anchors of Westfield, the West 12 centre and Shepherds Bush Market. The WCOAPF goes on to recognise the Council's aspirations for the market and adjacent land, and refers to the outline permission granted.

- 4.2.3 The redevelopment scheme responds to that policy framework. It will redevelop the market by improving its infrastructure, built environment, layout and design in order to reverse its decline. Its physical fabric will be enhanced and the improvements will bring about increased footfall, increased revenue for traders and other retailers, plus improve quality and diversity in the market.
- 4.2.4 Quashing of the SPD does not undermine the regeneration strategy or the aspiration to improve the market, as policy support for regeneration of the market was not based on the SPD. Support for Shepherds Bush Market's regeneration is explicit in the 2009 Core Strategy Options Paper², which pre-dated the SPD. The original version of Policy WCOA3 (CD6, page 67) contains no references to the SPD. The SPD was only inserted into the policy provisions when it had been produced. The adopted Core Strategy itself sets out broad support for the regeneration in Policy WCOA and that does not refer to the SPD.
- 4.2.5 Inclusion of the Goldhawk Road properties is not predicated on Policy WCOA3. The Core Strategy Options Paper noted the benefits of opening a development to Goldhawk Road. Maps associated with the WCOA suite of policies in the Core Strategy clearly include the Goldhawk Road frontage.

¹ CD3 – Core Strategy, Map and Strategic Policy WCOA on page 44

² CD6 – Core Strategy Options Paper, pages 46, 58, 66 and 67

Inclusion of the Goldhawk Road properties is expressly supported by Policy WCOA3.

- 4.2.6 Operation of Policy WCOA3 is not predicated on the existence of the Shepherds Bush Market SPD. That position has now been confirmed by the High Court (Wakil 2). The principles arising from the Judgment are:
- The Council was entitled to give no weight to the SPD in making its decision to grant planning permission for the scheme.
 - Policy WCOA3 does not simply defer to the SPD as the source of relevant guidance for development proposals in Shepherds Bush.
 - The references to the SPD in Policy WCOA 3 are one element of it, but far from being the whole of it, Policy WCOA 3 puts the objectives for the redevelopment of Shepherds Bush in the context of the Council's broader strategy for this part of the Borough.
- 4.2.7 The scheme accords entirely with the planning framework comprising the London Plan, the Core Strategy, the WCOAPF as well as the NPPF¹, in the light of the Wakil 2 judgment. In any event, since compliance of the scheme with the development plan was taken into account in the grant of planning permission, it is not appropriate for this issue to be revisited at the CPO stage unless there is a material change of circumstances². There has been no such material change of circumstances.
- 4.2.8 The report to Cabinet relied on the extant planning permission (CD44, 1.3.1). The draft statement of reasons relied on the NPPF, the London Plan and the Core Strategy. There was no requirement to make further reference to the terms of the SPD or its quashing. As the Court has now held, an extant SPD was not required to determine whether the CPO scheme complied with the development plan.
- 4.2.9 Even if Orion's intentions are not realised, any alternative scheme would be limited by the planning framework. The need to regenerate Shepherds Bush Market is not a product of this CPO. The matter has had a lengthy and detailed gestation in both London-wide and local development plan policy³. The Order lands fall within the WCOA area. Any alternative scheme would have to meet the long-standing objectives of the Council and the Mayor for the WCOA area, which expressly include regeneration of the market. A CPO for another reason or for another kind of mixed use development "*..would not be consistent with what is set out in policy, which would be the base position.*"⁴

¹ CD1 – NPPF: Town Centre First emphasis, promotion of customer choice and a diverse retail offer

² Collins J in *Alliance Spring Co Ltd & Others v First Secretary of State* [2005] 3 P.L.R. 76 at para. 16

³ ID5 – Shepherds Bush Market regeneration, key dates and milestones

⁴ Mr Miah (for Council) in evidence in chief

4.3 Contribution to economic, social and environmental well-being

- 4.3.1 The importance of the market is the fundamental premise to the Council's exercise of CPO powers. It is one of the defining elements of Shepherds Bush. Retention and regeneration of the market is a priority for the Council as a means of maintaining the distinctive identity of Shepherds Bush Town Centre. The market is part of the social fabric of the area, providing a retail offer different and complementary to that offered by Westfield and other retail in and around Shepherds Bush. It has a long and rich history (established in 1914) and is important to the local economy, and to the social well-being of Shepherds Bush.
- 4.3.2 The character of the market is one of small independent traders providing a diverse mix of products in food, fashion and household, mainly to the local population, combined with a specialism in textiles and haberdashery which attracts customers from a much wider area. It provides a social function to the local community; it is ethnically diverse in its nature and offers the opportunity for independent businesses to trade in an affordable environment not found elsewhere in the area.
- 4.3.3 The purpose of the CPO is to facilitate an enabling development of mixed use development that would generate sufficient s106 contributions to allow necessary improvements to Shepherds Bush Market which is in decline. In order to arrest that decline, there is a need for significant investment in the market. The purpose of the CPO is also to facilitate regeneration of the western part of the town centre as envisaged in the Core Strategy. The CPO will contribute to the area's economic, social and environmental well-being in the way described below.

Economic well-being

- 4.3.4 The market has enjoyed long periods of trading success over its long history. However, since the early 1990s it has experienced a slow decline in physical condition, in visitor numbers and trading performances. These findings are confirmed in studies commissioned by the Council¹. The Council had hoped that the Westfield centre would act as a stimulus to the market – increasing visits, generate more turnover and encourage investment. As a whole the market has not improved in condition or performance; its appeal remains low, relative to the footfall now enjoyed by the rest of the town centre.
- 4.3.5 The conclusions of the studies are consistent with evidence from the market traders who describe its condition in the following terms:
- “[The market] clearly suffers from an appearance that is tired and shabby and it is hoped that regeneration will address and solve this state of affairs. [Sadly] over past years the diversity has decreased and has been the market's demise.” (SBMTA response to the CS Options consultation).

¹ CD52 – Quarterbridge Report 2007; CD53 - GVA Grimley Report 2008; CD54 – Parsons Brinkerhoff Report (Conditions Survey) 2008 and updated in 2013 (CD58) and CD55 - Consultation undertaken by M&N Communications

- "Business is not so good. The market's condition is 'disgusting' and 'dangerous'."(Mr Rogers, market trader)
 - "We are trading in a market that is falling down around our ears. We don't even have adequate toilet facilities or running water for shopkeepers, and none for customers. [...] We are not attracting clients from outside of the area at all and the market is on a downward spiral. We desperately need this redevelopment." (Mr Bardini, market trader)
- 4.3.6 The decline compromises the market's economic and social functions. It is failing in its current form to meet the expectations of its customers and of the public more generally. The Council was advised that the level of expenditure needed to regenerate the market is in excess of what the current owner is willing or able to provide; it is low on the list of priorities and there is no capital budget allocated for redevelopment¹. The GVA Grimley Study (CD53) reports that "*TfL do not operate a proactive management regime for the market, but rather invest in the market on a piecemeal basis*" and that "*the drop in footfall at the market [are] in part a result of a lack of investment by TfL in the market.*"
- 4.3.7 The proposed regeneration will enhance the opportunities for the market and Goldhawk Road retail frontage to improve and generate wealth to the benefit of traders and the residents of the area as a whole. The greatly improved layout and the provision of public facilities will bring increased footfall and bring with it increased spending that will enhance existing businesses and encourage new ones to open, both preserving existing employment and creating new opportunities.

Social well-being

- 4.3.8 The market is part of the social fabric of the area, providing a retail offer different and complementary to that offered by Westfield and other retail in and around Shepherds Bush. Its decline reduces that role and accordingly the variety of choice for the local population and visitors. The regeneration scheme is intended to reverse the decline and enhance the social fabric through improvement in the quality and quantity of the offer.
- 4.3.9 The market also offers opportunities not available elsewhere for the local population (particularly amongst the ethnic communities) to establish small and start-up businesses in affordable premises, a role that will be enhanced by the regeneration scheme.
- 4.3.10 The scheme will provide 212 new high quality sustainable homes on a site which currently provides less than 30 units in a backland position. There is no affordable housing in the scheme at present. The Council's position on affordable housing is that it seeks 40%, subject to viability. In this case, given the demonstrable need for investment in the market, its regeneration has been prioritised. The Council accepted the applicant's viability assessment² which established that it is currently not possible for the

¹ CD52 – Quarterbridge Report

² CD30 – Savill's viability report, verified by the Council's appointed valuer Lambert Smith Hampton (CD31)

scheme to support provision of affordable housing as well as achieve the primary objective of regenerating the market¹.

- 4.3.11 The WCOA as a whole has a higher proportion of affordable housing than other parts of the Borough. As a consequence of more market housing, there may be a change in the overall mix of the area. That was not the aim of the scheme². Instead, regeneration is intended to reverse Shepherds Bush Market's decline and enhance the social fabric through improvements in the quality and quantity on offer.

Environmental well-being

- 4.3.12 The Parsons Brinkerhoff conditions survey report of 2013 identified at least £2,764,632 worth of remedial works to upgrade the market to simply comply with regulations and bring the units up to a "B" standard of condition³. Its built environment is in a poor condition. The immediate approaches are unkempt and many of its trading units are in need of either substantial repair or replacement⁴.
- 4.3.13 The market is tightly hemmed in between its present boundaries, creating narrow movement corridors between the arches, stalls and shops. These physical constraints inhibit pedestrian movement, severely limit opportunities for sitting or eating, and deliveries are difficult to manage. Proposals for more attractive circulation space, public areas and facilities will greatly improve the area's environment⁵. Evening openings will improve security and provide an attractive place for residents and visitors.
- 4.3.14 The Goldhawk Road properties are useable but in need of some external repairs. It is a tired looking commercial parade. The areas adjoining the market would be improved with a frontage to Goldhawk Road that would be more in keeping with the scale of adjoining properties⁶. The more consistent façade height would complement and enhance the nearby Conservation Areas. The curved façade of the proposed development on the Goldhawk Road would create a more obvious and open access to the market. It also has the advantage of creating additional pavement width for pedestrian circulation and an arrival area revealing the market entrance and more of the railway arches⁷. A sense of arrival would be achieved, attracting passers-by to the market. The scheme will improve servicing and access opportunities. Good quality public realm will help improve the market's presence in the streetscene.

¹ CD23 – GLA stage 2 report: was satisfied that after providing funds for the market, the scheme is not sufficiently profitable to provide any affordable units

² Inspector's note – some objectors allege that the Council is looking to change the social mix in the area

³ CD58 – Appendix A to Parsons Brinkerhoff update. Condition code B is described as "sound, operationally safe, minor deterioration"

⁴ LBHF/5 – Mr Ball's proof paragraph 4.8 lists the health and safety issues in the market. See also Images in LBHF/7 – Mr Ball's Appendix MB8

⁵ ID4 – Illustrative Plans page 7 and CD26 – Design Guide M_25 and M_26. Market Square, Bush Square and The Crook

⁶ Pennard Mansion block adjacent to the Goldhawk Road properties is a 5 storey locally listed building

⁷ ID4 – Illustrative plans: page 25, Goldhawk Road facade

- 4.3.15 The residential element of the scheme should assist in creating a vibrant mixed use scheme with increased security and natural surveillance. The new residential environment will transform what is currently a backland site into an attractive residential community. The Order will facilitate delivery of these environmental gains.
- 4.3.16 Orion has appointed Wellington Market Company PLC (Wellington) as operator of Shepherds Bush Market. Wellington has experience of running many regular markets and recognises the need for modernisation and evolution of markets¹. In the case of Shepherds Bush Market it is clear that the trading environment is reaching the end of its useful life. Reappraisal of the entire offer and operation is essential, irrespective of the rest of the development proposals for the surrounding area. With Wellington's high reputation as a market operator, the developer hopes to rebuild both the physical surrounds of the market and the required levels of consumer confidence, which will be borne out by the increased footfall once fully open.

4.4 Viability and necessary resources

- 4.4.1 Orion Shepherds Bush Ltd. (the developer) is a joint venture created in May 2010 between Development Securities PLC and Orion Land and Leisure Ltd². Development Securities is a major property developer and investor with net assets of approximately £300m³. The developer has entered into a number of agreements with existing property owners to secure delivery of the majority of the Order lands⁴. Agreements have also been entered into with the Council to indemnify it against all costs associated with the promotion and confirmation of the CPO and for transfer of Lime Grove Hostel to the developer⁵.
- 4.4.2 Orion has already spent in excess of £5m promoting the scheme, securing planning permission and entering into agreements to acquire the Broadway, Peabody and Council owned land. Additionally, it has commenced work to discharge the reserved matters⁶. Land deals in respect of the largest land parcels have been secured (TfL, Broadway, Peabody). Having invested in the scheme over more than 5 years, Orion is highly incentivised to secure a commercial return through scheme implementation. Subject to the CPO being confirmed, there is no evident impediment to that implementation.
- 4.4.3 It is common ground that the consented scheme is viable (ID15). Indeed, the consultant giving evidence on behalf of the Goldhawk Road objectors concluded that the project is financially viable and a highly profitable proposition⁷.

¹ LBHF/5 – Mr Ball's proof Section 3.9, details the involvement and role at Old Spitalfields Market

² ID51A - Orion Land and Leisure Ltd – Track record note

³ ID51B – Development Securities Preliminary Results for 2013

⁴ WD1, WD2 & WD3 – Letters from Throgmorton Investments (42 Goldhawk Road), TfL (LUL land interests) and Mr Bardini (20 and 20A Shepherds Bush Market)

⁵ ID7 & ID8 – Agreement and supplemental agreement between LBHF and the developer

⁶ ID57 and ID57A – Reserved matters consultation material

⁷ GHR/1 – Mr Whitfield's proof paragraphs 5.16 and 7.26

- 4.4.4 As the developer has committed more expenditure into the scheme pursuing the process, there is an amount of embodied investment that can only be redeemed if the scheme is carried out. Orion is committed to the delivery of this scheme. The area is improving. Values are improving. Performance of the scheme has improved since the planning permission was granted.
- 4.4.5 In sum, there is no challenge to the position that the consented scheme is viable, and the evidence reveals that the promoters have the necessary resources available to achieve the CPO purpose within a reasonable time-scale. The Secretary of State can therefore be satisfied that if the CPO is confirmed there is at least a reasonable prospect of its implementation.

4.5 Could the CPO purpose be achieved by other means?

- 4.5.1 There are no reasonable alternatives to achieving the scale and mix of land-use represented by the scheme and which would achieve the requisite planning and regeneration objectives. There is no obligation on any party to put forward alternatives.
- 4.5.2 A theoretical alternative to the scheme is not of itself sufficient to prevent there being a compelling case for the CPO, particularly if there are good reasons for the option pursued in the CPO. The Secretary of State and the Courts consider that the creation of delay and uncertainty in considering alternative proposals put forward in support of CPO objections can be highly relevant in rejecting the objections and confirming the CPO. If there are compelling public reasons for delivery of the scheme here, the delivery of alternatives (even were they considered to be appropriate – which is not the case) will cause damaging delay and uncertainty in the delivery of the scheme and its benefits.
- 4.5.3 The Goldhawk Road objectors' case is premised on the alternatives of: 1) a scheme with the Goldhawk Road properties excluded; 2) the self-funding of Shepherds Bush Market works and 3) alternative funding mechanisms for the works.

Scheme without Goldhawk Road properties

- 4.5.4 Inclusion of the parade of shops at 30-52 Goldhawk Road has been a contentious aspect of the area's regeneration plans for a number of years. Nevertheless, there are clear townscape, design and viability disadvantages to a regeneration scheme that excludes these properties.

Townscape/Design Issues

- 4.5.5 Through an iterative design and assessment process¹, it became clear early on (as far back as 2008) that all the land on the east side of the market was needed to achieve the Council's objectives for the reasons listed below:
- Widening the current market entrance from Goldhawk Road is essential, in order to improve pedestrian and delivery flows, meet standards for disabled people and improve access for loading and unloading.

¹ CD25 – Design and Access Statement: Section 4: Design development

- A wider market entrance is needed to create visibility and presence on the main road.
 - Without incorporating the Goldhawk Road properties the remaining lands constitute only a backland site with limited access and development capacity.
 - The scale of the Goldhawk Road buildings is no longer appropriate for this part of the street townscape or indeed a town centre¹. Pennard Mansion alongside is of 5 storey construction and properties on the opposite side of Goldhawk Road extend to 4 storeys². There is an obvious lack of harmony with Pennard Mansion.
 - Without the Goldhawk Road properties the desired prominence and frontage would be lost.
 - Removing the Goldhawk Road buildings allows for the important design feature of the curved block to be introduced into the scheme³. The curved façade onto the street creates a more obvious entrance, increased pavement width and views towards the railway arches. It also presents opportunities for a coherent architectural composition on the Goldhawk Road frontage.
 - Operation of the market would be significantly compromised. The existing entrance from Goldhawk Road at 3m width is wholly inadequate. Reduced retail areas would compromise the critical scale required for the regeneration and the loss of Market Square would be very significant, as it is crucial to the future flexibility of the market and its ability to host specialist produce sales and events.
- 4.5.6 Including the Goldhawk Road buildings allows for a comprehensive approach to site development, for opportunities to integrate the existing market with a larger one and a permeable, accessible and secure mixed use development with a notable entrance from Goldhawk Road. The existing terrace not only prevents the scope to improve the southern access or improve servicing arrangements but also turns the majority of the application land into a backland site⁴.
- 4.5.7 Removing only 50-52 Goldhawk Road, as suggested, does not resolve the issues. The access point would not be wide enough to address the servicing or delivery needs of the development. Another access point would be necessary. 'Salami slicing' the terrace is not a practical option and the perception of a backland development would remain. Retaining the Goldhawk Road properties would be a lost opportunity to reinforce and enhance the existing street structure and rhythm running from Shepherds Bush Green.

¹ CD25 – Design and Access Statement, pages 92 and 93: Goldhawk Road façade

² ID4 – Illustrative plans, page 23: photograph of the south side of Goldhawk Road

³ ID4 – Illustrative Plans, page 25: Goldhawk Road facade

⁴ LBHF20A – Appendix 1 to Mr Asher's rebuttal proof: note from Robin Partington Architects explaining the shortcomings of a scheme without the Goldhawk Road properties

- 4.5.8 In any case, the proposals presented as alternatives would have to comply with planning policy. In the Mayor's view, even the consented scheme was of an undesirably low housing density¹. There are all sorts of issues to be taken into account in a redesign². A relationship to the back of Goldhawk Road properties would lead to an outlook one would not expect for high value residential development. The massing elements are very complicated. There would be considerably less development area and a less attractive residential scheme.
- 4.5.9 The hypothetical options promoted by the Goldhawk Road objectors are not workable, viable or conducive to the Council's regeneration aims for Shepherds Bush Market. They are neither realistic nor sufficient to meet the requisite planning and regeneration objectives in the Core Strategy.

Viability Issues

- 4.5.10 Viability of a development depends on the acceptability of any alternative in planning terms and the quantum of residential floorspace which could be achieved without the Goldhawk Road properties. The question of whether the alternative is viable depends on whether it is a consentable proposition in terms of design, planning and regeneration benefits. That is because the main area of dispute between the witnesses presenting viability evidence relates to what floor areas would be achievable in a redesigned scheme³.
- 4.5.11 The Goldhawk Road assessment relies on floorspace assumptions for which there is no support. The Council's analysis of achievable floorspace, on the other hand, is based on the advice of the architects⁴ and is the only approach with any design and policy support. It is plainly the approach to be preferred.
- 4.5.12 The appraisal of the scheme minus 30-52 Goldhawk Road is also based on the assumption that Block A would be lost⁵. On the analysis presented, only Block B would suffer reductions in value. That is not a realistic approach. Sales value reduction would occur over the whole of the site. The backland nature of the development, and restricted access running across the rear area of the site, would render the scheme less attractive to potential purchasers. The lack of vehicular access from Goldhawk Road, congestion around the side and rear of the Goldhawk Road properties, and the view over the back of the retained properties would also have wider impacts on valuation. The market would not be renovated to the high standard expected from buyers accessing their residences from the market.

¹ CD23 - GLA October 2011 stage 1 report, page 47

² Inspector's note - Mrs McAllister (on behalf of Goldhawk Road) accepted in cross-examination

³ ID15 - Comparison Table of reduced scheme - 203,564 sqft (Goldhawk Road evidence) compared to 140,061 sqft (Council evidence)

⁴ LBHF/20 - Mr Asher's rebuttal proof

⁵ GHR/1 - Mr Whitfield's proof for Goldhawk Road objectors, Table on page 24 and paragraph 7.29

- 4.5.13 The proposition is unworkable. The scheme would not be viable¹ and there would be serious doubts about developers proceeding with it.

Conclusions on excluding the Goldhawk Road properties

- 4.5.14 Inclusion of the Goldhawk Road terrace is supported by Policy WCOA 3 and is predicated on achieving a satisfactory regeneration scheme. Without the Goldhawk Road properties, the scheme becomes a backland scheme, which is antithetical to the Core Strategy's regeneration objectives, detrimental to the market's prospects of greater footfall and future success, and incapable of supporting the requisite scale of development. Properly assessed, a scheme excluding the Goldhawk Road properties would not be viable.
- 4.5.15 The position on the inclusion of the Goldhawk Road properties is consistent with the analyses of Quarterbridge (CD52), GVA Grimley (CD53) and King Sturge (CD56). The market has been surveyed by Parsons Brinkerhoff in 2008 (CD54) and August 2013 (CD58) and, even on the basis of a non-intrusive, visual survey requires over £2.7m worth of work, which would not address its physical and layout shortcomings.

A self-funding market

- 4.5.16 The objectors claim that the market could be 'self-sustaining' i.e. its profits could fund its own regeneration. The analysis sought to demonstrate that the market will produce a surplus of £1,838,031 (ID20). However, that conclusion is predicated on a 7.5% yield and fails to take account of finance costs. In producing the analysis, neither turnover, churn nor the decline in tenants over the last 10-15 years had been investigated and volatility was not assessed. The 7.5% assumption is unsubstantiated.
- 4.5.17 The 9% yield assumed in the appraisal carried out on behalf of the Council (ID54) is a more appropriate figure for the following reasons:
- Because of the nature of agreements, tenancies and rents, an investor would take a more cautious view on valuing the market compared with regular shop units, such as those on Goldhawk Road.
 - A number of costs that may occur with the market would be unlikely with shops. For example, risk of voids. An investor would reduce the multiplier which increases the yield.
 - Because of the nature of the market and relatively short-term leases and tenancies that exist, it is quite a volatile investment; particularly as there are a large number of tenants and traders.
- 4.5.18 Furthermore, the 7.5% yield was derived from the £12m purchase price of the TfL site. It is not safe to assume that is the appropriate figure from which to derive a yield because:
- Any purchase price reflects potential for future income or potential for 'hope value'. Given the central focus on the regeneration of the market

¹ ID54 – Development appraisal excluding 30-52 Goldhawk Road (prepared on behalf of Council) estimates loss to the developer of £490,004

in planning policy, the extent of hope value in this case is likely to be significant;

- TfL was able to conduct a “closed” sale. If TfL offered the market on the open market, other buyers are unlikely to pay the same price, given the degree of the developer’s involvement, and
- If the Shepherds Bush Market works of £4.8m are added to the purchase price, the approach used to calculating yield would produce 5.35%.

4.5.19 Finance costs for 1 year would be £1.312m¹. A reasonable estimate for finance costs over 3 years would be £3m. On 1 year’s finance cost the hypothetical surplus (in ID20) is wiped out; on 2 or 3 years’ finance, the scheme would pass into deficit. The market’s ability to self-finance on 7.5% is marginal, assuming 1 year’s finance. Adopting a 9% yield simply increases the deficit.

Alternative funding mechanisms

4.5.20 Seeking s106 contributions from schemes such as Westfield (suggested by Mr Slaughter) for improvements to the market would be unlawful². S106 monies cannot freely be allocated to support unrelated schemes³.

4.5.21 There is no connection in planning terms between Westfield and Shepherds Bush Market. Even if there were evidence before the Inquiry of unallocated s106 funds from e.g. the Westfield development, those funds could not be lawfully applied to an unrelated regeneration project.

4.5.22 Furthermore, it is incorrect to suggest that money acquired by the Council for sale of the laundry site can be diverted⁴. Use of Government resource to finance a private development is unlawful. The approach would distort the market, as a private developer would be in receipt of public funding. Even a joint venture cannot avoid the situation of financing a private development with public money.

Conclusion on alternatives

4.5.23 The CPO purpose could not be achieved by any other means. The only alternative scheme mooted before the Inquiry is a Shepherds Bush Market scheme with the Goldhawk Road properties excluded. Such a scheme has no planning support. The hypothetical alternatives are not workable, viable or conducive to the Council’s regeneration aims for the market.

4.6 Acquiring land by negotiation

4.6.1 The Council and developer have been actively engaged in consultation with stakeholders, traders and members of the public on the Shepherds Bush Market regeneration principles, which began with a series of meetings in November 2010. Public meetings continued into 2011. The meetings led to

¹ Inspector’s note – Mr Whitfield (for Goldhawk Road traders) agreed in cross-examination

² *R (Sainsbury’s Supermarkets Ltd) v Wolverhampton City Council* [2011] 1 A.C. 437,

³ NPPF – paragraphs 203-204

⁴ ID73 – Statement from Mr Whitfield regarding payment from the laundry site

preparation of the Charter (CD90) as a means of directly addressing concerns raised by market traders. The consultation process leading to submission of the planning application is described in detail in LBHF/08 (Mr Horn's proof Section 2) and in the Statement of Community Involvement (CD29).

- 4.6.2 As for the CPO, withdrawal of 3 objections during the course of the Inquiry¹ demonstrates compliance with the Secretary of State's encouragement to continue to negotiate. In addition, transactions were completed in advance of the CPO process, e.g. the transaction with the Broadway Day Centre, which will facilitate relocation of Broadway's residents to Lime Grove. The NHHT objection is withdrawn, provided that the CPO is modified to exclude the Lime Grove properties.
- 4.6.3 The developer entered into an option agreement with Broadway as long ago as September 2011. The efforts to engage since then with other landowners and occupiers have been extensive². General negotiations and dialogue regarding the redevelopment scheme has been ongoing since 2010³. Ardent Management Ltd. (Ardent) was appointed by the developer in 2011 and has been involved in the acquisition of 30-52 Goldhawk Road plus the market freeholds. In June 2013 further instructions were issued to negotiate additionally with the tenants of the market stalls and arches.
- 4.6.4 Letters sent out on 14 June and 22 July 2013 (ID40 & ID41) to statutory objectors invited views on market traders' preferences and to submit background information to assist in understanding relocation requirements. The letter additionally outlined the relocation or other options available and advised of a drop-in centre on 24 and 25 June. As responses to the letter were poor, Ardent's representatives visited each of the statutory objectors' business premises to arrange appointments for the drop-in centre. Further letters were sent out between 23 and 31 July seeking the return of proformas. Appropriate offers cannot be made unless the Council and developer have a broad understanding of business requirements, tenancy information and future aspirations or requirements.
- 4.6.5 In addition to Ardent, Wellington has sought to engage with market traders since August 2013. Prior to that date, TfL was unwilling to allow the developer or its representatives to directly approach the market tenants to discuss the state of the market or its future. However, since August one-to-one meetings with traders have begun. A steering group is to be established (in accordance with Schedule 15 of the s106) to act as a forum to discuss and consult upon day to day management issues affecting the market, including the lettings policy⁴.

¹ Throgmorton Investments, freehold owner of 42 GHR [WD/1]; Transport for London [WD/2]; and Mr Paul Bardini of Bush Bedding [WD/3].

² CDs 80-82 – Correspondence with SBMTA, with Goldhawk Road and market traders

³ CD29 – Statement of Community Involvement

⁴ ID53A – Letter dated 31 October 2013 from Mr Olsen (chairman OSBL) to all market and Goldhawk Road traders, amongst others

- 4.6.6 Attempts with the market traders – through letters, meetings, organised drop-in sessions and otherwise – have been voluminous. What is more, they are and will remain ongoing after the close of the Inquiry, as encouraged in the Circular¹.
- 4.6.7 With regard to 30-52 Goldhawk Road, in November 2011 letters were sent to the freeholders inviting them to negotiate. Follow-up letters were sent and 5 of the freeholders were opposed to engaging at that time. Conditional offers were made to the freeholders of Nos. 30, 32, 34, 42 and 46 between November 2011 and January 2012. Renewed efforts to acquire by agreement were made in March and May 2013 following the making of the CPO², together with a meeting in April 2013³. Inspections took place on 11 June of 32-48 Goldhawk Road and of the premises at Nos. 50-52 in July of this year. Offers have also been made to traders to reimburse their professional costs. Traders are offered options of relocating temporarily or permanently elsewhere and offered the opportunity to return following completion of the new development. Parking arrangements in the basement of the new development are offered⁴.
- 4.6.8 To assist with relocation, lists of available properties in alternative locations were sent to the Goldhawk Road traders' representative (Turner Morum) in June, July and August 2013⁵. Further options were sent in November 2013 (ID64). The schedules were produced in association with a firm of local property agents and distributed to occupiers' agents or occupiers directly. The developer is committed to meeting costs of disturbance including adaptation of premises in accordance with the Compensation Code.
- 4.6.9 Mr Grundman's property was inspected on 4 September 2013 and he assisted with answering questions about the property. No further information was received by Ardent either from Mr Grundman (Obj 30) or his agent Gerald Eve. Efforts to engage with RAL Ltd (Obj 31) have been unsuccessful, despite letters and invitation to attend the drop-in events.
- 4.6.10 The success of Ardent's endeavours has been limited by a series of events beyond the promoters' control. Firstly, TfL refused to allow the developer to make contact with market traders until agreement was reached about transfer of its interests. Second, Turner Morum failed to pass on responses of Goldhawk Road traders to requests for information, for reasons that are unexplained. During the Inquiry, it has also transpired that the Goldhawk Road traders were seeking to sell as a collective freehold⁶ and not to engage until the judicial review had been decided⁷.

¹ ID65 – Post adjournment correspondence, comprising exchanges between developer and statutory objectors

² ID6 – Letter from Ardent to Turner Morum then acting on behalf of the freeholders and traders (except at Nos. 30, 34 and 42). Turner Morum were de-instructed in August 2013

³ CD81 – Summary of correspondence between Ardent and Turner Morum

⁴ ID58 – Typical offer letters sent to Goldhawk Road traders on 4 October 2013

⁵ LBHF/14C, 14D and 14E – Mr Yexley's (Ardent) Appendices

⁶ Emerged during Mrs Meghani's cross-examination

⁷ Inspector's note – Mr Cakici (Zippy's Diner) in cross-examination, but Mrs Meghani indicated that was a misunderstanding on his part.

- 4.6.11 The Goldhawk Road traders are plainly opposed to the redevelopment scheme. That opposition is not only to this CPO. It was to the SPD and the planning permission. That their opposition is genuine is not in dispute. However, this position has not assisted the negotiation efforts, primarily through Ardent. On the contrary, the opposition of the traders has substantially frustrated the developer's efforts to engage. Such actions demonstrate the need for a CPO. An offer for temporary relocation, permanent relocation or business closure cannot be made before the preferences and requirements of each business are understood. Ardent's approach accorded with the Circular and a substantive response is still awaited.
- 4.6.12 Formal offers have now been made to Goldhawk Road traders and the freehold stallholders. The Secretary of State will be updated on the progress of continuing negotiations as appropriate.

4.7 Safeguarding statutory objectors' interests

- 4.7.1 The Council has always maintained that protection and continued operation of existing traders is its central objective. It has been a priority since the scheme's inception¹. All of the existing businesses can be accommodated within the scheme and the developer has committed to keeping the market open and operational throughout the development period². When granting permission for the scheme, the Council was satisfied that the phased approach proposed by the developer would allow the market to trade during the construction phases. Wellington understands the needs of traders to continue operating and has successfully overseen refurbishment of other markets with no or little disruption to traders³.
- 4.7.2 Policy WCOA 3 seeks particular protection for the Goldhawk Road traders, providing specifically for opportunities for relocation of the shopkeepers to new premises within the scheme. As the policy states, any developer will be expected to negotiate to relocate traders within a scheme.
- 4.7.3 While the policy provides for relocation to new premises (and such opportunities must be reasonable and realistic), there is no requirement in the policy for 'like for like' in terms of size, legal interest or in other respects. Furthermore, there is no requirement for the opportunity for relocation to be on the Goldhawk Road frontage, although Schedule 16 of the s106 agreement provides greater surety in this respect than set out in Policy WCOA 3.
- 4.7.4 Reaching agreement on pre-let or pre-sales terms on the Goldhawk Road properties is in the developer's vested interest, because of the compensation and relocation arrangements. Security of trading is thus assured and disruptions to business are limited.

¹ CD90 – Shepherds Bush Market Charter, December 2010

² ID59A – Typical letter from Ardent dated 18 November 2013, circulated to all market and Goldhawk Road traders describing the process of temporary relocation and referring to Method Statement of Temporary Arrangements (ID59B)

³ LBHF/05 – Mr Ball's proof Sections 3.7-3.8

4.7.5 It was crucial for the Council to be assured that there were sufficient commitments from the developer to ensure retention of existing traders in the market and Goldhawk Road. The Mayor and GLA officers were consulted at great length. Stringent and lengthy obligations secured as part of the s106 provide comprehensive commitments and robust protection to the traders. The safeguards secured through the s106 are explained below.

Schedule 15¹

4.7.6 This part of the s106 relates to the market traders. Its provisions have been explained to aid understanding (ID/27). In short, Schedule 15:

- provides for the institution of a Shepherds Bush Market management steering group to meet on a monthly basis. The process has already begun in advance of the legal requirement². The current owners (LUL) have not adopted such an approach; meetings were infrequent and were not intended to decide on how the market was to be managed on a day to day basis³. Far from diluting the voices of the traders, the Steering Group will provide them with a formal forum to influence management and performance of the market under Orion's ownership;
- sets out notification requirements in respect of commencement of the market works;
- sets out a rent freeze and service charge freeze. Adequate protection is secured by limiting a rent freeze to the period of disturbance. Rent levels beyond the works will be determined by the market in the normal way. Rising rents in the future would be an indicator of a market in more robust commercial health;
- requires OSBL to prepare a lettings policy in consultation with the Shepherds Bush Market Management Steering Group;
- sets up a Shepherds Bush Market Business Continuity Fund capped at £500,000 to compensate losses as a result of the works;
- requires the foundation of the Shepherds Bush Market Liaison Group, the views of which OSBL is required to take into account in determining the programme of works and their day to day management.

4.7.7 The Liaison Group and the Steering Group will provide a formal mechanism for market traders to be represented in the management of the market, and in the programming of the Shepherds Bush Market works. The SBMTA concerns that the Groups will be "*instruments of control, binding the market tenants under the control of Orion*"⁴ are unfounded.

¹ Inspector's note – This section covers the Council's response to detailed objections raised on behalf of the SBMTA. A more comprehensive response is contained in ID56

² ID53A – Steering group letter from Orion (dated 31 October 2013). ID53B – Steering group nomination form. ID53C – Steering group market management plan

³ ID56 – Consolidated responses to SBMTA and IDs 56A and B – Meeting notes

⁴ OBJ-202-8 – Mr Horada on behalf of SBMTA, dated 2 October 2013

- 4.7.8 The Council is unclear about the criticisms levelled at the service charge freezing period¹. Schedule 15 does not “*totally disregard*” the Shepherds Bush Market Service Charge Agreement – indeed, the Agreement is cited at paragraph 5.1 of Schedule 15, which requires compliance with that agreement. The wording is plain and will operate to the benefit of the traders, rather than to their detriment.
- 4.7.9 Leases will be honoured. Each lease incorporates a rent review mechanism based on the Investment Property Databank and this will continue. The tenancy agreements contain a formula for resetting the rent using the Investment Property Database Index, which provides relative certainty to both tenant and landlord. Any rental increases will depend on changes in the index, as is the case now. The rent freeze period is clearly defined². The period of the market works is anticipated to take no longer than 12 months. So a 3 year freeze is a substantial benefit. As Orion has not yet completed acquisition of the market, it is not entitled to propose a rent increase³.
- 4.7.10 The lettings policy must be prepared in consultation with the Shepherds Bush Market Management Steering Group, so the market traders’ views on the proper range of affordable or entry level businesses must be taken into account and given due weight. The traders would not be better protected by a narrowly worded more prescriptive lettings policy in the s106.
- 4.7.11 The Continuity Fund will operate in tandem with the CPO compensation regime and gives traders an additional mechanism to seek compensation. Schedule 15 maintains protection for leases that already benefit from a 6% cap on increases. For leases with no cap, or a less stringent cap on increases, Schedule 15 will increase protection. A measure which, at the very least, preserves and maintains current protections on service charge increases for market traders should not be a matter of dispute. In any event, Schedule 15 goes further than the pre-existing lease protections, because it is enforceable by the Council and not only by the market traders themselves.
- 4.7.12 Robustness of the protection afforded by Schedule 15 has been considered and accepted by the Mayor. Initially, the Mayor required a number of matters to be secured or fulfilled⁴. Once the s106 had been reviewed, the Mayor’s view was that the relevant protection had been secured, and that the concerns and requirements set out by the SBMTA and the Mayor at Stage 1 were adequately addressed⁵.
- 4.7.13 Overall, Schedule 15 provides a robust framework for the protection of market traders. Part of that protection is the developer’s commitment to ensure that market traders can continue to operate their businesses

¹ OBJ-202-5, 6, 7 and 8

² “the period commencing with and including the [start date of the Market Works] and ending on the date three (3) years later”

³ Inspector’s note – This is in response to Mr Horada’s (SBMTA) claim that exorbitant rent increases are already being proposed (ID47)

⁴ CD23 – GLA Stage 1 Report, paragraphs 28-30

⁵ CD23 – GLA Stage 2 Report, paragraphs 20 and 24

through permanent or temporary relocations¹. Even if an alternative scheme were proposed, it would still have to meet the stipulations of Policy WCOA 3. And, in any event, it is apparent from the Mayor's response that any alternative scheme would be required to provide an equivalent level of protection for market traders.

Schedule 16

- 4.7.14 Policy WCOA 3 requires OSBL to negotiate to relocate traders within a scheme, and that there be opportunities to relocate businesses within the scheme.
- 4.7.15 The first matter is addressed by paragraph 2 of Schedule 16. It also requires the Owners² to continue to engage with Goldhawk Road businesses to discuss preferences and to negotiate terms. The operation of paragraph 2 in practice can already be seen in correspondence, such as the 29 May 2013 Ardent letter to Turner Morum (ID/6) and the offer letter of 4 October 2013 (ID58).
- 4.7.16 Paragraphs 2.3, 2.4 and 3 of Schedule 16 require the Owners to assist Goldhawk Road businesses to identify suitable temporary or permanent accommodation if they wish through, *inter alia*, appointing a commercial agent and circulating lists of available properties. Circulation of the lists has begun and is being undertaken on a monthly basis³.
- 4.7.17 If all existing Goldhawk Road businesses wish to be relocated to the area fronting the Goldhawk Road, there is more than equivalent space to enable that to happen. The final internal division of the frontage is a reserved matter which requires input from the traders making their requirements known. However, plans and schedule (ID25) demonstrate that the ground floor of the retail premises on the Goldhawk Road (and the return to Market Lane) would exceed the ground floor areas of the existing shops. The proposed basement areas would exceed the combined areas of basements and upper floors dedicated to retail use in the existing buildings. The new units would additionally have the benefit of greater useable floor to ceiling heights. When the traders engage with Orion, plans can be prepared identifying how the available areas can be arranged to meet their needs.
- 4.7.18 For Goldhawk Road traders seeking to protect their freehold as a capital asset, long leaseholds could be made available⁴.
- 4.7.19 At the Inquiry the traders generally accepted that, subject to terms, their businesses were capable of relocation within a new scheme. Mrs Boughton accepted that, subject to terms, her business was capable of operating in new premises on the frontage. Mrs Boughton also accepted that it would probably not prevent the business operating if it was moved around the

¹ ID59B – Temporary market area method statement

² Inspector's note - Owner refers to the person who acquires Shepherds Bush Market from LUL

³ LBHF 14/C, D & E – Mr Yexley's appendices, property availability schedules in June, July and August 2013

⁴ Inspector's note – Mr Horn (for Council) in evidence in chief and offer letter of 4 October 2013 includes that option

corner within the new scheme, as the Pie and Mash shop is a 'destination'. Mr Dangoor's electrical shop location on the Goldhawk Road is of strategic importance (proximity to the City, the A4, Hammersmith etc) and that could be maintained within the new scheme. Mrs Meghani agreed that her textile store could operate from a two floor layout, subject to the provision of sufficient floorspace.

- 4.7.20 When preparing the reserved matters application, Orion is required to provide units 'suitable' for the relocation of those wishing to remain trading on the site. What is suitable will depend on the requirements of the business. But businesses are required to offer at least some degree of assistance to help meet it.
- 4.7.21 Certain traders complain that their informal parking arrangements at the access to the rear will not be replicated in the scheme. There is a variety of metered and pay-and-display parking facilities within a short walking distance of the site¹. A large proportion of local trade use the long-stay parking at Westfield² and there is a very significant passing trade on foot relying on the local train, tube and bus services. There is no evidence that parking on the rear access road is essential to the viability of the Goldhawk Road businesses, such that alternative parking arrangements servicing new premises would render relocation unreasonable or unrealistic. Goldhawk Road is a long-standing 'destination venue' for fabrics and textiles of international repute. Customers are unlikely to be deterred by the need to find alternative parking when spaces are available within a minute's walk. A defined parking space is now offered to Goldhawk Road traders³, which is preferable to the precarious parking position that currently exists to the rear of the properties.
- 4.7.22 The Owners are not required to sell or let a unit within the Goldhawk Road commercial premises to a person who owns a Goldhawk Road on anything other than 'commercial terms' (paragraph 4.1 of Schedule 16). It was suggested that commercial terms does not mean the market-rate as assessed by an independent valuer but is profit-driven and equates to the best commercial rent that Orion can obtain.
- 4.7.23 That approach is not borne out by authority⁴. In short, the position is that in cases where a contract does not specify a future price, the Court is likely to imply a term that the price should be fair, reasonable or 'market' price. Furthermore, 'commercial' imports an objective assessment of what reasonable persons would have in mind in the situation of the parties. Commercial terms, at paragraph 4.1 of Schedule 16, does not mean best commercial rent that can be obtained. It connotes an objectively assessed reasonable market rent. An objective market valuation can be easily done through the conventional RICS Red Book approach.

¹ ID32 – Plans illustrating parking restrictions around Goldhawk Road

² Inspector's note – Mrs Meghani (Goldhawk Road) in cross-examination

³ ID58 – Typical offer letter, dated 4 October 2013

⁴ ID82 - Legal submission appended to Mr Elvin's closing submissions

- 4.7.24 As with Schedule 15, the Mayor considered that the provisions of Schedule 16 were sufficient to render the scheme compliant with the London Plan¹.
- 4.7.25 It is true that the Goldhawk Road shopkeepers have no way of enforcing any of the obligations in the s106 agreement. During the course of the Inquiry, the developer offered to enter agreements with Goldhawk Road shopkeepers so as to render the obligations directly enforceable. That offer remains open.

4.8 Justification for the plots to be acquired

- 4.8.1 There are some 240 different interests in the Order Lands (135 leasehold and 13 shop freeholds in the market alone) (CD40 – Schedule to the Order). Without the unified ownership which the redevelopment scheme will secure, there is little or no prospect of a scheme coming forward to bring about the public benefits in accordance with national and development plan policy. The benefits of the scheme can only be achieved through a comprehensive approach to development, which is predicated on unified ownership.
- 4.8.2 The schedule prepared by Mr Yexley (of Ardent Management Ltd. appointed by Orion)² lists the individual plot numbers, a brief description of each one and the reasons for its inclusion in the Order and to develop the scheme.
- 4.8.3 Given the number of interests in the land, the promoters cannot be expected to acquire all of those interests by private treaty within a reasonable period of time, if at all. Reasonable efforts have been made, and will continue to be made, to acquire land and rights necessary to carry out the scheme. In reality, the period for negotiation will continue until vesting.
- 4.8.4 The CPO is required to allow redevelopment of the land to occur in a timely fashion. The determined opposition of many of the market and Goldhawk Road traders makes it inevitable that a CPO must be used to secure regeneration of the Shepherds Bush Market area. That is why the Council has followed the appropriate statutory procedures to make the CPO alongside negotiations with affected landowners, as the Circular advises.

4.9 Compelling case in the public interest

- 4.9.1 The starting point is the importance of a vibrant, healthy market to its surroundings, to the WCOA, and to the Borough. It fulfils an important economic function, in terms of the opportunities it provides for independent retailers, and offer of alternatives to the newly developed Westfield centre. The market has become a social and cultural hub for Shepherds Bush since it was established in 1914. The Inquiry heard extensive evidence along those lines from traders, as well as from local residents and shoppers. The significance of the market is recognised in planning policy (the Core Strategy and the WCOAPF). The continuing health of the market is of real importance to the WCOA and to Shepherds Bush. There is a compelling public interest in maintaining that health.

¹ CD23 – GLA Stage 2 Report, paragraphs 21-24

² LBHF14/B – Mr Yexley's appendices

- 4.9.2 There is however extensive evidence to demonstrate that the market is in decline. The evidence includes the series of independent studies commissioned by the Council to assess that position; the most recent was in August 2013¹. Members of the public and market traders similarly have expressed that regeneration is essential. The evidence of a pressing need to regenerate the market is common ground between the promoters and market traders. It is a compelling need which serves the public interest. The aggregate of social, economic and environmental benefits constitutes a compelling case in the public interest.
- 4.9.3 The scheme granted permission will meet that need. The benefits include an extensive scheme of improvements works for the market, the establishment of a Market Continuity Fund, refurbishment of the Lime Grove Hostel and a series of off-site highway works. It will meet a need for high quality housing in Shepherds Bush. The Design and Access Statement (CD25 – Key Drivers section) and the Design Guide (CD26) illustrate how the scheme will respond to the market’s requirements. Its physical condition and appearance will be regenerated.
- 4.9.4 Without confirmation of the CPO, the scheme cannot proceed. It follows that there is a compelling public interest in confirming the CPO. That case remains compelling notwithstanding the objections of the market and Goldhawk Road traders. The CPO will impact their businesses and their property interests. However, protection of the traders has been a central theme throughout the planning and CPO processes and extensive provision has been made to minimise and mitigate those impacts. A temporary impact on a limited number of private interests does not render the public interest in regenerating the market any less compelling. That is particularly so in the light of evidence that those private interests stand to benefit in the longer term from the market’s regeneration.
- 4.9.5 Even if there are individual impacts in terms of the loss of some traders who choose not to return, there will be support for those who do wish to return and to ensure e.g. preservation of the cluster of textile shops and the pie and mash shop. The risk that some businesses may be lost to the Goldhawk Road, whilst regrettable, would be acceptable in the light of the overall public benefits which will be achieved by implementation of the scheme.
- 4.9.6 Consideration of human rights issues, principally with respect to Article 1 of the First Protocol of the European Court of Human Rights (ECHR) adds little, if anything, to the approach set out in the CPO Circular and by the UK courts. In all cases, the making of a compulsory purchase order to acquire private interests in land must be shown to be justified in the public interest. The balance between the public interest and private rights is not only a

¹ CD52 – Quarterbridge Report 2007; GVA Grimley Report 2008; CD54 – Parsons Brinkerhoff Report (Conditions Survey) 2008 and updated in 2013 (CD58) and CD55 - Consultation undertaken by M&N Communications

requirement of the CPO Circular, and English law¹, but reflects the position under the Human Rights Act (HRA) and the ECHR².

- 4.9.7 The Council and Orion's submissions are that the very significant public benefits that the scheme would provide by securing regeneration of the Order lands justifies interference with individual rights. Comprehensive redevelopment, including the properties on the Goldhawk Road, is the only commercially realistic proposition, if the Council's planning policy requirements are to be met.

4.10 Conclusions

- 4.10.1 The need for comprehensive redevelopment of the market is common ground. Urgency of that need has been recognised in the London Plan, the Core Strategy and the recently adopted WCOAPF. The scheme permitted responds to that need. It is funded, well thought out and will achieve real economic and social benefits for the market, and for Shepherds Bush more broadly. It needs the CPO to be confirmed to go ahead. Nothing else stands in the way of this significant regeneration project.
- 4.10.2 Failure to confirm the Order will have the adverse consequences of losing the only real opportunity to comprehensively regenerate the market in accordance with the London Plan and the Core Strategy. There is no serious alternative development to the scheme currently suggested by anyone, still less one which could secure the benefits provided by it. A lesser, piecemeal scheme is not capable of supporting the requisite standard and scale of development so as to achieve the planning and regeneration objectives set out in the Core Strategy.

5. OBJECTIONS ON BEHALF OF THE GOLDHAWK ROAD SHOPKEEPERS

- 5.1 The Goldhawk Road shopkeepers represented at the Inquiry³, and objecting to the CPO, comprise the freehold owners, leaseholders or tenants of premises at 30-48 Goldhawk Road. Their preference is for the Order not to be confirmed. In the alternative, they asked for the Order to be modified in the following ways⁴:
- Exclude 30-52 Goldhawk Road, the road fronting these properties and the service road to the side and rear (Order land nos: 3/177, 3/178-189 and 3/191-202); or
 - exclude 30-48 Goldhawk Road, the road fronting these properties and the service road to the rear (Order land nos: part of 3/177, 3/180-189 and 3/193-202) with unfettered rights of access over the land edged pink (part of 3/177, 3/178 and 3/179).

¹ Scottish Guidance (copy submitted by Mr Jones' in his closing submissions on behalf of Goldhawk Road traders ID/80). Mr Elvin: "It adds nothing to CPO Circular."

² ID1 – Mr Elvin's opening statement on behalf of the Council. Annex provides detailed legal submissions

³ ID46 – List of Goldhawk Road freeholders and leaseholders represented by PDC Legal

⁴ The options are listed in ID26 but I repeat them here for ease of reference

The material points are:

5.2 The Scope and Validity of the CPO

- 5.2.1 The Council seeks confirmation of a CPO for the “*purpose of facilitating the carrying out of development, redevelopment or improvement*” of land in and around Shepherds Bush Market.¹ Where an Order is not tied to a particular scheme, acquisition remains justified for any future scheme which meets the broad purposes of the Order². Notwithstanding that confirming the CPO could lead to compulsory acquisition to facilitate a scheme which is not even concerned with regeneration³, the CPO has been promoted entirely on the basis of the scheme for which planning permission has been granted (the Orion scheme), and particular reliance placed on the terms of the s106 agreement for that scheme, as justification for the acquisition of property. It is plain that the Orion scheme is the purpose for which the CPO is required.
- 5.2.2 The scope of the Order sought goes far beyond the scheme which has been subject to the Inquiry. Much of the Inquiry was concerned with the minutiae of the design of the scheme. For instance, the ‘viability analysis’⁴ adds a CIL requirement for a scheme without Goldhawk Road properties; because it could only be consented after the CIL Regulations came into force. But the viability analysis based on inclusion of Goldhawk Road shops is on the Orion scheme; consent for which was issued on the last working day before the CIL Regulations came into force.
- 5.2.3 The evidence was based on the Orion scheme, but the powers granted by members were not so restricted. No alternative cut down Order has even been suggested still less tested in evidence. There has been no application to amend the scope of the CPO and it is too late to do so now without substantial prejudice to the parties affected. The Council suggests that if the purpose of the CPO is too wide, it is open to the Secretary of State to modify it. However, the Goldhawk Road shopkeepers would be substantially prejudiced if the purpose were modified without holding a new Inquiry.
- 5.2.4 It is further claimed that whatever goes on site is constrained by planning policy. Thus, any alternative scheme would be likely to have the same objectives. However, it does not always follow that planning policies are complied with when granting planning permission, or even given any weight. In the present case, for instance, no weight was given to the SPD designed specifically to guide development on the site.
- 5.2.5 Nor is it the case that particular policy objectives would necessarily be achieved by a future planning application, as evidenced by the Orion scheme which has failed to provide any affordable housing. The economics of another scheme could be different and there would be CIL to consider. There simply is not the necessary degree of confidence to be assured that

¹ CD40 – The CPO Schedule

² Held in R (Argos Ltd) v Birmingham City Council [2011] EWHC 2639 (Admin)

³ The purposes are expressed as alternatives

⁴ Inspector’s Note: The Goldhawk Road objectors do not accept that Mr Asher’s (for Council) work constitutes a proper viability analysis

the CPO would not be used for an entirely different scheme. Reliance is consistently placed on no-binding assurances of commitment by Orion to the development. Neither the CPO nor the planning permission is tied to particular developers or ownership.

- 5.2.6 The Secretary of State is requested to confirm a CPO whose terms are in the widest possible terms and not tied to any particular scheme or regeneration principles, such as regeneration of Shepherds Bush Market. If granted, the CPO would be applicable to a scheme to demolish the market and construct something entirely different. No evidence (still less, the 'comprehensive...justification' envisaged by paragraph 18 of Circular 6/2004) has been called forward to support the CPO in the wide terms in which it is sought. The Order therefore should not be confirmed.
- 5.2.7 The planning permission has not been quashed by the High Court, but there is a prospect of successful appeal to the Court of Appeal. It cannot be in the public interest to confirm the CPO until the Secretary of State is satisfied that there is no obstacle to implementation of the scheme (particularly given its wide scope, and lack of reference to the Orion scheme).
- 5.2.8 It is also apparent that Members were seriously misled as to the policy support for the scheme when they resolved to compulsorily acquire the land in October 2012¹. The 15 October 2012 Report (CD44) to Committee refers Members back to a much earlier report (14 October 2010), written at a time when the Planning and Regeneration Brief was in force (which became the SPD shortly afterwards). Members were not updated as to the quashing of the SPD in the interim, and thus would have assumed that the vision and objectives of the scheme remained in extant policy. Even if some of the Members had heard that the SPD had been quashed, they were never advised of the full implications of the Wakil 1 judgment. This misrepresentation of the policy position renders the resolution itself invalid.
- 5.2.9 Without the SPD, Policy WCOA 3 provides no policy support for the particular vision and objectives promoted by the Council. Describing Goldhawk Road as of poor visual quality and out of scale with the townscape and improving the access to the market² were express requirements of the quashed SPD and do not appear as requirements elsewhere in planning policy³. The fundamental flaw is that members were advised to adopt the CPO on the same basis as if the SPD had never been quashed.

5.3 Fitting in with the Planning Policy Framework

- 5.3.1 Core Strategy Policy WCOA3⁴ is the single adopted development plan policy referring to the potential for inclusion of the Goldhawk Road shops within a scheme regenerating Shepherds Bush Market.

¹ CDs 44 & 45 – LBHF preliminary Cabinet report and minutes

² LBHF-1 – Mr Miah's proof, paragraphs 5.16-5.18

³ Inspector's Note – In cross-examination Mr Miah (for the Council) agreed that the sections of SPD quoted in his proof should be removed

⁴ CD3 – page 56

- 5.3.2 There are high-level references to promoting regeneration and vitality in the London Plan¹, but there is no support found therein for demolishing the Goldhawk Road shops. The same goes for the other policies in the Core Strategy² (e.g. page 37 and Strategic Policy WCOA, page 44) (CD 3). The WCOAPF (CD 4 and ID50B) simply describes WCOA 3 but as “...aimed at guiding future development of adjacent land in a way that will also regenerate the market.” It adds nothing more.
- 5.3.3 On the contrary, the retail objectives all support preservation of the current Goldhawk Road shops³. The mere reference to the planning permission does not endorse it in any way. It was just a statement of fact. The grant of a particular planning permission does not set down guidance. In any event, the Mayor relied on the Design and Access Statement, which was based on the planning policy framework within which the application was submitted (i.e. the quashed SPD). This reduces the weight that can be placed on the Mayor’s view.
- 5.3.4 The Council suggests that inclusion of the Goldhawk Road properties is consistent with the analyses of Quarterbridge (CD 52), GVA Grimley (CD 53) and King Sturge (CD 56)⁴. None of these reports finds that they need to be included, and there has been no physical survey justifying their demolition.
- 5.3.5 In the Wakil 2 judgement Lindblom J imposed an interpretation on Policy WCOA 3 which means that it does not require development to comply with the SPD, so long as a scheme matches the description given in the Core Strategy and is compatible with all other relevant provisions in the development plan (judgment: [78] – [86]). Lindblom J’s interpretation of Policy WCOA 3 is subject to appeal and it remains the case that there cannot be compliance with WCOA 3 without consideration of a SPD. The litigation is itself an impediment to implementation of the scheme, contrary to paragraph 22 of Circular 06/2004.
- 5.3.6 In any case, Goldhawk Road as a non-essential element of policy is acknowledged in Lindblom J’s reasoning. He noted that the expression “*should take place in accordance with the guidance set out in the [SPD]*” did not “*connote that in the absence of such guidance no proposals for the development of the site can claim the support of Policy WCOA 3*” (judgment: [80]). In the same way, a scheme in the absence of the Goldhawk Road shops could still be in compliance with Policy WCOA 3 – the words are similarly ‘*should*’ not ‘*must*’.
- 5.3.7 Policy WCOA 3 is clear that the Goldhawk Road Shops “*should be included provided there are opportunities for relocation of the shopkeepers to new premises within the scheme*”. Their inclusion is not essential; rather they are merely beneficial and, further, conditional on their relocation. The Mayor’s support for the scheme is very much based on the shops being

¹ CD2 - Policy 2.13 and Annex One – Opportunity and Intensification Areas

² CD3 - Strategic Policy C and Strategic Policy WCOA

³ ID50B – Adopted WCOAPF, paragraph 2.33: “*This diversity of retail offer is an inherent strength of the town centre.*”

⁴ ID1 – Mr Elvin’s opening statement for the Council, paragraph 28(6)

relocated¹. The development plan clearly allows for a scenario that excludes the Goldhawk Road properties².

5.3.8 There is planning policy support for regeneration of the market and adjacent land. There is no policy stipulating the minimum level of flat development that must be achieved. The 'heart' of Policy WCOA 3 is the market. Even regeneration of Goldhawk Road shops can mean refurbishment. There is nothing in Policy WCOA 3 that says that the shops should be regenerated for themselves. There is not even any statement in Policy WCOA 3 that says that the shops must be included for financial necessity.

5.3.9 The policy matrix is scant. Having felt it was necessary to adopt the SPD, the Council gave no consideration to its replacement following the Wakil 1 judgment³. In the absence of this particular SPD, which was designed to give guidance to Policy WCOA3 (hence the skeletal nature of the policy), evolution of the Orion scheme cannot be said to have been genuinely planned and the proposal is not set within a 'clear strategic framework'⁴.

5.4 Contribution to economic, social, environmental well-being of the area

Market Regeneration

5.4.1 That Shepherds Bush Market and adjoining land (identified as the core area in Policy WCOA3) would benefit from regeneration is not disputed. The relevant policy support in the development plan is for regeneration of the market. Even on that count, the Orion scheme fails, as it is a substantial housing development wrapped up in the guise of market regeneration. If market regeneration were really at the heart of this scheme, then not only would the Shepherds Bush Market Works consist of works that were actually needed by the market and the traders⁵, but there would be no need to demolish the Goldhawk Road shops, which have nothing to do with the market. Demolishing the shops would do nothing to improve access to the market. If anything, it is the Uxbridge Road entrance that needs improving.

5.4.2 The Orion scheme will change the social mix of the area and make it more affluent⁶. This will have knock-on effects on the types of market stalls and with that the rents payable both in the market and surrounding area. The protection offered to market traders through the s106 is very limited. Old

¹ CD 23 – Mayor's (Stage 2 report), page 4, paras 21 – 24. Mr Jones also claims that the Mayor proceeded on a false premise that there would be some form of rent subsidy for the shopkeepers within the s106 agreement: CD 23 (Stage 2 report), p. 4, paras 21 - 24

² GHR/5 – Mrs McAllister's proof of evidence, paragraph 5.11

³ Mr Jones confirmed that Wilkie J in Wakil 1 had found that the SPD in fact went beyond that which was lawfully contained in an SPD and its content was in substance a DPD and the Council had failed to go through the correct adoption process for a DPD

⁴ Circular 06/2004 - Appendix A, paragraph 12

⁵ Such as structural repairs and/or mitigation measures to alleviate the effects of water leaking in the arches

⁶ Inspector's note – In closing Mr Jones suggested that in cross-examination Mr Miah (for the Council) indicated that that was the Council's aim. In my note of the cross-examination, Mr Miah's response was that: "the Opportunity Area has a large number of social housing. The scheme will bring a social mix and will have a transformative effect."

Spitalfields Market is seen as the comparative example of how Shepherds Bush Market would develop. But it is clear from the publicity material that it is very different from the current character of Shepherds Bush Market¹.

30-52 Goldhawk Road

Social, economical and environmental value of existing premises

- 5.4.3 The Council recognises the businesses and the owners who operate the Goldhawk Road shops are valued features of the local area, providing foods and services to their surrounding communities². They are a culturally diverse but cohesive group of long-standing businesses. Many of the traders have been in their current location for decades³ and businesses are passed down through families. They are profitable and successful, but also provide a sense of community and place in contrast to the large retail offers at Westfield and West 12 shopping centres in the Shepherds Bush Market Town Centre. The businesses are long established family operations – they are not just places of work but part of the owners’ lives and family inheritances.
- 5.4.4 Goldhawk Road is renowned nationally and internationally for its fabric shops⁴, and draw significant foreign investment. The range and quality of the textile products is unique. Famous fashion designers and students are familiar with the heritage and uniqueness of the fabric shops on Goldhawk Road. These well-established and longstanding shops are well known to customers and suppliers. Customers benefit from a personal service⁵. The shops cater to costumers; fabric for BBC productions is frequently purchased on Goldhawk Road. There are clear beneficial effects to the clustering of textile shops in Goldhawk Road. The shops complement and need each other.
- 5.4.5 Cookes Pie and Mash shop has occupied the existing premises on Goldhawk Road since 1934⁶. The current business is well known⁷, and frequented by customers knowing that they will get a personal service. It is a family business, a local cultural icon and very much part of the community. Zippy’s Diner (42 Goldhawk Road)⁸ is also popular with local residents, as the food is reasonably priced. Different generations of the same families

¹ LBHF-7 – Appendices MB6 and MB7 to Mr Ball’s proof.

² LBHF-8 – Mr Horn’s proof paragraph 3.25

³ See Mrs Meghani, Mr Cakici, Mrs Boughton and Mr Dangoor’s proofs (OBJ- 17-1, 18-1, 25-1 and 21-1). They or their families have operated from current premises from between 20-80 years.

⁴ OBJ-17-1 – Mrs Meghani’s (Classic Textiles) proof of evidence (paragraph 17) describes the reasons why customers from the Middle East prefer to shop at Goldhawk Road and Shepherds Bush Market

⁵ OBJ-17-2 – Appendices 1, 2 and 3 to Mrs Meghani’s proof comprise letters from customers

⁶ There has been a pie shop at 48 Goldhawk Road since before 1891

⁷ The shop is the focal point for the mods annual homage ride out in the film Quadrophenia. Also see Mrs Boughton’s (Cookes Pie and Mash Shop) proof (OBJ-25-1, paragraph 15) listing the celebrity customers.

⁸ OBJ-18-1 – Mr Cakici is the leaseholder. His proof describes how he purchased the diner and took over the lease in 1971. It is the only remaining Zippy’s Diner in the UK.

have dined at the restaurant and continue to do so¹. The proprietors are well known and liked not only for the diner on Goldhawk Road but also for their charity work and services to the community². The building at No.42 accommodates two residential units which are let to the Council as affordable housing.

- 5.4.6 The Goldhawk Road buildings have a certain vernacular. While not conventionally attractive, they have an endearing character³ that cannot be replicated in a modern development. The shops are of their time and a legacy of the rich mix in London where such parades are becoming less common⁴. The varying heights of buildings (although restricted to two storey plus basement) creates visual interest in the streetscene, and is compatible with the two storey retail premises on the opposite side of Goldhawk Road. The buildings, with their shop fronts and traditional signage such as that at Cookes Pie and Mash shop, are essential to the physical diversity and character of the locality. The buildings are not in poor repair.
- 5.4.7 The Goldhawk Road shops provide an environment in which social interaction and communities flourish. They form a vital element of the diverse retail offer, an alternative shopping experience to the large, modern malls dominated by national chain stores. These are not your ordinary run-of-the-mill high street shops. Each one is individual and special – and thriving⁵ – as independent witnesses came to the Inquiry to attest⁶.
- 5.4.8 The shops contribute to the vitality of Shepherds Bush Market Town Centre. Loss of the shops, their temporary relocation elsewhere and eventual replacement with new retail units would destroy the prevailing sense of community which could not be recreated.
- 5.4.9 The Council is adamant that the Goldhawk Road businesses and all of the existing market traders are to be preserved. However, the only expert evidence on the matter noted that *“the [Goldhawk Road] shops would need to be relocated as any replacement retail provision would inevitably command higher rents...”* and *“...force some of these businesses out of the area.”*⁷ There has been no explanation as to why the report had not been adopted by the Council. Loss of the businesses is a major dis-benefit of the Orion scheme and will occur for reasons explained below.

¹ Mr Ashbridge spoke at the Inquiry, confirming that he frequents Zippy’s Diner with his children and appreciated the 1960s furniture – a throwback to the 1960s milkbars.

² OBJ-18-1 – Mr Cakici’s proof paragraphs 23-27

³ Described by Mrs Meghani as “shabby chic”

⁴ CD35 – Shepherds Bush Market, Historic Environment Assessment, Images of Goldhawk Road shops and buildings Figures 12, 13 and 14

⁵ ID31 - Accounts produced in respect of the Pie and Mash Shop do not paint a full picture. As Mrs Boughton explained, she is aware that her opening hours are short (36 hours over 6 days). She is going to expand her hours to make a greater profit. Prices are deliberately low (a hot meal for £4).

⁶ See evidence of Mr Dominic Ashbridge, Ms Kimikawa de Castro, and Ms Teresa Walsh (of Stitchless TV)

⁷ CD53 – Report by GVA Grimley, dated February 2008

Opportunities for relocation for Goldhawk Road businesses

- 5.4.10 Policy WCOA 3 is strongly caveated by the opportunity for relocation. If reasonable opportunities for relocation cannot be assured, the buildings should not be included in the scheme¹. The relocation opportunity is not realistic, both in practical and financial terms.
- 5.4.11 Orion is required when preparing their reserved matters application to provide units 'suitable' for the relocation of those wishing to remain trading on the site². 'Suitable' is not defined. Nevertheless, whilst it might physically be possible to go back into a new unit, a number of the shopkeepers own the freehold of their shops, which enables them to sell stock at reasonable prices. Orion will not commit to offer a freeholder a like for like freehold, or even a long-lease, and there is no obligation for them to provide tenure according to the shopkeepers' preferences³. Trading with a standard periodic-tenancy will have serious financial implications for some of the businesses – it is simply not 'suitable'.
- 5.4.12 The reserved matters application can include a smaller floor space on Goldhawk Road than currently exists if agreed with, or directed by, the Council. Until approval of reserved matters, there can be no confidence that the replacement shops will be of the same size. The frontages will not be as wide as the existing premises, if the same number of shops is retained⁴. There is not even a guarantee of a new shop on the Goldhawk Road frontage itself, since the 'Goldhawk Road Commercial Premises' is defined as those 'on and around' where the Goldhawk Road properties are currently situated⁵. The sketch in the Reserved Matters Application (ID57A) document shows six shops on the Goldhawk Road frontage: there are currently eight including some with double fronts. It is important for the Goldhawk Road shopkeepers to be on the street frontage, and not in the market⁶.
- 5.4.13 Furthermore, a number of shopkeepers rely on parking and rear access which they have enjoyed *de facto* for a number of years. This cannot be replicated with the new scheme. In the case of Classic Textiles, for instance, there are two places to park limousines used by customers from the Middle East who come in the summer and spend significant amounts⁷. There is no space for a limousine to park on a side road; they need to be in front of the shop. There are only four parking bays in Woodger Road, and there are hardly ever any spaces. There are also hardly ever any spaces free. Two hour parking restrictions are not long enough for overseas

¹ Inspector's note – Mr Butler in cross-examination (on behalf of the Council) agreed that if guarantees were not realistic then the Order should not be recommended

² CD21 – s106, Schedule 16, paragraph 1.2

³ CD21 – s106, Schedule 16, paragraph 2.2.2: discussions are confined to whether traders wish to 'let' a unit within the new scheme

⁴ ID4 – Illustrative Ground Floor plan and ID25 – Schedules of comparative floor areas

⁵ CD21 – s106 Definitions

⁶ Inspector's Note - Mr Cakici said in evidence that it would be too far for customers to walk to the market, given the limited amount of time available on local parking meters.

⁷ Obj-17-1 – See Mrs Meghani's proof paragraphs 14-19 which describe the attraction of fabric shops to tourists from the Middle East

customers to visit all the shops in the cluster. Hence, they deliberately park on the access road behind. Mr Dangoor describes how parking is very important to his business¹. The rear parking for loading and unloading vans at Goldhawk Road is of huge benefit.

- 5.4.14 Orion is concerned with providing only that which they are strictly obliged to provide, and not what is suitable for the shopkeepers. The housing above some of the shops will also be lost. In at least one case, the tenant receives housing benefit and is disabled.
- 5.4.15 In respect of temporary accommodation for those returning to the scheme, Orion's obligation is only to "*assist by looking to identify possible suitable temporary / alternative accommodation within the locality to allow continuity of trade where possible*"². There is no obligation to provide temporary accommodation or to subsidise it. The words presume that in some cases continuity of trade will not be possible, which seems a real likelihood for some of the businesses, e.g. Cookes Pie and Mash and Zippy's Diner.
- 5.4.16 There is no evidence of where Cookes Pie and Mash shop could be temporarily relocated away from the Goldhawk Road. If the business is extinguished during the 3 year relocation period, it would be difficult to re-establish. Mr Boughton (the owner) is 61. To start again at 64 would be difficult. Mrs Boughton does not know if he would be able to rise to that. The pie shop would not be able to survive during relocation even if it were to return, the loss of the historic frontage and absence of a high street frontage would all prove to be difficult hurdles to overcome, the latter factor in particular.
- 5.4.17 In the case of Zippy's Diner, Mr Cakici accepted that he could theoretically relocate into a new unit in the new scheme which was identical to the existing, but was adamant it would be very difficult for the three year temporary period and that would likely destroy his business. He has considered Orion's list of properties, but there is nothing suitable as they are all too expensive. He is currently paying just over £30K rent a year.
- 5.4.18 Similarly, Mrs Boughton has found nothing suitable. She has looked at 433 North End Road, but it is too large and not in the locality that customers associate the shop with. It has residential on the floors above. The other floors at Cookes' current premises are used for storage and as a staff rest room. Residential does not sit well with pie and mash due to the smell from the pies (liquor has a very distinctive smell and eels can certainly smell). In addition, Mrs Boughton does not want a long-lease because it is not an appreciating asset. There are also added complications such as service charges and needing landlord permission for alterations.
- 5.4.19 Mrs Meghani last year looked at 90 Goldhawk Road. It was not big enough but in any event it would have been too far away from the cluster. No one

¹ Mr Dangoor owns 36-38 Goldhawk Road. The premises house Arrow Electrics and is well known in the trade as suppliers of electrical materials and lighting fixtures

² CD21 – s106, Schedule 16, paragraph 2.3

has considered the impact on the fabric shops, if they are forced to trade outside the cluster on Goldhawk Road¹.

- 5.4.20 Mr Dangoor was in a financial position that enabled him to purchase new premises on Chiswick High Road² before the conclusion of these proceedings. He has taken this step because he cannot let customers down. It is a contingency plan, at a huge cost. If he moves to Chiswick for three years, he will not move back to Goldhawk Road. The Chiswick shop is bigger than he needs, but he bought it so as not to lose the opportunity. Should the electrical shop not return, Shepherds Bush Market and Goldhawk Road will lose a very successful business, and with it part of the character and vibrancy.
- 5.4.21 This 'assistance' should have been happening from the date of the agreement (30 March 2012), but an estate agent's list of properties has been provided only in the last few months. Mr Dangoor has exchanged contracts on a property with a long lease (not a freehold) on that list. None of the others are suitable for the shopkeepers, as their evidence showed.
- 5.4.22 A reasonable authority would have done an appraisal to consider the likely impact on these businesses. No one disputes that their presence in the area is highly beneficial to the community and in accord with the aims of the CPO. If the Secretary of State is to be in an informed position to weigh up the compelling public interest, there has to be evidence to show the likelihood or otherwise that the shops will be maintained. The evidence of the shopkeepers is clear: what is offered is not a reasonable opportunity for relocation.
- 5.4.23 In any event, some of these businesses do not lend well to any relocation at all. Mrs Meghani said that any relocation would "*simply kill*" Classic Textiles. People worldwide come to the shop, and it would be impossible to communicate to them. When Mrs Meghani took over the shop from her parents, she closed it for six months to refurbish it. It took four years to get the client level back. There is nowhere else in London with a similar fabric cluster. Not only will these businesses and their families suffer further personal loss, but the communities they serve will have lost much-loved services.

5.5 Financial viability of the scheme and the prospect of achieving the purpose within a reasonable timescale

- 5.5.1 Orion has no experience of market regeneration; that is why Wellington has been appointed. There is no reason why Wellington could not have been appointed far earlier to assist in consultation, if the developer were really interested in securing regeneration of the market itself as the first priority. That should have been a necessary pre-condition.

¹ Mrs Meghani explained the beneficial effect of the cluster. The textile shops complement each other and need each other. Classic Textiles specialises in silk and cotton; Mr Wakil sells curtain and upholstery; Mr Rashid and A1 stock multiple fabrics

² OBJ-21-1 – Mr Dangoor's proof paragraph 16

- 5.5.2 Orion does not have the experience and resources to deliver the scheme. Such a consequence would leave the CPO scheme-less and, given its wide terms, there would be a high risk that something even less desirable could take its place. Orion's experience¹ is unimpressive. The only major scheme Orion has been involved in is the International Cardiff Sports Village. What the Note fails to say, however, is that Orion in fact pulled out of its agreement to develop the site in November 2010. The lack of past success of this particular developer casts yet further doubt upon the non-binding assurances given by Orion as to their ability and their commitment to see the scheme through to full delivery. The lack of experience has been highlighted by the inept way in which they have gone about addressing the needs of the market trader and the very late appointment of Wellington. This goes both to ability to deliver what has been promised and the timing of such delivery, especially as much has been made of the urgent need for regeneration.
- 5.5.3 By including the Goldhawk Road properties within the scheme the Orion proposal becomes extremely viable by producing a development profit in excess of £35m or 25% of cost². This is a highly profitable proposition that has the added benefit of a s106 Agreement capping the developer's liability at £6m³. The scheme is CIL exempt (permission was granted the day before the Mayoral CIL became payable) and is not obligated to provide any affordable homes unless the scheme viability is improved (Schedule 5 of s106). The development will deliver 212 residential units into a market that has shown significant rental and capital growth over the course of the last 12 months and the forecast for growth is good.
- 5.5.4 However, even without the Goldhawk Road properties, there is a good prospect of developing the site viably. In fact the evidence shows that the market works are capable of being self-funded and the development is a viable proposition even without the Goldhawk Road properties. Feasibility of alternatives is considered below to address whether the purpose of the Order can be achieved in another way.

5.6 Could the CPO purposes be achieved by other means?

- 5.6.1 The key point here is that the public interest, if it is to be served at all by the redevelopment scheme, is only served through regeneration of Shepherds Bush Market. Other objectives of delivery of housing and regeneration of the area generally are also intended to be addressed but the primary aim is the uplift to the market. The Council has failed to show that viable alternatives would not achieve similar regenerative benefits. Furthermore, the market works are capable of being self-funded and it has not been shown why the windfall profit from the laundry site cannot be used to make up any shortfall in the cost of completing the market works.

¹ ID51A – Orion Land and Leisure: track record note

² LBHF/10 – Mr Asher (Council viability witness) proof paragraph 9.1 estimates a return to the developer in the range of £33-40m or profit on GDV of between 23% and 25%

³ ID21 – Definition of s106 Contribution page 24. The £6m includes relocation of Lime Grove Hostel (£1.2m), offsite highways contributions (£400,000), Shepherds Bush Market business continuity fund (£500,000) and Shepherds Bush Market works (£4.8m)

Funding market regeneration without the Goldhawk Road properties

- 5.6.2 The land take authorised by the Order must be the absolute minimum that is required in order to render the scheme as a whole financially viable. Since the outset, Orion has presumed inclusion of the Goldhawk Road shops within the scheme, and has never considered any design that might realise all or some of the market regeneration objectives without them¹.
- 5.6.3 A rebuttal scheme was presented to the Inquiry in response to the evidence prepared on behalf of the Goldhawk Road shopkeepers². The response is not a serious consideration of alternatives. The evidence on behalf of the Council confirms that the design for a new scheme without including Goldhawk Road would have to go back to first principles³. That exercise has not been undertaken. Yet it is something the developers should be required to do in justifying a compelling case for inclusion of the Goldhawk Road terrace, in order to provide the necessary development and funding for regeneration of the market and its surrounding areas.
- 5.6.4 The Goldhawk Road evidence demonstrates a viable alternative capable also of delivering the regeneration objectives but with retention of the Goldhawk Road properties. With an appropriate amount of time to re-design the scheme, it is likely to be financially viable, deliverable and generate a level of profit sufficient to cross subsidise the market works in full. Residual appraisal of a scheme that excludes the Goldhawk Road shops (in other words excluding Block A from the permitted scheme) estimates a profit of 20% of all costs to the developer⁴.
- 5.6.5 On the Council's own evidence, the redevelopment scheme is forecast to deliver residential properties that will have a sales value of £800 per sqft at an average unit value of some £770,000 as proposed, or over £670,000 per unit on the basis of the reduced scheme and with assumptions of reduced revenues⁵. The development of residential property with that high level of value ought to be commercially viable. The development of residential accommodation at Shepherds Bush Market needs to provide no more than £4.8million (Shepherds Bush Market Works costs identified in the s106) to bridge any shortfall that cannot be met in any other way. Neither the Council nor Orion has addressed the matter of shortfall.
- 5.6.6 There may even be design options for compensating for the loss of Block A. The potential to maximise the amount of accommodation in the scheme (thus enhancing its viability) while retaining the Goldhawk Road properties has not been explored.

¹ Inspector's note – Mr Horn giving evidence for the Council agreed that all options for the site examined included 30-52 Goldhawk Road

² LBHF/19 – Mr Horn's rebuttal proof confirms that the Goldhawk Road proposition was tested by removing Block A from the permitted scheme design and looking at 2 variants: retaining all of 30-52 Goldhawk Road or retaining only nos. 30-48. Also see plans and modelling in LBHF/19 A, B and C

³ Inspector's note – Mr Horn (for Council) confirmed in cross-examination

⁴ GHR/3 – Mr Whitfield's (for Goldhawk Road) Appendix 10 and ID15

⁵ ID54 – Mr Asher's development appraisal excluding 30-52 Goldhawk Road

5.6.7 The Council's reasons for including the Goldhawk Road are unfounded for the following reasons:

- The notion that only a comprehensive approach would maximise the regenerative benefits contribution to the town centre is wholly subjective. In any case, the case is not proven on viability grounds and should be measured against the private losses arising from acquisition of the Goldhawk Road properties.
- Physical disrepair of the Goldhawk Road buildings is exaggerated; they are in useable order¹. Any repairs needed are superficial. The shops are described as 'shabby chic' and customers don't have a problem with their appearance. The Council has never sought to engage with the Goldhawk Road shopkeepers for a programme of improvements.
- Two storey buildings are not out of keeping with the character of the area. They are very typical of West London. There is nothing unusual about having low level buildings on the street front with higher buildings rising up behind them².
- The prominent entrance and view of the railway arches sought in the permitted scheme could be achieved by removing the market clutter around the existing two entrances on Goldhawk Road. It does not require the shops to be demolished to achieve that objective, which in any case is not found in any adopted policy.
- There is no evidence that a backland development will affect marketability or that viability would be affected by having flats situated away from the busy Goldhawk Road frontage.
- There is no highways evidence to substantiate the claim that the Goldhawk Road shops are needed to improve vehicular access into the market. If width of entrance really is a highway obstacle then the access could be widened by demolishing only 50-52 Goldhawk Road³. This would provide access during the construction phases and to the implemented development thereafter.
- The evidence on viability provided by the Council's witness has fundamental and serious flaws. The claims for viability have not been established and the Council has been unable to discharge the alternatives burden.

5.6.8 It is apparent that the Council has not considered any options other than redevelopment of the site in order to address deficiencies in the management and maintenance of the market by TfL over a number of years. The £4.8m figure for the Shepherds Bush Market Works had not been derived from any costing of what was actually needed to improve the market. It simply arose from discussion with Orion as to what they could

¹ LBHF/12 – Confirmed in Mr Yexley's (Council) proof paragraph 5.22

² ID14 – Design and Access Statement for development at 45A and 47A Goldhawk Road, page 18

³ GHR/3 – Mr Whitfield's Appendix 2

afford to pay¹. The only figure that has been objectively assessed is the £2.7m figure identified in the report by Parsons Brinkerhoff². The s106 figure therefore bears no relation to what the market needs. It is developer and housing-led, and not regeneration-led. Furthermore, money could be spent on the market from CIL contributions³. The whole point about CIL is that contributions are not tied to a particular scheme.

Ability to self-finance

- 5.6.9 Orion has agreed to acquire TfL's existing investment interest in Shepherds Bush Market at a price of £12m⁴. Based on the current market income of £951,000⁵, the purchase price equates to an initial yield of just under 7.5% net of the purchaser's costs.
- 5.6.10 The purchase price agreed is its market value. There is no question that 'ransom' value or 'special' purchase value had to be agreed. The market value should reflect the current condition of the property. The obligation on the vendor to complete the Shepherds Bush Market Works will reflect a reduction in the market value of TfL's interest. In other words, backlog repair and maintenance which has been taken into account in arriving at the market value of Shepherds Bush Market cannot be said to require funding through the cross subsidy. Orion has already received 'credit' for the cost of such works as a reduction in the purchase price agreed. No evidence is provided to establish the extent to which the expenditure proposed as part of the Shepherds Bush Market Works was taken into account in arriving at the purchase price agreed with TfL.
- 5.6.11 In addition, Orion should not seek to claim the cost of developing 'new market stalls' as works that require cross subsidy. ID38 indicates that some £1.4m is to be spent on new market stalls and canopies above them. Additional income from new stalls and increased market rent will generate an income and have a capital value to Orion. Those works can be separately delivered on a 'value for money' basis and financed independently without the need for direct cross subsidy from the profit to be earned through redeveloping the Order land in its entirety, but particularly 30-52 Goldhawk Road.
- 5.6.12 On completion of the works, Orion is anticipating revenue from the market of £1,321,000 once complete compared with the current revenue of

¹.Inspector's Note – CD80 comprises copies of correspondence between the Council/developer and SBMTA. In a note accompanying an email dated 19 April 2012, Mr Miah (for the Council) explains that the £6.3m total s106 contributions "...has been calculated by reference to the GLA Toolkit for the assessment of s106 payments as the maximum amount viable from the adjoining development scheme." In response to my question, ID55 was produced by the Council which explains that during the course of the s106 negotiations an estimated cost breakdown was prepared to provide an informed indication of the possible extent of the proposed expenditure (see ID55B costs breakdown prepared by RLB)

² CD54 – Outline Conditions Survey report dated March 2008

³ Inspector's note - Mr Slaughter MP said this has happened recently in respect of refurbishing shops to the north of Shepherds Bush Green.

⁴ ID54 – Development Appraisal prepared by Mr Asher (on behalf of the Council)

⁵ ID54 - Development Appraisal prepared by Mr Asher (on behalf of the Council)

£951,000¹. In the Council's appraisal (ID54) a yield of 9% has been adopted. In other words, a higher yield (which results in a lower value) than that which Orion have agreed to pay to TfL of 7.50%.

- 5.6.13 Post completion of the Market Works, Orion's vision for Shepherds Bush Market is of a new, vibrant and diverse market that draws people to it from across London. It would widen the appeal of Shepherds Bush Town Centre as a visitor destination. To successfully achieve these aims, the value of its interest in the market will increase, not decrease (on a like for like basis). The lower yield will result in a higher capital value. This is what would be expected for Shepherds Bush Market once the works are completed, reflecting its improved prospects in terms of rental and capital growth.
- 5.6.14 It is perfectly possible that based on the yield of 7.50% the Market Works could be self financing². The Council and Orion have not considered properly, or at all, whether the works to Shepherds Bush Market can be financially deliverable independently of any associated residential development. The linkage between residential development and delivery of the Market Works has not been properly investigated. The onus rests on the Council to confirm that the Market Works are incapable of being independently financially viable and that cross subsidy is required.

Funding from Lime Grove Laundry Site

- 5.6.15 The Council owns the Lime Grove laundry site. It has entered into an Option Agreement with Orion³. The Agreement indicates that the Council as landowner will receive a minimum price of £4,900,000 plus overage, which falls to be calculated on a pro-rata site area basis having regard to the Marriage Value that is realised through development of the laundry site with the wider Order lands. In effect, the Council will receive consideration based on the benefit of the scheme.
- 5.6.16 The Option Agreement has been structured on a basis that ensures that the Council as landowner achieves a price based on the market value of the scheme. The Council is to be in receipt of a windfall - derived through the exercise of compulsory purchase powers where the objective is to secure regeneration of Shepherds Bush Market. This windfall should be applied to deliver the purpose for which the Order is made, namely regeneration of the market. There is no evidence to demonstrate why the windfall profit from the laundry site cannot be used to make up any shortfall in the cost of completing Market Works, to the extent that a shortfall can be proved.
- 5.6.17 In conclusion, there are potentially other funding sources for regeneration of the market. The Council has failed to show that viable scheme alternatives which exclude the Goldhawk Road shops are incapable of achieving the purposes claimed for the Order.

¹ ID 19 – Appraisal prepared by Mr Asher on behalf of the Council

² ID20 – Mr Whitfield's Analysis of Shepherds Bush Market Value (post-works), prepared on behalf of the Goldhawk Road shopkeepers

³ ID24 – Option Agreement and Plan

5.7 Efforts made to acquire the land by negotiation and safeguarding objectors' interests

Negotiations

- 5.7.1 Mrs Boughton's proof¹ (on behalf of the Goldhawk Road shopkeepers) details the meetings and correspondence with Orion. The first communication was in the form of a letter (dated 10 November 2010) from the Regeneration Director of Orion (Mr Horn) inviting those interested to an initial meeting with the development team. Since then there has been some correspondence with the traders themselves and with those representing them. The premises have only recently been inspected (May 2013).
- 5.7.2 The Goldhawk Road traders have not received any offer of compensation or any offer to return to the new premises². It is even suggested that Orion do not want the traders to return following completion of the development³. By letter dated 14 August 2013, the solicitors acting for the shopkeepers requested details of the "*generous compensation package*" reported in the Evening Standard⁴. No response was forthcoming⁵.
- 5.7.3 The Circular expects acquiring authorities to seek to acquire land by negotiation wherever practicable. Such negotiations (although continuing) should commence before the Inquiry⁶. Orion had ample information to inform their valuations and make offers all along, but did not make offers until after the evidence had actually ceased⁷. Formal offers were not made even during the Inquiry.
- 5.7.4 Offers were not made prior to the Inquiry. It is no criticism of the traders that they have not been able to make potentially life changing decisions to fit in with Orion's timetable. From a Circular perspective, Orion did not meet its obligations. The tasks undertaken were far too late.

Protection for Goldhawk Road shopkeepers

- 5.7.5 Whilst the s106 agreement makes some provision to ease the continuing operation of the market traders there is very little support for the Goldhawk Road shopkeepers.
- 5.7.6 The Goldhawk Road shopkeepers have no way of enforcing any of the obligations in the s106 agreement (Schedule 16), which can be varied

¹ OBJ-25-1 – Mrs Boughton's proof, paragraphs 22-25

² OBJ-17-1, OBJ-18-1, OBJ-21-1 and OBJ-25-1 – Mrs Meghani, Mr Dangoor, Mr Caciki and Mrs Boughton proof

³ OBJ-17-1 & OBJ-25-1 – Mrs Meghani and Mrs Boughton proofs

⁴ OBJ-25-2 – Mrs Boughton's Appendix 9

⁵ Inspector's note – events have moved on since the proofs were written. See ID65 (post adjournment correspondence) and some traders have received offers plus agreement to cover professional costs

⁶ ID81 - Inspector's Report in Bromley-by-Bow, paragraphs 10.33 onwards of the Inspector's report

⁷ ID65 – Post adjournment correspondence between Goldhawk Road traders and Ardent/Orion beginning 26 September 2013 and ID81 – Annex A: Note of negotiations between Orion and the Goldhawk Road traders

between the Council and developer. The Council has, since the close of the evidence, made an offer to enter into a separate agreement to enforce the provisions of Schedule 16 of s106. This is unacceptable because the terms of the s106 agreement are inadequate and not ones the objectors could agree to in any event. Furthermore, it is not sufficient to agree an enforcement mechanism in respect of only part of the s106. Such an agreement would not extend to e.g. the good faith provisions in Schedule 22 which are between the developer and the Council, not the shopkeepers. The ability to enforce is entirely in the hands of the developer.

- 5.7.7 There is no control on the rent or terms that Orion can demand in respect of the new premises. The agreement states expressly that there is no requirement for Orion to let or sell a shopkeeper a unit "*on anything other than commercial terms*¹." 'Commercial terms' is not defined in the s106. It does not mean the market-rate as assessed by an independent valuer. It is profit-driven and equates to the best commercial rent that Orion can obtain. The first refusal period is only three months long. Orion would be aware of other, more 'commercial' shop chains waiting in the background during that period, and thus the shopkeeper is in a weak negotiating position.
- 5.7.8 Orion would be entitled to charge higher rents based on 'improvements'. As compensation is assessed in the 'no scheme world', there is no obligation on Orion to pay greater CPO compensation if higher rents are charged. If the scheme is commercially marginal, there is a greater incentive to get the best rent.
- 5.7.9 Through its dealings with Orion, the Council is persuaded that they will be reasonable², even though the developer has hitherto pursued an aggressively commercial approach towards the traders and shop keepers. Orion may not ultimately be the developer of this scheme, or personnel could change, or indeed ownership of Orion. There is no evidence that a form of rent-control for the Goldhawk Road shopkeepers would render the scheme unviable – it has simply not been considered. Even if Orion was a philanthropic developer, the rights need to be guaranteed in some form of agreement.
- 5.7.10 No weight should be given to the s106 obligations. They are peculiar only to this consented scheme; subject to variation by the Council and developer. Furthermore, the CPO is not tied in any way to the planning permission and obligations.
- 5.7.11 In sum, there are grave concerns that not all of the Goldhawk Road businesses will survive the relocation and life thereafter in a standard commercial unit within the scheme. The evidence from the Council's

¹ CD 21 - s106, Schedule 15, paragraph 4.1

² In cross-examination Mr Butler (for the Council) said that so far Orion has been reasonable; he said: "the developer wanted to retain all existing operators; it was not in the developer's interest to price out shopkeepers – that was not in the spirit of the negotiations conducted."

witness (Mr Horn) confirmed that some of the businesses would inevitably be forced out. A number of them have already suffered significant losses¹.

5.8 The compelling public interest

- 5.8.1 There is no compelling case in the public interest for acquiring the shops. This case is predicated upon a primary ground that inclusion of the shops is absolutely necessary to provide the enabling development necessary to fund the regeneration of Shepherds Bush Market. Yet, there is no sound justification for their inclusion, and both the Council and Orion have never given any real scrutiny to possible alternatives.
- 5.8.2 The shops on Goldhawk Road are entirely separate from the market. These are long-established and successful businesses which make a positive contribution to the character of the area, its economic success, and the local and wider community (some are famous internationally). No one disputes that their loss would be detrimental, not only to the individual businesses concerned, but to the Borough. If an affected business cannot afford a market rent (and a number of units occupy their units on a concessionary basis), then they will be forced to close. The fabric shops will lose the benefits of the cluster effect during their temporary displacement. The requirement to assist with relocation is only general and there is little protection overall for the traders in the s106. Confirmation of the Order will cause financial hardship to a significant number of people associated with trading from the Goldhawk Road premises. With insufficient clarity about the financial justification for including these properties, private losses suffered by the traders are an important consideration.
- 5.8.3 Rights to respect for family and private life can only be interfered with in a proportionate manner and in accordance with the conditions prescribed by domestic law. So, legal flaws in the decision making process by which the decision by the Council to seek acquisition was made will also result in a breach of Article 1 to the First Protocol and Article 8 of the ECHR. The Orion scheme itself is thoroughly flawed. It is purportedly justified as a scheme for the regeneration of Shepherds Bush Market and the nearby land. The viability analysis shows that it is a profit driven residential scheme with little long term investment in the market. It has not been demonstrated that the aims of regeneration could not be achieved without inclusion of the Goldhawk Road shops.
- 5.8.4 The HRA reinforces the basic requirement that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. Article 8 of the ECHR is also engaged not only in respect of the homes above the shops but also in respect of the businesses themselves. The Goldhawk Road businesses are not just economic entities- they are long running family concerns; very much a part of the shopkeepers' family life for which respect must be given. Home has been described as "*the place, the physically defined area, where private and*

¹ Mrs Boughton explained that long-term contracts are not available e.g. for external catering, goods and utilities. There is a perception that the pie and mash shop has already closed. Her pay roll even had a letter from the Inland Revenue asking where Cookes had moved to.

*family life develops*¹." And the family run business is an aspect of family life itself.

- 5.8.5 The business owners and their families will suffer further personal loss. The shopkeepers described the intolerable strain they and their families have and continue to experience. Mrs Boughton requires a significant amount of medication and has recently been diagnosed with stress related ulcers. The CPO process has taken up every day and the children have suffered. Mrs Meghani said that at present she does not have a family life. The CPO process has taken a huge toll on her family. She has not discussed with her family yet what they will do if the CPO is confirmed and the business is extinguished. These personal circumstances are all highly relevant to the compelling need case and which has not been shown to outweigh the benefits claimed.

5.9 Conclusions

- 5.9.1 The Goldhawk Road shops provide a strong contribution to the economic, social and environmental well-being of the area. The loss of just one of these family run shops would represent a blow to the community and to the families themselves – the loss of all of them is devastating. Relocation opportunities offered are not realistic, in financial or practical terms.
- 5.9.2 Nowhere in adopted policy is inclusion of the building regarded as a necessity either in terms of financial viability to regenerate the market or as an essential element of any regeneration. Policy WCOA 3 is strongly caveated by the opportunity for relocation. The relocation opportunity is not realistic, both in practical and financial terms.
- 5.9.3 A viable housing scheme can proceed without the Goldhawk Road buildings. Regeneration of the market is not dependent on Goldhawk Road, and is not sufficiently benefitted by its inclusion to justify the very real risk that these businesses will be lost. The characteristics the Council says it wishes to preserve of the market and the surrounding area would be lost, should this development go ahead. There is no compelling public interest for compulsory acquisition to proceed.

6. THE OBJECTIONS ON BEHALF OF MR SABIR² (ORDER LAND: 3/177, 3/178, 3/179, 3/191, 3/191, 3/192)

- 6.1 Mr Sabir and his family are from Pakistan. They came to the UK in 1964 and opened 'A One Fabrics' at 50-52 Goldhawk Road in 1975. It remains a family business and Mr Sabir's sons work there. The family owns the freehold.

¹ *Moreno Gomez v. Spain* [2004] ECHR 633 [2005] 41 EHRR 40. Para 53

² Originally Mr Sabir and other members of the family were represented by Turner Morum (chartered surveyors). See letter of objection of 25 March 2013 (Obj 10). At the Inquiry Mr Sabir appeared on his own behalf and was not represented. His written statement to the Inquiry is filed under OBJ-12-1

The material points are:

- 6.2 The Goldhawk Road location is vital to the business because of the regular and longstanding customers that visit the store. The shop gets a lot of orders for television shows for the BBC (located nearby)¹. The premises are unique because they attract a mix of international customers looking to buy fabrics.
- 6.3 The current property is large enough with two basement storage areas to store large quantities of fabric required by customers. The business is able to buy in bulk because of the scale of the accommodation and storage within the building.
- 6.4 The premises should not be demolished. It has taken the family 38 years to develop the business and it cannot be replicated elsewhere. The family's future depends on running the business. Mr Sabir's children have no experience of other businesses and are entitled to inherit 'A One Fabrics' on Goldhawk Road. Replacement premises within the new development are unlikely to meet the size requirements of the business and would not be freehold.
- 6.5 Mr Sabir has received information on availability of accommodation for temporary location to premises during the period the area is to be developed. However, he is concerned that the prices would be too high for temporary relocation.

7. THE OBJECTIONS ON BEHALF OF SHEPHERDS BUSH MARKET LESSEES, TENANTS AND FREEHOLDERS

7.1 Shepherds Bush Market Tenants' Association (SBMTA)

- 7.1.1 Within the Shepherds Bush Market shop nos. 9-20² are in freehold ownership. The remaining areas of the market land comprise the arches, stalls and shops situated on land owned by LUL. This part of the Report sets out the case for the many objectors that own the freehold referred to or have leasehold/tenancy interests in the arches, stalls or shops. Their objections were expanded upon by Mr Horada, Chairman of the SBMTA³. He was tasked with representing those listed in Annex A to his proof (OBJ-202-2). The SBMTA objections are recorded below.

The material points are:

No compelling case for the use of compulsory acquisition

- 7.1.2 Given the judgement in Wakil 1, the planning permission was granted against the background of the fateful SPD, the permission is therefore

¹ Mrs Pettit – chair of Hammersmith Society informed the Inquiry that 3 main BBC studios are to be retained and there is to be a continuing BBC presence in the area

² Order land nos: 1/33, 1/38, 1/46, 1/47, 1/52, 1/53, 1/55, 1/60, 1/65 and 1/66

³ The SBMTA written representations are contained in the following documents: OBJ-202-1 to OBJ-202-9 and IDs47-49

flawed and vulnerable to judicial review¹. Accordingly, a principal justification for making the CPO is no longer valid.

- 7.1.3 If the planning permission is capable of being implemented, then it is capable of being implemented without compulsorily acquiring SBMTA members' interests. The continuity, character and viability of the existing market² can be secured without the use of compulsory purchase powers. The evidence shows that the redevelopment scheme is about something quite different.
- 7.1.4 SBMTA recognises that the market needs to be regenerated and approached various parties (TfL, LBHF, London Assembly and Councillors) 6 years ago. Slow progress was being made by TfL in carrying out repairs. The market traders feel that their future is better assured with a public body in charge rather than a private company looking to profit from the market.

Inadequacy of Undertakings

- 7.1.5 Section 15 of the s106 (CD21) contains inadequate provisions to enable the primary purpose³ of the CPO to be achieved. The broad concerns are:

Management Steering Group

- The steering and liaison groups⁴ are merely instruments of control binding the market tenants to the control of Orion. The language used: 'consult' and 'have regard to' are vague and misleading and do not commit the developer to complying with the groups' wishes.
- Proposals for the steering group (ID53A-53F) are misleading, as the group will be dominated by Orion's representatives. Only one person will represent the SBMTA⁵. Decision making on Shepherds Bush Market has always been undertaken by the SBMTA representing over 90% of market businesses. It is disproportionate and illogical for the non-SBMTA members of the steering group to be accorded equal representation. The committee will be dominated by people associated with Orion or LBHF.

Rent Freeze Period (Schedule 15, Section 4)

- The s106 fails to explain increases in rents during the full lease period and therefore increases uncertainties for market businesses.
- Start of the rent freeze period is not specified. Business may suffer beyond the 3 years for which the freeze will be operational.
- Business will be paying the same rent as present which takes no account of the disturbance and losses incurred during the development period.

¹ Inspector's note – this objection was expressed and repeated orally at the Inquiry before the Wakil 2 judgement was issued

² CD42 – CPO Statement of Reasons, paragraph 6.8

³ To secure the continuity, character and viability of the existing market

⁴ CD21 – S106, Schedule 15, Sections 2 and 9

⁵ ID53C – Market Management Plan

- The owners have already begun to approach leaseholders asking for an exorbitant rent increase of £30 per sqft per annum. This is a real threat to tenants' livelihoods, as many of the businesses presently pay only £10 per sqft.

Service Charge Freeze Period (Schedule 15, Section 5)

- Although the s106 refers to Shepherds Bush Market Service Charge (Schedule 20)¹, there is no reference to the actual Service Charge agreement, which is stated in every Shepherds Bush Market Lease. Failing to include the document introduces ambiguity in the protection accorded to Shepherds Bush Market tenants.
- The Lease explains that the total sum of the service charge is capped at a 6% increase from the previous year. The protection this provides, alongside other stipulations on the Lease, has been in operation for over a decade. The s106 Agreement and Orion's failure to provide the same level of protection severely compromise the market businesses.
- The Shepherds Bush Market Service Charge Freeze Period² will be withdrawn after a 3 year period. That removes a stipulation currently protecting market businesses forcing the landlord to share some of the cost and responsibility of the service charge.
- The 6% cap is ingrained within the service charge agreement and is being disregarded in the s106. Paragraphs 5.1 and 5.2 of Schedule 15 are misleading, as the wording implies a gesture of goodwill when in reality the provisions are attempting to alter longstanding stipulations.

Shepherds Bush Market Tenancy Agreements (Schedule 15, Section 6)

- The provisions of this section undermine and attempt to disregard current tenancy agreements. Future tenancies that do not embrace existing service charge agreements will compromise the agreement, as this may cause the service charge fraction to be amended.

Shepherds Bush Market Business Continuity Fund (Schedule 15, Section 8)

- The £500,000 allocated is inadequate for the number of market tenancies (137) and the scale of disturbance and disruption to businesses. Over 3 years, the compensation each market business can expect is £23.40 per week.
- The rules for the funds are unfair.

Shepherds Bush Market Works

- 7.1.6 Orion is proposing to spend £900,000 on market drains. The works are intended to facilitate development of the new residential properties. The s106 funds should not be used for that purpose.

¹ Instigated in 2002/2003 following a lengthy Court hearing between TfL and Shepherds Bush Market tenants

² CD21 – s106, Schedule 15, section 5

7.1.7 No funds are to be directed towards repairing or refurbishing the interior of the arches. The arches are iconic to Shepherds Bush Market and its key original feature. They suffer from water leaks, and lack of maintenance over a long period of time has worsened the condition. Failure to upgrade and repair the arches renders the Shepherds Bush Market incomplete. Removing the canopy to the arches would be a retrograde step. It provides protection to shoppers from the weather¹.

7.1.8 SBMTA and stall holders have repeatedly requested design proposals for the new stalls. But none has been forthcoming. Tenants are concerned that replacement stalls will not meet their needs.

Failure to demonstrate sufficient resources

7.1.9 There is no evidence to be assured that parties to the indemnity agreement relied upon² have sufficient resources to ensure that the scheme underlying the CPO can and will be implemented in the present and reasonably foreseeable economic conditions.

Failure to show that compulsory acquisition is necessary

7.1.10 The Council has failed to negotiate or negotiate in good faith. Consultation with market traders and tenants has been poor. Drop-in sessions were poorly advertised. SBMTA's request for general meetings in place of drop-ins was resisted. Drop-in sessions are staffed by Orion members with poor understanding of the situation and provide inaccurate/misleading information. The company has been evasive in engaging with and presenting appropriate financial offers to market businesses. Ardent has also failed to consult or engage with businesses in a meaningful manner.

7.1.11 There remains confusion over whether Orion will purchase the leases or acquire leases through their surrender. Concrete offers have not been made and nothing has been committed to paper. No offer has been made to the shops (leaseholders and some with freeholds in addition to the leaseholding) to offer to buy the leases and/or freeholds. There is a lack of willingness to compensate them for the disturbance.

7.1.12 SBMTA was introduced to Orion in 2008. While the SBMTA is very clear and specific what was required to regenerate the market (focus on regenerating existing businesses not increasing numbers), it soon became clear that Orion had different interests. The developer's interests lie in accommodating residential properties and are not concerned with the market.

¹ CD58 – Parsons Brinkerhoff Report of August 2013 notes that brickwork to arches require significant amount of restoration work to elevate it to "B" condition rating; that the main issue with arch units is damp (traders using buckets is reported); there is significant vegetation growth on walls towards the rear of units. Health and safety issues are also highlighted.

² CD42 – Statement of Reasons, paragraph 10.2

Human Rights

- 7.1.13 There will be a violation of Article 1 of the First Protocol of the ECHR, unless the requirements for justifiable interferences are met¹. The objective of the measure can be achieved by means that are less interfering of an individual's rights, as redevelopment of the market can take place without use of the powers. The CPO will deprive members of any further trading opportunities, as members are only able to trade where rents are affordable. There is nowhere else for traders to go should the rents become beyond their reach.
- 7.1.14 Compensation will not enable market traders to re-establish themselves as traders. They are being deprived of their livelihood. Traders without compensatable interests would receive minimum compensation and will lose their livelihood; that goes to the heart of Article 1 of the First Protocol.

Conclusions

- 7.1.15 Shepherds Bush Market is an extraordinary rental area selling unique and unusual goods. Orion's interest in the market is simply motivated by their desire to increase the land area to facilitate the residential element of the redevelopment proposals.
- 7.1.16 The livelihood of traders is threatened. Orion has avoided engaging with the market traders to purchase businesses and will now benefit from these businesses via the CPO. It stands to reap considerable rewards, while the traders will lose out in terms of current financial value of the businesses and future prospects.

7.2 Shepherds Bush Market Statutory Objectors

- 7.2.1 The following statutory objectors associated with Shepherds Bush Market as freeholders, lessees or tenants also made oral representations at the Inquiry with additional written material provided to expand on their individual cases as follows:

7.2.2 *Mr Wheeler (Order land nos:1/06 and 1/11)*

- Mr Wheeler has been associated with Shepherds Bush Market since the 1960s. He trades from the arches.
- Water leaks have not been addressed by LUL which affects the quality of the premises as a selling zone, given the condition of the arches.
- He complains about Orion's lack of consultation with traders and where they have been consulted, their concerns have not been heeded.
- There are concerns that the Shepherds Bush Market refurbishment would not be carried out to a good standard. Some good points in the scheme proposed – modifications to the entrance for instance, but also many bad points.

¹ The objector relies on [Samaroo v Secretary of State for the Home Department](#) [2001] UKHRR 1150 (Annex B to OBJ-202-1) in the balancing of taking of private property and the public interest and proportionality

- He is also concerned that the arches would be segregated during the market reconstruction works. Traders should be offered some rent reduction to compensate for potential losses.

7.2.3 **Mr Rogers (Order land nos: 1/39, 1/46 and 1/47)**

- Mr Rogers is the freeholder of a pet shop occupying shop 11 and space at the rear of shops 11-17. The business has been running profitably since he purchased it in 1990. The current uncertainty regarding the market's future has had a detrimental effect on him and his staff. Mr Rogers is concerned for his employees and their prospects of re-employment, should the pet shop cease trading.
- To comply with strict licensing requirements he has invested in upgrades to the property which would be costly to replace in temporary premises. Pet shops are strictly regulated and any temporary premises would need to be certified as complying with relevant animal health standards. The same would apply to premises in the new market.
- He is unable to understand why LUL allowed the market to get into the poor state it is now.
- Mr Rogers has not received a formal offer for purchase of his property or offer of compensation for loss of existing business. He wishes to have his freehold restored following relocation to a regenerated market and does not wish to occupy rental premises, with the prospect of facing rent increases.

7.2.4 **Mr Duggal (Order land no: 2/85)**

- Mr Duggal has been at Shepherds Bush Market since 1989. He is the leaseholder at stalls 34/35 and his business specialises in the sale of ladies' lingerie. A lingerie business has operated from this stall since 1954. Mr Duggal is also very involved with the SBMTA and is passionate about its future success. At the Inquiry he spoke on his behalf and for other stall holders.
- The stalls are in good structural condition. This is confirmed in the Parsons Brinkerhoff report of 2008¹ and is at odds with the Council's evidence which describes the stalls as poor/fair.
- The regeneration project has been led by Mr Horn for 3 years. He has visited the premises and spoken to the 39 stall holders on a number of occasions. Yet Mr Duggal and other stall holders remain no better informed as to the design of replacement stalls during and after the market is redeveloped. Without firm decisions about the size or design of replacements, businesses are unable to plan for the future. Mr Duggal fears that a confirmed Order will place him in a position that forces him to accept an unsuitable replacement or leave the business and suffer losses. It will take 4-7 years for what is currently a thriving business (grown year upon year for the last 10 years) to recover.

¹ CD54 – paragraph 4.2.3: "Structurally all of the stalls appeared to be sound and there was no cause for immediate concern"

- Relocation to another position would also cause his business to suffer, as customers recognise the stall in its present location.
- Mr Duggal questions whether all possible viable options have been explored. Orion could re-invest 10% of their £1-1.3 m annual rental income back into the market. The £100,000 raised annually could help the market to regenerate within 4-5 years.
- To date Mr Duggal has not received any written communication from OSBL as to the level of compensation expected for loss incurred as a result of the double relocation. Traders need the developers to explain to them and keep them up to date with details of the redevelopment proposals and the compensation on offer. Those affected also need time to negotiate. They are being forced into a disadvantaged and unfair position.

7.2.5 **Mrs Sakstein (Order land no: 1/14)¹**

- The objector operates a stall at No.1 Shepherds Bush Market. Her family members have traded from the market almost continuously since 1933. The longevity of traders and the history of market is one of its attractions. Customers do not want her to move or for other traders to be relocated, even temporarily.
- Mrs Sakstein visited the market at Old Spitalfields following Mr Ball's evidence. Wellington is responsible for its marketing, day to day operations and for raising its profile. The units at Spitalfields are small and have no storage facilities. The impression she was left with was that shoppers are attracted to Shepherds Bush Market whereas "*walkers take a turn round Spitalfields*" and that the former is a much nicer place, even in its present state.
- The traders have worked hard with OSBL's representatives but relations have not been good due to lack of communication on important matter such as future plans, rent, service charges, establishment of a suitable steering group, plans for selling goodwill.

8. THE OBJECTIONS ON BEHALF OF NOTTING HILL HOUSING TRUST (NHHT) (Obj 29)

8.1 Background

- 8.1.1 NHHT owns the freehold of Lime Grove Hostel and 47 Lime Grove (Order land nos: 1/08 and 2/08), having acquired the properties in 1997. As part of redevelopment of the Shepherds Bush Market site and adjoining land, the Council wishes to relocate the facilities currently accommodated in the Peabody and Broadway premises to the rear of 30-52 Goldhawk Road. Lime Grove Hostel has been identified as a replacement for the hostel to be demolished and is intended to provide 27 supported housing units. The objector's properties are included as part of the Order lands but not included within the redevelopment site granted planning permission.

¹ Mrs Sakstein has submitted two petitions attached to her objections filed under OBJ-102-2 and OBJ-102-3

- 8.1.2 By letter dated 22 November 2013 (ID66), the Inquiry was informed that agreements between NHHT, OSBL and the Council became unconditional on the same date. The agreements obliged NHHT to carry out conversion works to make the Lime Grove Hostel available for servicing the facilities¹ currently operated by Broadway at Market Lane and let the premises to Broadway for that purpose. The agreement further committed OSBL to fund the major part of the costs of the works and the Council to contribute to the costs.
- 8.1.3 As a result of the agreement becoming unconditional, it is no longer necessary for the Council to acquire the Lime Grove Hostel or 47 Lime Grove, as the future of the Broadway facility has been secured. The Council has therefore requested that the Order be modified by deleting Order lands 1/08 and 2/08 (see Map attached to ID66). NHHT confirmed by letter dated 22 November (WD/4) that the objection is withdrawn under the circumstances of the modified CPO. Nevertheless for completeness, NHHT's objections are summarised in bullet points below, and a fuller explanation of the objection is set out in Annex C to this Report.

8.2 Grounds of Objection

- The planning permission does not include the objection property in its scope
- Pre-conditions for making the Order have not been met
- Compulsory acquisition is unnecessary, given existing contractual arrangements
- The Council has given no consideration to the access arrangements to the Hostel.
- There is no compelling case for the CPO to be made over the objector's property and it should be modified by excluding plot nos: 1/08 and 2/08.

9. THE OBJECTIONS ON BEHALF OF MR BRADLEY GRUNDMAN (OBJ 30)² AND RAL LIMITED (OBJ/31)³

- 9.1 Mr Grundman is part freehold and part leasehold owner and occupier of Shop 9 in the market⁴. His family china and glassware business has operated from the property since 1976.
- 9.2 RAL Limited is the leasehold owner and occupier of Arch 175⁵ at Shepherds Bush Market. The property comprises a shop unit on the western side of the market and is used as an amusement arcade. It is held on a lease for 10 years from September 2011.

¹ Supporting People Contract

² Mr Grundman's written objections are filed under OBJ-30-1

³ These are separate objectors but the objections raised are identical and detailed under OBJ-30-1 and OBJ-31-1

⁴ Order land nos. 1/33 and 1/35

⁵ Order land nos. 2/108 and 2/109

9.3 The Objections

The material points are

- 9.3.1 Despite the claims in the Council's Statement of Reasons and Statement of Case¹ that negotiations are to continue to acquire interests by private treaty, no efforts have been made to discuss the possibility of or terms for a private treaty sale. The letter of 14 June 2013 sent by Ardent Management Ltd.² falls far short of the efforts a Council is obliged to make. In the absence of efforts made to acquire the objectors' interests by agreement or to engage in meaningful discussion regarding the future of the business, the Council has not complied with the requirements of the Circular. The Order is therefore premature and unjustified.
- 9.3.2 The s106 offers no protection or assurances. It is unclear whether freeholders will benefit from the relocation arrangements to be offered to leasehold occupiers.
- 9.3.3 In any case, there is insufficient information as to the layout of the proposed new development, the location of new units or the terms in which they will be made available. The objectors are therefore unable to plan for or make any decisions regarding the future of the businesses. The proposal will cause severe disruption to businesses that will continue to occupy and operate from their properties while the redevelopment is proceeding and for which full compensation may not be recoverable.
- 9.3.4 The Order should not be confirmed. If it is confirmed, acquisition of the objectors' properties should be expressly conditional upon the objectors being given the options of relocating to suitable and affordable accommodation within the redeveloped market, or of selling their interests by agreement at a time of their choosing.

10. WRITTEN REPRESENTATIONS BY STATUTORY OBJECTORS OPPOSING THE ORDER

- 10.1 The following lists the objections submitted in writing before the Inquiry opened.
- The Order should not be confirmed while the Council is facing a judicial review on its decision to grant planning permission for redevelopment of Shepherds Bush Market area. The Council has already been found to act illegally in adopting the SPD, which was quashed.
 - The outline permission is capable of implementation without compulsorily acquiring the land.
 - The continuity, character and viability of the market can be secured without using CPO powers.

¹ CD42 – Statement of Reasons: paragraphs 1.8 and 6.5. CD43 – Statement of Case: paragraphs 2.7, 7.4 and 8.3

² ID40 – Letter to objectors within the market arches, stalls and shops. The letter requests details of the term of property interests, business and property details, future plans for the business and relocation preferences

- Schedule 15 of the s106 accompanying the outline permission does not adequately make provision to enable the primary purpose of the CPO to be achieved – i.e. the continuity, character and viability of the Market
- The Council has failed to demonstrate that the funding to be relied on is adequate and/or available at the appropriate time, or that sufficient resources are available, or that the CPO is likely to proceed within the period of its validity, given foreseeable economic conditions and duration of implementation of the redevelopment scheme.
- The Council has failed to negotiate or negotiate in good faith with market traders and failed to show that compulsory acquisition is justified.
- There will be breaches of Article 1 and Article 8 of the First Protocol to the European Convention for the Protection of Human Rights, as the high rents or other terms of occupying the new/refurbished units could deprive market traders of their business and property.

10.2 Additional points raised by individual objectors in writing¹:

- Businesses have been at Shepherds Bush Market for many years. The market has operated successfully and continues to do so. It is a tourist attraction. Shoppers are attracted by the diversity and range of goods on offer at reasonable prices.
- The developers are using the market regeneration as an excuse to build luxury flats. The residential development could proceed but the market should not be included.
- Businesses in the market will lose customers due to double relocation. Some traders will be forced out of business.
- Shopkeepers and traders should be compensated for the losses that will be incurred.
- Developers have failed to provide firm proposals for compensation or communicate fairly with those affected. Questions are not responded to nor discussions confirmed in writing.
- Disappointing that the Shepherds Bush Market funds allocated in the s106 will not be used to repair or restore the interior of the arches.
- Freeholders wish to return to a freeholding position and not occupy new premises under leasehold or tenancy arrangements.
- One objector claims he felt bullied by Orion's tactics².
- A number of questions are raised in the objections which go to the heart of levels of compensation expected. Miss Horada (Obj 47) for instance has written to Mr Horn (Orion) for answers to questions relating to compensation if leases were relinquished; recompense for the costs of a

¹ Obj 1,2, 3, 33, 6, 7, 109, 47, 59, 60, 61, 80, 97, 99 and 124

² This has been denied on behalf of Ardent

surveyor and terms of the new lease. She is additionally concerned at the exclusion of the arches from the refurbishment programme.

11. OTHER SUBMISSIONS OPPOSING THE COUNCIL

11.1 Representations by non-statutory objectors appearing at the Inquiry

Mr Ashbridge¹

11.1.1 Mr Ashbridge is a longstanding customer of Zippy's Diner on Goldhawk Road. He brings his children to eat at the diner. It is a legacy to the 1960s milkbar which cannot be replicated. The décor and ambience will not be replicated should the business relocate.

Mr Andrew Slaughter MP (Obj/283)

11.1.2 Mr Slaughter is MP for Hammersmith, a resident of Shepherds Bush for 15 years and of the Borough for 53 years. He has been visiting and shopping at the market for over 35 years.

The material points are:

11.1.3 He dismisses the Council and developer claims that the market is redundant or unsalvageable without complete redevelopment and not catering to the local population. On the contrary, the users on the Order lands provide much needed and valued public and private services. The market is unique and developed its character over a century; the Goldhawk Road shops are thriving irreplaceable businesses and the social housing and hostel facilities are in high demand in an area of high housing costs, deprivation and social problems.

11.1.4 The new redevelopment scheme will not provide affordable homes. Evidence in the Borough and elsewhere in London suggests that the new residential units will be purchased for investment or for business people travelling from abroad. The Shepherds Bush Market area will be replaced with a ghost-town development.

11.1.5 The disruption to trading that will be caused by the redevelopment proposal will on its own destroy the market in its current form. Many of the traders have limited security and will be easy to displace; there are no long-term guarantees of rent levels. The replacement market will cater to a different clientele; the different type of traders attracted to the area will change the nature of Shepherds Bush Market.

11.1.6 The market has been neglected by its current owner. Rents have been collected without investing in the infrastructure, facilities, security or the design of the market. This is now being used as an excuse for demolition of the whole site. A simpler remedy would be for the Mayor (on behalf of TfL) to work with the SBMTA to provide a more attractive and functional market without destroying its history or character. The Orion scheme should be abandoned. Considerable s106 funds from major sites elsewhere in the

¹ Mr Ashbridge did not formally object to the Order but appeared at the Inquiry to speak in support of Zippy's Diner

WCOA is or will be shortly available and could be used to bring forward improvements to the market and affordable homes.

- 11.1.7 The Lime Grove Hostel has been empty for some years and is intended as a decanting for the Broadway hostel. This is opposed by local residents. The costs of the hostel have been underwritten by the Council to assist the developer. Octavia Housing owned the laundry site and was seeking to develop it with affordable homes. However, commercial pressure forced Octavia to agree a land swap with the Council for later disposal to Orion. As a consequence of this action, there are fewer affordable homes forthcoming than would have been the case had Octavia developed the laundry site.
- 11.1.8 If the current scheme is to be pursued and a market is retained in some form, there is no case at all for demolishing the Goldhawk Road shops. They represent everything that is good about Shepherds Bush – diversity, enterprise, imagination, success, independence. There is no good reason to sacrifice the livelihood, families and businesses of the Goldhawk Road shops.
- 11.1.9 The aim of the developer and the Council is to achieve a development which maximises profit and removes all current users. There is no evidence that the development is needed. The CPO has caused disruption and uncertainty: it is a waste of public resource and wilfully disregards public opinion over a period of 6 years thus far.

11.2 Ms Kimikawa De Castro (Obj/289)¹

- 11.2.1 Ms De Castro explains how in 1995 after graduation she moved to Shepherds Bush because it was affordable and she shopped in the market, as the prices were within her budget. She has developed friendships with traders, enjoyed their hospitality and was encouraged and advised by them when setting up her own business. Ms De Castro's detailed commentary provides a picture of the service, friendship and camaraderie that could not be replicated at supermarkets or department stores. The market and Goldhawk Road shops are *"the glue that allows 3 very large council estates, professionals and rich people of every colour, class and creed to live side by side in harmony."* Shepherds Bush Market and the Goldhawk Road shops contribute to the area's social and ethnic diversity. Refurbishment of the market will increase prices, cause higher rents and make it difficult for those on lower incomes to stay.
- 11.2.2 Over the years the Council and TfL have treated Shepherds Bush Market as a 'cash cow'. Market traders have requested that facilities be improved but to no avail, despite paying rent and maintenance. The market used to be vibrant. The laundry site was used as a car park and for car boot sales at weekends. After the land was sold, and the Broadgate Centre was constructed, trade in the market was affected and it marked the start of the decline. To worsen matters, the Council instituted on-street parking charges. Despite all this, trade in the market and shops continues.

¹ Ms De Castro's detailed submissions are in OBJ-289-1

- 11.2.3 The market does need to be improved. A consultation exercise took place in December 2008 and the questionnaire focussed solely on its refurbishment. Nothing in that questionnaire referred to demolition of the homeless centre or the Goldhawk Road shops. The proposed refurbishment in 2008 was estimated at £2m. Now the shops under the arches are not even a part of the refurbishment proposed. The consultation meetings held with the developer are merely meetings to present their design. Promises made by the Leader of the Council have not been forthcoming.
- 11.2.4 Demolition of the Goldhawk Road shops would impact adversely, as they are nationally and globally recognised for sale of specialist materials. The family businesses have been in existence for decades and provide goods at lower margins than elsewhere. They extend credit and give scholarships to local students at the local fashion college; provide caring service to those that are elderly or mentally, physically or financially challenged. They know their customers personally and have gone out of their way to help them with the sort of service that cannot be found in larger stores.
- 11.2.5 The benefits and contributions of Shepherds Bush Market and Goldhawk Road shops to the area and its people far outweigh what the Council and developer are proposing. It is questionable whether the development is in the interest of the public.

11.3 Ms Theresa Walsh (*Tree from Stitchless TV*)

- 11.3.1 Ms Walsh owns a popular sewing channel on YouTube (Stitchless TV). She speaks about sewing on London Radio and runs sewing workshops. Ms Walsh has been coming to the Goldhawk Road shops for about 40 years to choose fabric.
- 11.3.2 Viewers of and subscribers to the TV programme will know of the fabric shops in Goldhawk Road. It is a kind of tourist attraction in the sewing and craft world. There is nothing like it in Europe, except perhaps in Paris. The Paris area, though quite shabby, is preserved and also attracts visitors from worldwide. The Goldhawk Road offering is more varied and unique for the particular specialist fabrics, with 'Classic Textiles' (No.44) at the heart of it all.
- 11.3.3 These shops are part of the British heritage and to lose them would be a huge loss to the many small design businesses/crafters that rely on them.

11.4 Written Representations by non-statutory objectors opposing the Council

- 11.4.1 A standard letter which includes the arguments raised in the written statutory objections was submitted by a number of people. I do not repeat the contents of the letter. Many of the objections are directed at the application for redevelopment of the area, as opposed to the merits of the Order. Nevertheless, I summarise the views expressed.
- 11.4.2 Local people and those affected have not been consulted adequately. English is not the first language for many of those directly affected by the Order. The Council has not provided realistic opportunities for responding to the Order. The process has not been sufficiently inclusive.

- 11.4.3 The market is an important part of the diverse, lively character of the area. It has a long established history with the Borough and is a vital resource for low income people. Visitors from further afield, from as far as the Arab States are attracted to the market by its colourful cheerful spirit, by the diverse range of goods on sale at affordable prices and by the friendliness of the traders. Its character will be destroyed by the influx of market housing. Redeveloping the area at the scale intended is wrong. The character, trading and entrepreneurial nature of the market would be lost, only to be replaced by an impersonal corporate environment.
- 11.4.4 The Goldhawk Road parade is an attractive group of historic shops much frequented and enjoyed by local people. Cookes Pie and Mash shop is part of the English heritage. Replacement of these Victorian buildings with an undistinguished, bland row of new retail units would be a regressive step for the area. The small businesses are unique and customers travel long distances to visit. Friendships with shopkeepers have developed – that spirit will be lost.
- 11.4.5 The cluster of fabric shops is a vital part of the fashion industry. The facility is a valuable one with the combined knowledge of traders not available elsewhere in London. It is a useful resource for fashion students as well as the fashion trade itself. Those working in the trade are attracted to the area for the variety and prices offered by these independent small businesses.
- 11.4.6 Traders will unfairly lose their freehold properties. They have not been offered satisfactory terms or remain unaware of the terms of their return to trade in the market. Negotiations with the developer should continue instead of proceeding with compulsorily acquiring traders' properties.
- 11.4.7 The CPO will cause disruption to the market and stallholders' livelihood. The public would be forced to go elsewhere.
- 11.4.8 The market should not be closed down. It is a vital part of the community. Destroying communities leads to social problems in the future.
- 11.4.9 The market is in need of regeneration but the scheme granted permission is principally a housing development with no affordable homes in an already densely populated part of the Borough. A smaller scheme addressing the years of under-investment in the market would be a more beneficial option.
- 11.4.10 Higher rents in new premises will force traders to increase their prices and the market would lose its competitiveness. Residents will lose a useful local facility and those on low income will be unable to find alternatives. The redevelopment would only open the door to the chain outlets.
- 11.4.11 The market complements the Westfield shopping centre, with ethnic outlets offering varied produce at reasonable prices. The disruption and eventual gentrification of the market will attract a different clientele with the loss of its essential character.
- 11.4.12 The award winning hostel need not be demolished to make way for redevelopment. The laundry site would be suitable for sheltered housing and flats for key workers. The area needs more homes for local people; not a development for overseas investors.

11.5 Submission in support of the Council

- 11.5.1 Mr Bardini explains that he is trading in a market that is “*falling down around our ears.*” Toilet facilities are inadequate. There is no running water for shopkeepers and none for customers. Clients from outside the area are not being attracted to the market which is on a downward spiral. Redevelopment is desperately needed.

12. INSPECTOR’S CONCLUSIONS

(Numbers in square brackets refer to relevant sections or paragraphs in this Report)

- 12.1 The Council’s Statement of Reasons confirms that the primary purpose of the Order is to facilitate redevelopment and regeneration of Shepherds Bush Market and adjoining area to contribute towards significant social, economic and environmental improvements. The Order is made under Section 226 (1) (a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004). [4.2.2, 5.2.1]
- 12.2 ODPM Circular 06/2004 expects CPOs to be made only where there is a compelling case in the public interest; that is the fundamental test for any CPO. In addition to which, paragraph 16 in Appendix A of the Circular lists the factors relating to the purposes of an Order made under the well-being power, and which could have a bearing on its merits. Having heard the cases for the parties, and appraised the evidence, my recommendation flows from consideration of these factors:
- Does the purpose for which the land is to be acquired fit in with the adopted planning framework for the area?
 - Would it contribute to the economic, social or environmental well-being of the area?
 - Is the scheme viable with a reasonable prospect of it proceeding?
 - Could the purpose be achieved by any other means?
- 12.3 Consideration of the above enables me to assess whether:
- there is a compelling case in the public interest;
 - the public benefits outweigh any private losses.

12.4 Preliminary Matters

- 12.4.1 The objections on behalf of the Goldhawk Road shopkeepers raise two additional factors which call into question the validity of the CPO. First it is said that the Secretary of State should not confirm the Order while there may be legal obstacles to its implementation. This refers to the application to the Court of Appeal for leave to appeal on behalf of the Goldhawk Road shopkeepers, following the Wakil 2 judgment. Second, the Council was misled as it was not advised of the full implications of the Wakil 1 Judgment. The first matter is addressed in paragraph 12.5.10 below. [5.2.7, 5.2.8, 5.2.9]

- 12.4.2 Given the controversy and publicity surrounding the Orion planning application for redevelopment of the Shepherds Bush Market area, it is hard to imagine that Council members would have been ignorant of the Wakil 1 judgment. In any case, as operation of Policy WCOA3 is not predicated on the quashed SPD, and the Council was entitled to accord it no weight (confirmed by Mr Justice Lindblom), a decision by the Council on the making of the CPO is similarly not tied to the SPD. Failing to make express reference to the quashed SPD does not necessarily imply that the Council members were unaware of its implications or that the failing invalidates the CPO. [4.2.6, 4.2.8]
- 12.4.3 NHHT's withdrawal of its objection is conditional upon the Order being modified to exclude Order land nos: 1/08 and 2/08. In other words, removing the Lime Grove Hostel and 47 Lime Grove from the Order. The NHHT land is not part of the Shepherds Bush Market redevelopment scheme, except as a replacement facility for the Peabody and Broadway premises located behind the Goldhawk Road properties and proposed to be demolished. As the agreement between NHHT, Orion and the Council facilitating availability and conversion of Lime Grove Hostel became unconditional on 22 November 2013 (as the Order had not been confirmed by that date), there is no impediment to the Hostel works proceeding. In the light of this position, there is no reason for compulsory acquisition of the NHHT properties. The NHHT case is not taken any further in these conclusions and the merits of the Order are considered on the basis of the suggested modification. [1.7, 8.1.1, 8.1.2, 8.1.3]
- 12.4.4 Agreements are in place for acquiring the freehold interest of 42 Goldhawk Road and for acquisition of LUL interests. Mr Bardini withdrew his objection. However, given the other interests and objections in place there is no call from the Council to exclude the relevant plots from the Order. [1.4, 1.5, 1.6]

12.5 Does the purpose for which the land is to be acquired fit in with the adopted planning framework for the area?

- 12.5.1 The components of the planning framework of most relevance to this case comprise the development plan (the London Plan and the Hammersmith and Fulham Core Strategy) and the WCOAPF. The London Plan confirms the WCOA as an area undergoing substantial change and where the significant new retail at Westfield has raised Shepherds Bush's status to a Metropolitan town centre. Development is expected to promote the vitality of the town centre, particularly in the Shepherds Bush Market area. The more generic policies covering OAs and town centres (Policies 2.13 and 2.15) expect development to support wider regeneration, sustain and enhance the vitality and viability of centres and accommodate economic and/or housing growth through intensification in appropriate locations. [3.1.1]
- 12.5.2 The parties did not raise matters relating to the recent Alterations to the London Plan. For my part, the Alterations have no bearing on the substantive merits of the Order. [3.1.2]
- 12.5.3 Core Strategy Strategic Policy C describes regeneration of Shepherds Bush Common and market as important parts of the strategy for the town centre. Under Strategic Policy WCOA, a regenerated market area is identified as a way of providing an enhanced focus and destination in the western part of

the town centre. The WCOAPF recognises that Shepherds Bush Market is a valuable asset to the town centre and confirms the Council's aspirations for it. The document refers to the planning permission granted in 2012 (the Orion scheme) and confirms that the Core Strategy aims to guide future development of the adjacent land in a way that will also regenerate the market. The WCOAPF recognises that the market has suffered from lack of investment and reduced footfall. [3.1.3, 3.1.6, 3.1.7]

- 12.5.4 The extent of the development site for which Orion has obtained outline planning permission broadly corresponds with the core site defined in Core Strategy Policy WCOA3, i.e. the TfL market, laundry site, Peabody housing land and Broadway centre. The residential, market and leisure uses proposed in the scheme accord with the sort of town centre development envisaged in the policy and which would help create a "*vibrant mixed use town centre development*." Equally, the market regenerative elements of the scheme (secured through its refurbishment and retention of the current number, mix and diverse range of traders) would meet the policy aspirations for a long-term viable market, as well as improvements to the Shepherds Bush town centre. [3.1.4]
- 12.5.5 Objectors question the ability of the scheme to deliver on its promises as far as the market is concerned (the matter falls to be considered later in my conclusions). However, there is no doubt that the Council granted permission on the basis that the scheme would facilitate improvements to the market, while maintaining its unique character and diversity. Furthermore, redevelopment of the backland laundry site with a residential scheme would comply with the intensification, regenerative and enhancing requirements of the policy framework. In other words, the Council is planning positively for the future of the town centre as encouraged in the National Planning Policy Framework. To the extent that the Order is intended to facilitate a scheme that would lead to redevelopment and regeneration of the market and adjacent land, along the lines of policy aspirations, renders it compliant with the area's planning framework. [4.2.2, 4.2.3, 4.2.7]
- 12.5.6 Inclusion of the Goldhawk Road properties in the redevelopment scheme is regarded as beneficial under Policy WCOA3 and conditional upon opportunities for relocation of the shopkeepers to the new premises. Objectors are not persuaded that the proposed scheme would allow for that relocation to occur. However, if measures included in the s106 are effective, the scheme is compliant with the policy. Acquisition of the Goldhawk Road properties for the purposes of redevelopment and regeneration would therefore also accord with the policy framework. [3.1.4]
- 12.5.7 On the other hand, I agree that Policy WCOA3 does not state unequivocally that the Goldhawk Road properties should be included. It may be desirable (and essential as far as the developer and Council are concerned) but a development scheme without the Goldhawk Road shops that meets policy objectives with regards to the market and the town centre would be compliant too. The policy wording does not preclude that possibility. [5.3.6, 5.3.7]
- 12.5.8 In the absence of any affordable housing, the Orion scheme would not meet the Borough-wide target of at least 40% affordable dwellings, expressed in

Core Strategy Policy H2. However, the Council (and the Mayor) accepted the developer's viability appraisal which concluded that the development could not support any affordable homes. Policy H2 allows for exemptions along those lines, notwithstanding the aims of achieving mixed and balanced communities. [3.1.8, 4.3.10]

- 12.5.9 Application of Policy WCOA3 is not predicated on the Shepherds Bush Market SPD. That position was confirmed by the High Court judgement (Wakil 2). Equally, an extant SPD is not required to establish compliance of the permitted scheme with the development plan. [4.2.6, 5.3.5]
- 12.5.10 The suggestion that current legal uncertainties introduce an impediment to implementation of the Order carries little weight. Absence of a permission of itself does not preclude consideration of its merits. Furthermore, as argued on behalf of the Goldhawk Road shopkeepers, the Order is not tied to the Orion scheme. The acquisition remains justified for any future scheme, provided it meets the broad purposes of the Order. [5.2.3, 5.2.6, 5.2.7, 5.7.10]
- 12.5.11 An alternative scheme would be limited by the planning framework. The need to regenerate Shepherds Bush Market has had a lengthy and detailed gestation in development plan policy. The London-wide and local policy framework has developed from consideration of studies into the state of Shepherds Bush Market, understanding the reasons for its decline and putting in place long term regenerative solutions. Policy WCOA3 not only specifies regeneration of the market as a key objective but expects development to "*encourage small independent retailers and accommodate existing market traders.*" [4.2.9, 5.2.4, 5.2.5]
- 12.5.12 There is clearly a strong policy emphasis on uplifting the market and regenerating the area. Neither the Council nor the Mayor are likely to entertain a scheme departing from these core requirements. The Mayor's Stage 1 Report sought commitments to ensure that measures were provided to secure protection of the unique nature and character of the market and its individual traders, as well as to address issues of continuous trading during construction. At the time the Orion scheme was found to be wanting on those grounds (amongst others). The economic circumstances of an alternative scheme are unlikely to cause the Council or the Mayor to diminish their support for the key outcomes sought in policy. [4.2.9, 4.7.5, 5.2.4, 5.2.5]
- 12.5.13 The planning framework clearly provides justification for the Order promoted and it fits in with that framework.

12.6 Would it contribute to achievement of the promotion or improvement of the economic, social or environmental well-being of the area?

- 12.6.1 The Council has indicated that the importance of the market is the fundamental premise to the exercise of its CPO powers. In other words, retention and regeneration of the market is a priority as a means of maintaining the distinctive identity of Shepherds Bush Town Centre. It is a key element of the town centre, providing a distinctly different offer to the other two retail anchors at Westfield and West 12. [4.3.1, 4.3.2, 5.4.3]

- 12.6.2 The market and indeed also the Goldhawk Road shops are composed entirely of independent traders providing a diverse mix of food, fashion, haberdashery and household goods at reasonable prices. The shops cater largely to the local population but the textiles cluster has a wider customer base attracted to the area for the variety and price of its fabrics. The market provides a markedly different offering from the standard high street retailing environment and serves an immediate population that is identified as ethnically diverse. [4.3.2, 5.4.4, 7.1.15, 10.2, 11.1.3, 11.3.2, 11.4.5, 11.4.11]
- 12.6.3 Local people speak fondly of the market and its social aspects. The market is described in terms of being at the 'heart of the local community' and a 'glue' bringing together people from a wide range of means, background and ethnicity. The shops on Goldhawk Road and many of the market units are long established family-run businesses known for the personal services they provide. Local residents and customers drawn from a wide area have passionately voiced support for the market and Goldhawk Road shops for what they provide and represent. The area clearly has an established customer-base, a reputation and distinct appeal. [5.4.3, 5.4.4, 5.4.5, 5.4.7, 10.2, 11.1.8, 11.2.1, 11.2.4, 11.4.3, 11.4.4]
- 12.6.4 That the market's infrastructure needs upgrading is not a matter of dispute. Since the 1990s there has been a slow decline in its physical condition. Visitor numbers and footfall have decreased (particularly relative to numbers elsewhere in the town centre) and trading performances have declined. The cost of nearly £2.7m estimated for bringing the market units up to a "B" standard of condition gives some measure of the scale of physical and environmental improvements needed. The stalls and shops are tightly hemmed in; market servicing and deliveries are constrained; pedestrian movements are constricted; there is no space to linger or sit down and essential facilities such as customer toilets are non-existent. Reports commissioned by the Council point to drainage issues across the site, safety hazards and non-compliance with DDA requirements. Traders have invested in their own stalls and generally these are structurally sound but not compliant with current regulations. The fabric of many of the shop units and the arches is poorly maintained, and defective in many other ways. [4.3.4, 4.3.5, 4.3.12, 4.3.13, 4.3.16, 7.1.4, 7.2.2, 7.2.3, 11.1.6, 11.2.3, 11.4.9, 11.5.1]
- 12.6.5 Opinions about the appearance of 30-52 Goldhawk Road are divided. The Council regards the terraced properties as out of keeping in the streetscape and in need of some upgrade; others refer to it as 'shabby chic'. Some refurbishment and outward improvements would be beneficial. The buildings have been altered and added to over the years to suit individual occupiers but they are serviceable and not requiring urgent structural repairs. They are indeed dated but at the same time have a functional appeal and are typical of London retail parades that have evolved over time to suit the businesses and customers provided for. The laundry site is a derelict piece of brownfield land contributing very little to the area in economic, social or environmental terms. As a whole, the market and land adjoining it do not provide the vitality and attraction necessary to the well-being of the area. Regeneration centred on the market is necessary and urgently required. [4.3.14, 5.4.6, 5.6.7, 11.4.4]

- 12.6.6 The Council, through the formulation of its policies and the granting of permission for the Orion scheme, is convinced of the benefits of the scheme. Improved trading conditions, proper public facilities and a more spacious layout are likely to increase footfall and spending, to the economic advantages of the market. Existing businesses are expected to thrive and opportunities for start-up businesses are to be created. These are clearly positive elements of a proposal that is expected to generate sufficient funds to facilitate these improvements in the area's physical and trading environment. [4.3.7-4.3.10, 4.3.13, 4.3.14, 5.6.8]
- 12.6.7 The new residential units would introduce a mix of uses currently missing from this part of the town centre. Absence of affordable homes goes against the policy grain of achieving mixed and balance communities. But the Council and the Mayor have accepted that the scheme could not viably provide such homes because of the costs of delivering a vitalised refurbished market (in addition to other benefits). I was told the OA has a large number of social housing units. The Orion scheme will have the unintended consequence of changing the overall social mix but the residential elements are necessary to generate funds for the market upgrades. In any case, the s106 allows for affordable homes to be included in the scheme, should a subsequent financial appraisal establish that it can viably do so. [4.3.10, 4.3.11, 4.3.15, 5.4.2]
- 12.6.8 Refurbishment of Lime Grove Hostel is a necessary part of the Orion scheme, and not an additional benefit, given the need to relocate the Broadway facilities to be demolished. [4.9.3, 11.4.12]
- 12.6.9 My opinions on the design and townscape merits of the Orion scheme are immaterial, as the Council has adjudged it acceptable on those grounds. However, upgrades to the market's infrastructure and a layout allowing for significant improvements to conditions for traders and customers would be environmentally beneficial. Accessibility and permeability through the market would be markedly improved, alongside a new public realm for shoppers to enjoy. Physical enhancements to stalls and shop units would add to the market's attractions. At this stage there is no indication whether canopies over the arches are to be replaced. The matter will have to be pursued through reserved matters applications and does not go to the heart of the effectiveness of the scheme. [4.3.14, 4.3.15, 4.5.5, 7.1.7]
- 12.6.10 Overall, the Orion redevelopment proposal has the potential to bring about significant improvements in the physical environment of the area, boost the area's economy and generate the social benefits associated with an improved market. The CPO would equally contribute to the area's well-being, as an essential tool in facilitating delivery of those benefits.
- 12.6.11 The benefits described would only materialise if the essential ingredients and uniqueness of the market and the Goldhawk Road shops are retained. In other words, if the development provides the requisite financial as well as physical conditions for an independent, small-scale, diverse and ethnic mix of traders and shopkeepers to continue trading at the market and on the Goldhawk Road frontage. Those objectives rely on safeguards to ensure that existing businesses or new operators with similarly qualitative and diverse offerings are protected as far as possible during and after the

redevelopment process. The effectiveness of Schedules 15 and 16 of the s106 Agreement is a vital element of the consented scheme in this regard, and considered below. [5.4.10]

Safeguarding the traders' and shopkeepers' interests

12.6.12 Protection and continued operation of existing businesses has been the Council's central objective. Commitment was sought from the developer to ensure retention of existing traders and to maintain the independent trading basis of the market. The Charter outlines the developer's commitments along those lines. The Council was satisfied that sufficient protection was assured through the s106 provisions negotiated with the developer. After some initial ambivalence, the Mayor was satisfied that the terms of the permission and the s106 overcame concerns about maintaining the unique nature and character of the market while protecting businesses during construction. For market traders the provisions lie in Schedule 15 of the s106, and for the Goldhawk Road shopkeepers they are contained in Schedule 16. [4.2.1, 4.7.1, 4.7.5, 5.7.9]

Market traders

12.6.13 The steering group (to meet monthly) offers market traders a forum to discuss and consult upon day-to-day management issues affecting the market, including the lettings policy. The process of setting up the group is underway and nominations invited. Although the SBMTA complains about lack of market representation on the steering group, the group's membership itself could be a point of future discussion. It will not replace the SBMTA but should provide a more structured and effective basis for voicing concerns, agreeing the operation and future of the market. It does appear that the steering group is likely to provide better opportunities for market traders and tenants to voice their concerns and influence the market's future than is presently the case under TfL's ownership. [4.7.6, 4.7.7, 7.1.5]

12.6.14 The rent and service charge freeze periods would provide a level of certainty during the construction period. Appointment of a market operator (Wellingtons) and its presence in the market is a step forward in properly engaging with those directly affected. [4.3.16, 4.6.5, 4.7.6, 7.1.5]

12.6.15 The requirement under Schedule 15 to continue the service charges agreed between SBMTA and LUL in 2003 will continue. The SBMTA concerns in this respect are unfounded. Rent review arrangements currently in operation will also continue. The lettings policy will be crucial to maintaining the unique nature of the market, and to retain as well as attract independent local retailers, through affordable rental levels. The lettings policy is also subject to consultation with the steering group. The Continuity Fund is an additional mechanism to seek compensation and not an alternative to the compensation individual traders would be entitled to. Existing tenants will be given the opportunity to negotiate a new lease. The letter of 18 November 2013 to all market leaseholders explains the compensation entitlements which include disturbance costs and value of current leases. Freehold interests will be compensated and long leases (125 years) would

- be available for the retail units within the market¹. [4.7.6, 4.7.8-4.7.11, 7.1.5, 11.1.6]
- 12.6.16 The temporary arrangements will no doubt lead to difficulties and disruptions. However, any wholesale refurbishment or repairing programme is likely to cause similar levels of disruption. The SBMTA has been critical of the protection accorded through Schedule 15, but it would provide the necessary protection against hardship. Furthermore, it would provide financial certainty and assistance to stall and shop unit businesses in the interim period, unless individual traders choose to cease trading or relocate elsewhere, with disturbance compensation due to them as necessary. [4.7.1, 7.1.5, 7.2.2, 7.2.4, 9.3.2, 10.2, 11.1.6]
- 12.6.17 The form and details of the replacement stalls will be confirmed when Condition 6 of the Orion planning permission is discharged. The stallholders therefore remain ignorant of the size, form or positioning of replacement stalls. Equally, the sizes of retail units are unknown. The arches are to remain in their current form, albeit with new frontages to their eastern facades. Stall and shop holders will be offered new premises but not necessarily on a 'like for like' basis. [4.4.2, 4.7.3, 7.1.8, 7.2.4, 9.3.3]
- 12.6.18 Without knowledge of the replacement provision intended, the traders cannot fully comprehend their future, nor plan for it. That level of uncertainty is unacceptable and provides a poor basis for assessing the extent to which existing traders would or could relocate to the refurbished market. The s106 provides no guarantees in that regard. The Charter is an aspiration but carries no force. [7.1.8, 7.2.2, 10.2]
- 12.6.19 The Parsons Brinkerhoff report of August 2103 provides a detailed account of the poor state of the arch units in the market. It reports on water running down walls, significant vegetation growth, health and safety issues and the extensive restorative work required to bring the brickwork to "B" condition. The arches are historically important elements of the market, forming the backbone to the trading environment. Yet neither the Shepherds Bush Market Works (identified in the s106) nor the cost breakdown provided in evidence clarifies with any certainty that the arch units would be upgraded as part of the market refurbishment. The businesses housed in the arches are likely to see a fall in trade while the market works are being undertaken and may be unable to additionally fund the repair and upgrading of their premises at the same time. The retailers could face a precarious future without financial assistance for these necessary works. [7.1.7, 7.2.2, 10.2]
- 12.6.20 Furthermore, the sketches, images and examples referred to in the planning application material give me little confidence that the replacement market will maintain the diversity and multi-ethnic culture of Shepherds Bush Market. The glazed facades to arched premises bearing brand names and canopy design studies, for instance, have little in common with the current nature and variety of Shepherds Bush offerings. The comparator referred to at the Inquiry (Old Spitalfields Market) bears none of the attributes of

¹ The option of long leasehold sales is not contained in the s106 but is offered in the letter sent to market traders on 18 November (ID59A)

Shepherds Bush. Old Spitalfields is a covered market, with uniformly sized stalls lacking storage and locking facilities and surrounded by well-known multi-national outlets. The goods on offer are also very different to the range and mix at Shepherds Bush Market. [3.2.3, 5.4.2, 7.2.5]

- 12.6.21 The impasse with traders not wishing to engage due to lack of information and the developers unable to move forward without full knowledge of individual requirements is inhibiting progress. However, binding/enforceable measures are needed to be assured that the replacement premises (stalls and shop units) would be suitable and affordable enough for traders to return to the site in sufficient numbers and maintain the market's character. Moreover, businesses occupying the arch units must also be provided with the security that their premises would be upgraded to address the defects identified in the Parsons Brinkerhoff report and which fall within the owner's responsibility. In the absence of clear assurances along those lines, the social and environmental well-being sought is not likely to be achieved should the Order be confirmed.

Goldhawk Road shopkeepers

- 12.6.22 The developer has undertaken to provide all Goldhawk Road business owners/tenants with fees and removal costs in accordance with their individual CPO entitlements. [4.6.7]
- 12.6.23 The evidence confirms that there would be sufficient space in the new scheme to accommodate all of the businesses currently occupying 30-52 Goldhawk Road. The ground floor areas would exceed those of the existing shops and the proposed basement areas would exceed the existing basement and upper floor areas dedicated to retail uses. Equivalent floor space is also secured through paragraph 1.1 of Schedule 16. Shopkeepers that wish to relocate to the new development can do so without loss of retail or storage space. There is also scope for a new Zippy's Diner to be refitted with the 1970s furniture reminiscent of milkbars of that era. [4.7.17, 5.4.11, 5.4.12, 6.3, 11.1.1]
- 12.6.24 The businesses could not all be accommodated on the Goldhawk Road frontage. However, a frontage location is not a pre-requisite for some shops. For instance, Mrs Boughton accepted that a market location for the Pie and Mash shop would not prevent it operating. Equally other restaurants and take away food premises could operate from the market end of the new commercial premises. Mr Dangoor's electrical shop is reliant on its strategic location and his unit would be better served with access to parking and loading. The fabric stores could return to the new premises in Goldhawk Road and re-occupy their place in the well-known cluster. [4.7.19, 5.4.12]
- 12.6.25 The popularity and appeal of the shops and other units is due to the variety of goods on offer at reasonable prices. They are also attributable to the personal service and expertise provided by these long established, family-run businesses. New premises may not entirely replicate the physical ambience of the present Goldhawk Road premises, but there is no reason why the essential ingredients could not be recreated in the new development. [5.4.4, 5.4.5, 11.4.3]

- 12.6.26 Existing parking arrangements to the rear of the shops may be desirable but they are not essential to viable or effective running of the businesses. The account by Mrs Meghani of shoppers from the Middle East visiting the Goldhawk Road textile shops in limousines is colourful, and perhaps unique to the fabric shops cluster, but does not justify on-site parking in an area well served by public transport and with numerous on-street and public car parking spaces available locally. Orion has also offered to provide a defined parking space in the new development for each shop unit. [4.7.21, 5.4.13]
- 12.6.27 Freehold ownership enables stock to be sold at reasonable prices and also provides shopkeepers with asset security for their families and family-run businesses. Standard periodic-tenancy may not be a financially attractive alternative. However, an offer letter dated 4 October 2013 allows for the possibility of a 125 year lease which, in addition to entitlements under the compensation code (including displacement costs and professional fees), is likely to provide a better opportunity for those wishing to return to Goldhawk Road than is currently possible under Schedule 16. Other options of relocating to premises elsewhere and single payment settlements have also been offered to shopkeepers. Loss of rental income (No.42 for instance) would need to be assessed and the freeholder or leaseholder compensated accordingly. [4.7.18, 5.4.11]
- 12.6.28 To enable continuity of trade, Schedule 16 also commits the developer to assist with identifying suitable accommodation - temporary for those wishing to return and permanent for others. Schedules of available properties have been circulated monthly since June 2013. It should have taken place much sooner to allow the shopkeepers more time to consider the possibilities available to them. However, even now there is sufficient time for the traders to find temporary premises before Orion's estimated date of 1 December 2014 for vacant possession of the property interests (ID58). [4.6.8, 4.7.16, 5.4.14-5.4.21]
- 12.6.29 The temporary accommodation available for renting, leasing or on freehold terms is unlikely to meet the full requirements of all the traders concerned. An element of compromise is inevitable. Even to the extent that one or more of the fabric shops in the parade could be separated from the cluster. Furthermore, some businesses may not withstand the double relocation, due to the personal circumstances of the operators. On the whole, however, while recognising the scale of likely disruption to individual businesses, with the range of premises advertised and circulated on a regular basis there are good prospects for each of the Goldhawk Road businesses to be temporarily accommodated in the locality. [5.4.14, 5.4.21, 5.4.23]
- 12.6.30 The move would be for a temporary period of about 3 years. Provided the businesses are accommodated locally, regular customers are unlikely to be deterred by the change in venue or a longer than normal walking distance, especially to shops recognised as 'destinations' in themselves. With compensating financial and other assistance provided by the s106 and the Compensation Code, I am optimistic that most if not all the businesses would survive the disruptions. [3.2.2]
- 12.6.31 The question of the terms of purchasing or letting a unit within the new commercial premises is covered by paragraph 4.1 of Schedule 16.

'Commercial terms' is not defined. The shopkeepers point to the possibility of being priced out. The developer could seek terms to reflect improved premises and the shopkeepers could not compete with the likes of commercial shop chains likely to be better placed to afford the higher rents. Shopkeepers could be in a weak negotiating position. The prospect of the Goldhawk Road traders returning to the site and continue trading in the area is a priority for the Council, but it would have no control over the terms of the tenure offered to returning shopkeepers. [4.7.22, 4.7.23, 5.7.7, 5.7.8, 5.7.9]

- 12.6.32 Mr Elvin QC (on behalf of the Council and Orion) referred me to legal authority to support the claim that commercial terms does not mean "*best commercial rent that can be obtained*" but means an objectively assessed reasonable market rent. If this interpretation of 'commercial terms' is accepted, and objective market valuation is possible through the conventional RICS Red Book approach, the shopkeepers' misgivings are unfounded. However, other than the phrase 'commercial terms' in paragraph 4.1 of Schedule 16, there is no other legal mechanism for ensuring that the new units would be offered on terms conducive to the return of the Goldhawk Road shopkeepers or equivalent businesses. [4.7.22, 4.7.23, 5.7.7, 5.7.8, 5.7.9]
- 12.6.33 Some impact on the Goldhawk Road businesses is inevitable due to double displacement, of trading away from their current location for a period of at least 3 years and re-commencing the business in unfamiliar surroundings. They will not benefit from rent or lease freeze periods accorded to market traders. These are small family-run, long established operations that may not have the means or will to negotiate or afford the new commercial terms offered. There is insufficient security for those wishing to occupy the new shop units after a period of disturbance to at least be assured of terms that are affordable to them in the long term or to similarly independent small-scale concerns. [5.7.7, 5.7.8, 5.7.9, 5.7.11, 11.1.5]
- 12.6.34 Without proper mechanisms protecting shopkeepers against unaffordable terms, some of the long established businesses that go to the heart of this community may not return or survive in the long term. The potential for attracting similar shops or businesses would also be undermined. As with the market traders, the failure to be assured of attracting back and retaining at least a large proportion of the Goldhawk Road shops goes against the spirit of Policy WCOA3. It also undermines the social well-being of the area for the potential loss of much valued family-based shops, and loss of the economic benefits the shops bring to the locality. [5.4.9, 5.8.2, 11.1.8]
- 12.6.35 The s106 is enforceable by the Council as a party to the agreement. The developer offered to enter agreements with the Goldhawk Road shopkeepers to render the obligations directly enforceable. If that were to proceed, it would be unreasonable to exclude market traders from similar agreements. However, given the numerous interests and the scale of opposition to the Order (and to the Orion proposal), achieving agreements might be a major obstacle. The traders and shopkeepers must therefore keep faith with the Council to robustly enforce the terms of the obligations in a way that achieves the policy requirements. [4.7.25, 5.7.6]

Conclusions on contributions to well-being

12.6.36 The Orion scheme has been found by the Council (and the Mayor) to be policy compliant, as it would meet the London Plan and Core Strategy regenerative objectives. In doing so it has the potential to bring about the benefits described. Close examination of the evidence, however, has led me to conclude that the current Orion proposal lacks the mechanisms to be assured of retaining the number, mix and diversity of traders in the way explained above. They are vital to the distinctiveness of the market and the Goldhawk Road shops. Therefore, insofar as it would facilitate delivery of the redevelopment scheme promoted, the CPO would not fully achieve the social, economical and environmental well-being sought.

12.7 Viability and prospect of proceeding

12.7.1 Orion's involvement with the Shepherds Bush Market regeneration scheme has been extensive. Its responsibilities have included processing of the application and achieving consent for it. The developer has indemnified the Council against costs associated with promotion and confirmation of the CPO and for transfer of Lime Grove Hostel to the developer, and secured agreements with property owners for the majority of the Order lands. In total, Orion has invested in excess of £5m over a period of some 5 years. It may not have experience of developing markets, but its record of development delivery elsewhere, combined with Wellington's appointment as market operator, provides sufficient confidence in the ability of the developer to implement the scheme. [4.4.1, 4.4.2]

12.7.2 The joint venture with Development Securities brings a strong financial base to the project. Given the time and resources committed to date, there is little reason to suppose that the developer would not wish to redeem the embodied investment and proceed with the scheme. [4.4.1, 4.4.4, 5.5.2, 7.1.9]

12.7.3 The evidence on behalf of the developer and the Goldhawk Road objectors confirm the scheme would be viable. Indeed, it is regarded as a highly profitable proposition that would provide returns to the developer in the order of 20-25%. The position is likely to have improved since the last valuation appraisal, given growth in property values in the area. Orion is pressing on with its obligations under the s106 Agreement; the reserved matters applications are underway and negotiations for unacquired land interests are continuing. [4.4.3, 5.5.3]

12.7.4 In short, the consented scheme is viable, and the promoters have the necessary resources and will to achieve the CPO purpose within a reasonable time-scale.

12.8 Could the CPO purposes be achieved by other means?

12.8.1 Private interests in the Order lands are varied and extensive. There are a total of 135 leaseholds and 13 shop freeholds to be acquired in the market alone. The scale of opposition to the Council's redevelopment proposal for the area and to the CPO is considerable. Under these circumstances, the promoters cannot be expected to acquire all of the interests by private treaty within a reasonable period of time, if at all. Acquisition of the

entirety of the Order lands therefore could not be achieved other than through the compulsory purchase process. [2.1.1, 4.8.1, 4.8.3, 4.8.4]

- 12.8.2 Nevertheless, objectors question the appropriateness of proceeding with compulsory acquisition in the circumstances of: 1) the option of a scheme without all or part of the Goldhawk Road properties, and 2) the potential for alternative means of funding market regeneration. Whether these options could realistically achieve the CPO purposes is considered next. [4.5.3, 5.6.1]

CPO without the Goldhawk Road properties

- 12.8.3 As far back as 2008 the architects responsible for the scheme identified the need to include land south of the laundry site. In other words, the Peabody and Broadway buildings as well as 30-52 Goldhawk Road. The view was held that, without the entire site, the development capacity of the individual parcels would be severely curtailed and comprehensive development to meet policy aspirations for regeneration would not take place. [4.5.5]
- 12.8.4 Successive studies and iterations developing the scheme proceeded on the basis of the site frontage extending to Goldhawk Road. At no stage of the design and application process was serious consideration given to the alternative of a scheme that excluded the terraced parade on Goldhawk Road. The whole of the site was considered necessary for a number of townscape, amenity and operational reasons. Indeed, the Council was progressing its SPD and Core Strategy policies in tandem with the application process on the basis of the Goldhawk Road forming part of the regeneration site. [4.2.5, 4.5.4, 4.5.5, 5.6.2]
- 12.8.5 A scheme minus the Goldhawk Road properties was developed in sketch form, only after exchange of proofs in preparation for the Inquiry. The scheme and evidence presented were based on the layout and principles of the consented proposal, but with 30-52 Goldhawk Road retained in place of Block A. [4.5.5, 4.5.7, 4.5.8, 5.6.3]
- 12.8.6 As agreed in the evidence of both parties, a scheme with the Goldhawk Road properties in place (either in part or in whole), and delivering the same range of regenerative measures, would require a comprehensive '*starting from first principles*' re-design. That exercise has not been undertaken. A development retaining the existing parade of shops would be unlikely to be opened up to the Goldhawk Road frontage (as considered to be beneficial in Policy WCOA3). Accessibility and servicing could also be problematic. However, in the absence of a worked-up design solution, the possibility of overcoming such issues and the ability of such a scheme to achieve the main objectives cannot be fully discounted. [5.6.3]
- 12.8.7 The viability or otherwise of any alternative scheme turns on the amount of residential accommodation and the sales value of the new units. A comprehensive re-design could deliver the level of residential accommodation necessary to generate the required cross-subsidy. Current trends in property values suggests that higher sales revenues would compensate for reduced residential capacity, even with the additional CIL charges incurred on a future proposal. Without a worked up scheme in place, such propositions cannot be properly tested. The level of disparity in the main parties' evidence on the extent to which such a scheme would be

economically attractive to developers gives some measure of the difficulty in concluding on the economic success of a non-existent scheme. [4.5.10, 4.5.13, 4.5.14, 5.6.5, 5.6.6, 5.6.7]

- 12.8.8 That said, the current scheme is considered to be acceptable for all of the reasons that the Council has granted permission for it. It is a viable and (potentially) policy compliant development proposal. Agreements for a substantial part of the site are in place to deliver the consented scheme and detailed plans for discharging the reserved matters conditions are well underway. In short, Orion's current redevelopment proposal has a high prospect of meeting the urgent need to revitalise the Shepherds Bush Market area in a timely manner. The alternative is a scheme retaining all or part of the Goldhawk Road but with no conclusive evidence at present of its policy acceptability or viability. Wholesale redesign with the attendant delays in processing yet another potentially controversial scheme could delay the regeneration process for some considerable time. [4.5.1, 4.5.2]
- 12.8.9 The urgent need to proceed with a redevelopment proposal is highly material to the issue of whether the purposes of the CPO could be achieved by other means. As the alternative of a scheme without all or part of the Goldhawk Road properties falls short in this regard, the scheme granted consent is more likely to deliver the CPO purposes, provided the public interest is sufficiently compelling to outweigh personal losses and private interests. That balancing exercise is crucial to acceptability of the CPO and is considered towards the end of these conclusions.

Alternative means of funding the market regeneration

- 12.8.10 The basis for the £4.8m Shepherds Bush Market Works is unclear. On the one hand the Council explains that the figure was derived from an estimate undertaken to provide "*an informed indication of the possible extent of the proposed expenditure.*" On the other, correspondence between SBMTA and the Council in April 2012 reveals that the figure has been "*...calculated as the maximum amount viable from the adjoining development scheme.*" Either way, it is a substantial amount and provides an indication of the scale of works necessary to address the backlog of repairs and wider refurbishment of the market. There is some concern that the £4.8m set aside and capped in the s106 for the Shepherds Bush Market Works may not be sufficient. Current costs estimates suggest a figure closer to £6.7m. [5.6.8]
- 12.8.11 Whether the works can be funded without cross-subsidy from a redevelopment scheme is difficult to establish. The analysis showing that the market will produce a healthy surplus does not assist, given the disparity between the experts on yield (7.5% as opposed to 9%), and exclusion of finance costs from the analysis. The 7.5% is derived from the £12m purchase price of the TfL site but lack of information before the Inquiry on the terms of the sale adds to concerns about relying on the validity of the analysis. [4.5.16-4.5.19, 5.6.9-5.6.14, 7.2.4]
- 12.8.12 Without knowledge of the terms of sale of the TfL interests there is additionally no certainty one way or another that purchase value reflects the current condition of the market. Furthermore, neither the Council nor the developer has demonstrated why future profit streams and increased capital

value from a refurbished market could not fund the market works in place of the cross-subsidy expected from development of the Order lands in their entirety¹. Even if it could be argued that funding from CIL or s106 contributions from development proposals elsewhere is lawful or feasible, there are no certainties about the amount that would be generated or the timing of such sources. [4.5.20, 4.5.21, 5.6.8, 11.1.6]

12.8.13 Sale of the laundry site as a possible funding source raises issues of potentially unlawful public funding of private developments. Whether the sort of smaller scale redevelopment of the laundry site advocated by the MP for Hammersmith would meet the WCOA policy objectives is questionable. [4.5.22, 5.6.15, 5.6.16]

12.8.14 The evidence on alternative means of refurbishing the market is inconclusive. However, it must be emphasised that the purposes of the CPO are not restricted to regeneration of the market alone but refer to the Shepherds Bush Market area. In other words, to land beyond the market site. That is the basis on which Policy WCOA3 is expressed and expanded on in the WCOAPF. In addition to a revitalised and expanded market, the Orion redevelopment scheme would bring forward additional homes and help create a vibrant place beyond the market itself. The Council, through a lengthy policy preparation process and exercise of its democratic functions, has approved a scheme that could lead to comprehensive regeneration of the Shepherds Bush Market area, would fund the market works and, crucially, is deliverable within a reasonable timescale. By contrast, the question of whether similar gains can be delivered through alternative funding mechanisms is speculative and unproven. So it follows that achieving the CPO purposes by other means cannot be conclusively demonstrated.

12.9 Efforts to negotiate

12.9.1 The Orion scheme has been the subject of an extensive and wide ranging consultation process since November 2010. There is no suggestion that any one could have doubted the Council's intentions with regard to the Shepherds Bush Market area, given not only the application process but also the policy background and controversy that it has attracted. Equally the seriousness of the Council to acquire land for facilitating redevelopment cannot have been in any doubt to those affected. [4.6.1, 4.6.3]

12.9.2 To date the promoters' endeavours have met with some success, as evidenced by the agreements with TfL, NHHT and withdrawal of 3 objections. However, while negotiations were being undertaken throughout the Inquiry, and I was told would continue beyond, much remains to be done. By the time the Inquiry closed, save for the freehold on No 42, no agreements were in place for acquisition of the Goldhawk Road shopkeepers' interests and a substantial proportion of the market traders' interests remained to be negotiated. Some objectors wrote in during the Inquiry to complain about lack of information or a basis on which their futures could be planned. The manner in which negotiations were being

¹ In fairness to them, the matters were raised late in the Goldhawk Road objectors' evidence.

conducted has also caused some consternation. [1.4-1.7,4.6.2, 7.1.16, 7.2.3, 7.2.4, 9.3.1, 10.1, 10.2]

- 12.9.3 It has to be said that there was little evidence of a good working relationship between the parties. Voluntary agreements across the board will be hard to achieve under such circumstances and makes a good case for compulsory acquisition. Lack of or failure in communication (for whatever reason) is preventing Orion from establishing many of the shopkeepers' detailed requirements or understanding their plans for the future. This situation is undermining the process of making realistic offers and preventing Orion from meeting its s106 obligations. [4.6.9, 4.6.11]
- 12.9.4 Ardent was appointed by Orion to acquire the land and interests by private negotiations in March 2011. Initially the instructions extended only to acquisition of 30-52 Goldhawk Road and the market shop freeholds. In June 2013 the company was instructed to negotiate with the tenants of the market stalls. TfL would not allow Orion or their agents to approach the market traders until such time as agreement was reached about transfer of the TfL land, which goes some way to explaining the relatively late start of talks with market tenants. Had the market operators (Wellington) been appointed sooner or informal negotiations been allowed to proceed alongside the preparation of the Order, traders might have been better informed earlier in the process. [4.6.3, 4.6.4, 4.6.5]
- 12.9.5 Since the summer of 2013 Ardent and Wellington have sought to engage with market traders in a number of different ways, by letter and in person. Understandably traders are confused and apprehensive about their livelihood and future. However, Orion cannot be forthcoming about how individual businesses are likely to be affected, or compensated, without full knowledge of each individual trader's current interests and future expectations. Of late Orion has shown far greater urgency in finalising arrangements for displacement, temporary accommodation and relocation to the refurbished market. Formal offers have also been made but these cannot be finalised without co-operation from the affected parties. As far as the market is concerned, I am satisfied that significant efforts have been made to seek voluntary agreements from market stall holders, albeit late in the process. The efforts to negotiate are likely to continue after the Inquiry closed. [4.6.4, 4.6.5, 4.6.6, 4.6.10, 4.6.12, 7.1.16, 9.3.3, 10.1, 10.2, 11.4.6]
- 12.9.6 The Goldhawk Road shopkeepers have had the opportunity to engage with Orion and its agents for some considerable time. The shopkeepers have been represented for most of the time that Ardent has been seeking to negotiate with them. For an assortment of reasons, exchanges have proved fruitless. Nevertheless, Orion cannot be criticised for the efforts made over the period of over 2 years to engage with those affected, and to understand individual shopkeepers' needs. [4.6.7, 5.7.1-5.7.4]
- 12.9.7 Ardent sent letters, met the shopkeepers in person, undertook inspections of the properties, and encouraged them to provide the necessary information to enable offers to be made. In addition to which, lists of alternative properties available in the area have been circulated, albeit only since the middle of 2013. In October 2013 formal offers were made to the traders and this provides an opportunity for the negotiating process to progress. Overall, I am satisfied that adequate attempts were made to

acquire land interests by agreement. Orion and Ardent's actions of late dispel the notion that the Goldhawk Road shopkeepers have been deliberately discouraged from returning to new premises. [4.6.7, 4.6.8, 5.7.2]

12.10 Compelling case in the public interest, public benefits outweighing private losses and the case for interfering with private rights

12.10.1 Rights and protection offered by Article 1 (peaceful enjoyment of property) and Article 8 (respect for private and family life and for the home) of the First Protocol apply, given the long established and family-based nature of businesses in the market and in Goldhawk Road in particular. The CPO requirements, however, reflect the position under the ECHR and the HRA insofar as a balance has to be struck between private and public interests. [4.9.6]

12.10.2 Shepherds Bush Market is unique in its rich history, for the goods and services on offer with the mix of ethnically diverse traders adding to its character. It is an essential element of the Shepherds Bush Town Centre but its physical and trading conditions have been in decline for some time. There is a pressing need to regenerate the market to bring about economic, environmental, social benefits and in the interest of the vitality of the town centre as a whole. The addition of new homes and redevelopment of a vacant backland site would also lead to the comprehensive regenerative outcome advocated in the WCOA policies. The public interest in regenerating the Shepherds Bush Market area is considerable. [4.9.1, 4.9.2, 11.5.1]

12.10.3 As matters currently stand, the Orion scheme is the only option before the Secretary of State that has the potential to deliver a revitalised market and development of its immediate surroundings within a reasonable timescale. Numerous individual land interests and opposition to a redevelopment scheme along the lines of the consented proposal will continue to delay and inhibit delivery of the area's regeneration. Urgent need for redevelopment and the private interest impediments to its delivery provide sufficiently compelling reasons for acquiring the Order lands compulsorily (save for the NHHT land interests). Provided that the purposes of redevelopment and regeneration of Shepherds Bush Market and adjoining area could be achieved, the CPO would be necessary and justified in the public interest, even to the extent of interfering with private rights. [4.9.3, 4.9.4]

12.10.4 The scale of the works necessary to improve the market would most likely necessitate temporary displacement of traders in any event, or at the very least cause a degree of disruption. The s106 linked to the Orion proposal provides sufficient safeguards during the construction period to enable continuous trading and opportunities for relocation for those wishing to return to the area. Increased footfall and growth of the market following its redevelopment would be likely to compensate for trading losses incurred by businesses occupying the arches, stalls and shop units during the 3 year construction period. Those not wishing to return would be compensated under the Compensation Code and those looking to occupy new premises in the market will be supported through means other than the Code, under Schedule 15 of the s106. Some businesses may not survive the 3 year period but on the whole it does appear that the s106 measures would

protect the traders, and personal losses would be minimised during that time, as far as possible. [4.7.6-4.7.13, 7.1.5, 11.1.5]

- 12.10.5 There is sufficient scope in the Orion scheme to accommodate the retail and storage needs of all of the Goldhawk Road traders. The businesses would be compensated as necessary and provided with assistance to enable them to move to temporary accommodation. There is even the opportunity for long leaseholds to compensate for loss of freehold interests. Again, some shopkeepers may not wish to return or may not survive the displacement. But it seems to me that, given appropriate financial terms, most of the long established businesses have the capacity to weather the changes. Evidence from shopkeepers and those supporting their cases confirms that the shops and restaurants are well known, have a wide customer base and will continue to be supported for the reasons that they have attracted customers over a long period of time. The Orion scheme would cause some personal hardship and inconvenience during the construction period but the long term prospects are generally good. [4.7.14-4.7.21, 5.4.10-5.4.23, 6.4]
- 12.10.6 All of that said, without full knowledge of the replacement accommodation in the new development, it is not possible to establish whether new trading conditions would be sufficiently affordable or suited to the needs of traders currently operating in the market. Lack of certainty regarding necessary upgrades to the arched premises also places a question mark over the long term trading and survival position of businesses occupying the arches. Equally, in the absence of measures to secure the affordability of replacement shop units, the commercial future of the Goldhawk Road shopkeepers cannot be assured. Without such certainties in place, there is some doubt in my mind whether the scheme granted permission (or any subsequent redevelopment proposal) could deliver on its promises of retaining if not all then the majority of traders and shopkeepers. They are vital to the market and to the vibrancy of the area. [7.1.7, 7.2.2, 5.4.9, 5.8.2, 10.2, 11.1.8]
- 12.10.7 The Order is not tied to any particular scheme but its purposes are not deliverable while the uncertainties highlighted prevail. The compelling reasons for it therefore fall away.

12.11 Overall Conclusions

- 12.11.1 The purposes of the Order, as expressed in the well-being power, fall within the planning framework for the area, insofar as compulsorily acquiring the wide assortment of land interests would facilitate redevelopment and regeneration of the Shepherds Bush Market area. As matters currently stand, the Orion scheme is the only deliverable and viable option before the Secretary of State with the potential to bring forward these benefits in a timely manner. The appropriateness of an alternative proposal (without the Goldhawk Road properties) or other means of funding the market upgrade has not been tested nor conclusively demonstrated.
- 12.11.2 The developers have the necessary resources and commitment to see the project through. They have demonstrated a willingness to acquire property interests by agreement. The steering group and Wellington's recent involvement should improve the prospect of success in the negotiations and ensuring those affected are likely to be better informed.

- 12.11.3 There is no doubt that the disruptions and changes will lead to personal hardship and (at the very least) inconvenience to traders and shopkeepers. However, acquisition of the Order lands is necessary for regeneration of the area by way of redevelopment, even in the face of the personal losses likely. There are strong reasons in the public interest for proceeding with the Order (modified to exclude the NHHT's interests), provided that it would assist with improving the long term health of the market and protect its unique identity.
- 12.11.4 As explained earlier, the guarantees and safeguards are not sufficiently robust to be assured that genuine opportunities exist for current traders or shopkeepers (or similarly diverse businesses) to continue trading in the market and Goldhawk Road¹. Without such assurances, there is a real risk that the market and replacement Goldhawk Road shops would not provide the ethnic diversity, independent or small scale retailing environment central to the appeal of this part of the town centre. While such uncertainties exist, the personal losses and widespread interference of private interests arising from confirmation of the Order cannot be justified.

13. RECOMMENDATION

- 13.1 I recommend that the Order not be confirmed.
- 13.2 If, notwithstanding this recommendation, the Secretary of State is minded to confirm the Order, it should be modified by deleting Order lands 1/08 and 2/08.

Ava Wood
Inspector

¹ See paragraphs 12.6.18-12.6.21 and 12.6.31-12.6.34 of these conclusions

14. ANNEX A

APPEARANCES AT THE INQUIRY

FOR THE COUNCIL:

Mr David Elvin QC and Mr Zack Simons of counsel	Instructed by Ashfords LLP for the Council and David Bruce (solicitor) for Orion Shepherds Bush Ltd.
They called:	
Mr M Butler BSc, MSc, MA	Team Leader of Planning and Regeneration LBHF
Mr M Miah BA(Hons)	Head of Regeneration and Development LBHF
Mr C Horn BSc MRICS	Director, Chris Horn Associates Ltd
Mr M Ball	Chief Executive, Wellington Market Company PLC
Mr J Yexley BSc(Hons) MRICS	Director, Ardent Management Ltd
Mr R Asher FRICS	Director, Development Department Savills (UK) Ltd.

FOR THE GOLDHAWK ROAD SHOPKEEPERS (freeholders and/or leaseholders at Nos. 30, 32, 34, 36-38, 40, 42, 44, 46 and 48):

Mr Gregory Jones QC and Mrs Annabell Graham-Paul of counsel	Instructed by PDC Legal
They called:	
Mr Mark Whitfield BSc(Hons) MRICS	Partner, Montagu Evans LLP
Mrs Rebecca McAllister BA(Hons) MSc MRTPI	Managing Director, Hives Planning Ltd.
Mr Turker Cakici	Goldhawk Road shopkeeper
Mrs Audrey Boughton	Goldhawk Road shopkeeper
Mr Robert Dangoor	Goldhawk Road shopkeeper
Mrs Aniza Meghani	Goldhawk Road shopkeeper

FOR THE NOTTING HILL HOUSING TRUST:

Ms Judith Damarell	Partner, Lewis Silkin LLP
She called:	
Mr M Cornwall-Jones	Senior Land Manager, Notting Hill Housing Trust

OTHER OBJECTORS:

Mr J Horada	Chairman, Shepherds Bush Market Tenants' Association
Mr P Wheeler	Shepherds Bush Market Trader
Mrs Sakstein	Shepherds Bush Market Trader
Mr S Duggal	Shepherds Bush Market Trader

Mr Rogers
Mr Ashbridge
The Rt Hon Mr Andrew
Slaughter MP
Ms Kimikawa De Castro
Ms Theresa Walsh
Mr M Sabir

Shepherds Bush Market Trader
Customer at Mr Zippy
Member of Parliament for Hammersmith

Local Resident
Stitchless TV
Goldhawk Road shopkeeper

15. ANNEX B

DOCUMENTS LIST

CD1	National Planning Policy Framework
CD2	The London Plan
CD3	LB Hammersmith and Fulham Core Strategy
CD4	White City Opportunity Area Planning Framework (WCOAPF)
CD5	Mayors Housing Strategy for London
CD6	Core Strategy Options Paper
CD7	Sustainability Appraisal for the Proposed Submission Core Strategy
CD8	Core Strategy Options (A) and Submission (B) Consultation responses
CD9	Inspectors Report of EIP on Core Strategy
CD10	Consultation responses on WCOAPF
CD11	(Quashed) Shepherds Bush Market Regeneration Area SPD
CD12	Consultation Responses on SPD
CD13	Judgment in JR quashing CD11
CD14	Development Management Plan
CD15 to 19	<i>NOT USED</i>
CD20	Planning Permission for scheme
CD21	Section 106 Agreement
CD22	LBHF Committee report and minutes: planning application
CD23	GLA report and minutes: planning application
CD24	Planning Application
CD25	Design and Access Statement
CD26	Design Guide
CD27	Planning Statement
CD28	Consultation responses
CD29	Statement of Community Involvement
CD30	Savills' Viability Report and Appendices (Redacted)
CD31	Lambert Smith Hampton Review of Savills' Report (Redacted)
CD32	<i>NOT USED</i>
CD33	SBM GLA Design Presentation
CD34	Full list of planning application documents available on LBHF Website
CD35	Heritage Study of Shepherds Bush Market
CD36-39	<i>NOT USED</i>
CD40	The CPO Schedule
CD41	CPO Plans
CD42	Statement of Reasons
CD43	Statement of Case
CD44	LBHF Cabinet Report and minutes making CPO
CD45	LBHF preliminary Cabinet report and minutes on CPO
CD46 – 49	<i>NOT USED</i>
CD50	Survey of retail catchment areas in Hammersmith and Fulham
CD51	GVA Grimley West London Retail Needs Study
CD52	Quarterbridge Report
CD53	GVA Grimley

CD54	Parsons Brinkerhoff report
CD55	M&N Communications report
CD56	King Sturge Options Report
CD57	Marketlink Survey
CD58	Parsons Brinkerhoff Update
CD59	LBHF Housing Strategy
CD60	SBM Regeneration Newsletters
CD61	Cabinet Report November 2010
CD62	Cabinet Report
CD63	Open for Business
CD64	Regeneration Profile of W12
CD65 – 69	<i>NOT USED</i>
CD70	CPO Plan with scheme overlays
CD71	Land subject to purchase contract and interests still to be acquired
CD72	Trader Analysis Plan
CD73	Objector Plans
CD74	Proposed ground level uses overlay
CD75A	Hamilton's Study A
CD75B	Hamilton's Study B
CD75C	Hamilton's Study C
CD75D	Hamilton's Study D
CD80	Correspondence with SBMTA
CD81	Correspondence relating to 30-52 Goldhawk Road
CD82	Correspondence with Market Traders etc.
CD83	Correspondence with Non Statutory Objectors
CD84	<i>NOT USED</i>
CD85	Inspectors Note of pre Inquiry meeting
CD86	Compliance Bundle
CD87	Statement of Common Ground DRAFT 23 08
CD88	Rebuttal Matrix
CD89	<i>NOT USED</i>
CD90	SB Market Charter
CD91	London Assembly Markets Report
CD92	Davis Langdon Construction Management
PROOFS SUBMITTED BY LONDON BOROUGH HAMMERSMITH AND FULHAM BOROUGH COUNCIL	
LBHF - 1	Proof of Matin Miah
LBHF - 2	Summary Proof of Matin Miah
LBHF - 3	Proof of Matt Butler
LBHF - 4	Summary Proof of Matt Butler
LBHF - 5	Proof of Malcolm Ball
LBHF - 6	Summary Proof of Malcolm Ball
LBHF - 7	Appendices to Proof of Malcolm Ball

LBHF - 8	Proof of Chris Horn
LBHF - 9	Summary Proof of Chris Horn
LBHF - 10	Proof of Richard Asher
LBHF - 11	Summary Proof of Richard Asher
LBHF - 12	Proof of John Yexley
LBHF - 13	Summary Proof of John Yexley
LBHF - 14	Appendix 1 to John Yexley
LBHF - 14A	Report on Before and After
LBHF - 14B	Report on Parcels required
LBHF - 14C	Availability Schedule - June 2013
LBHF - 14D	Availability Schedule - July 2013
LBHF - 14E	Availability Schedule - August 2013
Rebuttal Proofs	
LBHF - 15	Matin Miah - Rebuttal Proof
LBHF - 16A	Appendix A
LBHF - 16B	Appendix B
LBHF - 17	Matt Butler - Rebuttal Proof
LBHF - 17A	Appendix
LBHF - 18	Malcolm Ball - Rebuttal Proof
LBHF - 19	Chris Horn - Rebuttal Proof
LBHF -19A	Appendix 1A
LBHF -19B	Appendix 1B
LBHF -19C	Appendix 1C
LBHF - 20	Richard Asher - Rebuttal Proof
LBHF -20A	Appendix 3
LBHF -20B	Appendix 4
LBHF - 21	John Yexley - Rebuttal Proof
LBHF -21A	Appendix A
LBHF -21B	Appendix B

PROOFS SUBMITTED BY GOLDHAWK ROAD SHOP KEEPERS (Represented by PDC Legal)

OBJ-17-1	Proof of Evidence of Aniza Meghani - Classic Textiles
OBJ-17-2	Appendix to Proof of Evidence of Aniza Meghani
OBJ-17-3	Further Appendix to Proof of Aniza Meghani
OBJ-17-4	Summary Proof of Evidence of Aniza Meghani
OBJ-18-1	Proof of Evidence of Turker Cakici - Zippy's Diner
OBJ-18-2	Appendices to Proof of Evidence of Turker Cakici

OBJ-18-3	Summary Proof of Evidence of Turker Cakici
OBJ-25-1	Proof of Evidence of Audrey Boughton – Cookes Pie & Mash
OBJ-25-2	Appendices to Proof of Evidence of Audrey Boughton
OBJ-25-3	Summary to Proof of Audrey Boughton
OBJ-25-4	Supplemental Proof of Audrey Boughton
OBJ-21-1	Proof of Evidence of Robert Dangoor
OBJ-21-2	Summary Proof of Evidence to Robert Dangoor
GHR/1	Proof of Evidence of Mark Whitfield on behalf of the Goldhawk Road Shop Keepers
GHR/2	Summary to Proof of Mark Whitfield
GHR/3	Appendices to Proof of Mark Whitfield
GHR/5	Proof of Evidence of Rebecca McAllister on behalf of the Goldhawk Road Shop Keepers
GHR/6	Summary to Proof of Rebecca McAllister

PROOFS SUBMITTED BY NOTTING HILL HOUSING TRUST (Represented by Lewis Silkin LLP)

OBJ-29-1	Proof of Evidence of Matthew Cornwall-Jones
OBJ-29-2	Appendices to Proof of Evidence of Matthew Cornwall-Jones

PROOFS SUBMITTED BY STATUTORY OBJECTORS

OBJ-06-1	Written Representation by Mr Anil Mehra
OBJ-12-1	Proof of Evidence by Mr Mohammed Sabir
OBJ-30-1	Written Representation on behalf of Bradley Grundman
OBJ-30-2	Appendix to Written Representation on behalf of Bradley Grundman
OBJ-31-1	Written Representation on behalf of RAL Limited
OBJ-31-2	Appendix to Written Representations on behalf of RAL Limited
OBJ-47-1	Written Representation on behalf of Dave Horatha & Co
OBJ-71-1	Written Representation by Mr Surjeet Duggal
OBJ-97-1	Written Representation by Mr Harbhajan Singh Khurana
OBJ-99-1	Written Representation by Mr Ghulam Haider
OBJ-116-1	Written Representation by Mr CA Rogers

PROOFS SUBMITTED BY NON STATUTORY OBJECTORS

OBJ-102-1, 2 &3	Written Representation of Mrs Laura Sakstein
OBJ-202-1	Proof of Evidence by James Horada – Chairman of the Shepherd’s Bush Market Tenants’ Association
OBJ-202-2	Appendix A to Proof of SBMTA
OBJ-202-3	Appendix B to Proof of SBMTA
OBJ-202-4	Appendix C to Proof of SBMTA
OBJ-202-5	Appendix D to Proof of SBMTA
OBJ-202-6	Appendix E to Proof of SBMTA (SBM s106 Agreement 26/09/13)
OBJ-202-7	Appendix F to Proof of SBMTA (TFL & SBM tenants Agreement 25/09/13)
OBJ-202-8	Appendix G to Proof of SBMTA (Additional Concerns, 9 th October 2013)
OBJ-202-9	Mr Horada’s email of 18 September and attachments
OBJ-275-1	Written Representation by Elaine Shepherd
OBJ-276-1	Written Representation by Mary McDonagh
OBJ-281-1	Written Representation by John Lodge
OBJ-282-1	Written Representation by Theresa Walsh
OBJ-289-1	Written Representation by Kimikawa De Castro
OBJ-283-1	Proof of Evidence of Mr Andrew Slaughter MP
OBJ-283-2	Email from Mr Slaughter MP, dated 25.11.13, Answers to Inspector’s Questions
OBJ-302-1	Written Representation by Maria Rubio

DOCUMENTS SUBMITTED DURING INQUIRY (dates in brackets refer to dates submitted to the Inquiry)

ID/1	The Opening Statement of Hammersmith and Fulham Council (Acquiring Authority) (17.09.13)
ID/2	Existing Plans of Shepherds Bush Market (18.09.13)
ID/3	Parameter Plans of Shepherds Bush Market (18.09.13)
ID/4	Illustrative Scheme Drawings (18.09.13)
ID/5	Key dates and Milestones document regarding the regeneration (18.09.13)
ID/6	Letter from Ardent to Turner Morum, dated 29 May 2013, Re: Goldhawk Road (18.09.13)
ID/7	Indemnity Agreement 25.02.13 (20.09.13)
ID/8	Supplemental Agreement 25.02.13 (20.09.13)
ID/9	Links to the CPO Compensation Booklets https://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-1-procedure https://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-2-procedure

	compensation-booklet-2-compensation-to-business-owners-and-occupiers https://www.gov.uk/government/publications/compulsory-purchase-and-compensation-booklet-2-compensation-to-business-owners-and-occupiers
ID/10	PDC Letter to Ashfords, dated 20.08.13 (20.09.13)
ID/11	Email exchanges between Mr Oliver and PDC, dated 27.08.13 (20.09.13)
ID/12	Council Meeting Minutes, dated 30.05.12 (20.09.13)
ID/13	Cabinet Meeting Minutes, dated 15.10.12 (20.09.13)
ID/14	45A & 47A Goldhawk Road – Design & Access Statement (23.09.13)
ID/15	Comparison Evidence Document (23.09.13) submitted by Mr Asher
ID/16	Savills Development Appraisal (23.09.13)
ID/17	Opening Statement from the Goldhawk Road Shopkeepers (23.09.13)
ID/18	Note on Value of Market (23.09.13) submitted by Mr Whitfield (This has been replaced by ID/20)
ID/19	Note From Richard Asher on Rental Summary/Accommodation Schedule & Appraisal (24.09.13)
ID/20	Analysis of SBM (Post Works) by Mark Whitfield (24.09.13)
ID/21	Principal Differences on Viability in relation to the Reduced Scheme (24.09.13)
ID/22	Comparison of Assumed Costs – Reduced Scheme (25.09.13)
ID/23	Report on former Spring Grove Laundry Site – PEIA Form (25.09.13)
ID/24	Laundry Option Extract & Plan (25.09.13)
ID/25	Goldhawk Retail Areas (Scheme) (25.09.13)
ID/26	GHR options for modifying the Order (25.09.13)
ID/27	Note to Inquiry on Schedule 15 (26.09.13)
ID/28	The History of Spitalfields Market (26.09.13)
ID/29	Opening Statement from the Notting Hill Housing Trust (26.09.13)
ID/30	List of Goldhawk Road Freeholders & Leaseholders instructed by PDC Legal (27.09.13)
ID/31	F E Boughton Ltd – Financial Company Accounts (27.09.13)
ID/32	Parking Restrictions (27.09.13)
ID/33	Ardent letter to Orion dated 2.03.13, regarding terms of appointment (27.09.13)
ID/34	Substitute Skeleton Argument on behalf of the Claimant – Submitted by the GHR (26.09.13)
ID/35	Mosaic Profile Categories (26.09.10)
ID/36	LBHF Leaflet “The Vision for Shepherd’s Bush” (27.09.13)
ID/37	Letter to Wellington Market Company – Request to tender for management of SBM, dated 25.1.13 (27.09.13)
ID/38	Note to inquiry regarding SBM Cost Breakdown relating to regeneration of SBM (27.09.13)
ID/39	Closing Statement on behalf of the Notting Hill Housing Trust (07.10.13)
ID/40	Example Letters dated 14 June 2013, from Ardent
ID/41	Example letters dated 22 July 2013, from Ardent
ID/42	Letter from Ashfords to PDC dated 18.10.13, Re: Housekeeping Issues (22.10.13)
ID/43	Planning History Document (22.10.13)
ID/44	Draft SoCG Version 2 (22.10.13)
ID/45	Email and Attachment from Tom Keady at Ardent to Mr Anil Mehra, Shop 16, dated 25.10.13
ID/46	List of Goldhawk Road Freeholders and Leaseholders, Instructed by PDC Legal, dated 29.10.13

ID/47	SMBTA – LBHF Explanatory Note of Schedule 15 of the S106 Agreement (11.11.13)
ID/48	SMBTA – Section 106 Schedule 1 – Definitions and Interpretation “Force Majeure Event” (11.11.13)
ID/49	SBMTA – Letter regarding the Steering Group form Mr Olson of Orion (14.11.13)
ID/50 A	LBHF – Adoption Notice WCOAPF (18.11.13)
ID/50 B	LBHF – Adoption Notice WCOAPF Showing Changes (18.11.13)
ID/51 A	LBHF – Orion Land & Leisure Limited – Track Record Note (18.11.13)
ID/51 B	LBHF – Development Securities Preliminary Results for 2013 (18.11.13)
ID/52	Note on the position with London Power Networks plc (19.11.13)
ID/53 A	Steering Group Letter from Orion (19.11.13)
ID/53 B	Steering Group Nomination Form (19.11.13)
ID/53 C	Steering Group Market Management Plan (19.11.13)
ID/53 D	Email to James Horada from David Bruce- Orion dated 03.11.13 (19.11.13)
ID/53 E	Letter to GHR regarding the Steering Group, dated 31.10.13 (19.11.13)
ID/53F	Nomination Form for the GHR regarding the Steering Group (19.11.13)
ID/54	MV Appraisal Document – Richard Asher (19.11.13)
ID/55 A	SBM – Note on the S106 Market Works Costs (19.11.13)
ID/55 B	SBM – OSB Works Cost Estimates (19.11.13)
ID/56	LBHF – Consolidated responses by the Acquiring Authority to SBMTA (19.11.13)
ID/56 A	Meeting Notes 25 – dated 23.09.10 (19.11.13)
ID/56 B	Meeting Notes 26 – dated 03.03.11 (19.11.13)
ID/57	Consultation Leaflet on RMA (19.11.13)
ID/57 A	Reserved matter Consultation Arch 165 Display Boards (19.11.13)
ID/58	Typical Offer letters sent to GHR Properties (19.11.13)
ID/59 A	Consultation Letter on Draft Method Statement (19.11.13)
ID/59 B	Method Statement – Temporary arrangements during works (19.11.13)
ID/59 C	Method Statement Circulation Note dated 18.11.13 (19.11.13)
ID/60	Judgement in WAKIL 2 (19.11.13)
ID/60 A	WAKIL 2 Costs and Refusal of leave to Appeal (19.11.13)
ID/61	WAKIL 2 Application for Leave to Appeal (19.11.13)

ID/61 A	WAKIL 2 Leave to Appeal Skeleton Argument (19.11.13)
ID/62	Sample of Typical letter sent to Owners/Traders at 9-20 SBM (20.11.13)
ID/63	Consultation and Engagement Statement (20.11.13)
ID/64	Property Availability Update November 2013 (22.11.13)
ID/65	Post adjournment correspondence (22.11.13)
ID/66	NHHT Modify Letter, Plan and Schedule (22.11.13)
ID/67	<i>Not Used</i>
ID/68	<i>Not Used</i>
ID/69	<i>Not Used</i>
ID/70	<i>Not Used</i>
ID/71	Steering Group Form from Audrey Boughton, dated 20.11.13 (21.11.13)
ID/72	Letter from PDC Legal dated 21.11.13 to Ashfords with enclosures (21.11.13)
ID/73	Statement from Mark Whitfield (21.11.13)
ID/74	Draft SoCG with comments from PDC Legal (22.11.13)
ID/75	Duedil Credit Report – Orion Shepherds Bush (No.3) Limited (22.11.13)
ID/76	Letter to Inspector and CPO with amendments from Acquiring Authority(24.11.13)
ID/77	Responses to Inspectors questions from Ashfords (24.11.13)
ID/78	Email from Ardent to Montagu Evans dated 22.11.13(24.11.13)
ID/79	Responses to Inspectors questions from GHR (25.11.13)
ID/80	Closing Submission from The Goldhawk Road Shopkeepers with appended documents (25.11.13)
ID/81	Further Note from Mr Asher in reply to questions from Mr Whitfield (25.11.13)
ID/82	Closing Submission from the Acquiring Authority (25.11.13)

LETTERS OF WITHDRAWAL RECEIVED DURING INQUIRY

WD/1	Letter from Throgmorton Investments Limited – Withdrawal – 18.09.13
WD/2	Letter from TfL – Withdrawal – 19.09.13
WD/3	Email from Mr Paul Bardini – Bush Beds – Withdrawal – 25.09.13
WD/4	Letter from Notting Hill Housing Trust – Withdrawal – 22.11.13

16. ANNEX C

NHHT OBJECTIONS

The planning permission does not include the objection property in its scope

16.1.1 The property is not included in the redevelopment site and does not fall within the planning application boundary. Those promoting the scheme cannot have regarded it as a necessary part of the redevelopment scheme. There is no justification from a land use planning perspective to include the objection property within the scope of the Order.

Pre-conditions for making the Order have not been met

16.1.2 On 14 October 2010 the Council cabinet resolved to promote a CPO subject to 4 conditions. The resolution by the cabinet on 15 October 2012 to make the Order proceeded on the basis that the conditions had been met. However, that is not the case as:

- There is no undertaking by the developers to reimburse the Council for the acquisition costs of acquiring the objector's property.
- The property is not within the red line of the application scheme.
- The Council cannot reasonably think there is a realistic prospect that the Secretary of State will confirm the Order.

16.1.3 Three of the 4 conditions required to proceed with the Order have not been met.

16.1.4 Furthermore, before a CPO can be confirmed, the Secretary of State needs to be satisfied that the Council has considered alternatives to compulsory acquisition. There is insufficient evidence to confirm that the objector's property is the only option for relocating the Broadway facilities. There are at least 2 sheltered accommodation units in the locality that could have been used in place of Lime Grove, which have been disposed of by the Council. The option of retaining the existing Broadway facility within the regeneration scheme has not been explored. That the site for the relocated drop-in facility has not been included in the CPO land¹ demonstrates an inconsistency in the Council's approach.

Compulsory acquisition is unnecessary, given existing contractual arrangements

16.1.5 Negotiations began in mid-June 2010 between NHHT, Broadway, the Council and OSBL. Agreement was reached in December 2012 and funding agreements have been entered into for refurbishment of the Hostel, conditional upon the judicial review of the planning permission.

16.1.6 The Council is confident that the permission granted for redevelopment of the Shepherds Bush Market area will survive the current legal challenge to

¹ The Council has identified a vacant Council-owned building on 239a Uxbridge Road for re-provision of the day facility (LBHF 15 - Mr Miah's rebuttal proof paragraph 3.11)

it. The Council sincerely hopes and plans for the scheme to proceed, even if the permission is quashed¹. The Hostel is therefore required by the Council regardless of the legal difficulties it has to encounter. In such circumstances, compulsory acquisition of the property is not justified and the Council is acting unreasonably in failing to release the conditional aspects of the contract. Such a release is in the gift of the Council and OSBL. It would enable refurbishment of the Hostel and relocation of the Broadway facility to proceed. NHHT would willingly waive the conditionality, thereby obviating the need for the property to be included in the Order.

- 16.1.7 The solution is for LBHF to proceed with the contracts already in place by foregoing the existing conditional restriction on their operation. The Council has funds available to acquire the property freehold² and such funds could be drawn upon now to implement refurbishment of the Hostel and Broadway's relocation to it. The works could be undertaken at an appreciably lower cost to the Council.

Access to the Hostel

- 16.1.8 The Council has given no consideration to the access arrangements to the Hostel. Currently access to the building is from Gainsborough Court (also owned by NHHT)³, an unadopted road. No discussion has taken place with NHHT about ongoing use of that access. Furthermore, no analysis has taken place of the potential changes that may be needed to provide a suitable access to the refurbished hostel, either via Gainsborough Court or in a different location. Consideration has not been given to the potential impact on the residents of Gainsborough Court. Such impacts are currently unknown.

- 16.1.9 The Hostel cannot and should not be included in the Order for reasons associated with the access alone.

Conclusions

- 16.1.10 NHHT wishes to see the Hostel brought back into productive use as soon as possible. The Hostel and 47 Lime Grove are currently occupied on a short term basis to ensure their security. However, they are currently lost to the Council as well as NHHT for the purpose of housing homeless people. This situation will continue until the Council/NHHT contracts become operational or the CPO is confirmed. The former could be brought about any time by the Council and OSBL. The timeline for the final decision on the CPO and its implementation is uncertain.
- 16.1.11 There is no compelling case for the CPO to be made over the objector's property and it should be modified by excluding plot nos: 1/08 and 2/08.

¹ Mr Miah in cross-examination

² LBHF-16B – Mrs Miah's rebuttal proof Appendix B: Letter from Mr Miah to Notting Hill Housing Group (dated 13 August 2012) offering to acquire the freehold interest for £2m.

³ OBJ-29-2 – Mr Cornwall's Jones' Appendix 3 – 3rd and 4th photograph and Appendix 4 – Highways plan