THE LONDON BOROUGH OF HARINGEY (HIGH ROAD WEST PHASE A) COMPULSORY PURCHASE ORDER 2023

CLOSING STATEMENT ON BEHALF OF THE TRYFONOS FAMILY

Introduction

1. Members of the Tryfonos family have lived and worked on this stretch of Tottenham High Road for more than four decades. Here, they've built community, formed emotional ties, built up businesses.

2. The London Borough of Haringey (High Road West Phase A) Compulsory Purchase Order 2023 ("**the CPO**") would, if confirmed without modification, authorise the compulsory purchase of six properties and associated accessways[1] ("**the Tryfonos Properties**") in which, between them, five members of the Tryfonos family (Alecos Tryfonos, his sister Kate Tryfonos, their brother Tryfonas Tryfonos, and their elderly parents Kyriacos and Maria Tryfonos) and Tryfonos Brothers Ltd (a business run by Alecos and Tryfonas Tryfonos) ("**the Tryfonos family**") hold interests:

Plot	Address	Owner	Interest	Description
73	745 High Road	Kate Tryfonos	Freehold	Shop (K&M Store Household Goods) operated by Kate Tryfonos and flat let on assured shorthold tenancy
74	747 High Road	Alecos Tryfonos	Freehold	Shop (Prince and Princess) and flat let on assured shorthold tenancy
76	749 High Road	Tryfonas Tryfonos	Freehold	Shop (currently vacant) and flat let on assured shorthold tenancy
82	755 High Road	Alecos and Tryfonas Tryfonos	Freehold	Shop occupied by Tryfonos Bros Ltd operating as Chick King
82		Alecos and	Freehold	Flat occupied by Kate Tryfonos under 999 year lease

[1] The Schedule to the CPO identifies: (a) Alecos and Kate Tryfonos as owners and occupiers of private accessway situated to the rear of 745 and 747 High Street (Plot 72); (b) Tryfonas Tryfonos as owner and occupier of private accessway situated to the rear of 749 High Street (Plot 75); and (c) Alecos and Tryfonas Tryfonos as owners and occupiers of private accessway situated to the rear of 755 High Street (Plot 81).

	755a High Road	Tryfonas Tryfonos		
		Kate Tryfonos	Leasehold	
83	757 High Road	Kyriacos and Maria Tryfonos	Freehold	Shop (The Nail Group Limited) and flat occupied by Kyriacos and Maria Tryfonos

3. The Tryfonos family object in strong terms to the confirmation of the CPO with respect to those[2] properties.

4. We close our case under four headings:
   (a) The Tryfonos Properties are widely valued;
   (b) There is no up-to-date business relocation strategy;
   (c) Negotiations with the Tryfonos family have not been meaningful; and
   (d) There is no compelling case for acquiring the Tryfonos Properties.

The Tryfonos Properties are widely valued

5. Chick King provides an obvious starting point. It has been described as "the best chicken shop in London" and "a big part of Tottenham", with "football fans from all over the country… [making] it part of their tradition to visit after the game."[3] Lendlease's own consultants found that it's a business "people cherish in the area and would like to see stay".[4] Mr Tryfonos describes it as "a landmark in Tottenham[,] an institution[,] a local treasure, a community hub…"[5] Mr O'Brien acknowledged that Chick King is valued not only by the Tryfonos family, but also the wider community.

6. Chick King is a focal point, but it does not exist in isolation. It is one component of a "tightly knit cluster of properties" which have been "the centre of [the Tryfonos family's] lively family existence" for many years.[6] That includes the flat in which Mr Tryfonos' parents – now in their nineties – have lived since the 1970s. It includes the shop which has been operated by Mr Tryfonos' sister since the 1980s (K&M Stores), as well as her home. It includes the flat in which Mr Tryfonos hopes his daughter will soon start her adult life. Together, the Tryfonos Properties are a "clear symbol… of

[2] As Mr Tryfonos clarified in his evidence in chief, 8 Kathleen Ferrier Court does not form part of their objection.
[3] Appendices to Mr Tryfonos' proof (CD9.18), p. 3.
[4] Statement of Community Involvement (CD4.7), p. 53.
[5] Mr Tryfonos' proof (CD9.17), §37.
[6] Mr Tryfonos' proof (CD9.17), §§14 and 18.

what [the family] have achieved in [their] lives" – their "livelihood and legacy".[7] In his evidence in chief, Mr Tryfonos made clear that this is not something they would be able to recreate elsewhere.

7. The impact that the CPO would have on the Tryfonos family is not merely one material consideration to be taken into account alongside many others. Their rights are of a different nature to (for example) design benefits. As Laws J explained in ***Chesterfield Properties plc v Secretary of State*** (1998) 76 P&CR 117 at 130:

> "To some ears it may sound a little eccentric to describe, for example, Kwik Save's ownership of their shop in Stockton as a human right; but it is enough that ownership of land is recognised as a constitutional right, as Lord Denning said it was. The identification of any right as 'constitutional', however, means nothing in the absence of a written constitution unless it is defined by reference to some particular protection which the law affords it. The common law affords such protection by adopting, within *Wednesbury*, a variable standard of review. There is no question of the court exceeding the principle of reasonableness. It means only that reasonableness itself requires in such cases that in ordering the priorities which will drive his decision, **the decision-maker must give a high place to the right in question. He cannot treat it merely as something to be taken into account, akin to any other relevant consideration; he must recognise it as a value to be kept, unless in his judgment there is a greater value that justifies its loss**. In many arenas of public discretion, the force to be given to all and any factors which the decision-maker must confront is neutral in the eye of the law; he may make of each what he will, and the law will not interfere because the weight he attributes to any of them is for him and not. the court. But **where a constitutional right is involved, the law presumes it to carry substantial force. Only another interest, a public interest, of greater force may override it**."

8. With that in mind, we turn to the approach which has been taken to affected businesses.

There is no up-to-date business relocation strategy

9. Mr O'Brien acknowledged that the confirmation of the CPO would have a "significant impact" on businesses currently operating within the Order Lands. The Council has recognised that there is a need to mitigate that impact – which is why the Business Charter was prepared back in 2014.[8]

[7] Mr Tryfonos' proof (CD9.17), §§43 and 51.
[8] CD5.7.

10. Although Mr O'Brien's evidence placed great emphasis on the Council's Business Charter, he went on to accept that:

    (a) The Charter is a **draft** document. It was produced as part of the consultation on the High Road West Masterplan Framework and was intended to be superseded by a "final document" which has never materialised.

    (b) The Council recognised that the Charter does not contain all the **detail** that it might have. The Council stated expressly that more detail would likely be added over time. Additional detail has not, however, been supplied.

    (c) The Charter is now nearly a **decade** old. It dates back to 2014 – a time when a development partner had not been selected, planning permission had not been applied for, and the current Tottenham Hotspur Stadium did not exist. Mr O'Brien accepted that, since 2014, Tottenham High Road has changed and the proposals for it have evolved. The Charter, however, has remained the same: it has not been updated, much less rewritten, with the consented scheme or today's High Road in mind.

11. Mr O'Brien claimed that it was "unnecessary" for the Council to adopt "a further policy… to develop the Business Charter", because the Charter has now been "secured" by the section 106 and the CPO indemnity agreement ("**CPOIA**").[9]

12. Clause 4.4.2 was the only provision of the CPOIA[10] Mr O'Brien referred to in that regard. However, in cross-examination, he accepted that clause 4.4.2 relates only to negotiations for the acquisition of property interests within the Order Lands. It is not engaged in any other context, which means that those parts of the Charter which have nothing to do with negotiations to acquire – such as the promise of skills and training opportunities, marketing advice, and regular communication in the form of a Council newsletter – are never brought into play. The CPOIA does not, therefore, impose any obligation on Lendlease to deliver all the promises made by the Council in the Charter.

13. The section 106 agreement, meanwhile, does not refer to the Charter at all. Instead, Schedule 11[11] requires the production of a different document: a Business Relocation Strategy. Mr O'Brien confirmed that, at present, this document **does not exist**. He also

[9] Mr O'Brien's proof (CD9.1), §§7.6 and 17.2.
[10] CD5.4, p.20.
[11] CD4.29, p. 135.

accepted that, if and when Lendlease comes to produce such a Strategy, there is no requirement for it to replicate the Charter. Which means that affected business owners (and indeed this inquiry) do not know whether, and to what extent, the specific commitments made in the Charter will be carried forward.

14. There is another aspect of Schedule 11 on which the Promoters rely, namely the provisions which relate to the marketing of "Existing Business Occupier Units". Ms Mason suggested that those provisions show that it is "a priority [for Lendlease] that as many of the existing businesses on the High Road can relocate into the Scheme as possible."[12] The way the provisions work is this:

    (a) At least 40% of the total commercial development in the scheme for which planning permission has been granted ("**the Regeneration Scheme**") must be offered as "Exiting Business Occupier Units". This 40% threshold applies on a Scheme-wide basis. It does not apply on a Phase-specific basis – i.e. Lendlease is <u>not</u> required to provide 40% of the commercial floorspace delivered in Phase A of the Regeneration Scheme as "Existing Business Occupier Units". Nor does it apply on a Plot-specific basis – i.e. Lendlease is <u>not</u> required to provide 40% of the commercial floorspace in (say) Plot C1 as "Existing Business Occupier Units". As Ms Mason put it: "you measure it once you've reached the end".

    (b) Schedule 11 requires the "Existing Business Occupier Units" to be offered on a lease with a minimum five-year term, with the protections of the Landlord and Tenant Act 1954 disapplied. The units are to be completed to a shell and core finish (i.e. not fully fitted-out). There is no provision in Schedule 11 for the payment of relocation or fit-out costs.

    (c) There is also nothing in Schedule 11 which requires the "Existing Business Occupier Units" to be offered at a point in time when "Existing Business Occupiers" would be able to make a single move from their existing premises directly into the Regeneration Scheme.

    (d) To take one possible scenario (to which we return below), Lendlease might seek vacant possession of the Tryfonos Properties in Q2 2026, but does not "anticipate" that it will deliver any commercial floorspace until Q1 2028 (when Plot C1 is "anticipated" to be completed). In the meantime, the businesses will (necessarily) have either stopped trading or relocated elsewhere. Ms Mason accepted that there is nothing in the section 106 agreement which would require Lendlease to cover

[12] Ms Mason's proof (CD9.13), §11.19.

the costs of those businesses making a second move back into the Regeneration Scheme.

(e) And so, if Lendlease were to offer "Existing Business Occupier Units" in Plot C1 (something which, as explained above, it would have no obligation to do), the "Existing Business Occupiers" could find themselves faced with the prospect of (i) making a second move, (ii) at their own expense, (iii) to a unit which is not fitted-out, (iv) many months, if not years, after they have either stopped trading or settled elsewhere.

(f) The "Existing Business Occupiers" may well not take Lendlease up on that offer. Lendlease would then be free to put the "Existing Business Occupier Units" on the open market, once the three-month marketing period has passed.

15. When asked about the limitations of those provisions, Ms Mason said that Lendlease does not intend to restrict relocation opportunities to what the section 106 requires. But the point remains that Schedule 11 captures what we know to be required, as opposed to what we might hope that Lendlease will choose to deliver.

16. For completeness, we note that a Commercial Occupier Relocation Strategy was also approved under the Development Agreement ("**the DA**") in 2018. A copy was not provided to the Tryfonos family until the second week of the inquiry[13] – after the opportunity to ask questions of Mr O'Brien and Ms Mason in relation to it had passed. Not having been referred to in (much less appended to) their evidence, we assume that the Commercial Occupier Relocation Strategy does not form part of the Promoters' case for confirming the CPO.

17. Which leaves us with:

(a) A Business Charter which remains in draft form, having been produced for consultation nearly a decade ago, without Lendlease now being under any legal obligation to deliver all the commitments made in it.

(b) A Business Relocation Strategy which does not (yet) exist.

(c) Provisions in Schedule 11 of the section 106 agreement relating to Existing Business Occupiers, which do not require Existing Business Occupier Units to be made

[13] Letter dated 14 November 2023 (CD11.19).

available early on in the delivery programme, and do not otherwise guarantee single moves for the High Road businesses.

18. It is difficult to square that picture with the Promoters' claim that business relocation is a "priority".

Negotiations with the Tryfonos family have not been meaningful

19. Similar themes run through the Promoters' negotiations with the Tryfonos family.

20. Mr Tryfonos has made clear that, if the Tryfonos Properties are to be acquired, his family would want to secure the continuation of their businesses through relocation into the Regeneration Scheme. Mr Franklin agreed that that aim is a reasonable one – and indeed (as we have seen) it is an aim the Promoters say they share. It has therefore been clear throughout this process that relocation options would need to form part of the Promoters' negotiations with the Tryfonos family – not as a tick box exercise, but as a meaningful part of the negotiations. Mr Franklin agreed with that, too.

21. When considering whether the Promoters' efforts have in fact been meaningful, it is necessary to draw a line between what happened before the CPO was made and what has happened since – given that, as Mr Franklin accepted, paragraph 17 of the CPO Guidance requires the Council to provide evidence that meaningful attempts at negotiation were pursued or at least genuinely attempted **before the CPO was made**.

Negotiations before the CPO was made

22. The Council's Statement of Reasons identifies "three formal engagements" with the Tryfonos family (on 2 August 2018, 28 June 2022 and 23 November 2022)[14] – that's three in four years. Mr Franklin sought to add a fourth meeting to the list (6 June 2018). It's important to understand what each of those meetings actually entailed:

    (a) The meeting on 6 June 2018 was, to use Mr Franklin's words, "an introductory meeting". As his contemporaneous note[15] shows, it provided Mr Franklin with an opportunity to find out basic details about the Tryfonos family and their property interests.

    (b) At the meeting on 2 August 2018, Mr Franklin made a verbal offer to acquire the Tryfonos Properties. The offer was never followed up in writing. It was not based on measurements taken by Mr Franklin – as he did not measure any of the Tryfonos Properties until 23 November 2022. No relocation options were presented at this meeting, despite Mr Tryfonos having expressed an interest in relocating into the Regeneration Scheme in June.[16]

[14] CD1.4, §11.38.
[15] Appendices to Mr Franklin's proof (CD9.10), p. 55.
[16] Appendices to Mr Franklin's proof (CD9.10), p. 55.

(c) The next "formal engagement" came nearly four years later, on 28 June 2022. At that meeting, Lendlease identified options for relocating Chick King into the Regeneration Scheme. No options were identified for K&M Stores. It was left to Mr Tryfonos to raise that issue for himself.

(d) Although he refers to it as a "formal engagement", Mr Franklin's log[17] shows that the purpose of his 23 November 2022 visit was to take measurements (for the first time) of Chick King and the flat above. Mr Franklin agreed that the purpose of this visit was not to undertake formal negotiations with respect to valuation, relocation or anything else.

23. And that's it: that's all the "formal engagement" the Promoters claim to have undertaken with the Tryfonos family before the CPO was made on 26 January 2023.

24. Two written offers to acquire the Tryfonos Properties had been made by that time:

(a) The first offer was made by the Council in 2015. Of course, at that time, Lendlease had not been selected as the Council's development partner, CBRE had not been instructed to undertake negotiations, and planning permission had not even been applied for. As Mr Tryfonos put it, at that time, "[t]here was nothing of substance to discuss".[18]

(b) The Tryfonos family did not receive another written offer until 13 January 2023 – nearly eight years after the first offer, and less than two weeks before the CPO was made. This letter[19] suggested that Chick King would be a "welcome addition" to the Regeneration Scheme, but did not provide any details regarding (for example) potential locations or indicative timescales. There was no indication that K&M Stores would be "welcome", despite Mr Tryfonos having raised the issue of its relocation on 28 June. Nor was any support offered to those members of the Tryfonos family who live in the Tryfonos Properties. Love Lane residents were offered re-housing options in 2021, including an equity loan option – but that was not extended to the Tryfonos family until 6 October 2023, a month before the inquiry opened.

[17] Appendices to Mr Franklin's proof (CD9.10), p. 43.
[18] Mr Tryfonos' proof (CD9.17), §11.
[19] Appendices to Mr Franklin's proof (CD9.10), p. 94.

25. In those circumstances, the Tryfonos family do not consider that meaningful attempts were made to negotiate with them before the CPO was made, or that reasonable steps were otherwise taken to acquire their properties by agreement. For that reason, they maintain that the Council's exercise of compulsory purchase powers was not – as the Guidance requires – a last resort.

Negotiations after the CPO was made

26. So far as paragraph 17 of the Guidance is concerned, the clock stops at the time the CPO was made (26 January 2023). Paragraph 34 does, however, encourage Acquiring Authorities to continue to negotiate with objectors whilst the confirmation process is underway.

27. The Promoters rely on two "retail relocation packs" provided to the Tryfonos family as evidence of steps taken to negotiate after the CPO was made.

28. The first was provided in May of this year, suggesting that Chick King could be relocated into Plot C1 and K&M Stores into Plot B.[20] This did not provide the Tryfonos family with a meaningful relocation option, since:

    (a) Neither Plot has detailed planning permission. Mr Franklin accepted that there is no guarantee that the detailed design of the Scheme will correspond with the plans provided in the relocation pack, and that there is no certainty as to what the servicing arrangements will be.

    (b) The Tryfonos family have been given a "not before" date of Q2 2026 – and yet Lendlease "anticipates" that Plot C1 will not be completed until Q1 2028, and Plot B not until Q1 2029. Mr Franklin accepted that there is a real (as opposed to merely theoretical) possibility that Lendlease will seek vacant possession of the Tryfonos Properties before there are new units within the Regeneration Scheme for them to relocate into.

    (c) This is not therefore an offer of a <u>guaranteed</u> single move.

    (d) The phasing programme is also such that, if Chick King were to relocate into Plot C1 in Q1 2028, it would not (at that time) be fronting Moselle Square – which is currently "anticipated" to be completed in Q1 2030.

[20] Appendices to Mr Franklin's proof (CD9.10), p. 105.

(e) So, at least in the short term, this is not therefore an offer to relocate to Moselle Square, but an offer to relocate within a construction site.[21]

(f) In the longer term, Mr Tryfonos explained that he "cannot take a unit [on Moselle Square] when he doesn't know what it's going to be in 5 or 10 years [time]". Yes, the Promoters have ambitions for Moselle Square to bring change to this area, but Mr Tryfonos cannot be sure that their ambitions will be realised.

29. The uncertainty is not only as to whether Moselle Square will live up to the Promoters' expectations. Concern has been consistently expressed[22] on behalf of the Tryfonos family that there is no effective mechanism for requiring Lendlease to deliver Moselle Square at all:

(a) Schedule 13 of the section 106 agreement requires the delivery of Moselle Square prior to the occupation of 90% of the Open Market Housing Units in Phase A of the Regeneration Scheme, or prior to the Occupation of 780 Open Market Housing Units, whichever is earlier. Unless and until that trigger is satisfied, there is no obligation to deliver Moselle Square under the section 106.

(b) The point made in Mr O'Brien's evidence[23] – that Lendlease is required to deliver Moselle Square because it is a "Core Requirement" of the DA – appears to have been abandoned. Mr O'Brien identified only one provision in support of that proposition (clause 17.3) – but, as Ms Mason accepted, that provision does not impose requirements as to *what* is delivered on this site, only *how* it is delivered (in terms of dust and noise control, access for construction vehicles, etc). Clause 17.3 could not be used to compel the delivery of Moselle Square.

(c) In the second week of the inquiry – after Mr O'Brien and Ms Mason had completed their evidence – the Promoters confirmed that "[t]here is no express obligation to complete the construction of Moselle Square within the Development Agreement."[24] They suggested that such an obligation arises instead by virtue of two clauses which require Lendlease to complete "the Works". It remains unclear how – as a matter of law – those clauses take us any further forward, given that

[21] See letter from Town Legal dated 22 September 2023 in the appendices to Mr Franklin's proof (CD9.10), p. 167.
[22] See letters from Town Legal dated 6 July and 22 September 2023 in the appendices to Mr Franklin's proof (CD9.10), pp. 115 and 147 and the Tryfonos family's Statement of Case (CD7.9), §21.
[23] Mr O'Brien's proof (CD9.1), §15.20.
[24] Letter dated 14 November 2023 (CD11.19).

Moselle Square is not included in the definition of "the Works" (or, for that matter, in the definition of "Development", "Council Facilities", or "Partner's Works").

30. A second "retail relocation pack"[25] was provided to the Tryfonos family in October, showing both Chick King and K&M Stores within Plot C2. Again, absent detailed planning permission, it is impossible to know whether the Scheme will replicate the plans provided – i.e. whether there will actually be two units consented for the relevant uses in the locations shown. It is common ground that this option will not entail a single move: Plot C2 is not "anticipated" to be completed until Q3 2029, more than a year after the Tryfonos Properties are due to be demolished.

31. In its draft Business Charter, the Council said that it would provide "a clear timetable and options… [to] allow [businesses] to make choices with as much certainty as possible", would "aim to relocate businesses within the regeneration area", and would "aim… to minimise disruption to businesses and ensure continuity of trade where possible"[26] – which, Mr O'Brien accepted, means facilitating single moves where possible (amongst other things).

32. And yet – nine years on from the publication of the Charter – the Tryfonos family have not been provided with a relocation option which would involve a guaranteed single move. They have not been provided with sufficient certainty to make plans for their future. As Mr Franklin accepted, the options presented in the two "retail relocation packs" carry with them material uncertainty.

33. At this point, it is perhaps worth recalling the conclusions of the Council's Scrutiny Committee, in its 2019-2021 review of the High Road West regeneration proposals: that "not all businesses within the development site were sufficiently informed of the Council's plans", that "[m]any… felt that they had been written off", that they had been "alien[ated]", and that "the consultation process… included only limited options that did not realistically address [their] fundamental concerns".[27] The Committee recommended – and the Council's Cabinet agreed – that "higher priority" should be given to ensuring affected businesses are kept informed, that there should be "full and frank disclosure", and that "[t]he Council should be able to demonstrate that regeneration is not simply being done to an area."[28]

[25] Appendices to Mr Franklin's rebuttal (CD10.7), p. 20.
[26] CD5.7, pp. 5 and 8.
[27] CD5.24, §§9.47 and 9.48.
[28] CD5.24, p. 56 (recommendations 8 and 9).

34. Clearly, the Council's Scrutiny Committee, and its Cabinet, considered that more could have been done to assist those affected.

There is no compelling case for acquiring the Tryfonos Properties

35. The Tryfonos family do not object to the principle of the CPO. They object only to the confirmation of the CPO with respect to the Tryfonos Properties.
36. To overcome their objection, the Promoters must demonstrate that there are sufficiently **compelling reasons in the public interest** for the Tryfonos Properties to be acquired **at this time**.[29]

37. There are two key points of agreement as to how that test should be applied.

38. First, Mr O'Brien agreed that the Council's reasons for seeking the compulsory acquisition of the Tryfonos Properties at this time (as opposed to at some later time) must be reasons in the public interest, and not reasons related solely to Lendlease's private or commercial interests. The question is not whether it is in Lendlease's commercial interests to acquire all the Order Lands now.

39. In that context, we note that Lendlease's phasing programme for the Regeneration Scheme has shifted as the CPO process has progressed. In the latest update, we are told that demolition is not currently "anticipated" to begin in Plot E until Q2 2028.[30] Which means that, if the CPO were confirmed in early 2024, Lendlease would not "anticipate" redeveloping the Tryfonos Properties for another four years.

40. The second key point is that, if the CPO is to be confirmed with respect to the Tryfonos Properties, it is not enough to demonstrate a "compelling case" for the Regeneration Scheme in general – there must be a compelling case for acquiring the Tryfonos Properties in particular. Mr O'Brien accepted that this means that it's necessary for the Inspector to consider what, if any, public benefits will be realised through the acquisition of the Tryfonos Properties.

41. In that context, it is important to distinguish those benefits of the Regeneration Scheme which are not specific to the land currently occupied by the Tryfonos Properties – i.e. those benefits which would, or could, be delivered elsewhere. In particular:

[29] CPO Guidance (CD5.1), §§2, 12 and 13.
[30] Note on phasing programme (CD11.31).

(a) It is **agreed** that the Tryfonos Properties do not sit within the proposed location of Moselle Square.[31]

(b) It is **agreed** that there is no requirement under the planning permission for the Library and Learning Centre to be delivered in Plot E.[32]

(c) It is **agreed** that the Tryfonos Properties do not sit within the route of the new east-west connection[33] (at least if Plot E is built out to its maximum extent[34]).

(d) It is **agreed** that no residential units will be delivered in Plot E. The redevelopment of this land will not therefore, of itself, contribute to meeting housing need.[35]

42. In its Statement of Reasons, the Council claimed that the inclusion of the Tryfonos Properties was justified for the following reasons:

> "In order to deliver Moselle Square and the east to west connectivity it will deliver, the existing properties along the High Road are required to be removed. Furthermore, to best achieve the amenity space regeneration benefits of Moselle Square, it needs to be bordered by active frontage that promotes activity and a sense of safety and comfort, as well as enhancing the existing local centre."[36]

43. Mr O'Brien accepted that there are two key benefits identified in that paragraph: east-west connectivity and active frontage. Because the Tryfonos Properties do not sit within the proposed location of Moselle Square, they are not required for the delivery of Moselle Square itself.

44. An additional reason has been developed through the Promoters' evidence, namely that it is Lendlease's intention to deliver the Library and Learning Centre in Plot E.

45. We consider those reasons – east-west connectivity, the Library and Learning Centre, and active frontage – in turn.

East-west connectivity

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[31] Statement of Common Ground (CD8.2), p. 5.
[32] The Promoters' letter dated 14 November 2023 (CD11.19) makes clear that it is only the DA which would require the delivery of the Library and Learning Centre in Plot E.
[33] XX of Mr Horne, by reference to the Objectors' Ownership Plots Plan (CD11.9).
[34] A qualification added by Mr Lawrence in EiC.
[35] XX of Mr O'Brien.
[36] CD1.4, §9.45.

46. Mr Horne confirmed that the Tryfonos Properties do not sit within the new east-west connection shown on the Objectors' Ownership Plots Plan. Mr Lawrence similarly agreed that that Plan shows that it is possible to "make a connection from A to B without the Tryfonos Properties from station to stadium."[37]

47. Mr Lawrence did, however, explain that the Objectors' Ownership Plots Plan shows Plot E built out to its maximum extent. The illustrative masterplan instead shows a smaller Plot E and a wider east-west connection, with the latter covering at least part of Plot 73 (in which K&M Stores and the flat above it sits). There is no suggestion that all the Tryfonos Properties fall within the wider east-west connection shown on the illustrative masterplan.

48. When considering what (if any) weight should be given to the benefit of securing this wider east-west connection, we ask the Inspector to take account of the following:

    (a) The baseline is not one of no east-west connectivity. There are existing east-west connections along White Hall Street, Moselle Street/Moselle Place, and White Hart Lane.[38]

    (b) Mr O'Brien described White Hart Lane (as existing) as "a very, very successful east-west connection". Mr Lawrence describes the "ease of access and connectivity [it provides] for pedestrians", as well as its "generous streetscape [which] is active and well used, colourful and ecologically rich, encouraging people to sit, dwell and interact within a comfortable environment."[39]

    (c) The Promoters emphasise that the new connection will be pedestrianised, but as Mr Horne confirmed in response to questions from the Inspector, it's already the case that the existing routes are not used by vehicles when events are being held at the Stadium.

    (d) Mr O'Brien confirmed that there is no suggestion that, if the Tryfonos Properties were not acquired, it would be impossible to deliver an east-west connection. Which is, of course, what the Objectors' Ownership Plots Plan now shows.

The Library and Learning Centre

[37] XX by Mr Speed.
[38] XX of Mr O'Brien, by reference to the Order Map (CD1.3).
[39] Mr Lawrence's proof (CD9.7), §§4.5.1 and 4.5.3.

49. There is **no requirement** under the planning permission for the Library and Learning Centre to be delivered in Plot E. The Library and Learning Centre could, under the planning permission, be delivered in Plot C.[40]

50. Nonetheless, we are told that Lendlease intends to deliver the Library and Learning Centre in Plot E.

51. Intentions can, of course, always change.

52. When considering what (if any) weight should be given to the benefit of the Library and Learning Centre (potentially) being delivered in this location, we ask the Inspector to take into account the following:

    (a) There is already a library operating within the Order Lands. The proposal is not for an additional library: rather, the existing library will be demolished, and a new one then delivered. And, as Mr Horne acknowledged in answer to questions from the Inspector, on the minimum parameters prescribed by the planning permission, the new library could be equivalent in size to the existing library.

    (b) Should the Council decide not to exercise its right to occupy the Library and Learning Centre, Mr O'Brien accepted that Schedule 14 of the section 106 agreement does not impose any controls in relation to (for example) public access or the provision of community services.[41] Those would be matters within the control of Lendlease, not the Council.

Active frontage

53. Now that we know that the Tryfonos Properties do not sit within the plot of land required for the delivery of Moselle Square, the Library and Learning Centre (at least under the planning permission), or the new east-west connection (at least if Plot E is built out to its maximum extent), the crux of the Promoters' case appears to be the need to provide "active frontage" onto Moselle Square.

54. When considering what (if any) weight should be given to the provision of "active frontage", we ask the Inspector to take account of the following:

[40] XX of Mr O'Brien, by reference to the parameter plans (CD4.3).
[41] Schedule 14 of the section 106 agreement (CD4.29), paragraph 5.3.2.

(a) Plot E is not the only part of the Regeneration Scheme which would provide active frontage onto Moselle Square. Mr O'Brien agreed that active frontage would be provided by Plot C, Plot D and Plot F.

(b) Mr Lawrence similarly agreed that Moselle Square would be overlooked not only by Plot E, but also by Plot C1, Plot C2, Plot D, and Plot F.

(c) Mr Speed asked Mr Lawrence whether it is really the case that nothing could be done to improve the outlook from Moselle Square onto the Tryfonos Properties. He responded: "… I suppose there's a scenario where a sort of market environment might sit" in the gap between the back of the Tryfonos Properties and the edge of Moselle Square.[42]

(d) The Council never consulted on an option for High Road West which would involve retaining the Tryfonos Properties, with or without improvements being made to their rear. As the Council's Scrutiny Committee recognised, the Tryfonos Properties were "earmarked for demolition from the start of the process."[43] The process was never designed to ascertain if and how they might be retained.

(e) It was put to Mr Tryfonos that he was nonetheless still able to make his views about the demolition of the High Road properties known. He told the Council that he opposed their demolition and presented a petition with more than 4,000 signatures to that effect. But, as Mr Tryfonos explained, that meant nothing – because "the Council never listened to us or heard what we had to say."

55. The question for this inquiry is not, of course, whether it would be better in design terms for the Tryfonos Properties to be demolished or retained.

56. To justify compulsory purchase, the bar is – rightly – set higher than that.

57. And yet, the case for acquiring the Tryfonos Properties appears to come down to (i) a preference for a wider east-west connection than that shown on the Objectors' Ownership Plots Plan, (ii) the potential for the Library Learning Centre to be delivered in Plot E (despite that not being required by the planning permission), and (iii) the benefits of having "active frontage" on all sides of Moselle Square.

[42] The gap as shown on the Objectors' Ownership Plots Plan (CD11.9).
[43] Scrutiny Review (CD5.24), §9.38.

58. On behalf of the Tryfonos family, it is submitted that that does not come close to a compelling case in the public interest.

Conclusion

59. For those reasons, we ask that the CPO not be confirmed with respect to the Tryfonos Properties.

Isabella Buono
Landmark Chambers
22 November 2023