

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

**SUBMISSIONS MADE ON BEHALF OF KINGWELL
INVESTMENTS LTD & DR & DR JEYARAJAH**

(OBJECTOR 4)

Introduction

1. These submissions are made on behalf of Kingwell Investments Ltd, the freeholder to the land at 759 High Road¹ (“Tottenham Health Centre”) and Drs. Jeyarajah, the leaseholders to Tottenham Health Centre (and sole directors of Kingwell Investments Ltd. For the purpose of ease of reference, these parties are referred throughout these submissions as Objector 4.
2. It is accepted that these submissions have been made late in the day, and introduced a week after the Inquiry into this CPO was opened. Objector 4 is grateful for the opportunity to address their objection² directly to the Inquiry through this document and Counsel. There is no attempt made in what follows to introduce new evidence at this late stage.
3. In summary, Objector 4 maintains its objection of 6th March 2023 that:
 - a. Tottenham Health Centre is to be acquired early, and there is no justification for this
 - b. There is a lack of clarity as to how the land will be used
 - c. There are concerns over the viability and deliverability of the Scheme

¹ Plot 84

² CD6.Obj.04

- d. The AA has not demonstrated a compelling case in the public interest to the extent that CPO powers should be granted to it to deprive Objector 4 of their property.

Tottenham Health Centre

4. Tottenham Heath Centre is located within Plot E of the AA's "Objector's Ownership Plots"³. It is identified as an existing community resource in the AA's EqIA⁴ and reduced access to the facility was also identified as a potential equality risk⁵ in respect of older people, disabled people, pregnancy and maternity and ethnic minority groups. It's identification in the EqIA does, with respect, acknowledge the important role that the Tottenham Heath Centre provides for the local community (should that need emphasis).

The Objections

Tottenham Health Centre is to be Acquired Early, Without Justification

5. As explained, at [15.30] by Peter O'Brien in his "Overview Proof of Evidence"⁶, Tottenham Health Centre is required to deliver Phase 5 of the Scheme. Within the table found at [8.4] of Selina Mason's "Overview Proof of Evidence"⁷, the "anticipated" start date for Phase 5 is Q2, 2028 on the Scheme's current timetable. The AA's position⁸ is that it, and Lendlease, do not "...intend to rely on the Order to obtain vacant possession..." of Tottenham Health Centre "...in advance of Q2 2026".
6. In its Statement of Case, at [12.2.7], the AA explains:

"These "not before" dates are intended to give the owners and occupiers of those properties a significant level of reassurance to enable them to make arrangements for the future planning of their businesses. It will be noted that these dates precede the dates stated in Section 7 above as those on which vacant possession of the High Road properties will be required pursuant to the current delivery timetable. That is because

³ CD11.09

⁴ CD2.3 Appendix 5 at [4.3]

⁵ CD2.3 Appendix 4 at Table 5.1

⁶ CD9.1

⁷ CD9.03

⁸ Encapsulated in [12.2.6(b)] and Appendix 1 of its Statement of Case – CD7.1

Lendlease requires a degree of flexibility in the event the delivery of the Scheme (and the associated benefits) is accelerated.”

7. With respect, whilst attempting to pursue a “reassuring” approach to the acquisition of Objector 4’s property, the AA appears to have overlooked S.13 of the Guidance⁹ – “How will the confirming minister consider the acquiring authority’s justification for a compulsory purchase order?” which provides:

“The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest. The more comprehensive the justification which the acquiring authority can present, the stronger its case is likely to be.

*However, the confirming minister will consider each case on its own merits and this guidance is not intended to imply that the confirming minister will require any particular degree of justification for any specific order. **It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired, but a confirming minister will need to understand, and the acquiring authority must be able to demonstrate, that there are sufficiently compelling reasons for the powers to be sought at this time.***

If an acquiring authority does not:

- have a clear idea of how it intends to use the land which it is proposing to acquire;*

and

- cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable timescale*

⁹ CD5.1

*it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.” **(emphasis added)***

8. Selina Mason, in her Proof of Evidence at Sections 5 and 10 (at [10.18], dealing with the Tryfonos family objections) makes it clear that the AA’s motive for seeking CPO powers over Tottenham Health Centre now is to provide “*certainty over the availability of the land required to deliver the Scheme is required now to provide certainty that the proposal to comprehensively regenerate the Order Land and create the associated public benefits is deliverable*”
9. In essence, this appears to be an approach adopted for “administrative convenience” in respect of the implemented¹⁰ planning permission. It is an odd approach to take (and indeed, seemingly at odds with the Guidance) in respect of a Scheme that is being delivered in Phases and in respect of property interests that are not, in fact, required until 2028. Presumably, as Tom Horne explains in his PoE, given that the planning permission has been implemented, there is no risk of the permission being lost, if Objector 4’s property is not obtained as soon as the AA (and Lendlease) may want or consider convenient.
10. Further, in respect of the “need” to acquire Tottenham Health Centre now, it is unclear as to why there is such a need at this stage, given the requirement that Lendlease must provide a new healthcare facility before Tottenham Health Centre is demolished either through the RMA or through its relocation before the redevelopment of Plot E (as explained by Tom Horne in his PoE at [4.20] and Schedule 15 of the s.106 Agreement¹¹).
11. Objector 4 does not accept that, on the evidence filed with the Inquiry, the AA has demonstrated that there are compelling reasons, in the public interest, for their land to be acquired now given the explanation as to when and why their interest is required.

¹⁰ CD9.5 at [4.26]

¹¹ CD4.29

Lack of Clarity as to How the Land Will be Used

12. At [15.34] of his PoE¹², Peter O’Brien explains that the land is required for Plot E of the Planning Permission, this being the location for a Library and Centre. At [10.16] of Selina Mason’s PoE¹³ – she explains:

“Delivery of the Library and Learning Centre is part of the Core Requirements of the DA as set out in section 5. Whilst the DA provides flexibility as to where it is located, it is Lendlease’s intention to deliver it within Plot E as indicated in the illustrative masterplan submitted in support of the planning application for the placemaking reasons set out in the evidence of Lucas Lawrence [CD 9.7]

Both Moselle Square and the Library and Learning Centre are key elements of the Scheme which Lendlease will deliver through implementation of the Planning Permission. Lendlease is commercially incentivised to deliver Moselle Square and the Library and Learning Centre as set out in section 7.”

13. Objector 4 has noted the position set out in the Tryfonos family’s Statement of Case¹⁴ (at [5]-[31]) concerning the flexibility of the planning permission, Lendlease’s “obligation” to deliver Moselle Square and/or the Library and Learning Centre and the fact that the family’s properties are not required to deliver Moselle Square. Given the location of Tottenham Health Centre (noting that it only partially sits within Plot E¹⁵), the issues raised by and on behalf of the Tryfonos family equally apply to the Tottenham Health Centre.

The Viability and Deliverability of the Scheme

14. Whilst this issue was raised by Objector 4 in its Objection, it is noted that THFC have dealt with this issue comprehensively in its pleadings and the evidence of Colin Cottage¹⁶. Objector 4 has considered the evidence produced by THFC and agrees with the points raised within it.

¹² CD9.1

¹³ CD9.3

¹⁴ CD7.9

¹⁵ CD11.9

¹⁶ CD9.23 & CD10.13

15. The Guidance at [106] provides a list of factors that the Secretary of State can be expected to consider. This includes:

“...the potential financial viability of the scheme for which the land is being acquired.

A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. The timing of any available funding may also be important. For example, a strict time limit on the availability of the necessary funding may be an argument put forward by the acquiring authority to justify proceeding with the order before finalising the details of the replacement scheme and/or the statutory planning position”

16. Financial viability is, therefore, always a central consideration in CPOs such as this.
17. The Inspector should pay careful attention to the evidence produced by all parties to this Inquiry and from what Objector 4 has seen, draw the conclusion that this is one of those cases in which there is not enough to demonstrate that this Scheme has a reasonable prospect of proceeding.
18. Additionally, Schedule 15 of the s.106 Agreement¹⁷ has the potential to frustrate the timely delivery (or at all) of a replacement health centre – either through:
- a. the RMA process “*within which the Replacement Healthcare Facility is to be located*” as there is no absolute certainty that any specification submitted as part of an RMA would be approved by the LPA as being suitable, or;
 - b. the failure to construct a replacement facility (under this Planning Permission or HGY/2021/2283 or HGY/2021/2284), a lease entered into with the CCG, within a period of time that will enable the Scheme to proceed as intended.
19. None of the evidence that Objector 4 has seen deals with, or considers, the issues that could arise in terms of viability or deliverability of the Scheme that a delay in the

¹⁷ CD4.29

reprovision of the Tottenham Health Centre could result in, particularly as the demolition of the current site is expressly forbidden until such reprovision is provided.

20. It would (clearly) be unacceptable for the LPA or developer to seek to renegotiate the terms of the s.106 in circumstances where the reprovision of the Health Centre became difficult to the point that delay in the delivery of the Scheme began to arise.

The AA Has Not Demonstrated a Compelling Case in the Public Interest

21. In considering the merits of this CPO, the Inspector can only confirm it “...*where there is a compelling case in the public interest*” (as per the Guidance at 12).
22. As set out above, those reasons identified by the Objectors (including Objector 4) in the course of this Inquiry, and the evidence presented to the Inquiry to date (that Objector 4 has seen) - the AA does not demonstrate a compelling case in the public interest for its land to be including within the CPO.
23. It is not enough for the AA to pray in aid of the need to regenerate Tottenham by reference to the level of deprivation experienced within the locality. This, it appears to do so by reference to its strategic objective for the area¹⁸. That alone is not sufficient to justify the confirmation of the CPO to include the Tottenham Health Centre now.
24. The Planning Permission does not inspire confidence that the development on Plot E for the Library and Learning Centre, or indeed the delivery of Moselle Square is something that the Developer is bound to deliver in those locations and/or needs to do so through the acquisition of the Tottenham Health Centre.
25. From the outset, the Scheme does not, to Objector 4, appear to have been financially viable. This is clearly a concern shared by others and, in considering it, the Inquiry has (in Objector 4’s submission) to view the AA’s claims of viability with considerable caution.

¹⁸ CD11.2 at [3]

Conclusion

26. Through their objection, Objector 4 has not sought to claim that there is not a need to regenerate Tottenham. They have not claimed a lack of engagement with them. However, through this Inquiry the Inspector will need to examine, and consider, the issues raised by Objector 4 when determining, on the evidence before the Inquiry, as to whether or not the CPO should be confirmed as a whole, including Objector 4's interests.
27. Objector 4 submits that the Inspector should not confirm the CPO with their interests included. Tottenham Health Centre should be excluded from the CPO.

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22nd November 2023