

TRT's response to the Authority's case for using s19(1) of ALA 1981 (witness: Celia Holman) - Executive Summary

Background

- 1) The Authority is relying on s19(1)(a) to acquire Lost Open Space and s19(1)(aa) to acquire Retained Open Space within the Scheme. TRT challenges the use of both legislative procedures.
- 2) The Authority originally intended to rely solely on s19(1)(a) (ie the acquired open space would be replaced by at least the same amount of equally advantageous open space) but in September 2021 just before launching its CPO, it realised that the legislation prohibits the use of existing open space as part of any replacement land.
- 3) Consequently the Authority had insufficient replacement open space to satisfy s19(1)(a) so its only alternative was to acquire the existing open space by using s19(1)(aa), to '*improve its management*'. This legislation is relied upon even though (i) the Council already manages the open space under its lease obligations to TRT and (ii) the Authority is not arguing that the land is inadequately managed.
- 4) Instead the Authority relies on a novel use of the legislation, arguing that the Scheme improves the current open space (which TRT contests) and that, de facto, this improves management of such open space (also contested).
- 5) So the Authority hastily adopted an entirely new strategy which significantly reduces the quality of the s19(1)(a) Exchange Land, whilst seeking to use s19(1)(aa) in a wholly unprecedented, inappropriate and (in policy terms) dangerous way.

Objections to Authority's use of s19(1)(a)

- 1) TRT contends that the Exchange Land is of lesser size than the Lost Open Space and that accordingly the first limb of s19(1)(a) (requiring the exchange land to be no less in size than the order land) remains unsatisfied.

- 2) The Authority contends that the Lost Open Space measures 1,336 sqm and the Exchange Land 1,815 sqm. By contrast TRT contends that the Lost Open Space measures 1,486.9 sqm and the Exchange Land 1,217.2 sqm, thus falling short by 269.7 sqm.
- 3) TRT argues that the area of Exchange Land described as the Water Lane Retail Walkway (497.8 sqm) is a thoroughfare which shares the characteristics of public highway rather than public open space within the meaning of s19(1) so shouldn't form part of the Exchange Land.
- 4) It also explains why a large area of open space (120 sqm) falling outside the order land (described as the Wharf Lane Building Forecourt) should form part of the Lost Open Space – since it's wrongfully designated by the Authority as future open space whereas TRT contends it's not open space.
- 5) The Authority has also wrongly included 100sqm of terraced gardens (forming part of the 2005 Jubilee Gardens) as Exchange Land. The legislation prohibits the inclusion of existing open space as s19(1)(a) exchange land so this area must be excluded.
- 6) A further 30.9 sqm of embankment flower beds (currently not shown as order land) should be included within Lost Open Space since it will now become a vehicular turning circle.
- 7) The second limb of s19(1) requires the Exchange Land to be equally advantageous to the public. The CPO Guidance defines the public as *"principally the section of the public which has hitherto benefitted from the order land and, more generally, the public at large."*
- 8) TRT sets out how, when and by whom the existing open space is used. It identifies the broad cross-section of the public who use the space and describes the large number of recreational activities that they enjoy. It further evidences that the majority of such activities have been given no or insufficient consideration by the Authority in its Scheme, resulting in the proposed open space being less advantageous to the public who currently use it.

- 9) The Exchange Land is not as advantageous as the Lost Open Space. In assessing equality of advantage s19(1)(a) requires direct comparison between the Exchange Land and Lost Open Space. Nonetheless in making its case the Authority's Statement consistently references the perceived advantages of open space falling outside the Exchange Land so makes incorrect comparisons.
- 10) It takes similar liberties with the statutory requirements when describing the order land being acquired. So, when describing the perceived limitations of existing open space, it often refers to land in the Authority's ownership rather than limit its comments to the Lost Open Space it is seeking to acquire.
- 11) TRT explains why it considers the Exchange Land to be less advantageous than the Lost Open Space and why it feels the Authority has neither addressed the test stipulated by s19(1)(a) nor (whichever way one makes a comparison) shown that the replacement open space is more advantageous than the existing.
- 12) TRT sets out in detail the many reasons why it considers the replacement space to be less advantageous. These include the impact of:
- (a) Placing open/events space on the embankment in conflict with highways, cyclists, vehicular turning circles, pub users and flooding.
 - (b) Vehicles using highway (bisecting open space) between 7-10 am on daily general use of the open space and ability to run events.
 - (c) General inadequacy of replacement events space (comparative to existing spaces used for events) and inability to use the events space for proposed purposes due to its location.
 - (d) Inability for public to use new open space for the same recreational use as the existing space and absence of provision of multi-functional, dynamic use in the new space.
 - (e) Insufficient and inadequately located replacement playground
 - (f) Loss of coherent contiguous open space and imposition of new 'open space' which is closer to the high street than the riverside.
 - (g) Loss of safety and security enjoyed by current open space.

- (h) Placing a pub at the centre of public gardens- immediately adjacent to a controlled drinking zone; increasing anti-social behaviour.
- (i) Wholesale destruction of all but one of the trees to build the private Wharf Lane Building; removing/reducing green aspect, habitat, biodiversity and screening from neighbouring buildings.
- (j) Wharf Lane Building on overshadowing and loss of sunlight. The Authority is placing a 20m tall, 40m wide building between afternoon sunshine/evening sunsets and the new open space whereas currently the open space is remarkably sunlit/shadow free all year round. Many hundreds of hours of sunlight will be lost and the impact of overshadowing on all year-round use of open space has been buried. No comparative overshadowing assessment has been provided. Also no overshadowing assessment was provided for the Water Lane 'open space'.
- (k) Wharf Lane Building on green views of Thames Eyot Canopy

- 13) TRT also challenges the ability of the Authority to use either sections without then granting an appropriate lease back to TRT as a *"right trust and incident"* as required under s19.

Objections to Authority's use of s19(1)(aa)

- 1) The Authority is using this statutory provision in a wholly unprecedented way. It has been forced to do so because its inability to provide sufficient exchange land under s19(1)(a) leaves it with no alternative.
- 2) So it has set itself a big challenge. The legislation (and CPO Guidance) seem to envisage s19(1)(aa) should be used to acquire open space *'to secure its preservation or improve its management'* in circumstances where an acquiring authority needs to step in where the open space is either at imminent risk of serious deterioration or of being lost altogether.
- 3) All recorded CPO/s19(1)(aa) cases since the introduction of the legislation have followed such sentiment.
- 4) However here the Authority is seeking to acquire open space that is not in any peril. Indeed it doesn't even assert that it is poorly managed. This

is unsurprising given it's already responsible for management under the 125 year lease of the Gardens granted to TRT in 2014.

- 5) Instead it is seeking to use s19(1)(a) because it argues that the Scheme provides better open space and that better open space automatically means it will be better managed. TRT disagrees with both contentions. In particular it contends that the Scheme 'designs in' conflict for the public where none currently exists (pub next to CDZ, curfew hours, tiered steps for informal drinking, residents' need for quiet enjoyment, cycle lanes, intermittent vehicular use bisecting open space, safety issues for events, floodable areas and flood zones) so that management will in fact be worsened under the Scheme.
- 6) TRT also explains why anti-social behaviour in the Gardens has been exaggerated and why (when TRT assumes responsibility for the open space under the lease in 2024) it will be an excellent manager of the current open space.
- 7) TRT also explains its concerns (in policy terms) for the floodgates that would be opened if an authority were allowed to acquire land in this way. It would create a developer's charter for the acquisition of open space for assimilation into reconfigured open space in a neighbouring development and legitimise the compulsory acquisition of privately owned open space by an authority for any new scheme requiring additional open space, regardless of the quality or diligence of the current management of such space.

