

EFFORTS TO ACQUIRE THE ORDER LAND BY AGREEMENT – THE TWICKENHAM RIVERSIDE TRUST

Introduction

1 Section 9 of the Authority's Statement of Case sets out the its narrative regarding the consultations and negotiations held with the Twickenham Riverside Trust from the present administration's tenure in 2018 to the present day. From the Trust's perspective this is a 'curate's egg'. While much is accurate and straightforward, it frequently presents a subjective picture, on key parts of which the Trust takes issue.

2 The Trust understands that, at times, the situation may not have been as clear as it might have been on both sides and that, looking back, more open communications might have resolved some of the misunderstandings or misinterpretations between the parties, but the Trust remains under the impression that there was frequently on the part of the Authority a single-minded determination to press through its proposals, and to do so to meet certain external time targets (eg the local Council elections in May 2022).

3 We are bemused too by some of the language used in and omissions from the Statement of Case, which appear to seek to influence the way in which the Trust's actions and legal title are received by the reader. One evident example is the use of the term – unusually and for the first time – “Trust Management Area” instead of “lease” or “leasehold”. A lease is a powerful and defined term which is known to all, while “management” or “management/managed area” is a much weaker concept and would appear to have been chosen to diminish the value of the legal title held by the Trust in the eye of the reader.

4 Above all, the Trust does not consider that the Authority has entered into or encouraged serious negotiations with the Trust, except in connection with the legal and administrative matters in the Heads of Terms of a future arrangement. Much of the engagement both with the Trust and more widely in the Stakeholder Reference Group has taken the form of reports from the Council with clarifications offered, rather than consultation and encouragement of genuine two-way communication or – in the case of the Trust, whose land the Authority has wanted to build on – negotiation.

5 The Trust holds the view that there has been no substantial negotiation on the core issue of the loss of Public Open Space resulting from the intent to construct the Wharf Lane Building on land which it holds under a lease until 2139.

6 Genuine dialogue and negotiation require the parties involved to listen to and engage with each other honestly. It requires trust to be built up between the parties so that both have a sense that they are listened to with an intent to reach the right outcome, in the common and public interest. It does not help either for time pressures to be imposed or for time to be dragged out in order to secure an advantage.

7 We attach a timeline of contacts between the Trust (and others) and the Authority since May 2018 until April 2023. It is not exhaustive, but rather details key stages/exchanges.

Scene-setting

8 Para 9.8 states that “There has been a significant amount of engagement with the Trust at each stage of the design development from the creation of the RIBA Full Design Brief to the current day”. The Trust accepts that there have been many contacts, but there is a difference between the quantity and the nature/quality of those contacts. Moreover, there have been long periods when the Authority has been ‘missing in action’.

9 In addition, this paragraph says that the Leader of the Council “received the Trust’s ‘in principle’ approval to include the Gardens within the Scheme set out in a letter dated 15 October 2018”. However, it omits to mention the condition that the Trust insisted upon – that it would “consider, in relation to its Objects, all plans proposed by LBRUT”. Indeed this reflected a decision in a Trust meeting a week before that the Trust had a “duty” to be open to possible enhancements both to its demise and to the Riverside, as part of those Objects.

10 Para 9.11 reports on the Trust’s support for the process being put forward by the Authority and the RIBA competition and the Trust was pleased that its “principles for development” were incorporated in the Competition brief. In addition to the two noted here, one major other consideration was: “That adjacent buildings are not overbearing/ towering over DJG and in doing so negatively impact upon the usage and enjoyment thereof”.

11 Para 9.13 goes to the precise measurements of the Scheme and suggests that these all meet the Trust’s requirements. No comment is made here as these are the core subject for the challenges relating to Public Open Space elsewhere in the Trust’s evidence.

12 Paras 9.14 to 9.18 describe the outcome of the competition and thoughts which were exchanged during that process. The Trust notes that the Authority had confirmed that the competition was to choose the architect and that the competition entries were ‘concept’ designs which would require further development and approval – hence the mention in 9.14. The Trust indicated at the 31 January 2020 meeting that it was prepared to consider a design which included land on the Embankment as well as a reduced area on the upper level of the Riverside (where the Gardens are) in the context of the totality of the public amenity delivered by any proposal. There were, however, no fuller discussion or decisions at this stage on the suggestions under consideration.

13 It is also relevant that it became clear shortly after the announcement of the winner that at least one key issue had not been included in the Competition brief – the Environment Agency’s likely requirements regarding flood defence. This meant that the chosen concept design had to be changed significantly in the practical development of the Scheme and, indeed, none of the five short-listed entries would have complied. Other changes also followed because of the impracticality of important elements (eg the expectation that it would be possible to link the service road to Water Lane).

‘Negotiations’ and the CPO

14 Para 9.19 skips forward to November 2020 when: “Following several months of negotiations on the developed designs, but little progress on an agreement, the Authority was forced to reluctantly consider the principle use of CPO powers”. The Trust considers that this is curtailed to the point of being misleading because several relevant points are overlooked:

1. Negotiations had begun, as stated in 9.15, but this was focused primarily on the Heads of Terms for the memorandum and time was required for the architect

(Hopkins) to confront the new element of the Environment flood defence requirements.

2. As a result, the all-important plan of the proposed re-provision of the Trust's demise was not fit for consideration. At a meeting on 5 June 2020, the scheme shown to the Trust was still the original competition concept scheme.
3. The Council's immediate reaction in an email was to insist on reasons that the plan is not acceptable and stating: "We will use that note here at the Council to consider our next steps if that were, sadly, to be the case".
4. The Trust's response on 12 June 2020 reiterated Key Requirements of the Design Brief and noted that the Council was not able to demonstrate that the plan complied with EA or PLA policies. At this stage, the Authority had not initiated contact with the EA about the Scheme. However, the EA had supplied a report to the LPA in April 2020, as part of the EIA Screening process. The Authority's Project Team, however, was unaware of this.
5. Further email from the Council on 24 June insisting that the plan shown was a "final offer" and repeating that "Should your stance remain unchanged ... the Council will need to fully consider its options". The Trust took this and the earlier email as an ultimatum and the first indication that a CPO was being contemplated.
6. There was a two-month silence from the Authority at this point. It was in frantic redesign, having learnt that the Hopkins concept Scheme was non-compliant with EA requirements on two major fronts - (1) location of the flood defence walls with respect to built structures and (2) the need to ensure that existing flood storage is 'replaced'. The Authority's plan accordingly changed radically after this exchange in regard to both the Scheme as a whole and the Gardens – to the point that, when

the Trust reached the stage of taking on independent surveyor advice, the actual plan on which that advice could be sought was not made available until June 2021 – not April 2021 as Para 9.22 suggests.

15 The threat of the CPO was made explicit, as stated, in November 2020, incidentally about two weeks after a significant change in the line-up of the Trust following the retirement of several founder trustees. The Trust, with 8 out of 12 trustees new arrivals, found its relationship and discussions with the Authority overshadowed and distorted by that change of circumstance.

16 Up to that point, the only true negotiation between the Authority and the Trust had been on the legal and formal aspects – the Heads of Terms – but, while relatively good progress had been made on those, they remained for both parties “Subject to Contract, Council and Trust Approval & Without Prejudice”, with the Trust unable to finalise and consider them fully until the plan was agreed. Thus, the primary focus from the Authority had been up to June 2020 on the way in which the property might be handed over and its future treatment, not the property itself and its amenity value. Attempts by the Trust to engage in discussion of the footprint or layout of the Wharf Lane building (including in the informal design group set up with the Trust to look essentially at landscaping) were closed down.

17 Para 9.23 describes the efforts made to accommodate the Trust in relation to the plan, but does not reference the Trust’s consistent statements that it had not taken a position on the re-provision and could not consider that until it received the definitive plan, which only happened in June 2021. Only then would it be then in a position to commission the independent advice that it was bound to take as a charity readying itself for the disposal of its land. Indeed this was subject to further delay when, after the first draft of the surveyor’s Open Space Replacement Land Report was received in late September 2021, the Authority then produced a revised Open Space plan. The Report had to be adjusted and was not available until November.

18 On Para 9.24, a word on the succession of Chairs of the Trust. Firstly, it should be noted that the Chair of the Trust does not have an executive function. The Chair exists to chair meetings and to act, when required, as a single point of contact/reference. This is clear from the Trust's Articles of Association. Secondly, regarding the Trust's most recent chairs: the first (Hugh Brasher) retired having served a maximum 9-year term as a trustee; the second stood down as Chair (but remains a Trustee) due to work commitments that meant he was spending increasing amounts of time outside of the UK; and the current Chair is a longstanding trustee. These changes have not altered the evolution of the Trust's view on the central issues, despite suggestions to the contrary. The implication that the first change of Chair led to the Trust being "no longer willing to progress with the existing Heads of Terms" is inaccurate.

19 Similarly the narrative in Para 9.25 is misleading in that it suggests a change of direction. As the CPO process was initiated in November 2021 – the same month as the Trust finally had access to its final, revised advice from the independent surveyor – it is unsurprising that the elements of the Trust's position on the plan and its objections to the Order should come together. This paragraph makes two separate suggestions. The first – "that the Trust no longer supports the principle of the existing open space being included in the overall Scheme Land" is not correct. While the second – that it will not support any scheme which proposes the loss of open space to provide built development where the Wharf Lane building is proposed to be constructed" – is accurate, the backdrop to this is not so straightforward.

20 Leaving aside the Trust's position on the primacy of the letter of the Local Plan/the 2013 TAAP (see the Trust's separate submission on Planning Policy) and the Council's failure and refusal to distinguish between the brownfield and the open space parts of the Scheme Land right up until five days before the Planning report and decision – as explained above, the Council's continuous redrawing of the plan (for both Scheme and re-provision) and

changes of CPO strategy made it impossible for the Trust to offer a definitive view until the beginning of 2022.

21 With the Trust's objections to the CPO and to the Acquisition of Public Open Space using S.19 of the 1981 ALA submitted to the Secretary of State on 18 November 2021 under the timetable dictated by the lodging of the CPO process, the Trust was unable formally to consider the advice it had received and take a firm decision regarding the re-provision plan until December.

22 The Trust wrote to the Authority on 25 January 2022 giving a full explanation of its position under three headings of which two are relevant here:

- The space offered fails to compensate for the general loss of safe and optimal space for which we currently have a responsibility.
- The Wharf Lane Building will have a negative impact on Twickenham's riverside.

The Trust sought to open a first substantive discussion on the differences arising out of its two objections and added: "Accordingly we are of the opinion that – for there to be genuine negotiations – the Council needs to be open to discussing the areas that we highlight above".

23 This was the first opportunity that the Trust had had to communicate its decision and did so in some detail, but it was met with responses on 30 January 2022 to a complaint the Trust had made challenging the 'brownfield' status of the Gardens and on 22 March 2022 to the 25 January 2022 email, both suggesting that the Trust had never had the intention of redeveloping the site and that the Trust had now moved significantly away from its original position of being willing to negotiate with the Authority regarding a design which met the agreed criteria. The 22 March 2022 email did nonetheless open the door to an important first meeting between the full Trust (with the 'new' trustees, who had for the most part been

in post by this point since October 2020, with one new trustee having joined in October 2021) and the Council's project team, which took place on 20 April 2022. The Trust sent a detailed response to the points made by the Council in preparation for this discussion, again setting out its position in detail.

24 The meeting was a helpful run over the ground, with the Council team promising to come back to the Trust with comments on the Trust's objections (all discussions of the CPO/s19 having been declared "off the table" by the Authority) with a view to continuing a practical dialogue. It was expected at that time that the Statement of Case would be produced by July 2022 and the Trust agreed to wait until after that. In the event, that was deferred.

25 The Trust continued to press for a further discussion, but was met with a letter in September 2022 expressing scepticism "that the Trust is not truly willing to negotiate with us in respect of the existing scheme". The Trust replied on 10 October: "You state bluntly that you are willing to meet 'only if you [TRT] are prepared to negotiate with us [the Council] based on our current scheme and for a negotiation of the detail of the Heads of Terms that have thus far been developed'. We do not consider it reasonable to insist on the first part of this statement – when is negotiation on an already decided plan ever 'negotiation'? ... We do not consider that any 'negotiation' on this [the proposed re-provision plan] has yet been offered, in the true meaning of the word."

26 As is evident from the last paragraphs, Para 9.26 again skips important developments in moving straight to the 29 November 2022 letter. The Trust regarded this letter with some cynicism, given its timing coming on the heels of the approval of the planning application – with no questions asked of the Trust by the Committee on key matters such as the compatibility of the Scheme with the TAAP or the environmental consequences.

27 Following this, there was again pressure from the Trust for a continuation of the dialogue and the Council's reaction to the Trust's objections from November 2021, with no positive response until late February as described in Paras 9.27 – 9.31. The Council met with the Trust to respond to the CPO and SI9 objections – over a year after this discussion had been first requested by the Trust. (Para 9.30 is inaccurate in its timing. The pause in the negotiations on the Heads of Terms resulted from the Council's delay in producing the plan of the re-provision – **not** "as [the Trust] had voted to reject the Council's re-provision" since, as recorded above, this did not happen until December 2021.)

28 The Trust has seen no indication – as recorded in Para 9.32 – of the Authority's willingness or intent "to continue to engage in negotiations with the Trust with a view to narrowing the issues" and the Statement records the Authority's continuing refusal to discuss the impact of the Wharf Lane Building.

Conclusion

29 The Trust's contention is that the Authority has never been truly open to, or encouraged, genuine negotiation on the re-provision plan nor to genuine dialogue about maximising the practical possibilities regarding the Public Open Space on the TW7 site. The sense is that the Authority has been determined to press through its Scheme without adjustment, other than essentially cosmetic changes or as a result of external factors imposed on it.

Annex: Timeline of contacts between the Trust (and others) and the Authority since 2018