

The London Borough of Richmond upon Thames (Twickenham Riverside) Compulsory Purchase Order 2021 and

Application for a Certificate under section 19 and Schedule 3 of the Acquisition of Land Act 1981

Public Local Inquiry

CLOSING STATEMENT

on behalf of the

ACQUIRING AUTHORITY

Preliminary

1. The London Borough of Richmond upon Thames's ("the Council") Statement of Case contains a glossary of defined terms, which have subsequently been updated in the Council's proofs of evidence.¹ The terms used in this closing statement are those contained in the updated glossaries in the Council's proofs of evidence.²
2. The relevant procedural requirements for the Inquiry have been complied with. The Council has provided a clip of the relevant documentation.³
3. The Council has produced a wayfinding document, identifying where each objection made in respect of the Order and the section 19 application is responded to.⁴ Each objector was identified in the Council's Statement of Case and the Council's response to their objection was set out. This was supplemented by the Council's Proofs of Evidence, which responded to the principal themes from the objections, and its Rebuttal Proofs, which responded individually to the objectors' Proofs of Evidence. During the course of the inquiry, the Council has produced a number of additional Rebuttal Proofs in response to points raised in additional written and oral evidence.⁵

Introduction

4. This closing statement is structured as follows:
 - a. The need for redevelopment of the Scheme Land;
 - b. The impact of non-delivery;

¹ LBR1A – 4A.

² In response to TRT, there is now an amended definition of Derelict Areas (as well as of Play Space): LBR22 (INQ03).

³ LBR21.

⁴ LBR45 (INQ39)

⁵ LBR33 (INQ25); LBR34 (INQ26); LBR35 (INQ27); LBR36 (INQ28); LBR39 (INQ33); LBR42 (INQ36).

- c. The Scheme in detail;
- d. The evolution of the Scheme in collaboration with stakeholders;
- e. Compliance with planning policy;
- f. The well-being benefits of the Scheme;
- g. The Order as proposed to be modified;
- h. Efforts to acquire by agreement;
- i. Scheme alternatives;
- j. Lack of impediments;
- k. Public sector equality duty;
- l. Human rights;
- m. Objections;
- n. Application for certificate under section 19 and Schedule 3;
- o. Support;
- p. Conclusion.

The need for redevelopment of the Scheme Land

5. The Scheme Land is unique. It is the only site available for redevelopment that directly connects Twickenham's town centre with the river.⁶ The Scheme Land is ideally located to offer residents and visitors a place to meet, relax and play in close proximity to the river.
6. However, unlike the thriving riverside areas in nearby Richmond and Kingston,⁷ the Scheme Land is underused and partially derelict. Since the closure of the open-air swimming pool in 1980, the riverside area has been the subject of many proposals for redevelopment. These proposals, which have been promoted by both the Council and private developers, have all failed for different reasons.⁸ None of these previous applications have included an area as large as the Scheme Land.⁹ During this period, the Scheme Land has been the subject of various temporary permissions as a means of securing short term use, whilst ensuring that a more comprehensive permanent solution is not prejudiced.¹⁰ As one of the supporters who have given evidence (Mr. Young) put it, over time the Twickenham riverside area has fallen behind its neighbours.¹¹
7. The result of its history is that the Scheme Land in its existing state is not worthy of its unique riverside location. The 1.34 hectare site currently includes three retail units with first floor commercial space, the Diamond Jubilee Gardens ("the Gardens"), a separate

⁶ LBR1A, para 4.1.

⁷ Mr Chadwick, XiC (Day 8). This is supported by the evidence of Mr Young, XiC.

⁸ LBR1A, para 5.4.

⁹ LBR1A, para 5.4.

¹⁰ LBR1A, para 5.2.

¹¹ Byron Young, XiC.

isolated area of open space to the south east of the Gardens, car parking and a number of derelict and disused areas.¹² Despite their location, the Gardens have a limited connection to the river. They are raised above the Embankment and separated from the river by a significant level change and a large retaining wall and railings. Lines of parked cars along the Embankment enforce the sense of separation and limit views towards the river from the Gardens.¹³ The only accessible entrance to the Gardens is in the north-west corner.¹⁴

8. The Gardens provide an area of hard landscaping for events at the eastern end, two artificial grass lawns bordered by hedges, an enclosed play area, pétanque terrain, a sandpit and planting bed with a border of mature trees.¹⁵ Due to the retention of the filled-in former open-air swimming pool on site, there is limited capacity for the Gardens to support significant areas of natural planting.¹⁶ The play area is visually disconnected from the rest of the Gardens by hedges.¹⁷ The structures from the former pool buildings remain to the east of the Gardens; these buildings have long been derelict and are currently hoarded off for reasons of public health and safety. The area has become a location for fly-tipping.¹⁸ The derelict buildings separate the Gardens from an area of the Existing Designated Open Space which is accessible only by steps from the Embankment.¹⁹ As a result of the disjointed layout, this isolated area of open space cannot be used in conjunction with the Gardens.
9. The Council accepts that the play area is, at times, well used and that a number of events are held within the Gardens that are well-attended. However, as Mr Chadwick, the Council's Director of Environment and Community Services explained on Day 8, overall the Gardens are distinctly underused having regard to their brilliant location. Mr Bannister too explained that he had observed the Gardens being "*very quiet*" during his site visits.²⁰ This is confirmed by other speakers at the Inquiry: the physical limitations of the Gardens mean that it is often "*devoid of visitors and activity*".²¹ The evidence is that the footfall in the Gardens as a whole is considerably lighter than for other open spaces in Twickenham,²² such as the pedestrianised area of Church Street.²³ This is consistent with the fact that the shortcomings of the Scheme Land are widely recognised and remarked upon by the local community.²⁴ Indeed, the Twickenham Riverside Trust ("TRT") itself accepts that the Gardens are disconnected from the town and much quieter than Church Street.²⁵ This is in part due to the fact that there is, on most days, a distinct lack of anything going on within

¹² LBR1A, para 4.1. These areas are identified on Map U at LBR22 (INQ03).

¹³ LBR1A, para 10.11.

¹⁴ LBR1A, para 4.7.

¹⁵ LBR1A, para 4.6.

¹⁶ LBR2A, para 4.4. As Mr Chadwick explained on Day 8, previous efforts to plant grass have failed.

¹⁷ LBR2A, para 4.5 and 4.6.

¹⁸ LBR1A, para 4.4.

¹⁹ The former Plot 48, shown as comprising 126 sqm on Map A (CD4.3A).

²⁰ Mr Bannister, XiC (Day 7).

²¹ Cllr Neden-Watts, XiC.

²² Cllr Chard, XiC (Day 2) explained that the footfall in the Gardens is "considerably lighter" than in other outside areas in Twickenham, XiC (Day 2); see also Mr Chadwick on Day 8, "underused relative to other areas of this type" (his own observations are consistent with those of Council officers who would expect it to be a more widely visited site given the town centre and riverside location (LBR18-2 para. 2.15))

²³ Cllr Chard, XiC (Day 2).

²⁴ Mr Bannister explained in XX (Day 4) that he had observed during his visits to the site that Church Street is considerably more well used than the Gardens, which were "*very quiet*".

²⁵ Cllr Chard, XiC (Day 2).

²⁶ Mrs Holman (Day 2; during XX of Byron Young).

the Scheme Land to draw people there.²⁶ [An illustration of that is to be found in the TRT's timelapse videos, in which the hardstanding appears almost entirely empty throughout the day.](#)

10. It is widely acknowledged that the Scheme Land has been and continues to be subject to anti-social behaviour, including criminal damage, arson and drug related issues.²⁷ This is in part attributable to their location, under-utilisation and lack of connectivity to the wider area.²⁸ The existing Gardens lack natural surveillance, which would help to reduce anti-social behaviour.
11. Whilst the inquiry has heard from interested parties that object to the Scheme, it is significant that none of those have seriously challenged the need for the riverside area to be improved or the desirability of doing so. Even Mr Cremin, the Chair of the TRT, has described the current Gardens as only a *"stage in the progression towards a genuine riverside park"*.²⁹ Other objectors to the Scheme have recognised the issues with the Scheme Land and the scope for improvements, in particular:
 - a. The desirability of removing the existing *"dereliction"* from the Scheme Land;³⁰
 - b. The scope for accessibility to be improved;³¹
 - c. The opportunity to improve the connection between the town centre and the river by *"opening up"* the Scheme Land;³²
 - d. The opportunity to interlink the Gardens with the isolated area of open space situated to the south east of the Scheme Land;³³
 - e. The opportunity to create a connection between the upper gardens and lower Embankment level, and to create a space where visitors can be closer to the river;³⁴
 - f. The overwhelming advantages of removing car parking from along the Embankment and reducing vehicular movement;³⁵ and
 - g. The opportunity to introduce real grass.³⁶
12. Mr Cremin explained in his evidence that the inquiry has *"heard the Council talk a lot about dereliction, crumbling buildings, antisocial behaviour, car parking etc. How negative all these things are, how much they are impacting on the public. How important it is to get*

²⁶ Cllr Neden-Watts, XiC (Day 2).

²⁷ LBR1A, para 10.32. For example at W1.1.02 pages 25 to 26. LBR19-2, para 2.16. This was confirmed by Mr Chadwick (Day 8), who explained that instances of anti-social behaviour in the Gardens are regular and that addressing these issues was often on the Council's priority task list.

²⁸ LBR1A, para 4.6; LBR2A, para 4.11.

²⁹ Mr Cremin, XiC (Day 6).

³⁰ Howard Vic, XiC: *"everyone's aim is to get rid of the dereliction and make the riverside area a nice friendly area"*. Mr Cremin, XiC (Day 6).

³¹ Mrs Holman, XX (Day 4); the current Gardens have only one accessible entrance.

³² Mrs Holman expressed the view that she *"shared the aspirations"* of the supporters of the Scheme during XX of Cllr Neden-Watts, and *"did not disagree"* with Cllr Neden-Watts view that one of the great merits of the Scheme was *"opening up"* the Scheme Land (Day 2).

³³ Mrs Holman, XX (Day 4).

³⁴ Mrs Holman, XX (Day 4).

³⁵ Mrs Holman, XX (Day 4).

³⁶ Mrs Holman, XX (Day 4).

something done. And we agree."³⁷ Mr Cremin recognised that there was a "*wonderful opportunity to achieve this ambition*".³⁸ This echoes the views of supporters, for whom the redevelopment of the Scheme Land offers a "*once in a life-time opportunity for real and indelible change*".³⁹

13. The real point of dispute between the Council and objectors to the Scheme is whether this Scheme offers an appropriate means of achieving these ambitions. Whereas the TRT amongst other objectors consider that the Scheme prioritises built development over the quality of public open space, supporters of the Scheme have explained how it offers the perfect opportunity to move Twickenham on.⁴⁰ As explained by Cllr Neden-Watts, the predominant view of local residents is support for the Scheme and eagerness to see the Scheme delivered.⁴¹ The Council share this predominant desire of local people to see the Scheme delivered, in order to address the longstanding issues with the Scheme Land and create a "*heart for the community*"⁴² for the benefit of local people.

The impact of non-delivery of the Scheme

14. The need for the redevelopment and improvement of the Scheme Land is clear. The long history of the failed attempts to redevelop the Scheme Land since the closure of the public lido underlines the need for comprehensive redevelopment of the Scheme Land to be delivered now. The opportunity offered by the Scheme has been "*long awaited*" by residents of Twickenham.⁴³ It has taken a considerable number of years for a deliverable Scheme to emerge that has the backing of both the public⁴⁴ and the Council. The evolution of the Scheme itself has been ongoing since 2018; it now has full planning permission that was granted unanimously by the Committee,⁴⁵ funding is secured and it has the full support of the Council.⁴⁶
15. If the Order were not confirmed, the Scheme could not be delivered. Without the Scheme, the future redevelopment of the Scheme Land would be a matter of great uncertainty. It is highly likely that the redevelopment of the Scheme Land would be subject to a delay of many years.⁴⁷ Any future scheme would have to go through the same rigorous process of consultation and design evolution, as well securing planning permission and funding. These steps take a considerable amount of time to complete. Restarting that process would delay the delivery of the significant well-being benefits that redevelopment of the Scheme Land would bring. There is, of course, no guarantee that any future proposals would secure the

³⁷ INQ23-4, page 16.

³⁸ Mr Cremin, XiC (Day 6).

³⁹ Byron Young, XiC (Day 4). Anthony Mayer, XiC (Day 4) explained that it was "*last chance saloon*" for the redevelopment of the riverside, and that this provided the opportunity to redevelop this "*iconic site*". Sheila Hale, XiC (Day 4) described the Scheme as a "*great opportunity*" for Twickenham.

⁴⁰ Byron Young, XiC (Day 4) described how the Scheme offered the opportunity to transform a "*pokey backstreet park*" into a beautiful and vibrant town centre space.

⁴¹ Cllr Neden-Watts and Cllr Chard, XiC (Day 2). This demonstrates that there is a broad support from constituents.

⁴² Ellen Purton, XiC (Day 3).

⁴³ Cllr Neden-Watts, XiC (Day 2). Sheila Hale (SUP-04) explains how this Scheme differs from the six previous attempts to redevelop the riverside.

⁴⁴ LBR1A, para 7.7 and CD3.13.

⁴⁵ LBR1A, para 13.2.

⁴⁶ As explained by Cllr Neden-Watts, XiC (Day 2).

⁴⁷ Cllr Neden-Watts, XX (Day 2).

necessary level of political and public support to be pursued. In the meantime, the Scheme Land would remain partially derelict and under-used.

The Scheme in detail

16. The Order has been made by the Council so as to secure the implementation of the Scheme, which was granted planning permission on 21 December 2022.⁴⁸ The Order will facilitate the development, redevelopment and improvement of the Scheme Land so as to deliver significant social, economic and environmental improvements for the Borough.
17. By way of overview, the Scheme will deliver replacement open space, including a children's play area, sensory play elements, pétanque terrain, terraced lawns, seating, areas of soft landscaping and a town square/events space, including open space wrapping around and along Water Lane; a pedestrianised riverfront; 45 residential homes, including 21 affordable homes (50% by habitable room⁴⁹); an active ground floor frontage with commercial, retail and food and beverage units; a river activity zone including boat storage, changing space and pontoon; a designated servicing and loading area for Eel Pie Island; floating ecology for wildlife in the river; and ground floor public toilets.⁵⁰
18. Central to the Scheme is the delivery of enhanced open space, reflecting the importance of open space to the local community.⁵¹ The Scheme would remedy the lack of cohesion that the current Scheme Land suffers from by opening up the area, removing much of the large retaining wall and internal barriers, and softening the gradient across the Scheme Land. The Scheme would deliver three accessible entrances to the upper part of the open space, significantly improving the accessibility over that of the Gardens. It is accepted by the TRT that the integration of the currently isolated area of open space to the south east of the Scheme, the link between the upper Gardens and lower open space, and the improvement in accessibility, are all benefits of the Scheme.⁵²
19. The main activity areas, the play space, the pétanque space, the Events Space and grass lawn terraces would be located in the central part of the Future Designated Open Space.⁵³ That has been designed with an emphasis on visual connection to the river, avoiding hedges, fences and other barriers as far as possible.⁵⁴ The Future Designated Open Space would be fully integrated with the Future Functioning Open Space allowing different areas to be used in conjunction with one another. Unlike the disconnected pockets within the current Scheme Land, the areas of open space created by the Scheme are inherently flexible.⁵⁵
20. The Scheme would result in an overall increase in functioning open space from 4,445 sqm to 6,005 sqm (approximately 30%).⁵⁶ The increase in usable space is even more significant; 4,955 sqm compared to 3,205 sqm in the existing, which is an increase of 54%.⁵⁷ This includes an increase in Events Space from 507 sqm to 931 sqm, an increase in play space

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⁴⁸ CD3.40.

⁴⁹ This is compliant with policy H4 of the London Plan and policy LP36 of the Local Plan: LBR4A, para 6.21.

⁵⁰ LBR1A, para 6.1; LBR2A para. 2.8.

⁵¹ LBR2A, para 10.11.

⁵² Mrs Holman, XiC, Day 4.

⁵³ LBR2A, para 11.9.

⁵⁴ LBR2A, para 11.9.

⁵⁵ Mr Bannister, XiC (Day 4). This is identified as an important attribute by others too, for example Mr Lombard, XiC (Day 4).

⁵⁶ LBR2A, Table 2.

⁵⁷ LBR2A, para 10.48. If circulation space is included, the increase is 58%.

(including associated circulation and seating) from 419 sqm to 432 sqm and a larger petanque area of 287 sqm (compared to the existing 126 sqm). The 388 sqm of artificial grass in the Existing Functioning Open Space would be replaced by 571 sqm of real grass lawns, which the TRT accepts is a benefit of the Scheme.⁵⁸ The circulation space within the Scheme would be larger.⁵⁹ There would be a slight decrease in the planted areas in the Future Functioning Open Space,⁶⁰ but the quality of soft landscaping will be improved; if the figures for the planted areas are added to the grass areas then the areas balance, albeit the existing grass is only artificial.⁶¹ Much of the existing planted areas on the Scheme Land are inaccessible and comprise self-seeded trees that are in poor health⁶² due to the concrete and rubble remnants of the former buildings on the site.⁶³ The Scheme will also deliver more open space within flood zone 1 and 2 than in the existing.⁶⁴

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21. The creation of the area of Future Functioning Open Space on the Embankment is facilitated by the removal of the lines of parked cars and the restriction of the existing highway to between 7 am and 10 am.⁶⁵ The TRT does not dispute that the removal of parked cars and thus reduction in vehicular traffic on the Embankment is a significant benefit of the Scheme,⁶⁶ although Mrs Holman reserved the TRT's position in respect of the removal of through traffic outside the hours of 7 am to 10 am more generally.⁶⁷ Indeed, this aspect of the Scheme would remove the visual and psychological barrier that the cars currently provide between the Scheme Land and the river and allowing the integration of the open space with the town centre.⁶⁸ The Scheme has been designed so as to avoid the need for reversing of vehicles at the end of the service road.⁶⁹ The amendments to the highways layout (including improved sightlines) and parking arrangements will result in a significant decrease in the volume of traffic, thereby reducing the potential for conflict between vehicles and delivering a betterment in highway safety terms.⁷⁰ As explained by Mr O'Donnell, the Council will use an experimental traffic management order ("ETMO") in order to introduce the new parking and servicing arrangements within the Scheme Land. This will allow the impact of the Scheme on the highway network to be further assessed once it is in place. The Council has demonstrated how this could be carried out, but there remains flexibility through the TMO modifications process.⁷¹

22. The new space on the Embankment would provide a flexible space for relaxation, formal and informal recreation⁷² and events.⁷³ The proposed Events Space, which is 931 sqm, would be significantly larger than in the existing Gardens, which is 507 sqm.⁷⁴

⁵⁸ Mrs Holman, XX (Day 4).

⁵⁹ 2536 sqm in the proposed, compared to 1680 in the existing (LBR2A, Table 2).

⁶⁰ LBR2A, Table 2, 1240 sqm in the existing compared to 1050 sqm in the proposed.

⁶¹ LBR2A, para 10.45.

⁶² CD4.9A, page 9, Table 3.

⁶³ Mr Lombard, XiC (Day 4).

⁶⁴ CD4.3G and H.

⁶⁵ LBR1A, para 13.9.

⁶⁶ S2.W1.01, page 6.

⁶⁷ Mrs Holman XX (Day 4). Mrs Holman explained that the TRT retained concerns about the deliverability of, and possible consequences of the removal of traffic between 10am and 7am.

⁶⁸ This is accepted by the TRT as a benefit: Mrs Holman (Day 2).

⁶⁹ Mr O'Donnell, XiC (Day 4). Mr Bannister, XiC (Day 4).

⁷⁰ Mr O'Donnell, XiC (Day 4). LBR3A, para 6.3.1.

⁷¹ Mr O'Donnell, XiC (Day 5).

⁷² As emphasised by Mr Lombard, XiC (Day 4).

⁷³ LBR1A, para 9.14. Deon Lombard, XiC (Day 4) explained that the "*beauty of the space*" was the flexibility to host events.

⁷⁴ LBR2A, Table 2.

Furthermore, the integration of the Events Space with the rest of the Future Functioning Open Space means that different areas can be used in conjunction, unlike the Existing Functioning Open Space.⁷⁵ The Events Space would benefit from tiered seating, providing an opportunity for people to sit and watch events against the backdrop of the river.⁷⁶ The dimensions and proportions of the Events Space have been scaled to accommodate a wide variety of temporary events including concerts and markets. External lighting, power and water would be provided around the perimeter of the space.⁷⁷ The location of the Events Space would draw people into the Scheme Land and encourage footfall in the area. The flexibility of the Future Functioning Open Space means that events could also be held at the upper levels.⁷⁸

23. Although the lower areas of the Future Functioning Open Space would be exposed to flooding that is currently experienced by the entirety of the existing Functioning Open Space on the Embankment, there would be an increase in the amount of open space within Flood Zone 1, from 2652 sqm to 3107 sqm (as well as [an increase](#) in Flood Zone 2).⁷⁹ Flooding rarely occurs during the summer, when most events are likely to be held on the Events Space.⁸⁰ Maps G and H⁸¹ compare in relation to the Existing Functioning Open Space and the Future Functioning Open Space. As explained by Mr Bannister, the flexibility of the Future Functioning Open Space as a whole means that events can be held in various different areas, meaning that any disruption from flooding can be minimised.⁸² The benefits of the new Events Space, situated close to the river, far outweigh the minor risk of flooding.⁸³

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24. The central areas of open space within the Scheme, including the Events Space, would meet the BRE overshadowing guidelines.⁸⁴ This is supported by the shadow studies produced by Mr Bannister, which demonstrate that the new open space will experience a mix of sunlight and shade across the day,⁸⁵ just as the existing open space does currently. Those shadow studies, unlike the TRT's,⁸⁶ provide a comparison between the Scheme Land at present and the Scheme Land with the Scheme in place. Mr Bannister applied a health warning to them as *"it is difficult to be precise with a natural living organism that changes with the seasons"*⁸⁷ and the studies have modelled the trees in full leaf throughout the year. As Mr Bannister explained, that modelled approach has thus produced a conservative estimate of the level of sunlight across the new open space, but it is consistent in both the present condition and with the new open space. In any event, as also explained by Mr Bannister, the provision of a mix of shaded and sunlit areas within the Future Functioning Open Space is advantageous, providing an environment that is suitable [for](#) all. The fact that the seated

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⁷⁵ LBR2A, para 10.24 and 10.44. This was echoed by Deon Lombard, XiC (Day 4).

⁷⁶ LBR2A, para 8.23. Mr Chadwick explained in XX how the location of the Events Space against the backdrop of the river created a *"fantastic opportunity"* to hold events at this *"brilliant site"* (Day 8).

⁷⁷ LBR2A, para 8.23.

⁷⁸ LBR2A, para 10.7.

⁷⁹ CD4.03G and 4.03H.

⁸⁰ LBR2A, para 10.13.

⁸¹ CD4.3G and 4.3H.

⁸² Mr Bannister, XX (Day 7).

⁸³ Mr Chadwick, XiC, Day 8.

⁸⁴ CD3.37, page 85, para 8.131.

⁸⁵ LBR16(2A).

⁸⁶ W.1.1.2, pages 48 – 54.

⁸⁷ LBR16(2), para 3.32.

area of the Events Space will experience shadows during the summer in the later afternoon, for example, is something to be welcomed.⁸⁸

25. More play space, however defined, than existing would be provided. If circulation and associated seating is taken into account, rather than just areas with play equipment where the current provision is much smaller, the difference is between 419 sqm and 432 sqm.⁸⁹ The new play space would enjoy good levels of sunlight, as evident from the comparison in LBR16-2A; this is the case in Spring, Summer and Autumn and on Winter mornings. This is quite apart from the BRE guidance where the play space would well exceed the BRE's recommendations.⁹⁰ It is not presently proposed to wholly enclose the new play space but as Mr Bannister explained on Day 7, that is a matter of detail that can be addressed later, if required. As with the present arrangements, the new play space is focussed on the under 12s and an off site contribution for formal facilities for 12+ children is also provided, envisaged to be at the nearby Radnor Gardens.⁹¹ In respect of para 21 of the TRT's Closing Submissions, which refers to the current use of the Gardens by teenagers, there are no formal facilities for teenagers at present. In future, teenagers will be just as well if not better catered, not only due to the ability to kick balls around on the Events Space and lawns, but also when just relaxing. The petanque pitches would be reprovided and enlarged and would also enjoy good levels of sunlight.⁹²
26. The café would be re-provided at the ground floor of the Wharf Lane building. Relocating the café to the east of the Scheme Land allows for better use to be made of the open space and provides for a better connection with the river. The café would benefit from outdoor seating and views towards the river and over the open space,⁹³ thereby enhancing natural surveillance.⁹⁴
27. The delivery of housing is key to regenerating this part of the town centre. Both the Water Lane and Wharf Lane buildings provide residential units at the upper levels. As accepted by the TRT, the delivery of residential development as a means of contributing to the regeneration of the town centre is recognised as a key issue in the Twickenham Area Action Plan 2013 ("the TAAP").⁹⁵ Local Plan policy LP34 identifies a housing target for the Borough of 315 new homes per annum and indicates that Twickenham can accommodate approximately 1000 – 1050 homes over the 10 year plan period.⁹⁶ The London Plan, which was adopted in March 2021, identifies an increased annual housing target for Richmond of 411 new homes per annum, which is reflected in the emerging Local Plan.⁹⁷ The Twickenham Riverside area is identified in the Local Plan⁹⁸ and the TAAP as an 'opportunity area', where residential units could be delivered in order to contribute towards Twickenham's housing needs.⁹⁹

⁸⁸ Mr Bannister, XiC (Day 8).

⁸⁹ LBR2A Table 2

⁹⁰ LBR2A para. 10.18

⁹¹ CD3.37, para. 8.33

⁹² LBR16-1, para. 2.15; LBR16-2A; they increase from 126sqm to 287 sqm (LBR2A Table 2)

⁹³ LBR2A, para 8.6.

⁹⁴ LBR1A, para 6.5.

⁹⁵ LBR1A, para 9.7; CD2.05. Mr Brownrigg, XX (Day 5).

⁹⁶ LBR4A, para 6.18.

⁹⁷ LBR4A, para 6.17.

⁹⁸ CD2.04.

⁹⁹ LBR1A, para 9.7; LBR4A, para. 6.14.

28. The Council currently has a five-year housing land supply of 2,308 dwellings against the current remaining London Plan target of 2,192 homes, assuming the delivery of 45 dwellings on the Scheme Land.¹⁰⁰ However, the Council faces significant challenges in delivering housing in the Borough, with more than two thirds of the Borough being protected by heritage or open space designations.¹⁰¹ Furthermore, as noted in the Local Plan, the Borough has one of the highest average housing prices in the UK and there is a continuing need for affordable housing.¹⁰² In the period between 2014 and 2033, the Borough has a net deficit of 964 affordable homes per annum.¹⁰³ It is therefore of particular importance that the contribution of the Scheme Land towards meeting the housing need is optimised.

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29. In addition to housing, the Scheme would deliver retail and office space. Five flexible retail units and a kiosk would be situated at ground floor level within the Water Lane building, which would be experienced as a continuation of the smaller retailers found on pedestrianised Church Street on the edge of the Scheme Land.¹⁰⁴ The net provision of new retail uses along Water Lane in a main town centre location would meet the objectives of Local Plan policy LP25, which seeks to protect the viability of the Borough's town centres.¹⁰⁵ The provision of retail units will help to draw people into the Scheme Land and provide a further reason for them to dwell there.¹⁰⁶ The Wharf Lane building would provide flexible office space at ground floor level. That proposed office provision, which would result in a net uplift on the Scheme Land, meets the objectives of policy LP41 which seeks to retain existing office floorspace and also promote new floorspace.¹⁰⁷ As well as being policy compliant, these uses would bring vitality to the area and would help to activate the public realm at ground level. The inclusion of flexible office space within the Scheme provides activity during the day, supporting events such as lunchtime markets within the open space.¹⁰⁸

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30. The Wharf Lane building is critical to the Scheme and the delivery of economic and social benefits. In addition to the delivery of housing, the Wharf Lane building, alongside the Water Lane Building, would provide architectural bookends to the proposed open space, activating the space through commercial ground floor uses¹⁰⁹ and enhancing the natural surveillance of the open space.¹¹⁰ The proposed gastro pub/restaurant at the southern end of the ground floor of the Wharf Lane building would act as a destination for visitors and a focal point for activity.¹¹¹ Those who have spoken in support of the Scheme demonstrate that the riverside gastro-pub/restaurant would be a place that local people would want to go to.¹¹² The toilets within this building (as well as those within the café) would be open for the public, as part of the community toilet scheme, thereby enhancing the inclusivity of the

¹⁰⁰ LBR27 (INQ13).

¹⁰¹ LBR1A, para 9.33.1.

¹⁰² Local Plan, supporting text to policy LP36 at para 9.3.1 (CD2.04).

¹⁰³ LBR27 (INQ13). Local Plan, supporting text to policy LP36 at para 9.3.1 (CD2.04). Ms Purton explained in XiC about the importance of delivering affordable housing to address the 'acute need' for such homes (Day 2).

¹⁰⁴ LBR1A, para 6.5.

¹⁰⁵ LBR4A, para 6.24.

¹⁰⁶ Cllr Chard, XiC (Day 2).

¹⁰⁷ LBR4A, para 6.24.

¹⁰⁸ Cllr Chard, XiC (Day 2).

¹⁰⁹ LBR2A, para 11.6.

¹¹⁰ LBR2A, para 6.5.

¹¹¹ LBR2A, para 8.30.

¹¹² Ms Purton, XiC (Day 2).

space.¹¹³ The terrace providing outside seating would form part of the Future Functioning Open Space.¹¹⁴ The northern end of the Wharf Lane building would deliver managed office space with residential apartments at the upper levels.¹¹⁵ The boathouse situated under the gastro-pub/restaurant and the new pontoon would enhance opportunities for visitors and local people.¹¹⁶ The uses within the Wharf Lane building are the highest income generating uses within the Scheme.¹¹⁷ As explained by Mr Chadwick, any income from the sale of the units of private housing would be invested in the delivery of the Scheme, albeit that it does not cover the whole cost of delivering the Scheme.¹¹⁸ The removal of these uses, and their replacement with lower value uses, would increase the cost of the Scheme to the Council.¹¹⁹

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31. As explained by Mr Bannister, the design of the buildings within the Scheme have been informed by the local context. The design seeks to balance the influence of the river to the south and the influence of King Street to the north.¹²⁰ The Wharf Lane building, which relates more strongly to the river, has been inspired by other wharf buildings along the Thames, taking inspiration from the linear roof form of nearby boathouses.¹²¹ The Water Lane building, which has a greater presence on King Street, relates architecturally to the adjacent buildings by adopting the characteristic red brick.¹²² The architectural form of the Scheme means that it would strengthen the local townscape¹²³ and would preserve and in some instances enhance the setting of nearby designated heritage assets.¹²⁴ As the Planning Committee found when determining the application, the Scheme would positively contribute towards the character of the Twickenham Riverside Conservation Area.¹²⁵

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32. The Scheme strikes a balance between the delivery of high-quality, enlarged replacement open space and other uses which are essential to enhancing the vitality of the open space and the wider area. This balance is critical to making the riverside an exciting destination, so as to attract people of all ages.

The evolution of the Scheme in collaboration with stakeholders

33. The Scheme is the result of a long process of evolution and collaboration with stakeholders.¹²⁶ The Council has engaged in consultation relating to the regeneration of the riverside since as early as 2010, the output of which has consistently demonstrated the local desire for the riverfront to be improved.¹²⁷ A Stakeholder Reference Group ("SRG") was established prior to inception of the Scheme in 2018, on which the TRT and others were represented. The SRG was established to ensure that local stakeholder groups with an interest in the riverside were fully involved in the process and with a view to securing agreement in principle from stakeholders at the earliest point.¹²⁸ The SRG met on eleven

¹¹³ LBR2A, para 8.30. This is secured by condition NS111 (CD4.30).

¹¹⁴ LBR2A, para 8.30.

¹¹⁵ LBR2A, para 8.31.

¹¹⁶ LBR2A, para 9.7.

¹¹⁷ LBR38 (INQ32), para 1.5.

¹¹⁸ LBR1A, para 14.45.

¹¹⁹ LBR38 (INQ32), para 1.5.

¹²⁰ Mr Bannister, XiC (Day 4).

¹²¹ Mr Bannister, XiC (Day 4). See CD3.03, page 155, referred to by Mr Bannister in XiC.

¹²² Mr Bannister, XiC (Day 4).

¹²³ LBR4A, para 6.46. Ms Purton described the Wharf Lane building as "*beautifully designed*" in XiC (Day 2).

¹²⁴ LBR4A, para 6.50.

¹²⁵ CD3.37, page 65, para 8.45.

¹²⁶ LBR1A, section 7.

¹²⁷ LBR1A, para 7.2.

¹²⁸ LBR1A, para 11.10 to 11.

occasions between December 2018 and December 2020. The SRG included representatives from the TRT and Eel Pie Island Association, amongst other stakeholder groups.¹²⁹ The SRG had an integral role in shaping the brief and design development as well as helping the Council to ensure that as wide a population as possible was engaged with the design.¹³⁰ In particular, the groups represented at the SRG provided ‘principles for development’ in December 2018, which helped to shape the RIBA Full Design Brief. The principles provided by the TRT through this process were directly incorporated into the Design Brief.¹³¹ These principles included *inter alia* the requirement that the open space be “*maintained/extended*”, that it be of sufficient proportions to “*support community events and be enjoyed by a wide range of groups and communities*”, improve access to the Gardens and enhance the public’s view of the river.¹³² The SRG also elected a representative to sit on the Design Panel, which approved the Design Brief and selected the Hopkins concept design and design team through the competition process.¹³³

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34. The Council chose to select the design team for the Scheme through a RIBA design competition, which was held between March 2019 and November 2019; a process described as an “*excellent idea*” by Cllr Samuel.¹³⁴ On 6 February 2019, the TRT wrote to the Council to express its “*wholehearted*” support for the design process.¹³⁵ As confirmed by Mr Cremin, the principle of the design competition remains something which the TRT supports.¹³⁶ The process was overseen by a Design Panel, on which the SRG was represented, which evaluated the submissions and approved the final RIBA Full Design Brief.¹³⁷ The Design Panel selected five shortlisted teams from 54 expressions of interest, following which the full design brief was published in June 2019.

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35. Two separate four-week periods of public consultation were held. The first of these, held between September and October 2019, sought views on the five shortlisted concept designs.¹³⁸

36. In September 2019, the TRT wrote to the Council in support of the Hopkins concept scheme, indicating that “*the Trustees are unanimous in their decision that scheme number 1 [the Hopkins scheme] should be the preferred scheme among those that have been shortlisted*”.¹³⁹ The TRT expressed “*delight*” that its preferred bidder had emerged as the preferred bidder.¹⁴⁰ In November 2019, the Design Panel selected the Hopkins team and concept design from those shortlisted. It is notable that an integral part of the concept design supported by the TRT was the inclusion of a Wharf Lane building, which was not considered as objectionable by the Trust at that stage and indeed contributed to the TRT’s enthusiasm about the Hopkins scheme.¹⁴¹ At that stage, the building on Wharf Lane had a significantly larger footprint than is now proposed; the footprint of built form on the Scheme

¹²⁹ LBR1A, para 5.11.

¹³⁰ LBR1A, para 5.11.

¹³¹ LBR1A, 11.12.

¹³² LBR5, Apx 3.

¹³³ LBR1A, para 11.15.

¹³⁴ Cllr Samuel, XiC (Day 2).

¹³⁵ LBR5, Apx 6: July 2018

¹³⁶ Mr Cremin, XX (Day 6).

¹³⁷ LBR1A, para. 5.11. The objectives of the Design Brief are summarised at LBR2A, para 5.4.

¹³⁸ LBR1A, para 7.4.

¹³⁹ LBR1A, para 5.13; LBR5, Apx 15.

¹⁴⁰ LBR5, Apx 15.

¹⁴¹ Mr Cremin, XX (Day 6).

Land was reduced by some 33% subsequently to accommodate the Environment Agency's ("EA") flood risk requirements, with a commensurate increase in open space.¹⁴²

37. Following the selection of the Hopkins team and concept design, the Design Team met with members of the TRT on at least ten occasions between June 2020 and May 2021.¹⁴³ Four of those meetings were with a specifically appointed selection of trustees who formed a Trust Design Subgroup.¹⁴⁴ The success of this Subgroup is demonstrated by the feedback from Ms Kamleh (one of the trustees appointed to the sub-group), to the Council at the time of her resignation.¹⁴⁵ The SRG continued to hold meetings, with a total of eleven meetings held between December 2018 and December 2020.¹⁴⁶ The Council also held a number of direct meetings with the TRT. On 16 April 2020, the TRT provided a 'minimum specification' for the replacement open space,¹⁴⁷ which was subsequently updated in June 2020.¹⁴⁸ It is accepted by the TRT that the detailed requirements provided by the TRT in 2020 are all met by the Scheme.¹⁴⁹

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38. In late June 2020, the EA provided its consultation response in respect of the concept scheme.¹⁵⁰ As explained by Mr Bannister, a considerable process of design development took place in order to accommodate the EA's flood storage requirements. The Design Team worked with the EA in order to accommodate a buffer zone between the flood defence wall and the built form, whilst engagement with stakeholders continued. The minimum 4m exclusion zone¹⁵¹ meant that the size of both the Wharf Lane and Water Lane buildings had to be reduced. The 'winter garden' that was designed into the Wharf Lane building as part of the concept design was removed in order to redress the loss of developable area on the Scheme Land, whilst maintaining the quantity and quality of open space.¹⁵² The pavilion building which was proposed within the concept design was incorporated into the Water Lane building; this had the benefit of increasing the quantum of residential accommodation at the upper floors of the Water Lane building.¹⁵³ The removal of the pavilion building was something that the TRT had itself suggested to the Council in January 2020.¹⁵⁴

39. The Design Team met with the TRT on 28 September 2020 and the SRG on 30 September 2020 to take them through the refined proposals following meetings with the EA.¹⁵⁵ Following further discussions with the EA, it was agreed that boathouses could be provided on the Embankment, with outdoor seating on a terrace above.¹⁵⁶ Amendments were also made to the servicing arrangements for Eel Pie Island in order to accommodate flood storage requirements. Although the revised proposals differ from those indicated in TAAP, they

¹⁴² LBR1A, para 6.13; LBR2B(6).

¹⁴³ LBR1A, para 11.30.

¹⁴⁴ LBR1A, para 11.30. LBR5, item 60 (9 December 2020), item 63 (16 December 2020), item 78 (5 March 2021), item 90 (7 May 2021).

¹⁴⁵ LBR5, Apx 75: the founding members of the TRT were "*engaged positively*" with the Council over "*many months*" through the design process, which has led to a Scheme that fulfils the objectives and offers "*more opportunities for all residents and visitors to enjoy the riverside*".

¹⁴⁶ Mr Cremin described the number of meetings with the SRG as a "*good quantity*", XX (Day 6).

¹⁴⁷ LBR5, Apx 27.

¹⁴⁸ LBR5, Apx 30.

¹⁴⁹ Mr Cremin, XX (Day 6).

¹⁵⁰ LBR2A, para 7.4.

¹⁵¹ LBR2B(5).

¹⁵² LBR2A, para 7.14.

¹⁵³ LBR2A, para 7.19.

¹⁵⁴ LBR5, Apx 34.

¹⁵⁵ LBR2A, para 7.20.

¹⁵⁶ LBR2A, para 7.25.

have the benefit of avoiding the need for service traffic to cross over the pedestrian approach to the Scheme on both Wharf Lane and Water Lane throughout the day, thereby significantly decreasing the risk of conflicts.¹⁵⁷

40. A second period of public consultation took place in January to February 2021, which focussed on the Hopkins design as refined to take account of the EA's specific requirements. Whilst Mr Cremin has criticised the questions used for the purposes of the consultation, it is apparent from the questionnaire used that support for the Scheme was not limited to the removal of parking, but included support for the proposed open space and greenery, views of the river and the opening up of the town centre to the river. The questions were reasonable.¹⁵⁸ 73% of respondents agreed that the proposed development achieved the ambition of delivering high-quality open space and pedestrianised priority on the river frontage.¹⁵⁹ As accepted by the TRT, the Council made changes to the Scheme in order to respond to the outcome of the public consultation,¹⁶⁰ which included changes to servicing arrangements for Eel Pie Island,¹⁶¹ moving the flood defence wall further back from the river¹⁶² and improving the aspects of the Scheme that enhance riverside activity.¹⁶³

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41. The TRT provided a revised schedule providing detailed requirements for the open space on 29 March 2021.¹⁶⁴ The Design Team made amendments to the Scheme to ensure that as many of the requirements as possible were met prior to the submission of the application for planning permission in August 2021.¹⁶⁵ The Council was able to meet the vast majority of requests made by the TRT. The only items requested that the Council could not commit to were the provision of 5G facilities and splash pads.¹⁶⁶ With regards to the former, there was insufficient clarity as to what was required. The Council did not consider that splash pads were appropriate for the open space in light of the infrastructure and maintenance requirements that they would entail.¹⁶⁷

42. It is reasonable to conclude that the Scheme has been thoroughly consulted upon over a considerable period of time, offering residents and stakeholders meaningful opportunities to influence the design.¹⁶⁸

Compliance with planning policy

43. The Scheme is in compliance with the adopted local plan, namely, the Local Plan, the London Plan and the TAAP,¹⁶⁹ and national planning policy.¹⁷⁰ This was the conclusion

¹⁵⁷ LBR2A, para 7.32.

¹⁵⁸ LBR1A, para. 7.7. LBR19-1 paras. 2.2 to 2.7

¹⁵⁹ LBR2A, para 7.33 and CD3.13.

¹⁶⁰ Mr Cremin, XX (Day 6).

¹⁶¹ CD3.13, para 4.3.

¹⁶² CD3.13, para 4.11.

¹⁶³ LBR2A, para 7.36. CD3.13, para 4.19.

¹⁶⁴ LBR5, Apx 57.

¹⁶⁵ LBR1A, para 11.33.

¹⁶⁶ LBR1A, para 11.33.2. This is agreed: Mr Cremin, XX (Day 6).

¹⁶⁷ LBR1A, para 11.33.2.

¹⁶⁸ LBR1A, para 7.15.

¹⁶⁹ LBR4A, para 6.99. The Committee report (CD3.37) refers at one point to the TAAP as an SPD instead of as a DPD. Given that the Committee found that the Scheme was in compliance with the TAAP, the only consequence of treating the TAAP as a DPD instead of an SPD is that it would benefit from additional weight in favour of granting planning permission by virtue of section 38(6) of the Planning and Compulsory Purchase Act 2004, above that which the Committee attached to it.

¹⁷⁰ LBR4A, para 6.112.

reached by the planning committee which granted planning permission for the Scheme in December 2022.¹⁷¹

44. It is a matter of common ground with the TRT that it is not the ~~task of a CPO inquiry to revisit the detailed planning merits of the underlying scheme absent some relevant change in circumstances.~~¹⁷³ Whether or not a proposal accords with the development plan requires consideration of the proposal against the development plan as a whole. The TRT accepts that the Scheme achieves certain of the ambitions of the TAAP insofar as it delivers the land uses envisaged for the site including retail, residential and office uses, and will attract more visitors to the site.¹⁷⁴

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Deleted: the planning merits of the Scheme and that there has been no material change in planning policy since the grant of permission.¹⁷² It is established that it is not the task of a CPO inquiry to revisit

45. Notwithstanding this, the TRT's position remains that the Scheme is not in overall compliance with the TAAP, and that the issue of compliance with the TAAP was not addressed in the Committee report.¹⁷⁵ The TRT's case rests on the argument that Map 7.12 of the TAAP prescribes which areas of the site can be built on and that the TAAP does not permit built development on the existing Gardens. This is notwithstanding that Mr Brownrigg accepts that there is nothing in the TAAP to indicate that the ~~maps in the TAAP~~ are prescriptive in this manner, and that the land use plan (Map 7.14) allows for "shuffling" of land uses within the site.¹⁷⁶ Indeed, as accepted by Mr Brownrigg, the operation of para 99 of the NPPF (as incorporated in policy 31 of the Local Plan¹⁷⁷) means that a development that delivers replacement open space is in compliance with planning policy.¹⁷⁸

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46. ~~Notwithstanding that,~~ as Mr Brownrigg accepts, the issue of whether the Scheme complied with the TAAP was an issue before the Committee.¹⁷⁹ The Committee report described the TAAP, summarised its contents and referred to the indicative land uses ~~map~~.¹⁸⁰ The TRT made extensive submissions within the planning process as to the compliance of the TAAP, which were taken into account in the Committee report.¹⁸¹ The report concluded that the Scheme was compliant with the design policies in the TAAP;¹⁸² it would positively contribute towards the character of the Conservation Area;¹⁸³ and that it delivered on the many aspirations of the TAAP, including, the delivery of policy compliant uses on the Scheme Land;¹⁸⁴ the delivery of "enhanced public realm above policy requirements" and a significant change to traffic movements to improve the environment along the Embankment.¹⁸⁵ The delivery of enhanced open space was considered to be "a significant benefit of the scheme".¹⁸⁶

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¹⁷¹ CD3.37.

¹⁷³ *Alliance Spring v First Secretary of State* [2005] EWHC 18 (Admin) at [16]. [The reference in that case to section 226\(2\)\(c\) included an express requirement to have regard to material planning considerations. That provision no longer is in force but the Guidance still requires regard to be had to 'fit' with the development plan.](#)

¹⁷⁴ Mr Brownrigg, XX (Day 5).

¹⁷⁵ W.3.1, para 14 – 15.

¹⁷⁶ Mr Brownrigg, XX (Day 5).

¹⁷⁷ CD2.4, page 102.

¹⁷⁸ Agreed: Mr Brownrigg, XX (Day 5).

¹⁷⁹ Mr Brownrigg, XX (Day 5).

¹⁸⁰ CD3.37, pages 9 – 11. As accepted by Mr Brownrigg, XX (Day 5).

¹⁸¹ CD3.37, pages 41 – 42.

¹⁸² CD3.37, page 76, para 8.105.

¹⁸³ CD3.37, pages 76 – 84, para 8.122.

¹⁸⁴ CD3.37, page 152, paras 11.11.

¹⁸⁵ CD3.37, page 151, paras 11.6 and 11.8.

¹⁸⁶ CD3.37, page 151, para 11.8.

47. There has been no material change in circumstance in any adopted policy since the grant of planning permission, at which stage the Committee found that the Scheme was in compliance with the development plan. It can fairly be concluded that the Scheme fits with the planning policy for the area, including the Local Plan, the TAAP and the London Plan, as required to be considered by the Guidance.¹⁸⁷ There has been a change in so far as the emerging Local Plan has reached a more advanced stage. However, this only reinforces the position of “fit” as the policy seeks comprehensive redevelopment with improvements to the riverside and open space and improving connections between the town centre core and the riverside to create a destination.¹⁸⁸ [In response to the TRT’s Closing Submissions at para 64, the corrected status of the brownfield land was taken into account by the Committee and that does not represent any material change since the grant.](#)

The well-being benefits of the Scheme

48. The redevelopment of the Scheme Land is a priority for the Council.¹⁸⁹ The Scheme would make a significant contribution to the promotion and achievement of the economic, social and environmental wellbeing of the area.¹⁹⁰

49. With regards to the economic benefits of the Scheme, it would deliver 45 additional units of housing, 50% of which would be affordable by habitable room; an increased retail offer, which would capitalise on the success of the pedestrianisation of Church Street; and new commercial office space.¹⁹¹ Mr Brownrigg on behalf of the TRT agreed that these uses were consistent with the TAAP and that the delivery of such uses were benefits of the Scheme.¹⁹² Mr Brownrigg accepted that the delivery of the affordable housing units would make a meaningful contribution to the Borough’s affordable housing need, in particular given that the number of units to be provided through the Scheme would equate to the total affordable housing units that were delivered [in the Borough](#) last year.¹⁹³ In contrast, the TRT maintains that the delivery of market housing on the Scheme Land would not make a meaningful contribution to the Borough’s housing need.¹⁹⁴ This is notwithstanding Mr Brownrigg’s acceptance that there is an acute housing crisis in London, and that the emphasis on the delivery of housing on the Scheme Land is a key strand of planning policy.¹⁹⁵

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50. The TRT accepts that the delivery of retail units and commercial floorspace is a requirement of planning policy but considers that additional retail floorspace is not necessary in Twickenham.¹⁹⁶ As explained by Mr Chadwick, the Council considers that the increased retail offer would assist in increasing the footfall in the area by strengthening the sense of destination on the Scheme Land, thereby enhancing spending in the local area.¹⁹⁷ This is further supported by the delivery of a gastro-pub/restaurant and café. The Events Space and widening of Water Lane would also provide the opportunity to hold regular markets.¹⁹⁸

¹⁸⁷ CD4.1, para 106.

¹⁸⁸ INQ18 and 21; XiC Ms Johnson

¹⁸⁹ LBR1A, para 9.2.

¹⁹⁰ LBR1A, para 9.3.

¹⁹¹ LBR1A, para 9.4.

¹⁹² Mr Brownrigg, XX (Day 5).

¹⁹³ Mr Brownrigg, XX (Day 5).

¹⁹⁴ Mr Brownrigg, XX (Day 5).

¹⁹⁵ Mr Brownrigg, XX (Day 5).

¹⁹⁶ Mr Brownrigg, XX (Day 5).

¹⁹⁷ LBR1A, para 9.5.

¹⁹⁸ LBR1A, para 9.5.

These uses provide employment opportunities for local people, the value of which is appraised in the Council's Social and Additional Value Report.¹⁹⁹ As demonstrated by the second public consultation, 84% of all respondents and 68% of respondents with a disability would be more likely to visit the riverside after the Scheme had been delivered than now.²⁰⁰

51. With regards to the social well-being benefits of the Scheme, the delivery of good quality market and affordable housing on land that is partially derelict is a significant benefit of the Scheme. The improvements to the public realm would help to address the current issue with anti-social and criminal behaviour taking place on the Scheme Land, and address the perceived lack of safety after dark.²⁰¹ The new open space would better connect the town with the river, which is made possible in part by the removal of parked cars and reduction in vehicular movements along the Embankment.²⁰² The improvements in accessibility of the open space²⁰³ would create a more inclusive space for relaxation and activities, which is supported by improved access to the river by a repaired slipway and new pontoon and new public toilet facilities.²⁰⁴ The creation of employment opportunities on the Scheme Land would have social as well as economic advantages for the local community.²⁰⁵
52. With regards to environmental well-being benefits, the reduction in car parking and vehicle movements along the Embankment would result in an improvement to the public realm and to air quality.²⁰⁶ The re-use of an area of brownfield land for a Scheme that would deliver homes and other policy compliant uses is supported by policy objectives in the NPPF and helps make efficient use of land.²⁰⁷ As agreed by the TRT, the removal of aged and derelict buildings from the Scheme Land and the ability to introduce real grass lawns are benefits of the Scheme.²⁰⁸ Contrary to the position of the TRT, the Scheme would deliver a biodiversity net gain of 19% through a net gain strategy, well in excess of the target of 10%.²⁰⁹ This is secured by condition 40 of the planning permission for the Scheme.²¹⁰ The delivery of a floating ecosystem is accepted as a “good thing” by the TRT,²¹¹ as well as being welcomed by the PLA.²¹²
53. Whilst the Scheme would require the removal of 66 trees, this includes a significant number of trees that are of low quality, with a low estimated remaining life expectancy, young trees or trees that should be removed straight away. The 66 trees comprises 46 individual trees and four groups; 36 of the 46 individual trees, and a group of 4, are categorised as ‘C’ or ‘U’ in terms of their quality, i.e 40 out of 66.²¹³ 34 of the 66 are trees are self-seeded trees in publicly inaccessible areas.²¹⁴ As accepted by the TRT, the loss of these trees is a necessity for the redevelopment of the site, in particular the derelict areas.²¹⁵ Of the 26 trees

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¹⁹⁹ LBRA1A, para 9.6 and CD4.5.

²⁰⁰ LBRA1A, para 9.4.

²⁰¹ LBRA1A, paras 9.11 and 9.12.

²⁰² LBRA1A, paras 9.14 and 9.15. This is accepted as a benefit by the TRT; Mrs Holman, XX (Day 4).

²⁰³ This is accepted as a benefit by the TRT; Mrs Holman, XX (Day 4).

²⁰⁴ LBRA1A, para 9.17 and 9.21.

²⁰⁵ LBRA1A, para 9.13.

²⁰⁶ LBRA1A, para 9.30.

²⁰⁷ LBRA1A, para 9.25.

²⁰⁸ Mrs Holman, XX (Day 4).

²⁰⁹ CD3.37, page 99, para 8.187

²¹⁰ CD3.40.

²¹¹ Ms Fotiadis-Negrepontis, XiC (Day 6).

²¹² CD3.37, page 45.

²¹³ CD4.9A, Table 3.

²¹⁴ CD4.9A, para 3.3.2.

²¹⁵ Ms Holman, XX (Day 5).

lost that are in a higher category, 16 comprise London planes which would be replaced to perform the same function in the proposed open space; these were planted some 11 years ago, are fast growing and are heavily pruned each year.²¹⁶ This is in the context of 49 new trees which would be planted, and which would benefit from deeper soil as required by planning condition 36 (designs for tree pits and soil volumes etc) in contrast to the current shallow planting depths.²¹⁷ Accordingly, although there would be short-term losses, this would provide “*the best medium to long term outcome*” benefits.²¹⁸ Overall there would be net gain for biodiversity.²¹⁹

54. The balance struck between built form and open space allows the delivery of all of the well-being benefits identified above. As explained by Ms Johnson, the Scheme cannot be disaggregated in the way that the TRT have sought to in the presentation of its case.²²⁰ It is not, therefore, helpful to analyse whether certain aspects of the Scheme (such as the removal of parking from the Embankment) can be achieved in isolation from the wider Scheme.

The Order as proposed to be modified

55. As originally made, the Unmodified Order Land comprised approximately 2.03 hectares and was made up of leasehold interests in three retail units and one office unit with communal space at first floor; the Gardens, part of which is subject to a 125 year lease granted by the Council to the TRT in 2014 and comprising Designated Open Space; an area of derelict and disused land, including the buildings to the east of the Gardens; and highway land forming part of the Embankment, which was unregistered at the time of the Order.²²¹ The Unmodified Order Land also included the right to oversail over part of the Embankment promenade, reputedly owned by the PLA, for the purpose of constructing the Scheme.²²²
56. Since the making of the Order, the Council has continued to keep the Order Land under review. It has proposed several amendments to the Order Land in response to points raised by objectors and in order to minimise the land proposed for compulsory acquisition. The Modified Order Land excludes four categories of plots, which are shown on the Proposed Modifications CPO Plan and Revised Open Space Plan.²²³ The categories of land proposed to be excluded from the CPO are existing open space owned by the Council and to be retained as open space;²²⁴ existing highway land that would remain as highway;²²⁵ and other land fully owned by the Council, which therefore negates the need to acquire any further interests²²⁶ or rights.²²⁷ The effect of the modifications is to reduce the extent of the Order Land from 2.03 hectares to 1.72 hectares.²²⁸ None of the modifications involve the

²¹⁶ LBR17, para. 2.5. Bannister XiC, Day 4

²¹⁷ LBR2A, para. 10.15. Planning conditions NS36, NS48, and NS68 would mitigate the risk of new trees failing by securing details of sustainable soil volumes, selection of waterlogging resistant species and a financial contribution to support tree planting and maintenance in the wider Twickenham ward (CD3.40).

²¹⁸ LBR17, para. 2.3. This is quite apart from the off-site planting that would come forward under condition 68 following the CAVAT methodology

²¹⁹ INQ33 para. 8 and CD3.37 para. 11.5

²²⁰ Ms Johnson, XX (Day 5).

²²¹ Council Statement of Case, para 4.2.

²²² Council Statement of Case, para 4.3.

²²³ CD4.2A and CD4.2B.

²²⁴ Council’s Statement of Case, para 5.3.1.

²²⁵ Council’s Statement of Case, para 5.3.2.

²²⁶ Council’s Statement of Case, para 5.3.4.

²²⁷ Council’s Statement of Case, para 5.3.3.

²²⁸ Council’s Statement of Case, para 5.5. This includes a correction to the size of plot 25 (as explained at para 5.4).

acquisition of any additional land such as to engage section 14 of the Acquisition of Land Act 1981.²²⁹

57. The Proposed Modifications and the Revised Open Space Plan were issued to all interested parties on 10 March 2023. Three responses to the modifications have been received within the requisite period for response. Each response stated that plots 27 and 85 (a small area of flowerbeds within highway land on the Embankment) should not be deleted from CPO. However, these areas do not need to be acquired so there is no basis for their retention in the CPO. The response by the TRT was supplemented some months after the response period – it now refers also to plots 52 and 87. Plot 52 is not affected by the proposed modification and plot 87 does not need to be acquired by the Council.²³⁰
58. The proposed modifications fall within scope of power to modify, have been consulted on, no one is prejudiced (or asserts any prejudice) by reason of the proposed modifications.

Efforts to acquire by agreement

59. As required by Government guidance,²³¹ the Council has sought to acquire the land and rights required for the Scheme by agreement. It has done so from before the making of the CPO and those endeavours continue.
60. As outlined in opening, the Council has been successful in negotiating with landowners in respect of a number of plots required for the Scheme. In particular:
- a. The Council has secured the surrender of the leasehold interests in two commercial properties on King Street, and a third is terminable at 10 weeks' notice;²³²
 - b. The Council has been successful in negotiations with Eric Twickenham Limited in respect of plot 49 to the rear of King Street and has secured agreement in principle to allow the Council to carry out necessary works, whilst retaining access to the company's property at all times;²³³
 - c. The Council has entered into discussions with UKPN in respect of an electricity substation on plot 50. All discussions to date indicate that an agreement can be achieved;²³⁴ and
 - d. The Council has agreed terms with the PLA for the acquisition of its interest in land forming part of the Embankment, once it is registered with the Land Registry. The acquisition by the Council of this land is close to completion.²³⁵ The Council's agents have also been in negotiations with the PLA in respect of rights to oversail

²²⁹ The consequential modifications to the CPO and its schedules are at INQ04 (LBR23); see also INQ31 (LBR37)

²³⁰ Statement of Case, paras. 11.263 to 11.287; Day 8 modifications session. Twickenham Society also referred to Plot 26 which is proposed to be deleted on the basis that it is highway, contending that it is not highway; however, it is and would remain so (11.282, Statement of Case). Eel Pie Island Association argue that what is now Plot 62 (Plot 62a being proposed to be modified by deletion) is unsuitable as exchange land prior to a safety audit: that is addressed at 11.263 to 272 of the Statement of Case; what is now Plot 62 however is not proposed to be modified.

²³¹ 'Guidance on compulsory purchase process and Crichel Down rules' (2019), section 2 (CD4.1).

²³² LBR1A, paras 11.3 – 11.6.

²³³ LBR1A, para 11.7.

²³⁴ LBR1A, para 11.8.

²³⁵ LBR1A, paras 11.69 – 11.71.

its retained land.²³⁶ These have led to the withdrawal of the PLA's objection to the CPO²³⁷.

61. The Council's agents have written to those with rights of light that may be impacted by the Scheme and those from whom the Council require rights to oversail cranes.²³⁸ The Council is continuing to make efforts to engage with affected property owners.

TRT

62. As explained above, the Council sought to engage with the TRT from the earliest period. The first meeting took place between Councillors, officers and the TRT in July 2018.²³⁹ In addition to direct meetings between the Council and the TRT, the TRT was engaged in the Scheme through its representation on the SRG,²⁴⁰ which elected a representative to the Design Panel, having a representative on the Twickenham Riverside Design Group,²⁴¹ and through the TRT Design Subgroup.²⁴² Through all these channels, the views of the TRT have been integral to shaping the design selection process and the development of the design of the Scheme. From the initial invitation to provide 'principles for development' to be incorporated into the RIBA Full Design Brief in December 2018,²⁴³ until the final design for the submission of the planning application, the TRT's requirements have been central to the development of the Scheme design. It is notable that two of the trustees who participated in the Design Subgroup in their capacity as architects have expressed their support for the Scheme to the Inquiry.²⁴⁴
63. In July 2019, the Council approached the TRT to offer to pay its reasonable legal fees for negotiating and entering into an option agreement.²⁴⁵ This offer was reiterated and accepted by the TRT in October 2019. As early as December 2019, whilst the Scheme was still at the concept stage, it was agreed between the TRT and the Council that they could move forward with agreeing a memorandum of understanding.²⁴⁶ In January 2020, the TRT presented three redline areas indicated on the concept design layout for the Council to consider.²⁴⁷ Between January and April 2020, the Council and TRT corresponded about the draft heads of terms for a new lease or licence area for the TRT under the Scheme.²⁴⁸ In April 2020, a meeting was held between the parties to agree the heads of terms.²⁴⁹ The parties discussed details of the arrangement, such as the number of events that could be held by the TRT each year, the scope for the TRT to charge for events and the target date for completion of the new open space.²⁵⁰ Following the meeting in April 2020, the parties' legal advisers continued to correspond on the heads of terms.²⁵¹ During this period, the

²³⁶ LBR1A, paras 11.73.

²³⁷ LBR25.

²³⁸ LBR1A, paras 11.73 – 74.

²³⁹ LBR1A, para 11.10.

²⁴⁰ LBR1A, paras 11.10 – 11.15.

²⁴¹ LBR1A, para 11.11.

²⁴² LBR1A, paras 11.30 – 11.33.

²⁴³ CD3.01.

²⁴⁴ Cathy Stewart (SUP-44) and Ms Kamleh (SUP-13). This is distinct from the Design Panel, whose membership included Mr Waters (Supp/15) and Mr Meggitt who support the Scheme, as Mr Cremin accepted.

²⁴⁵ LBR1A, para 11.38.

²⁴⁶ LBR1A, para 11.38.

²⁴⁷ LBR5, Apx 21.

²⁴⁸ LBR5, Apxs 22 – 25.

²⁴⁹ LBR1A, para 11.42.

²⁵⁰ LBR5, Apx 26.

²⁵¹ LBR5, item 40.

Council had an “*excellent relationship*” with the TRT.²⁵² As Mr Cremin made clear, the TRT does not seek to criticise the process of negotiations by the Council, which he described as “*very good engagement*” with “*a lot of back and forth*”.²⁵³

64. In June 2020, the TRT indicated that it could not agree to a plan for the proposed TRT lease/licence area until planning permission had been secured.²⁵⁴ The Council reluctantly sought approval for the potential use of compulsory purchase powers in November 2020, in light of the significant risk to the cost and programme of the Scheme posed by the TRT’s position. The Council made clear to the TRT that the use of compulsory purchase powers was not the Council’s preferred route, and would only be used as a last resort.²⁵⁵ As a result of a representation from the TRT, the Council postponed the decision on the use of such powers until January 2021, to allow further time for progress to be made in negotiations.²⁵⁶ In January 2021, the Chair of the Trust confirmed that “*positive progress*” had been made and that “*a very constructive approach*” was being taken by both parties.²⁵⁷ The TRT confirmed that the outstanding key element was the need to comply with the Charity Commission’s requirements.²⁵⁸
65. In March 2021, the Council wrote to the TRT to express concern that despite the good progress that had been made, it was critical to reach a full agreement soon.²⁵⁹ The Council noted that without progress, including an approach by the TRT to the Charity Commission, the Council could not do anything other than recommend the reinstatement of the TRT’s lease into the protective CPO process. The Council noted that this would be “*unreflective*” of the good progress that had been made.
66. Despite continued collaboration between the Council and the TRT over a period of some 18 months, by June 2021 no agreement had been reached and the Council resolved to approve the use of compulsory purchase powers. The Report to the Finance, Policy and Resources Committee made clear that the Council did not wish to resort to CPO powers and hoped that an agreement would be reached with the TRT by September 2021, however legally the parties were no further forward than in January 2021.²⁶⁰ Notwithstanding this, the Council continued to meet with the TRT in respect of both design matters and with a view to reaching a negotiated agreement for a new lease/licence area. It was not until October 2021 that the Order was made. This followed an announcement by the TRT in August 2021 on its website which stated that the trustees were still “*yet to reach a decision*” on the relevant aspects of the redevelopment proposals.²⁶¹
67. In January 2022, the Council were notified that some of the trustees had resigned. That letter indicated that the TRT were no longer meaningfully considering a negotiated settlement with the Council.²⁶² It has since been confirmed that the TRT had, in April 2021, suspended negotiations on the heads of terms and that the trustees had voted to reject the Council’s proposal for a future role for the TRT in respect of the proposed lease/licence

²⁵² Mr Cremin, XX (Day 6).

²⁵³ Mr Cremin, XX (Day 6).

²⁵⁴ LBR1A, para 11.45.

²⁵⁵ LBR5, Apx 41.

²⁵⁶ LBR1A, para 11.48.

²⁵⁷ LBR5, Apx 51.

²⁵⁸ LBR5, Apx 51.

²⁵⁹ LBR5, Apx 56.

²⁶⁰ LBR5, Item 98.

²⁶¹ LBR5, Apx 63.

²⁶² LBR1A, paras 11.60 – 63.

area.²⁶³ This is notwithstanding that negotiations continued after April 2021 and in October 2021, the Council agreed to cover the TRT's additional legal fees that it continued to incur.²⁶⁴ It is readily apparent that from April 2021, the TRT's focus was on seeking to influence the design of the Scheme, and not securing the voluntary acquisition of its interest.²⁶⁵

68. The Council has remained open to continued involvement of the TRT in the event that the CPO is confirmed. In January 2023, the Council reiterated the offer and sought to understand how the Scheme could best meet the requirements of the TRT.²⁶⁶ The TRT did not respond to that offer. Mr Cremin confirmed during his evidence that if the Order were confirmed, the TRT would not just “walk away”, but that there was scope for a future role for the TRT, in particular given that the TRT's objects are not associated with a particular area of land but with the Twickenham riverside area generally.²⁶⁷ Whilst the TRT had not discussed the inclusion of the Water Lane area within a future lease/licence area, Mr Cremin indicated that he would be open to considering it.²⁶⁸

Scheme alternatives

69. Three alternatives to the Scheme have been proposed by objectors.

70. First, the TRT has suggested that the Scheme could be delivered without the development of the Wharf Lane Building.²⁶⁹ The Council has responded to this alternative in its Statement of Case²⁷⁰ and in its evidence.²⁷¹ The Wharf Lane Building is an integral component of the Scheme which delivers important benefits. In particular, it delivers much needed housing. At the ground floor, the Wharf Lane Building will include flexible office units and a gastro-pub/restaurant with views over the river. The inclusion of homes and offices within the Scheme would bring vitality to the open space by drawing people into the Scheme and providing custom for local markets and stalls. The gastro-pub/restaurant would bring life and activity to the Scheme and help make the riverside a destination. The gastro-pub and café would provide publicly accessible toilets for users of the public open space. These uses also assist in providing natural surveillance, which is essential for minimising issues such as anti-social behaviour that the Gardens currently suffer from. Architecturally, the Wharf Lane Building and the Water Lane Building provide bookends to the Scheme, animating the ground floor level and providing a sense of identity for the open space.

71. Second, in its rebuttal evidence, the TRT floated (but did not advocate²⁷²) a further alternative that is based on amendments to the previous scheme which was promoted in 2017 which was subsequently withdrawn.²⁷³ The proposed alternative would remove

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²⁶³ LBR1A, para 11.67; LBR5 Apx 84.

²⁶⁴ LBR5, Apx 70.

²⁶⁵ Mr Cremin, XX (Day 6) accepted this; the focus of the TRT at that time was on persuading the Council that they could take an “elegant detour” in respect of the Scheme design.

²⁶⁶ LBR5, Apx 83.

²⁶⁷ Mr Cremin, XX (Day 6).

²⁶⁸ Mr Cremin, XX (Day 6).

²⁶⁹ Objection S-02; W1.1.01, page 62; S-2 REB.4, page 31ff.

²⁷⁰ Paras 11.65 – 66.

²⁷¹ LBR1, para 9.33; LBR36 (INQ42), paras 2.12 to 2.14; LBR38 (INQ32), paras 1.4 to 1.6.

²⁷² Mr Cremin, XiC (Day 6). INQ23-4, page 14.

²⁷³ S-2 REB4, page 9ff. [Contrary to what Mr Cremin said in para 102 of the TRT's Closing Submissions, that Scheme never obtained planning permission; it had a resolution to grant planning permission but with an outstanding objection from the Environment Agency.](#)

parking along the Embankment and retain vehicular access (which the 2017 scheme did not), but otherwise reflects the 2017 design which would locate buildings at the eastern end of the Scheme Land.²⁷⁴ As Mr Bannister explained, despite the TRT's criticism of the podium proposed within the Scheme, the TRT's proposal would double or triple the extent of the podium by extending it to Water Lane, which would create an imposing set of steps.²⁷⁵ The alternative Water Lane building would also have a considerably greater impact in terms of daylight and sunlight on existing properties.²⁷⁶ The location and scale of the Water Lane building would also interrupt the look and feel of the promenade, which would no longer provide a continuous walking route along the river within the Scheme Land.²⁷⁷ The proposal would not be acceptable to the EA due to the loss of flood storage that could not be replaced on the same level and the extent to which the uses then proposed (fewer housing units and only six affordable housing units) could be provided without loss of other uses is unclear. Accessibility would be markedly inferior to the Scheme.²⁷⁸ Most fundamentally, the alternative floated by the Trust would have nothing to draw people into the west of the Scheme Land, in stark contrast to the Scheme.²⁷⁹ It therefore also does not bring the benefit of passive surveillance from both sides of the Scheme Land.²⁸⁰

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72. Third, an alternative scheme has been suggested by Mr Vie.²⁸¹ This proposal would remove the Wharf Lane building but extend built form on the eastern end of the Scheme Land down to the river.²⁸² The Council provided a written response to this alternative proposal in a rebuttal.²⁸³ Mr Vie's alternative proposal is not deliverable. The proposed buildings are situated on land that is currently subject to flooding.²⁸⁴ The Environment Agency require that the level of flood storage is maintained on the Scheme Land. On the basis of Mr Vie's proposals, there would be nowhere for the lost flood storage to be re-provided. Flood defence walls would also need to be included along Water Lane, which are not currently allowed for.²⁸⁵ Mr Bannister further explained that Mr Vie's Scheme would not provide an accessible means of entering the open space, as access relies on a staircase in the middle of the Embankment.²⁸⁶ Mr Vie accepted that his scheme was a only a sketch, and that it was not "realisable" in its current format.²⁸⁷

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73. For these reasons, it is evident that none of the alternatives suggested would be capable of delivering the benefits of the Scheme. The Scheme is the product of a rigorous design process, with input from key stakeholders throughout. It provides a whole site solution which is capable of delivering substantial social, economic and environmental benefits.

Lack of impediments

²⁷⁴ S-2 REB4, page 9.

²⁷⁵ Mr Bannister, XiC (Day 4). LBR42 (INQ36), para 2.5.

²⁷⁶ Mr Bannister, XiC (Day 4). LBR42 (INQ36), para 2.7.

²⁷⁷ Mr Bannister, XiC (Day 4).

²⁷⁸ Mr Bannister, XiC (Day 4); accepted: Mr Cremin, XX (Day 8).

²⁷⁹ LBR42 (INQ36), para 2.8.

²⁸⁰ LBR42 (INQ36), para 2.7.

²⁸¹ NS-134.

²⁸² NS-134, page 4.

²⁸³ LBR9, para 2.8.

²⁸⁴ Mr Bannister, XiC.

²⁸⁵ Mr Bannister, XiC.

²⁸⁶ Mr Bannister, XiC.

²⁸⁷ Mr Vie, XiC.

74. There is considered to be no likely impediment to implementation of the Scheme. In particular:

- a. Planning permission has been secured for the Scheme. The planning conditions attaching to the permission are capable of being discharged in a timely manner;²⁸⁸
- b. The Council advertised its intention to make a stopping up order (“SUO”) under section 247 of the Town and Country Planning Act 1990 between February and March 2023.²⁸⁹ The Council has considered the objections received to the stopping up order and considers that there are no grounds for a further inquiry to be held. The GLA has agreed that no inquiry is required to be held and the Council proposes to confirm the SUO in the event of and upon confirmation of the CPO;²⁹⁰
- c. The Council has discussed the need for a flood risk permit to be obtained with the Environment Agency for the Scheme works. The Environment Agency has raised no objections to the Scheme design as proposed;²⁹¹
- d. The Council has had detailed engagement with the PLA in respect of the necessary river works licence from the PLA. The Council is satisfied that such a licence will be forthcoming; and
- e. The Council has commenced the procurement process for contractors to construct the Scheme and an indicative programme has been prepared. The outcome of the procurement process will be ratified by the Council prior to the appointment of a contractor.²⁹²

75. With regards to the management of traffic on the Scheme Land, the traffic and transport implications of the Scheme were considered at length during the planning application process and led the highway authority to have no objections to the granting of the planning permission. In terms of road safety, a revised Stage 1 Road Safety Audit was carried out in October 2022 and all amendments to the highway network have already been agreed in principle with the highway authority, which has responsibility for such matters.²⁹³ The Stage 1 Road Safety Audit identified no major safety concerns and there was therefore no need to accelerate the Stage 2 Road Safety Audit, which will take place before the Scheme is constructed.²⁹⁴ Indeed, the Transport Assessment indicates that the Scheme will reduce the number of vehicles on the Scheme Land by 2/3, thereby reducing the possibility of conflicts.²⁹⁵ The Scheme will rely on traffic regulation orders that would be implemented through an ETMO, for which the relevant statutory processes would be followed. Any objections to the proposed orders would be considered by the Council’s Transport and Air Quality Committee and if necessary, the Council would reconsult interested parties on any major modifications proposed.²⁹⁶ As explained by Mr O’Donnell, it would not be

²⁸⁸ LBR4A, para 5.26 – 28; LBR1A, paras 13.3 – 13.4.

²⁸⁹ LBR3A, para 6.8.5, as shown on the plan at CD4.06.

²⁹⁰ LBR24.

²⁹¹ LBR1A, para 13.22.

²⁹² LBR1A, para 13.24.

²⁹³ LBR1A, para 13.20.

²⁹⁴ Mr O’Donnell, XX (Day 5).

²⁹⁵ CD4.08, page 86, Tables 6.25 and 6.26 show significant decreases in vehicle movements on Wharf Lane and Water Lane in the AM and PM peak hours, both on weekdays and during weekends. For Water Lane, vehicle movements would decrease by 68% in the AM and 67% in the PM (weekday) and 83% in the AM and 62% in the PM (weekends).

²⁹⁶ LBR1A, paras 13.19.

appropriate to implement the ETMO prior to the Scheme being in place, as it would not allow for an assessment of the impact of the Scheme itself, which is the very purpose of the ETMO.²⁹⁷ Furthermore, doing so would mean that the 18 month period for which an ETMO can be in force would be likely to expire before the Scheme has been implemented in full. This would deprive the public of the opportunity to be consulted on the impact of the Scheme through the ETMO process, which cannot be re-run once it has expired.²⁹⁸ By waiting until the Scheme is in place before making the ETMO, it allows the Council and the local highway authority to understand the impacts of the Scheme holistically and respond to any issues that arise.

76. As Mr O'Donnell explained, the details of the traffic management on the Scheme Land are still subject to final confirmation; the location of loading bays, the road markings and restrictions on vehicular movement are indicative so there remains flexibility.²⁹⁹ It will be incumbent upon the highway authority to monitor the implementation of the Scheme to ensure that any difficulties that arise are addressed. However, the Council is confident that it has sufficient data to understand how the highways layout within the Scheme will operate. In particular, five sets of survey data have been gathered including details on vehicular, cyclist and pedestrian movements, in addition to informal monitoring and numerous site visits.³⁰⁰ The Scheme retains sufficient flexibility so as to respond to any issues should they arise. In this regard, it is notable that whilst the TRT raise a number of points regarding the adequacy of servicing arrangements and concerns about the operation of the highways layout as part of the Scheme, it does not suggest that the issues identified cannot be resolved; the TRT has made clear that its principal concern in terms of highways is the impact of the highways layout on the amenity value of the open space comprised in the Scheme.³⁰¹

Funding

77. The Council is clear as to the means of funding the Scheme. On 19 January 2023, the Council's Finance, Policy and Resources Committee approved the funding required for the Scheme.³⁰² The estimated net cost to the Council is £20 million.³⁰³ The Council is committed to investing in the Scheme in order to deliver wider benefits and help regenerate Twickenham town centre.³⁰⁴ As required by the Guidance, the Council is clear as to the source of the funding, which will be made available both for acquiring the interests and rights in land and for implementing the Scheme.³⁰⁵ [In response to paras 114 to 116 of the TRT's Closing Submissions, there are three short points to make. First, LBR19-1 at para 3.8 makes it clear that the cost appraisals and viability appraisals have been completed by qualified professionals within external consultancies, these include contingencies and inflation estimates. These have been scrutinised by the Committee. Second, at para 10.45 of the Statement of Case, the Council explains that in relation to the brownfield site fund,](#)

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²⁹⁷ Mr O'Donnell, XX (Day 5).

²⁹⁸ Mr O'Donnell, XX (Day 5).

²⁹⁹ Mr O'Donnell, XX (Day 5). This is secured by conditions 22 and 23 (CD3.40), to which informative 21 also applies, which requires double yellow lines to be provided along the Embankment to the east of the barriers, to ensure sufficient space for turning.

³⁰⁰ Mr O'Donnell, XX (Day 5).

³⁰¹ As explained by Mrs Holman (Day 5): "We are not suggesting for one moment that there is not a solution [t the highways issues identified] ... our concern is with the impact on amenity value of the open space next to [the highway]".

³⁰² CD1.11.

³⁰³ LBR1A, para 13.5.

³⁰⁴ LBR1A, para 13.5.

³⁰⁵ CD4.1, para 14(a).

[the final amount is subject to further discussions, but the Council has approved a total that would cover the cost of the grant if the full amount were not available. Third, the January 2023 Committee report³⁰⁶ specifies that the total capital budget is £45 million, which is the totality of the cost. The Committee’s resolution therefore covers this figure. The net cost is £20 million after various funding, but funding is available up to the full cost of the Scheme.](#)

Public Sector Equality Duty

78. At each stage of its formal decision-making, consideration has been given by the Council to potential equalities impacts pursuant to section 149 of the Equality Act 2010.³⁰⁷ The Scheme has been designed in accordance with relevant accessibility standards and would significantly improve accessibility in respect of the open space.

Human rights

79. Consideration of European Convention on Human Rights (“ECHR”) rights issues, in this instance Article 1 Protocol 1, is reflected in the CPO Guidance at Tier 1, paragraph 2, which states that *“the purposes for which the compulsory purchase order is made [must] justify interfering with the human rights of those with an interest in the land affected”*.³⁰⁸ It is well established that the *“compelling case in the public interest”* test is not materially different to the decision making required in the context of Convention rights, on the basis that the *“compelling case”* approach necessarily involves weighing the individual’s rights against the public interest. The balance between the public interest and private rights is therefore not only a requirement of the Guidance but also reflects the position under the Human Rights Act 1998 and the ECHR.

80. The Council has considered the rights of all those affected under Article 1 of the First Protocol, including the TRT’s. It is submitted that the significant and wide-ranging public benefits provided by the Scheme in securing the redevelopment and improvement of the Scheme Land provides a compelling case that justifies the interference with individual rights. Those affected by the Modified Order will be entitled to compensation in accordance with the Compensation Code.

Objections

Statutory objectors

81. As indicated above, the Council has responded to all objections received in respect of the Order. With regards to the statutory objectors:³⁰⁹

- a. Mr and Mrs Thomas³¹⁰ are statutory objectors as occupiers of Plot 37 over which a right of oversailing is sought. Their objection does not relate to this right. They raise points in respect of the reduction in parking spaces; additional traffic; the design of the proposed buildings, their uses and the impact on daylight and sunlight of those buildings. The removal of parking from the Embankment is a key objective of the TAAP, which facilitates the delivery of high quality open space that links the town

³⁰⁶ [CD1.11, page 1.](#)

³⁰⁷ CD1.06.

³⁰⁸ See also para. 12 of Tier 1 of the CPO Guidance (CD4.1).

³⁰⁹ The PLA has withdrawn its objection: LBR25 (INQ06).

³¹⁰ S-01.

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with the river and improves pedestrian safety.³¹¹ The design of the proposed buildings and the importance of the mix of uses for animating the open space is explained at para 29 above. The impact of the buildings on daylight and sunlight levels experienced by 17 Water Lane is addressed at para 11.68 of the Council's Statement of Case.

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- b. Negotiations have been successful with Eric Twickenham Ltd³¹² in respect of the small parcel of land to the rear of King Street.³¹³ Access will be maintained to its property at all times.
- c. In respect of the objection by Tower of Power Limited, T/A Eel Pie Island Bridge Company,³¹⁴ as explained at paragraph 126 below, the statutory status arises as they hold a river works licence from the PLA in respect of the bridge. There will be no impact on its river works licence by reason of the right to oversail.³¹⁵
- d. In addition to the points raised by the TRT that are dealt elsewhere in these Closing Submissions, the TRT raise the following points:
 - i. That the lawns proposed within the Scheme can only be used for 'sedentary' uses. As explained by Mr Bannister, there is no reason that they could not be used for activities such as ball sports or other forms of play.³¹⁶
 - ii. That the areas adjacent to buildings, including the land to the north and west of the Wharf Lane building, cannot be considered to be open space as there is a requirement for "*breathing space*" around the built form. This is addressed in LBR16-1 at paras 2.6 to 2.7. Mrs Holman accepted that it was necessary to be consistent in this regard when considering the existing space, but this was evidently not the case with her approach to the existing open space adjoining buildings and structures. Reluctantly, she accepted that the land adjacent to the Water Lane building was open space, albeit she said it was low in the hierarchy.³¹⁷
 - iii. That there is no need for the Wharf Lane building. This is addressed at para 30 above.
 - iv. That the proposed play space will be inferior to the existing play space. This is addressed at para 25 above.
 - v. That the use of the Scheme Land by cyclists will impact on the Future Designated Open Space. This is addressed at paras 2.24 and 3.14 to 3.14 of LBR16-1;
 - vi. That reversing vehicles within the Scheme Land will create a highway safety risk. This is responded to at para 21 above.

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³¹¹ Council's Statement of Case, para 11.8 to 11.9.

³¹² S-03.

³¹³ Council's Statement of Case, para 9.7

³¹⁴ S-04.

³¹⁵ Council's Statement of Case, paras 11.214 to 11.215; XX Mr Heath (Day 3)

³¹⁶ Mr Bannister, XX (Day 7).

³¹⁷ Mrs Holman, XX (Day 4).

- vii. That the Future Functioning Open Space will experience inferior levels of sunlight than the Existing Functioning Open Space. This is addressed at para 24 above and in LBR16-2 at para 3.32.
- viii. That the proposed Events Space will experience greater levels of flooding than the existing events space. This is addressed at para 23 above, LBR2A at paras 10.11 to 10.14 and LBR16-2 at para 2.24.
- ix. That the Scheme will have an adverse impact on ecology and will fail to achieve biodiversity net gain. The Scheme would deliver significant ecological enhancements and would deliver an overall biodiversity net gain of 19%, far in excess of the 10% benchmark.³¹⁸
- x. That the Scheme lacks the necessary funding. The funding of the Scheme is addressed at para 77 above.
- xi. That the Scheme will exacerbate the ‘urban heat island effect’. This is addressed at LBR39.³¹⁹
- xii. That the Scheme will result in the loss of a significant number of existing trees. The Scheme’s impact on trees is addressed at para 53 above.
- xiii. That the proposed gastro-pub/restaurant within the Scheme will create conflicts with users of the open space. This is addressed at LBR16-1 at paras 2.27 – 2.28.
- xiv. That there are no details as to use of the pontoon.³²⁰ This is addressed at LBR18-2 at para 2.7 and is controlled by planning conditions 2, 27 and 74.

Affected businesses

82. Eel Pie Island Boatyard Ltd (“EPIB”) have raised concerns about the impact of the Scheme, including the Stopping Up Order, on its access and servicing. As explained by Mr O’Donnell, the Council has carried out an extensive number of surveys, which have been taken into account in designing the highways layout.³²¹ There has been extensive engagement with EPIB, as recorded in the Transport Assessment.³²² The Stage 1 safety audit is independent and “robust”³²³ and has not corroborated these concerns. Condition 25 attaching to the planning permission requires the submission and approval of a servicing and delivery plan which expressly requires the continuation of that engagement pursuant to the plan.³²⁴

Other objectors

³¹⁸ Council’s Statement of Case, para 6.27.

³¹⁹ INQ13.

³²⁰ S-2 W3.2 page 7

³²¹ Mr O’Donnell, XiC (Day 5).

³²² LBR8, para. 2.4.

³²³ Mr. O’Donnell, XX (Day 5)

³²⁴ CD3.40.

83. The points raised by Mr Montgomery-Smith on behalf of Eel Pie Residents Association are addressed in LBR36.³²⁵ All other points raised by objectors have been addressed by the Council, as identified in the Council's wayfinding document.³²⁶

Application for a Certificate under section 19 and Schedule 3

84. The Modified Order Land includes open space within the meaning of section 19(4) of the Acquisition of Land Act 1981 ("1981 Act"). The areas of open space over which powers of compulsory acquisition are sought are identified on the Revised Open Space Plan³²⁷ and comprise acquisition of part of the Gardens under section 19(1)(a) of the 1981 Act. The Modified Order Land also includes open space comprising part of the Gardens under section 19(1)(aa) of the 1981 Act, also identified on the Revised Open Space Plan.³²⁸ The Council also seeks rights over open space under paragraph 6(1)(a) of Schedule 3 to the 1981 Act. Such rights will not result in the open space being any less advantageous to the public on the basis that they are rights to oversail cranes only.

85. As explained in opening, the Council has continued to interrogate the need to include all plots within the Order. This process has resulted in a number of plots being proposed to be removed from the Order, as shown on the Revised Open Space Plan.³²⁹ As a result of the modifications, the amount of Lost Open Space would reduce from 1,388sqm to 1,336sqm; the amount of retained open space to be acquired reduces from 2,010 sqm to 1,428sqm; and the amount of Exchange Land reduces from 1,919sqm to 1,815sqm.³³⁰ In all other respects the Council's case in support of the grant of the section 19 certificate remains as originally set out in the submission made on 4 November 2021.³³¹ As explained above, the Proposed Modifications and Revised Open Space Plan were issued to all interested parties on 10 March 2023, the responses are before the Inquiry and no prejudice arises or has been asserted by any person by reason of the modifications.

86. Four representations have been made in respect of the Certificate application under section 19: Mr. Hamilton-Miller, Mrs. Hamilton-Miller, Mr. McInerney and the TRT. In the case of the first three, they have been responded to by the Council in writing (as identified in INQ39) and have not been expanded upon in evidence to the Inquiry. The focus of these submissions is therefore on the evidence brought forward by the TRT at the Inquiry.

87. None of these representations relate to the certificate under Schedule 3.

Section 19(1)(a): Quantum of lost open space and exchange land

88. As stated above, the Modified Order will authorise the acquisition of 1,336 sqm of Lost Open Space under section 19(1)(a).³³² That Lost Open Space calculation includes part of the café building. The Scheme will provide 1,815 sqm by way of Exchange Land.³³³ This is 36% greater than the Lost Open Space.³³⁴

³²⁵ INQ28.

³²⁶ LBR45 (INQ39).

³²⁷ CD4.2B. Shaded in red.

³²⁸ CD4.2B. Shaded in orange.

³²⁹ CD4.2B. Shown in hatched. Explained at LBR1A, paras 10.15.1 – 10.15.7.

³³⁰ LBR1A, para 10.15.8(a) – (c).

³³¹ LBR1A, para 10.15.9.

³³² LBR2A, Table 1. CD4.3F.

³³³ LBR2A, Table 1. CD4.3F.

³³⁴ LBR1A, para. 10.15.8(b)

89. There is no dispute with the TRT as to the measurements of Lost Open Space and Exchange Land, but the TRT disputes the status of certain plots in terms of Lost Open Space and Exchange Land.³³⁵ The TRT's position is that there is a total quantum of Lost Open Space of 1,486.9 sqm and a total quantum of Exchange Land of 1,217.2 sqm.³³⁶
90. The TRT identifies two additional parcels of land that it considers should be included in the calculation of Lost Open Space. These are: (i) land comprising flowerbeds on the Embankment (plots 27 and 85) and (ii) land in front of the Wharf Lane Building (part plot 87). None of these plots are included within the Modified Order as there is no need for this land to be acquired. Plot 87 is already owned by the Council, and plots 27 and 85 are adopted highway and will remain as such within the Scheme.³³⁷ There is therefore no basis to include these plots within the calculation of open space that is lost as a result of the Order as they are not proposed to be acquired under the Order.
91. In the TRT's written evidence, it identified two areas of Future Designated Open Space that it considered could not be Exchange Land. These areas were (i) the open space along Water Lane (identified by the TRT as "the Water Lane Retail Walkway"); and (ii) an area of inaccessible scrubland in the south east of the Scheme Land (part of plot 52) (identified by the TRT as "the Terraced Jubilee Gardens").³³⁸
92. The TRT argues that the land along Water Lane does not constitute open space as it cannot be used for public recreation. In particular, the TRT's view is that there is no differentiation between the experience of standing in King Street and that in the proposed Water Lane area.³³⁹ The TRT asserts that the Water Lane area is principally a "*retail environment*" rather than an area that can be used for public recreation.³⁴⁰ However, as accepted by the TRT, the Water Lane area will be at least as wide as the pedestrianised area of Church Street (building façade to building façade) which is widely praised as a successful area of open space.³⁴¹ The area on Water Lane includes planting and seating areas, allowing people to meet, stroll (or "*promenade*") and sit and relax. The ground floor retail uses will be experienced as a continuation of Church Street, and will have the benefit of animating the space. The Water Lane area will also provide the opportunity to hold markets. Whilst the TRT submit that "*entering into retail transactions*" does not constitute recreation, attending and browsing a market is quintessentially a recreational activity. Indeed, markets take place in other areas of open space in the area which the TRT accepts are used as open space.³⁴²
93. The TRT's position is that the area in the south east (part of plots 52 and 83) is land "*laid out as a public garden*" such that it is designated open space within the meaning of section 19(4). It is readily apparent that this area does not form part of the current Gardens. It is an isolated area of overgrown scrubland that is inaccessible to the public. Behind the locked gate, there is a high wall, which prevents any use or access. It cannot meaningfully be said to be used for public recreation, or that it is 'laid out as a public garden'. The fact that the trees within the area can be seen from the Embankment and nearby open space is insufficient to conclude that it is "*used for public recreation*". The inclusion of this area

³³⁵ Joint statement (INQ41).

³³⁶ W.1.1.02, pages 21 – 23.

³³⁷ AA's Statement of Case, paras 5.3.1 and 5.3.2.

³³⁸ W.1.1.02, pages 21 – 23. This area also includes part of Plot 83 but this is not proposed as Exchange Land.

³³⁹ Mrs Holman, XX (Day 7).

³⁴⁰ Mrs Holman, XX (Day 7).

³⁴¹ Mrs Holman, XX (Day 5): "*a very successful and popular area*". Also referred to by Cllr Neden-Watts (Day 2).

³⁴² For example, Church Street, which Mrs Holman accepted was used as open space.

within the area of what has been called the Jubilee Gardens adds nothing. The area was apparently planted in 2004, but was never made accessible to the public and did not form a useable part of the Jubilee Gardens. In any event, the permission that created the Jubilee Gardens was temporary only, for a period of five years.³⁴³ This was “a meanwhile use” whilst comprehensive redevelopment of the Scheme Land was developed. It was never laid out as a public garden and on inspection it can readily be appreciated that it is still not. The TRT raised an entirely new point in its Closing Submissions, namely, that the Jubilee Gardens now have an established planning use through the passage of time. First, there is no evidence to support that this area has a lawful use as a public garden. Second, the reference to CD3.37, page 55, para 8.6 does not support in any way that proposition but quite the reverse. That passage notes that the play area and café have gained lawful use through the passage of time but the gardens have remained unlawful. Even assuming this area was part of the Gardens at any point, it remains unlawful.

94. The position remains therefore that the Exchange Land would not only be not less in area than the Lost Open space but substantially larger.

Section 19(1)(a): Equality of advantage of exchange land

Approach

95. There are two points of dispute in respect of the approach to be taken to assessing whether the Exchange Land is ‘equally advantageous’ to persons entitled to rights in the land and to the public,³⁴⁴ namely (i) the relevance of ‘context’; and (ii) whether the TRT are entitled to a ‘right’ in land by virtue of its lease, within the meaning of section 19(1)(a) (“*rights of common and other rights*” and “*rights, trusts and incidents*”).
96. In respect of the first point, the TRT’s legal submissions stated that “[t]he ‘compare and contrast’ must be carried out solely in relation to the open space to be acquired and the open space to be provided in exchange. There is simply no ‘broader context’, as the AA argue, to consider in relation to whether a certificate can be granted...”³⁴⁵ Similarly Mrs Holman for the TRT in her evidence states that the proposed open space (including the retained open space) “*must be ignored*” in the assessment.³⁴⁶ This approach would require both the Lost Open Space and the Exchange Land to be considered as detached pieces of land or ‘islands’, with no regard to their surroundings. Notwithstanding these written submissions, however, the TRT appeared to accept that there is a need to have regard to how “*the Exchange Land functions with other land*”.³⁴⁷ This approach was borne out by the TRT’s own evidence. When supposedly following the approach of ignoring context, Mrs Holman gave evidence about the users and the extent of use of the *whole* of the Gardens; not just the area that falls within the Lost Open Space.³⁴⁸ This is because, as Mrs Holman explained, “*the Lost Open Space forms part of a large single level area*”. Indeed, considering the Lost Open Space in isolation would mean that only a portion of a café building could be considered, or only part of a playground, with no regard to the parts of these facilities that lie outside the Lost Open Space. This demonstrates how unrealistic and

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³⁴³ CD3.37, page 13, para 4.2B(b).

³⁴⁴ Section 19(1)(a), Acquisition of Land Act 1981.

³⁴⁵ TRT Legal Submissions, para 12 (INQ40)

³⁴⁶ S2-W.1.1.02, p. 25

³⁴⁷ TRT Legal Submissions (oral) (Day 6).

³⁴⁸ This was a separate exercise to her later “fall-back” contextual comparison

artificial this exercise would be; although even if this unreal exercise was to be undertaken, there would be significantly greater useable space with the Exchange Land.³⁴⁹

97. Notwithstanding the TRT's submissions, in light of the approach adopted by the TRT in the presentation of its evidence [and what we understand was submitted in the TRT's Closing Submissions](#), there should in reality be no dispute of substance that the analysis of the quality of Lost Open Space and Exchange Land cannot be undertaken in isolation. These areas of open space are not, and cannot be, used in isolation, which reinforces the common sense approach that consideration of equality of advantage must have regard to context.

98. In respect of the second issue, the TRT submits that its lease is a 'legal right' in land, such that the Secretary of State must have regard to whether the Exchange Land is 'equally advantageous' to the TRT as well as the public.³⁵⁰ This argument also has implications for whether the TRT is entitled to a lease over the Exchange Land, by virtue of section 19(1)(a), which provides that the Exchange Land is to be subject to the "*like rights, trusts and incidents*". The TRT's argument in this regard is entirely misconceived; a legal interest in land (such as a lease) does not constitute a 'right' for the purposes of section 19(1)(a). The 'rights' referred to in section 19 are those similar in nature to "*rights of common*", for example, rights of access to open space.³⁵¹ These are the rights that the Exchange Land must be subject to, in order that it can be used in the same manner as the Lost Open Space.³⁵² It does not include legal 'interests' in land, which are extinguished through compulsory acquisition. Indeed, nowhere is the word 'interests' used which it would have been if that had been intended by the legislation. The implication of the TRT's argument is that a lease must somehow be re-created over the Exchange Land by virtue of section 19(1)(a),³⁵³ notwithstanding that the lease is extinguished. The TRT argues that in the event that the lease is not recreated (either due to unwillingness of the Council or acceptance by the TRT), the certificate cannot be granted and the Order must go through special parliamentary procedure.³⁵⁴

99. The correct position in law is that leases are not rights within the meaning of section 19 and would be extinguished on acquisition. This is supported by the Guidance, which explains that "*land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned*" (underlining added).³⁵⁵ This makes clear that the 'rights' envisaged are those associated with the use of the land as a common or open space. Indeed, if 'rights' included legal interests such as the TRT's lease, then any land subject to legal interests prior to acquisition (whether leasehold or freehold) could never be exchange land; in other words, no land would ever qualify as exchange land.

³⁴⁹ 80% more useable space including circulation, 64% more excluding circulation -when compared to the lost open space: LBR2A para. 10.35.

³⁵⁰ TRT Legal Submissions, para 32(c) (INQ40).

³⁵¹ For example, the public right to access common land under the Countryside and Rights of Way Act 2000.

³⁵² This applies equally to trusts and incidents: trusts would cover statutory trusts such as under section 10 of the Open Spaces Act 1906 and incidents must be construed in the same vein i.e. matters incidental to such rights and trusts.

³⁵³ TRT Legal Submissions, para 32(i)(d) (INQ40).

³⁵⁴ TRT Legal Submissions, para 32(i)(d) and (ii) (INQ40).

³⁵⁵ CD4.1, para 240.

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100. The legislation cannot sensibly be construed in a manner which has absurd consequences. The TRT's argument is wholly at odds with the way in which compulsory purchase operates.

Analysis of equality of advantage

101. As made clear by the Guidance, the Exchange Land may not offer the *same* advantages as the Lost Open Space, yet the advantages offered may be sufficient to provide equality of advantage.³⁵⁶ There appears to be no dispute that equality of advantage to the public relates to the public at large which will encompass that section of the public which comprises existing users.³⁵⁷ In paragraph 19 of the TRT's section 19 Closing Submissions, it argues that regard must be had to the sections of the public who has benefitted from the land, not merely theoretical other groups of the public at large. That is not right; the Guidance (CD4.1) makes clear at para 241 that 'the public' means principally the section of the public that has benefitted from the order land and more generally the public at large. The correct approach is to look at the public at large, which includes current users.

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102. The Existing Functioning Open Space, of which the Lost Open Space forms part, comprises three separate pieces of land which are split into a number of different types of space which are separated from each other by fences, hedges, retaining walls, road and car parking. As explained above, it suffers from serious deficiencies such as the lack of natural surveillance and is blighted by proximity to derelict and disused areas. The isolated piece of open space to the east of the Scheme Land cannot be used in conjunction with the rest of the open space in any meaningful way.³⁵⁸ Furthermore, the Existing Functioning Open Space fails to capitalise on the riverside location, being separated physically and visually from the river.

103. In comparison, the main areas of the Future Existing and Functioning Open Space are located adjacent to one another, allowing for them to be used flexibly, together or in tandem with the adjacent circulation space.³⁵⁹ As explained by Mr Bannister, there is nothing that has been described by the TRT as taking place in the Gardens that could not take place in the new open space.³⁶⁰ The Future Functioning Open Space is significantly more accessible than the existing, opening up the area and connecting the town and the river.³⁶¹ The new open space would make better use of the space, creating opportunities for a number of uses which would better appeal to all ages.³⁶² The lawns introduce real grass, and provide the opportunity for either active or passive recreation, including ball games or even rolling down the banks.³⁶³ As explained by Mr Bannister, the Events Space is larger than the existing hardstanding and artificial grass areas combined, thereby providing an alternative space for ball games.³⁶⁴ Whereas the Embankment and Gardens are currently disconnected by moving traffic and parked cars, in future there will be a reconnection of the open space with the river with significant reduction in the impact of vehicular traffic.

³⁵⁶ CD4.1, para. 240

³⁵⁷ CD4.1, para. 241

³⁵⁸ LBR2A, para 10.42.

³⁵⁹ LBR2A, para 10.44.

³⁶⁰ Mr Bannister, XiC (Day 7).

³⁶¹ It is agreed that accessibility is a relevant factor: Mrs Holman, XX (Day 7).

³⁶² LBR2A, para 10.9.

³⁶³ Mr Bannister, XiC (Day 7). Contrary to Mrs Holman's suggestion that there would be a 'zero percent' prospect of using the lawns for ball games (XiC, Day 7).

³⁶⁴ Mr Bannister, XX (Day 7).

104. The joint statement with the TRT identifies 8 issues [relating to](#) equality of advantage. These issues overlap to an extent with the same issues addressed above under the CPO but are summarised here in any event.³⁶⁵ They are:

(1) Comparative quality and amenity of the Events Space

105. As explained above, the proposed Events Space is significantly larger and more flexible than the existing space and will provide a unique location in which to hold a range of events. It can be used in isolation or in conjunction with the rest of the Future Functioning Open Space. The levels of sunlight and the impact of flooding on the Events Space are addressed above. As explained above, the ability to hold events in different areas of the open space allows any disruption from flooding to be avoided.

(2) Comparative impact of flooding on the existing and proposed open space

106. The comparative impact of flooding on the Existing and Future Designated and Functioning Open Space is shown on Maps G and H.³⁶⁶ As explained above, the Scheme would result in an increase in open space within Flood Zone 1 and Flood Zone 2.

(3) Comparative quality of the play space

107. As explained above, the Scheme would deliver an increase in play space, which will be focussed on the under 12s (as at present).³⁶⁷ The new play space would enjoy excellent levels of sunlight all year round. The extent of enclosure of the play space, such as the installation of railings, is a matter that can be determined later. The equipment would have “*better play value*”.³⁶⁸ The petanque pitches would be reprovided and enlarged and would also enjoy good levels of sunlight.³⁶⁹

(4) Comparative amenity value of the open space, including the impact of overshadowing, sunlight levels and the impact of the Wharf Lane Building

108. As explained above, the central areas of open space within the Scheme would meet the BRE overshadowing guidelines.³⁷⁰ Mr Bannister’s shadow studies demonstrate that the new open space will experience a mix of sunlight and shade across the day,³⁷¹ which is advantageous for creating a comfortable environment throughout the year.

(5) Impact of surrounding uses on proposed open space

109. Unlike the Lost Open Space, the Exchange Land (and wider Future Existing and Functioning Open Space) will benefit from natural surveillance from both the east and west. The ground floor uses in the Wharf Lane and Water Lane buildings will help animate the space and draw people towards the river. The inclusion of residential and office uses will create a market for daytime uses such as market stalls, thereby increasing the levels of activity on the Scheme Land.

(6) Impact of traffic and cyclist movements on users of proposed open space

³⁶⁵ INQ41.

³⁶⁶ CD4.3G and 4.3H.

³⁶⁷ CD3.37, para 8.331.

³⁶⁸ CD3.37, para 8.330.

³⁶⁹ LBR16-1, para. 2.15; LBR16-2A; they increase from 126sqm to 287 sqm (LBR2A Table 2)

³⁷⁰ CD3.37, page 85, para 8.131.

³⁷¹ LBR16(2A).

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110. The Scheme will result in a reduction in vehicle movements of approximately 60%. The effect of this will be to improve the safety of pedestrians within the proposed open space. The removal of parking from the Embankment will have a direct impact on the amenity of the Exchange Land as well as connecting the Exchange Land with the river, both physically and visually. As explained by Mr O'Donnell, cyclists and users of open spaces interact well on numerous sites along the Thames.³⁷² The Scheme retains flexibility to make further amendments in the event that they are required.

(7) Comparative quality of the Exchange Land as a functioning part of the open space as a whole

111. Unlike the Lost Open Space, the Exchange Land is integrated into the rest of the Future Functioning Open Space. This allows the spaces to function together in a flexible way. The Scheme will result in a cohesive and attractive area of open space that links the town with the river. The adjacent uses will bring vitality and interest to the space, thereby providing attraction for people of all ages and reducing the risk of anti-social behaviour. The removal of the derelict buildings and use of real grass will significantly improve the amenity of the open space as a whole.

(8) Proximity of Exchange Land to riverside compared to Lost Open Space

112. As can be seen from the Modified Open Space Plan, parts of the Exchange Land are closer to the riverside than the Lost Open Space, and parts further away. The key point however is that the new open space, of which the Exchange Land will form a critical part, will form a unified whole, linking and integrating with the riverside promenade and allowing the new open space to relate far better to the riverside than the open space currently does.

Date of exchange

113. The date for assessing equality of advantage is the date on which the Existing Designated Open Space is to be acquired under a CPO, being the same date that the Exchange Land must vest in the persons in whom the existing open space is vested. However, it is agreed with the TRT [\(as confirmed in its section 19 Closing Submissions\)](#) that regard can be had to improvements to the Exchange Land proposed within the Scheme which are to take place after the date of the exchange.³⁷³ The period before which the open space will be available is also relevant. In this instance, the open space is anticipated to be completed within 24 months of the commencement of development, which will take place following the exercise of powers under the Modified Order.³⁷⁴ [Para 13 of the TRT's section 19 Closing Submissions refers to 2 – 3 years before the open space is delivered. That is not supported by the evidence; Mr Chadwick explains at para 13.24 that the programme has been drawn out by the specialists, Arcadis, and considered by the Council's programme officers, and that it is considered to be an appropriate basis on which to proceed.](#)³⁷⁵ Planning condition NS64 requires the submission and approval of a phasing plan prior to commencement of development to provide that all areas of open space, landscaping and play provision are provided as early as practicable as part of the development. In this case,

³⁷² Mr O'Donnell, XiC (Day 5).

³⁷³ LBR1A, para 10.46. TRT Legal Submissions (oral) (Day 7).

³⁷⁴ LBR1A, para 10.45 (accordingly, it would be a staged acquisition rather than GVD).

³⁷⁵ [LBR1A](#).

the improvements to the Exchange Land are part of the very purpose of the Scheme and seeking compulsory acquisition of the Modified Order Land.

114. This temporary unavailability is a negative factor but it is outweighed not only by the greater quantity of Exchange Land compared to that lost (36% more) but by the significantly superior quality of Exchange Land in its proposed context, compared to the Lost Open Space in its existing context.

115. Accordingly, it is submitted that it can be properly be certified that the Exchange Land would be not less in area than the Lost Open Space and equally advantageous to the public including existing users.

Section 19(1)(aa)

116. The only plot of land being acquired under section 19(1)(aa) is plot 63. There are two points of dispute concerning the availability of section 19(1)(aa). The first turns on whether what is proposed through the Scheme falls within the scope of section 19(1)(aa) in terms of ‘improving the management’ of the open space. The second is the TRT’s argument that section 19(1)(aa) is not available to an acquiring authority that already owned and managed the open space.

117. The TRT seeks to draw an inference from the timing of the [Council](#)’s decision to rely on section 19(aa). The report to the Finance and Policy Committee in September 2021 explained the recommendation to rely on section 19(1)(aa) on the basis that it had the “*best fit*” with the legislation.³⁷⁶ The report noted that these matters did not represent any change to the Scheme nor the open space to be delivered.³⁷⁷ It also noted that the Council had had regard to the Guidance, which makes clear that section 19(1)(aa) may be relied on where an “*acquiring authority may wish to acquire land which section 19 applies e.g. open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space.*”³⁷⁸ This is precisely the intention of the Council; the compulsory acquisition of the Retained Open Space would allow the comprehensive redesign of the area in order to re-provide much improved open space as part of the Scheme.³⁷⁹ The report further explained that the Retained Open Space was “*required to implement the [open space] improvements, and thus improve its management as part of the overall scheme.*”³⁸⁰

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118. The TRT has sought to suggest that this demonstrates that the Council did not have an intention to improve the management of the open space ‘independently’ from the delivery of the Scheme.³⁸¹ This approach is highly artificial; the re-provision of enhanced open space is at the heart of the Scheme.³⁸² As explained by Mr Chadwick, the TRT’s case is based on “*a very narrow definition of management*”;³⁸³ one that is much more akin to ‘maintenance’ or the identity of ‘the manager’. The narrowness of the TRT’s approach is demonstrated by the nature of the questions put to Mr Chadwick, such as the suggestion

³⁷⁶ CD1.9, para 3.12.

³⁷⁷ CD1.9, para 3.12.

³⁷⁸ CD4.1, para 242. This was cited by the AA in CD1.9, para 3.18.

³⁷⁹ CD1.9, para 3.18.

³⁸⁰ CD1.9, para 3.18.

³⁸¹ Ms Graham Paul, XX of Mr Chadwick.

³⁸² Mr Chadwick, XX (Day 8).

³⁸³ Mr Chadwick, XX (Day 8).

that the replacement of astroturf with real grass would not be a ‘management’ issue.³⁸⁴ Indeed, it is telling that the TRT’s legal submissions used the word ‘maintenance’ instead of ‘management’ in the context of section 19(1)(aa).³⁸⁵

119. It is submitted that ‘management’ is clearly a much broader term than the definition afforded to it by the TRT. It includes physical changes and reconfiguration of the open space in order to alter the way in which it is managed. Mr Chadwick explained that whilst he didn’t criticise the current ‘management’ (in the narrow sense), there were ongoing issues with the open space as a result of the configuration of the land, such as criminal and anti-social behaviour.³⁸⁶ This arose from the physical layout of the open space, such as the lack of natural surveillance.³⁸⁷

120. The broad definition of ‘management’ as encompassing physical changes to open space is consistent with the CPO Guidance which provides examples of when section 19(1)(aa) might be used, including if the Council may wish to provide “*proper facilities*”.³⁸⁸ This makes clear that making physical changes to the open space may properly fall within section 19(1)(aa).

121. The TRT relied on three examples of CPOs that it says demonstrate how unprecedented the Council’s use of the power is, opening “*dangerous floodgates*”.³⁸⁹ Only two instances (in each case of committee reports) have been provided to the Inquiry. In the case of Blackwall Reach (2012), although there is sparse detail it appears from the later Blackwall Reach (2017) report that these powers were used in conjunction with section 19(1)(a). The later report (2017) notes that the powers under section 19(1)(aa) are to be used so that the land can be “*improved for inclusion in the new central park*”, for “*comprehensive renewal of the entire green*” and “*[t]he Order Land equates to around 28% of the proposed new central park, so its acquisition is important if the Council is to enable comprehensive improvements to the central open space as a whole, to create the new park and implement its intended ownership and management structure to make it a success for the whole community.*”³⁹⁰ Far from being unprecedented, the Council’s use of section 19(1)(aa) to acquire the open space as an integral part of wider improvements to open space is – on the TRT’s own evidence – a path that has been followed before.

122. The Council is seeking to acquire the Retained Land in order to deliver a new, enhanced open space. The acquisition of the Retained Land allows it to be incorporated into the wider Scheme in order that it can be managed in a coordinated manner with the Future Functioning Open Space. Without acquiring this land, the Council would be unable to achieve this aim.

123. The second issue identified by the TRT is a product of its narrow understanding of the term ‘management’. The acquisition of the land is necessary in order to achieve a unified area of open space that can be managed as a cohesive whole. The implications of the TRT’s argument about the status of its lease as a ‘right’ is that the lease would not be discharged from the Retained Open Space acquired under section 19(1)(aa). As accepted by the TRT, the purpose of section 19(1)(aa) is to allow an acquiring authority to “*acquire land from*

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³⁸⁴ Ms Graham Paul, XX of Mr Chadwick.

³⁸⁵ TRT’s Legal Submissions, para 27 (INQ40).

³⁸⁶ Mr Chadwick, XX (Day 8).

³⁸⁷ Mr Chadwick, XX (Day 8).

³⁸⁸ CD4.1, para 242.

³⁸⁹ TRT Legal Submissions, para. 28 (INQ40).

³⁹⁰ Blackwall Reach report 2017, paras. 1.1.2, 4.9 and 6.7.

someone in order to improve its management".³⁹¹ But the implications of the TRT's legal argument is that open space could never be acquired under section 19(1)(aa) from a landowner, as it would always remain subject to a leaseholder's (or indeed freeholder's) 'legal right' to occupy that land. This is notwithstanding there is no requirement to 'vest' land acquired under section 19(1)(aa) in the original freeholder. Any interests in the land would be therefore rendered immune from acquisition, which in turn would completely undermine the power in section 19(1)(aa). This starkly further illustrates the fallacy in the TRT's legal submission that the reference to rights (or indeed incidents) in section 19 includes proprietary rights such as a lease. That is because, under section 19(1)(aa) says expressly that the land remains subject to the "rights, trusts and incidents", so on the TRT's argument, the land here would remain subject to the lease. This is nonsensical.

124. Finally, the Inspector invited submissions on the TRT's position that the Council's use of section 19(1)(aa) leaves the Trust with "*nothing*".³⁹² As accepted by the TRT, the TRT would be entitled to compensation for the acquisition of its leasehold interest under the Compensation Code. No further compensation is or should be available by virtue of the operation of section 19, as the TRT accepts.³⁹³

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125. Accordingly, it is submitted that it can properly be certified that the Retained Open Space is required to improve its management.

126. At para 45 of the TRT's section 19 Closing Submissions, it says that there is 'nothing' within section 19(1)(aa) to stop an Acquiring Authority building on open space in order to improve its management. That is a particularly bad point; section 19(1)(aa) relates to improving the management or securing the preservation of open space. Clearly one cannot rely on it to acquire for building. Furthermore, in response to para 51, the TRT suggests that the Council must act in accordance with the terms of the lease. This is a product of the narrow interpretation of 'management'; if it meant maintenance then there well may be a case for that argument, but here it is for reconfiguration of the open space, in which case landlord and tenant law does not provide any grounds on which to acquire the land. This is based on a misunderstanding of the fundamentals of how section 19 operates and the basics of compulsory purchase law.

Acquisition of rights over open space

127. The only open space plot over which rights to oversail are sought is plot 70. This plot is the steps from the Embankment to the river and it is owned by the PLA. As explained above, the Council's agents have also been in negotiations with the PLA in respect of rights to oversail its retained land.³⁹⁴ This has led to the withdrawal of the PLA's objection to the Scheme. Mr Heath on behalf of the Tower of Power, who benefit from a river works licence in respect of the Eel Pie Island bridge, agreed that the right to oversail will not impact on the use of the steps.³⁹⁵

³⁹¹ TRT, Legal Submissions (oral) (Day 7).

³⁹² TRT, Legal Submissions (Day 7) (INQ40).

³⁹³ As explained by Ms Graham Paul, Day 8.

³⁹⁴ LBR1A, paras 11.73.

³⁹⁵ Mr Heath, XiC (Day 3).

128. There is therefore no evidence before the Inquiry which disputes that the open space comprising Plot 70 would be no less advantageous to the public if subject to the right to oversail.³⁹⁶

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Support

129. The inquiry received written representations from 65 supporters of the Scheme. Eleven supporters attended the inquiry in person to speak in support. This included long-standing residents of the borough and two ward Councillors,³⁹⁷ who were able to speak on behalf of their constituents to whom they had spoken to about the Scheme. There is no publicly elected body in opposition. The PLA and the EA both welcome the Scheme.³⁹⁸ Supporters include two former trustees of the TRT, both of whom indicated their support for the Scheme and the design process by which it was developed.³⁹⁹ Two further former trustees have submitted written letters of support for the Scheme.⁴⁰⁰ The overwhelming message from supporters is clear; they share the Council's desire to see the Twickenham riverside redeveloped now and consider the Scheme to be a successful means of transforming this corner of the town⁴⁰¹ into a flourishing town centre for current and future generations.⁴⁰²

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Conclusion

130. For all the reasons given in evidence and in submissions, it is submitted that there is a compelling case in the public interest to justify the confirmation of the Modified Order. The Council has a clear vision for the Scheme Land. There is near unanimity in the need for it to be redeveloped and improved. The Scheme has been shaped by a long period of engagement and consultation. It benefits from planning permission, full funding and the commitment of the Council. It enjoys a wide degree of support. The Scheme cannot be delivered without the Order.

131. Further, it is submitted that the Secretary of State can properly issue the requisite certificate(s) under section 19 and Schedule 3.

132. Accordingly, it is requested that the Order is confirmed with the proposed modifications (i.e the Modified Order) and it is further requested that the Secretary of State should issue the certificate(s) in respect of the Exchange Land under section 19(1)(a), the acquisition of Plot 63 under section 19(1)(aa) and the rights over Plot 70 under Schedule 3 paragraph 6 of the Acquisition of Land Act 1981.

Andrew Tait KC

Daisy Noble

27 June 2023

³⁹⁶ LBR1A, paras. 10.63 to 10.65

³⁹⁷ Cllr Chard (SUP-50) and Cllr Neden-Watts (SUP-50A).

³⁹⁸ CD3.37, page 45, para 7.7.

³⁹⁹ SUP-13 and SUP-04.

⁴⁰⁰ SUP10 and SUP44.

⁴⁰¹ As described by Ms Purton, XiC (Day 2) and Byron Young, XiC (Day 2) as “largely unloved”.

⁴⁰² Cllr Neden Watts, XiC (Day 2).

