

EFFORTS TO ACQUIRE THE ORDER LAND BY AGREEMENT – TRT EXECUTIVE SUMMARY

Introduction

The Authority's Statement of Case sets out its narrative regarding the consultations and negotiations with TRT from 2018 to the present day. While some is accurate and straightforward, it frequently presents a subjective picture, on key parts of which TRT takes issue.

TRT appreciates 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 between the parties, but TRT remains under the impression that on the part of the Authority there was frequently a single-minded determination to press through its proposals, and to do so to meet external deadlines (particularly the local Council elections in May 2022).

TRT doesn't consider 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 dealing with future management arrangements. Much of the engagement both with TRT 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.

TRT holds the view that there has been no substantial negotiation on the core issue of the loss of Public Open Space resulting from construction of the Wharf Lane Building on the Trust's land.

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.

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ADDITIONAL COMMENT: In it's rebuttal (ref 2.7), the AA considers "that there have been substantial negotiations over the past 5 years with the Trust, regarding the proposed open space and design of the Scheme". But this is wrong. There was no negotiation on the fundamental design. Only on the legal and management aspects in the Heads Of Terms. Even the design group meetings had no meaningful discussion on the buildings themselves. Instead, they were limited to points of detail (e.g. surface material for playground, number of benches etc) rather than core design issues.

For the AA to say (ref 2.7) the "first inkling the Council had that the Trust were opposed in principle to the scheme was upon receipt of the Trust's objections to the CPO in November 2021" is misleading. How can they say this when a year earlier in November 2020 our letter to the AA clearly documented that the Trust had serious concerns with

the scheme (Appendix 44). Indeed, even earlier on 8th June 2020, Mr Chadwick wrote an email to the Trust indicating that his discussion with us on the scheme was "dispiriting". Was a "dispiriting" meeting with the Trust not an inkling that there was a problem here?

We also note that there was no change in direction from the Trust. We remained consistent throughout that we had concerns with the scheme. For example, when the AA first launched the CPO on us back in 29th October 2020 (LBR5 App 42 letter from the AA saying there would be a CPO launched), we responded to this letter on 5th November 2020 (see Appendix 44) giving considerable detail of our concerns, including the podium on which the Wharf Lane building sits. Furthermore, our own meeting minutes record that the Trust were raising concerns even earlier than this in a meeting with the AA on 5th June 2020, when the Trust design team met with the AA (although not minuted by the AA (only a meeting note from Mr Chadwick 3 days after the meeting, Appendix 33), our internal Trust minutes confirm that even then we were raising concerns about the Wharf Lane building). We always had legitimate concerns about the scheme and we have remained consistent in raising them with the AA.

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A non-exhaustive timeline of contacts between the Trust (and others) and the Authority since May 2018 until April 2023 is supplied.

Scene-setting

Para 9.8 states that "There has been a significant amount of engagement with TRT at each stage of the design development from the creation of the RIBA Full Design Brief to the current day". TRT accepts that there have been many contacts, but differs in its view as to the quantity and the nature/quality of those contacts. Moreover, there have been long periods when the Authority has not engaged.

In addition, this paragraph says that 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 TRT 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 TRT had a "duty" to be open to possible enhancements both to its demise and to the Riverside, as part of those Objects.

Para 9.11 reports TRT was pleased that its "principles for development" were incorporated in the Competition brief, but TRT wishes to reiterate that one of those principles was : "That adjacent buildings are not overbearing/towering over DJG and in doing so negatively impact upon the usage and enjoyment thereof".

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

Paras 9.14 to 9.18 describe the outcome of the competition and thoughts which were exchanged during that process. TRT 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. TRT 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.

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.

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ADDITIONAL COMMENT: In it’s rebuttal (ref 2.4), the AA claims that “the Environment Agency requirements were included within the Brief”. Yet as has been highlighted by the AA themselves, none of the competition schemes are compliant with these EA requirements. So they would have us believe that all 5 of these experienced architects had in their possession the relevant requirements but still got it wrong. That none of the 5 could understand the requirements. I find that very hard to believe. Can the AA show this inquiry where in the brief the following fundamental EA requirement as shared by the EA on 9th Feb 2018 is written?

- *"We are concerned that flood defences underneath new buildings and flood barriers have an inherently higher risk of failure that a passive / fixed flood defence structure and may require future works / amendments to make the development resilient to climate change. Resolution: The flood defence should be a passive, independent structure located at the front of the new buildings and not underneath buildings / car park."*

This is an extract from Page 1 of the EA's letter dated 9th Feb 2018 as shown by us in evidence on p13 of doc S-2 REB.4 TRT Rebuttal of Mr Chadwick's Proof of Evidence). The fact is that this requirement was not included in the brief. That is why none of the schemes were EA compliant. Including the Hopkins competition scheme.

The 2019 RIBA competition brief directed people to the previous planning application documents to act as a comprehensive reference offering a head start to any designers. However, this important letter from the EA was not uploaded by the AA. This letter which very clearly explains the flood wall challenge and how to resolve it was not included in the competition brief. We can still see today that it is missing. That is why none of the competition schemes were compliant. If the architects had read the letter, they never would have designed the schemes in the way they did.

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‘Negotiations’ and the CPO

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”. TRT considers that this is curtailed to the point of being misleading because several relevant points are overlooked. These important points are set out in the full version of this response.

The threat of the CPO was made explicit in November 2020. Up to that point, the only true negotiation between the Authority and TRT 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 TRT unable to finalise and consider them fully until the plan was agreed. Thus, the primary focus from the Authority up to June 2020 was 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 were consistently closed down.

Para 9.23 describes the efforts made to accommodate TRT in relation to the re-provision plan, but doesn’t reference TRT’s consistent statements that it hadn’t and couldn’t properly consider the re-provision 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 regarding 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 produced a revised Open Space plan. The Report had to be adjusted and was not available until November.

The Council’s continuous redrawing of the plan (for both Scheme and re-provision) and changes of CPO strategy made it impossible for TRT to offer a definitive view until the beginning of 2022.

With TRT’s objections to the CPO/use of s19 submitted to the Secretary of State on 18 November 2021 under the timetable dictated by the lodging of the CPO process, TRT was unable formally to consider the advice it had received and take a firm decision regarding the re-provision plan until December.

TRT wrote to the Council on 25 January 2022 giving a full explanation of its position explaining:

- 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.

This was the first opportunity that TRT had had to communicate its decision and did so in some detail, but it was met with responses that TRT had never had the intention of redeveloping the site and had now moved significantly away from its original position of being willing to negotiate with the Council.

This did nonetheless open the door to an important first meeting between the full Trust and the Council’s project team in April 2022. TRT sent a detailed response to the points made by the Council in preparation for this discussion.

The Authority agreed to respond to TRT’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 TRT agreed to wait until after that. In the event, that was deferred, along with the Authority's response.

TRT's views on the Authority's partial and selective account of discussions and engagement in 2022 and 2023 are set out in the fuller version of this response.

Conclusion

In summary TRT'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. 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.