IN THE PLANNING INSPECTORATE

IN THE MATTER OF LONDON BOROUGH OF HARINGEY (WARDS CORNER REGENERATION PROJECT)

COMPULSORY PURCHASE ORDER 2016

NPCU/CPO/Y5420/77066

STATEMENT OF CASE ON BEHALF OF

SEVEN SISTERS MARKET TRADERS

Introduction

1. This Statement of Case ("**the Statement**") is made on behalf of various market traders ("**the Traders**"), both men and women, operating in the Seven Sisters Indoor Market (known as El Pueblito Paisa) ("**the Market**"). A full list of the Traders and their market units can be found at Annex A of the Statement.

2. The Traders oppose approval of the London Borough of Haringey (Wards Corner Regeneration Project) Compulsory Purchase Order 2016 ("**the Order**") on ten grounds:

    a. The Order Scheme does not accord with the National Planning Policy Framework (NPPF) because it does not pursue sustainable development. Nor does it fit with the Local Plan.

b. The Council's decision-making is vitiated for breach of their Public Sector Equality Duty;

c. The Order Scheme would involve unjustified interferences with human rights and constitute indirect discrimination against ethnic minorities and women;

d. The Council has wholly failed to take into account the best interest of children affected by the Order, in breach of domestic and international law;

e. The Order Scheme fails to secure the future of the Market, in part because the Council has fundamentally misunderstood the meaning and practical effects of the S106 Agreement;

f. The Order Scheme fails to protect important community and heritage assets;

g. The Order Scheme fails to provide much-needed affordable housing;

h. The Council's evidence as to the economic, social or environmental benefits of the Order Scheme is limited;

i. There are alternative plans for the Order Land and possible alternative locations in which the proposed development could take place; and

j. In the premises, there is no compelling case for compulsory purchase and the Order should not be confirmed.

3. The Traders are supported in their object to the Order by two prominent community organisations:

a. **Latin Corner UK**[1] – which aims to support the Latin American Community in the UK and protect the Market, as the UK's second largest concentration of Latin businesses; and

b. **Wards Corner Community Coalition**[2] – which seeks to prevent the destruction of homes, businesses and the Market by Grainger PLC ("**the Developer**") and which, to this end, has obtained planning permission for an alternative regeneration scheme ("**the Alternative Scheme**") on the Order Land.

4. The Traders' submissions in opposition to the CPO are naturally concerned with the interests of the Latin American community and the destruction of the Market itself. However, submissions will also be made on the failings of the Order Scheme as a whole and additional reasons why the CPO should not be confirmed.

Background

5. The Market is located on the ground floor of the Wards Corner Building at 227-237 High Road, within the Order Land. It is referred to locally as 'Wards Corner'.

6. The Wards Corner Building is owned by London Underground Limited and was leased to Market Asset Management Seven Sisters Limited until the expiry of that lease on 16 September 2015. Discussions as to renewal of the lease are ongoing.

7. Meanwhile, the Market continues to operate in the same vibrant manner that it has for decades. Information provided by the Developer to AECOM for the purposes of the CPO Equality Impact Assessment in September 2015 ("**the CPO EIA**") indicated that "*the current market comprises 60 very small retail units, with 42 shops or other*

[1] http://www.latincorner.org.uk/
[2] https://wardscorner.wikispaces.com/

businesses, including the market office, occupying the units" and that market traders are presently "*holding licenses with a four week break clause*".[3]

8. The CPO EIA further recorded the cultural and ethnic diversity of the Market[4]:

   a. Market traders "*included people from a range of ethnic backgrounds*";

   b. "*Over 50% of respondents to the business survey identified themselves as belonging to a Latin American or Hispanic background, and 21% of respondents self-identified themselves as belonging to other backgrounds, including, Mediterranean, Turkish/Turkish British and Iranian. 14% of respondents identified themselves as from Asian backgrounds, whilst 8% of respondents identified themselves as either Black African or Black Caribbean*";

   c. Of those employed by businesses in the Market, "*the largest group represented are those of Latin American or Hispanic background (55.6%) followed by other ethnic groups (28%)*";

   d. Responses to a 2012 business survey raised "*potential negative equality impacts arising from possible loss of livelihoods and employment for Latin American/Hispanic and other BAME-owned businesses and their employees, following closure of existing shops and markets*".

9. The Market is much more than just a business community, important though that is. It also operates as an informal community centre, a social meeting point for those from a variety of ethnic backgrounds and as an historic home for London's Latin American families, including their children. It is the distinct Latin American culture of the Market that leads so many to call it "El Pueblito Paisa" or the "Latin Market".

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[3] AECOM Wards Corner Compulsory Purchase Order (CPO) EQIA, September 2015, at para 2.2.15.
[4] Ibid. at paras 4.7.1 to 4.7.3.

10. Latin Corner UK, which has started a petition to save the current market (gathering over 2000 signatures from the local community) state that:

> *"We have the UK's second largest concentration of Latin American businesses in Tottenham. We have a Latin American village right on the entrance of Seven Sisters Underground station. A unique treasure in a national landscape that is being homogenised by corporate interests and not local communities.*
>
> *Many of our children from multicultural backgrounds rely on Seven Sisters Market/Pueblito Paisa to enjoy a sense of a village community, especially in an absence of youth centres across the country.*
>
> *Seven Sisters Market / Pueblito Paisa already attracts visitors from around the world because of its originality in character.*"[5]

11. The cultural and local importance of the Market, as a commercial and social centre for traders, families and children from multicultural backgrounds, has frequently been recognised by politicians, journalists, artists and tourist websites:

    a. The Market is recognised by Trip Advisor, London Town and Time Out as a significant London tourist attraction;[6]

    b. Boris Johnson, as Major of London, has intervened in the planning process to try and prevent the destruction of the Market. In 2008, his spokesperson said that he "*has always been a strong supporter of the Puebilto Paisa market and has worked hard to safeguard its future.*"[7]

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[5] https://www.change.org/p/save-uk-s-only-latino-village-pueblito-paisa-in-seven-sisters-indoor-market-wards-corner?recruiter=54809858&utm_source=share_petition&utm_medium=email&utm_campaign=share_email_responsive

[6] https://www.tripadvisor.co.uk/Attraction_Review-g186338-d2470227-Reviews-Seven_Sisters_Indoor_Market-London_England.html; http://www.londontown.com/LondonInformation/Shopping/Seven_Sisters_Market/6dc3/; https://www.timeout.com/london/restaurants/seven-sisters-market

[7] https://www.theguardian.com/uk/davehillblog/2008/dec/16/boris-london3

c. The proposed demolition of the Market by the Developer has been followed by local and national media[8], with Dave Hill, a leading London commentator, writing for the Guardian on 12 January 2009:

> "*I've read about Haringey Council's plans to redevelop the home of Seven Sisters Market, noted the local campaign to save it and followed Boris Johnson's interventions in the controversy. But until Saturday I'd never been to the market itself. Within a minute of arriving it was obvious to me that it is irreplaceable. If the bulldozers move in, as it now appears they will, something unique and valuable will be destroyed . . . it's a small indoor market, friendly, warren-like, and with a strong South American character*"[9]

d. Such is the unique character of the Market that a feature-length film, directed by Klearjos Eduardo Papanicolaou, has been produced about it. This film was premiered at the 2016 East End Film Festival and shown as part of the 2016 LSE Resist Festival. More information can be found at https://www.sevensistersmarketfilm.com/ , including the director's comments that:

> *"On face value, it is a fairly common market, with numerous and diverse businesses sit side-by-side vying for custom. Looking more closely, it's evident that it also doubles as an informal cultural centre for immigrants from Latin America, Africa, and elsewhere. This, too, is common enough among various parts of London and cities like it.*
>
> *Upon closer reflection, however – and it is this reflection that the film attempts – a brilliance emerges. It is a brilliance in which public and private, social and commercial, native and foreign, are merged into a social attitude of inclusiveness – an example of humanity exceptionally embedded into urban space. It is a market imbued with a 'living*

[8] http://www.standard.co.uk/news/seven-sisters-market-saved-as-demolition-may-damage-race-relations-6483804.html; https://www.theguardian.com/uk/davehillblog/2009/jan/11/boris-london1
[9] https://www.theguardian.com/uk/davehillblog/2009/jan/11/boris-london1

room' feeling made up of informality and spontaneous cosmopolitanism. Imagine trying to cross a corridor amid multilingual chatter, and being blocked by a child practicing karate.

…

The story of the Seven Sisters Indoor Market is a reminder of what is possible in a city, as well as of what we risk losing through the systematic dismantling of the conditions that keep it open."

e. In January 2017, leading London men's fashion designer, Martine Rose, recognised the important of the Market by selected it as the venue for her catwalk show as part of London Men's Fashion Week. Her company put out a statement that:

"Martine Rose has been based in Tottenham for the last 10 years, making it increasingly relevant to hold an event in the area in which the label has developed and flourished. The incredible indoor Seven Sisters Market and its community deserve to be celebrated and experienced. By holding the show in this unique market space, Martine is hoping to not only raise awareness on a diverse and exciting part of London but also to support both the businesses and the people who make the market what it is."[10]

12. The unique cultural importance of the Market and its role in creating harmonious race relations within Tottenham has also been recognised by the courts. In quashing the first grant of planning permission for the Order Land in 2010, the Court of Appeal found that the Council had failed to have due regard to the need to promote equality of opportunity and good relations between persons of different racial groups. Such was the concern that the Equality and Human Rights Commission intervened in that case. The Court of Appeal found that:

[10] http://www.seventhsister.london/2017/01/09/mens-fashion-week-comes-tottenham/

"on the material before the council, there was sufficient potential impact on equality of opportunity between person of different racial groups, and on good relations between such groups, to require that the impact of the decision on those aspects of social and economic life be considered"[11]

13. In further recognition of the Market's cultural and community importance, the Council itself designated the Market as an Asset of Community Value ("ACV") in May 2014, pursuant to an application by the Wards Corner Community Coalition under the Localism Act 2011.

14. Section 88(1) of the Localism Act 2011 provides that a building or land may only be designated as an ACV if "*in the opinion of the authority* –

(a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and

(b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community."

15. In the premises, the importance of preserving the Market and protecting the Latin American and other ethnic communities which use it must be recognised as a paramount consideration when considering both the Order Scheme and the proposed Order.

16. Against this background, it is easy to see why there has been a long history of objection to the Wards Corner Regeneration Project and why there are now strong objections to the Order.

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[11] R *(Harris) v Haringey LBC* [2010] EWCA Civ 703 at [37].

17. Finally, the Traders would draw the Inspector's attention to the following procedural history, which demonstrates that the Council has consistently failed to properly consider the interests of ethnic minority groups and the vital contribution that the Market makes to the economic, environmental and social well-being of the Seven Sisters area:

a. The first planning permission granted on 24 December 2008 permitted the complete destruction of the Market and was granted by the Council without carrying out any Equality Impact Assessment.

b. This grant of planning permission was challenge in court and, on 22 June 2010, the Court of Appeal quashed the Council's decision on the basis that the Council had wholly failed to have due regard to the promotion of equality of opportunity and good relations between persons of different racial groups when making its decision to grant Planning Permission.

c. In response to the judgment of the Court of Appeal, the Council pressed ahead with the proposed development and, in attempted compliance with the judgment, instructing URS Scott Wilson to carry out an Equality Impact Assessment aimed at satisfying the Council's legal obligations.

d. The report produced by URS in June 2011 ("**the Planning EIA**") formed the basis of the Council's second grant of planning permission on 12 July 2012 ("**the Planning Permission**").

e. This followed the S106 Agreement between, inter alia, the Council and the Developer on 11 July 2012, which was intended to protect the position of the Market and existing traders. This was the Council's own understanding of the effect of this S106 Agreement, as set out in their Statement of Reasons in support of the CPO. The Council states that "*the development consented pursuant to the Planning Permission secures the relocation and improvement of the Market on Seven Sisters Road . . . and will be viable in the long term*" and that "*a package of*

measure has been secured by the Council to help to ensure the successful future of the Market".[12] The Council further states that "*a package of measures is secured pursuant to the S106 Agreement in order to enhance the environment for local people and local businesses, including existing traders working within the Market. In short, the s106 Agreement ensures financial assistance to traders to facilitate their relocation to the new market*". However, as will be explained further below, the Council has fundamentally misunderstood the meaning and practical effects of the S106 Agreement – which in fact fails to offer any meaningful protections for the existing Market, its traders or its users.

f. Further, the Council instructed AECOM to produce the CPO EIA in September 2015, before making the Order on 22 September 2016. As will be explained below, the CPO EIA was based, to a very significant extent, on the Planning EIA and was equally flawed in failing to take due account of the interests and rights of ethnic minority groups and the significance of the Market's cultural and social impact in the local community.

g. Finally, contrary to the account given in the Council's Statement of Case,[13] the engagement of the Council with the Latino Community during the consultation process has not always been constructive, nor did the consultation respect elemental aspects of due process. For example, most of the Spanish translations of the documents forming part of the Statement of Reasons were made available to the Latino Community (most of which is Spanish-speaking only) after the deadline for objections had passed, despite express written objections that this would render the rights of most of the Traders illusory.

18. In the premises, the Council has consistently failed to recognise and protect the Market and the various ethnic groups who depend upon it for their livelihood and

[12] Council's Statement of Reasons at 8.22.
[13] Council's Statement of Case at 18.1 to 18.3.

for their community and family life. Instead, the Council has sought to insulate its plans from legal challenge by paying lip-service to its public-law obligations through EIAs and a S106 Agreement. In fact, these steps have proved wholly inadequate and only serve to further demonstrate why the Order which the Council seeks should not be confirmed.

Legal Framework and Guidance

19. Before setting out their grounds of opposition in more detail, the Traders draw attention to the legal framework applicable to any consideration of a CPO.

20. The Council made this Order under section 226(1)(a) of the Town and Country Planning Act 1990 ("**the Act**"), which provides that:

> *"A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area . . .*
>
> *(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land."*

21. Section 226(1A) then provides that:

> *"[A] local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects–*
>
> *(a) the promotion or improvement of the economic well-being of their area;*
>
> *(b) the promotion or improvement of the social well-being of their area;*
>
> *(c) the promotion or improvement of the environmental well-being of their area."*

22. However, in determining whether or not to confirm the Order, a much broader view of the merits must be taken.

23. Paragraph 2 of the Compulsory Purchase Guidance provides that:

> *"[A] compulsory purchase order should only be made where there is a compelling case in the public interest.*
>
> . . .
>
> *When making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected. The officers' report seeking authorisation for the compulsory purchase order should address human rights issues"*

24. Paragraph 76 of the Guidance further provides that:

> *"Any decision about whether to confirm an order made under section 226(1)(a) will be made on its own merits, but the factors which the Secretary of State can be expected to consider include:*
>
> - *Whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or , where no such up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework*
>
> - *The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area*
>
> - *Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired."*

25. Although these considerations do not form a comprehensive or exhaustive list of the factors which must be considered, it does follow that the Order should not be confirmed unless, at the very least:

a. The Council can demonstrate that the Order Scheme will promote or improve of the economic, social or environmental well-being of the area – when weighed against any disbenefits of the proposals;

b. The Council can establish that there is a "*compelling case*" for compulsory purchase and that the Order is therefore "*in the public interest*" – not merely that it is in the interests of the Developer or the Council;

c. On the full merits of the case, including consideration of all human rights issues arising, both the acquiring and authorising authorities are "*sure*" that the purposes for which the Order is made justify the interferences with human rights that the Order entails;

d. The purposes for which the Order is sought fit with the Local Plan for the area and/or the NPPF; and

e. Careful consideration has been given to alternatives to the Order, including the suitability of alternative planning proposals and examination of alternative locations to the land which is being acquired.

Objection 1: The Order Scheme does not accord with the National Planning Policy Framework (NPPF) because it does not pursue sustainable development. Nor does it fit with the Local Plan

26. As noted by the Council at section 7 of its Statement of Case, the NPPF, published by the Government in March 2012, introduced a presumption in favour of sustainable development. The Council quoted at section 7.42, paragraph 7 of the

NPPF which sets out three roles for the planning system in contributing to sustainable development:

> *"an economic role – contributing to building a strong, responsive and competitive economy…;*
> *a social role – supporting strong, vibrant and healthy communities… and*
> *an environmental role- contributing to protecting and enhancing our natural, built and historic environment…" (NPPF, para 7)*

27. The Council likewise acknowledges that the above roles "are mutually dependent" (NPPF, para 8).

28. The vision statement for Haringey in 2026, on the other hand, as laid down in Haringey's Local Plan Strategic Policies 2012-2026, ties its notion of "economic growth" to the "socially inclusive" feature of the borough, and the presence of "mixed communities" as part of Haringey's growth.[14] Paragraph 1.5.1 under *Vision and Objectives* of the said Local Plan, indeed mentions "a place for diverse communities" as the Local Plan Vision.

29. The Order Scheme however has not been conceived in accordance to such *Vision and Objectives*. Admittedly, the Scheme is driven to create, (i) new retail floorspace;[15] and (ii) new private housing,[16] which will be available at open market value. Thus "social inclusiveness" is not gearing such development. In fact, rather than promoting diversity, the Scheme is adversely affecting the businesses and housing of ethnic minority groups (Black, Asian and minority ethnic – Latin Hispanic) *only*. Indeed all the Traders and individuals to be affected by the Order Scheme are non-white members of the community. This disproportionate effect on the ethnic minority group of the Order Land, alone, amounts to indirect discrimination, in

[14] Haringey's Local Plan: Strategic Policies 2013-2026 (formerly the Core Strategy), para. 1.5.4, pp. 16-17.
[15] Haringey's Statement of Reasons, para. 8.18.
[16] Ibid, para. 8.16.

violation of Article 14 of the European Convention on Human Rights (ECHR), as will be seen further below.

30. Further, rather than following core planning principles underpinning decision-making (as enshrined in Paragraph 17 of the NPPF) such as "empowering local people to shape their surroundings" the Scheme, in spite of the local community, disregards the community's conception of "quality public spaces", "sense of destination", [17] and identity.

31. Moreover, as it will be fully addressed in Objection 6, the Order Scheme proposes the demolition of the existing buildings (three of which are locally listed), which the community feels would irreversibly damage the historic identity of the area.

32. In short, the Order Scheme contravenes the principle of sustainability enshrined in paragraph 7 of the NPPF because (i) it does not foster economic growth in inclusive terms as mandated by Haringey's Local Plan – failing to contribute to building a strong, responsive and competitive economy; (ii) it does not foster community cohesion by implementing a measure (CPO) amounting to indirect discrimination on ethnic minorities – failing to contribute to supporting strong, vibrant and healthy communities; and (iii) it fails to contribute to protecting, and enhancing, the historic environment in the area by demolishing buildings with historical value, absent the economic and social benefits.

Objection 2: Breach of Public Sector Equality Duty

33. As the Council acknowledges at section 17 of its Statement of Case, the Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief and sex and sexual orientation.

[17] Haringey's Statement of Reasons, para. 8.59.

34. Pursuant to section 149 of the Equality Act 2010, the Council and the Secretary of State are subject to the Public Sector Equality Duty, which requires them, in the exercise of their public functions, to have "*due regard to the need to* –

> *(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
>
> *(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
>
> (c) *foster good relations between persons who share a relevant protected characteristic and persons who do not share it*."

35. The Council appears to claim that it has fulfilled its Public Sector Equality Duty merely by commissioning the Planning EIA and the CPO EIA and setting out brief summaries of the conclusions of those EIAs in its Statement of Case.

36. However, that is plainly insufficient evidence that the Council has actually given "due regard" to its Public Law Equality Duty (which is a question of substance):

    a. The Council's Statement of Reasons contains no reference to, or consideration of, the Council's Public Law Equality Duty or to the EIAs, and only refers to the issue of equality once, at para 1.19, in which it is merely asserted, without reasoning or justification, that "*the Order is acceptable having regard to the objectives of the Equalities Act 2010*".

    b. The Statement of Reasons therefore demonstrates that the Council has, in making the Order, wholly failed to have "due regard" to the need to eliminate discrimination, advance equal opportunity and foster good relations between different ethnic groups.

c. The Council's Statement of Case, no doubt drafted by its lawyers, seeks to remedy this failing by making specific reference to the EIAs and to the Council's Public Law Equality Duty. But the relevant passages, at section 17 of the Council's Statement of Case, provide no evidence of "due consideration" at the time of the decision to make the Order or at all, and simply pay lip service to the concept by copying isolated conclusions from the EIAs without giving evidence of any further or independent consideration.

37. The principles which ought to have guided the Council, and which must guide the Secretary of State, were recently set out by the Supreme Court in *Hotak v Southwark London Borough Council* [2015] UKSC 30 at [75]:

> *"As was made clear in a passage quoted in the Bracking case [2014] EqLR 60, para 60, the duty 'must be exercised in 'substance, with rigour, and with an open mind' (per Aikens LJ in R (Brown) v Secretary of State for Work and Pensions (Equality and Human Rights Commission intervening) [2009] PTSR 1506, para 92). And, as Elias LJ said, at paras 77-78, in the Hurley case [2012] HRLR 374, it is for the decision-maker to determine how much weigh to give to the duty: the court simply has to be satisfied that 'there has been a rigorous consideration of the duty'. Provided that there has been 'a proper and conscientious focus on the statutory criteria', he said 'the court cannot interfere… simply because it would have given greater weight to the equality implications of the decision'."*

38. A balancing exercise is required and, if it "*is clear precisely what the equality implications are when [it] puts them in the balance, and … [the authority] recognise[s] the desirability of achieving them*", the authority is entitled to weigh equality considerations against any other matters that are relevant: *R (on the application of Hurley and another) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 at [78].

39. The Public Law Equality Duty is personal to the decision-maker and cannot be delegated to those conducting EIAs, such as URS or AECOM. Accordingly, there is clear legal authority that a decision-maker can fail to fulfil its Public Law Equality Duty even if it has commissioned a full EIA and especially if the EIA proves (on closer examination) to be flawed in its approach: *R (Cushnie) v Secretary of State for Health* [2014] EWHC 3626 (Admin).

40. It is for the decision-maker to produce clear evidence that it has rigorously considered its Public Law Equality Duty, including race-relation impacts, and this is not simply to be inferred in the absence of clear evidence that the correct factors have been considered by the Council or the Secretary of State: *R (Winder) v Sandwell Metropolitan Borough Council* [2014] EWHC 2617; and *R (Fakih) v Secretary of State for the Home Department* [2014] UKUT 513 (IAC).

41. In the premises, despite commissioning two EIAs, it is plain from the Council's Statement of Reasons that the Council wholly failed to exercise its Public Law Equality Duty "in substance" or "with rigour" at the time of its decision to make the Order. There are only passing references made to the Equality Act 2010 and to "*the interests of Spanish-speaking traders*" at paras 1.19 and 8.56 of the Council's Statement of Reasons. This plainly cannot amount to *"a proper and conscientious focus on the statutory criteria"* of section 149, which is never specifically mentioned.

42. There has been an attempt to remedy this failure in the Council's Statement of Case, which, for the first time, expressly recognises the applicable statutory criteria (at section 17) and acknowledges that "*some objectors assert that the Order impacts on the Latin American community's right to culture. As above, two separate EQIAs have been prepared . . . The Wards Corner CPO EQIA concludes that, whilst there will be a residual risk of a negative equality effect on Latin-American people, the S106 Agreement includes a detailed set of obligations on behalf of both the Council and Grainger to avoid and minimise these negative equality effects*" (at para 18.31). However:

a. This Statement of Case was written after the Council's decision to make the Order, and cannot retrospectively remedy the Council's failure to consider its Public Law Equality Duty at the time of its decision;

b. The Statement of Case simply relies upon the findings contained in the EIAs, without demonstrating any independent, rigorous or proper consideration by the Council of the equality impacts of its decision; and

c. There is no clear identification by the Council, in either its Statement of Reasons or its Statement of Case of what precisely the equality implications of its decision are. There is merely a general and unsubstantiated reference to "*negative equality effect*".

43. Further, the reliance which the Council has placed on the Planning and CPO EIAs only compounds its breach of duty, because those EIAs are fundamentally flawed.

44. The negative impact of the Order Scheme for Latin American and other ethnic groups (including the Traders and the communities which they serve) is said in the Planning EIA to be minimised by the terms of the S106 Agreement which is understood to "*contribute to enabling a significant proportion of the affected business to plan for their temporary relocation and develop their business in order to be able to afford to return to the new market or to an alternative permanent location*"[18]. The proposed mitigation measures are said to be "*likely to overcome potential barriers to Latin American, Afro-Caribbean, African and other BME business owners from sharing in the benefits of new business premises and opportunities afforded by the new development.*"[19] It is further claimed that "*the planned measures are appropriate to minimise negative effects on Latin American and BAME-run businesses from the closure of the existing market and to enhance positive benefits from Latin American run businesses as part of the planned development*".[20]

[18] Planning EIA at p.3.
[19] Planning EIA at p.4.
[20] Planning EIA at p.4.

45. Those conclusions are effectively adopted by the CPO EIA.[21]

46. Those conclusions, which have now been adopted by the Council in support of the Order, demonstrate a fundamentally flawed understanding of the meaning and practical effect of the terms of the S106 Agreement and of the other information which URS, AECOM and the Council had at the time of the EIAs and of the Council's decision to make the Order. Contrary to the Council's assertions, the S106 Agreement is not likely to overcome potential barriers to Latin American, Afro-Caribbean, African and other BME business owners sharing in the benefits of new business premises and the agreed measures are plainly not appropriate or effective to minimise negative effects of closing the Market:

a. The Planning EIA and CPO EIA both referred to a study undertaken by Urban Space Management which recorded that existing rents in the market are approximately £31/sq.ft per year but that "*the likely future rent payable by market traders*" would be "*around £90/sq.ft per year*".

b. This means that the condition in the S106 Agreement for rent in the new market to be at open market rates for A1 use classes effectively authorises the Developer to increase current rents by 300%, though the report from Urban Space Management also concluded that "*rates will increase possibly by a factor of up to 10 times the current charge*".[22]

c. The obvious consequence of such an increase in rent would be to decimate the existing Market by pricing out the current Traders and removing Latin American, Afro-Caribbean, African and other BME business owners and communities from the Market. No real consideration has been given to the likely impact of the proposed rental increase for the future of the Market, despite the findings in the Urban Space Management report that "*we do not*

[21] CPO EIA at paras 1.3.1, 2.2.19, 4.7.11, 4.7.12.
[22] Urban Space Management Report (May 2008), at p.16.

believe that the current market operation can be (or should be) relocated into the new Grainger scheme" and that "*the impact of these increased costs means it is essentially unviable for the existing market businesses*".[23]

d. Although Clause 3.2 of the S106 Agreement requires the Developer to provide the Traders with a 30% reduction in this new rent for the first 18 months of their occupation of the proposed new market, this mitigation measure is clearly of very limited benefit in the short-term and of negligible-to-zero benefit in the medium-to-long-term. Again, no consideration has been given to how many, if any, of the current Traders would be able to pay this discounted increase in rent in the short-term.

e. It is particularly surprising that URS, AECOM and the Council have overlooked these serious deficiencies of the S106 Agreement and concluded that these measures should (and are likely to) enable a "*significant proportion*" of the Traders to continue trading in the proposed new market. AECOM's own consultation of affected businesses revealed entirely contrary evidence which did not support those conclusions[24]:

    i. 75% of those surveyed considered that the proposed re-provision of the Market would be unlikely or highly unlikely to support existing businesses to continue to operate and 8.3% were unsure how their businesses would be affected;

    ii. 50% of those surveyed considered that the proposed new rent-levels would be unlikely or highly unlikely to support existing businesses to continue to operate and 35.7% were unsure how their businesses would be affected;

[23] Urban Space Management (May 2008), at pgs.16-17.

[24] CPO EIA, table 27, p. 53.

iii. 46.2% of those surveyed considered that the proposed funding towards relocation costs and the rent reduction for the first 18 months of the proposed new market would be unlikely or highly unlikely to support existing businesses to continue to operate and 30.8% were unsure how their businesses would be affected;

iv. 73.3% of those surveyed considered that the proposed financial assistance from the Council would be unlikely or highly unlikely to support existing businesses to continue to operate and 26.7% were unsure how their businesses would be affected.

47. The CPO EIA also contains a number of paragraphs which cast serious doubt on its overall conclusion that the adverse equality impacts of the Order are only likely to be residual:

a. Para 4.7.7 records that "*the findings of the business survey raised concerns as to whether the agreed mitigation measures would be sufficient to enable affected businesses to continue to operate*"; and

b. Para 4.7.8 finds that "*as part of the community engagement with market stall-holders which is required by the S106 Agreement, appropriate rent levels, including variations to reflect position and user type, would be an important issue for negotiation between the developer and the market stall-holders*".

48. The potential justification for the CPO EIA's reluctance to accept the conclusions which logically flow from that evidence (i.e. that the Order will likely destroy the Market and the livelihood of its traders) appears to be found at para 4.9.3, in which the writers of the CPO EIA claim that "*the site redevelopment, by-providing the market as well as bringing increased footfall and spending, will help to minimise losses*".

49. However, this optimistic speculation is entirely contrary to the express evidence given to the Council's Planning Sub-Committee by Steve Smith of URS on 25 June

2012 that "*the EqIA set out that there was a risk of a negative impact, even with the mitigation measures in place, but that there could be no certainty around this issue as it was not possible to predict how successful the new market would be*".[25] In other words, there is no reliable means of knowing how successful the new market will be (irrespective of the effort which the current Traders make) and it is therefore impossible to predict whether, or to what extent, existing Traders will be able to develop their businesses so as to afford a 300% increase in rent.

50. By simply adopting the overall conclusions in the Planning and CPO EIAs without further critical reflection, the Council has failed to specifically or fully consider the negative equalities impact of the Order on the protected characteristic of race and overlooked the findings in the Urban Space Management report "*the impact of [the] increased costs means [the new development] is essentially unviable for the existing market businesses*".[26].

51. Further, the Council has failed to specifically or fully consider the negative equalities impact of the Order on the protected characteristic of race age, with particular reference to the Latin American children who frequent the Market as a social centre, second home and source of family support. The negative impact of the Order on the children of the Market has not been considered in either of Planning EIA or the CPO EIA.

52. In the premises**:**

    a. The Council was required, at the time of its decision to make the Order, to rigorously assess the various equalities impacts of its decision and consider its Public Law Equality Duty by reference to the specific statutory criteria of section 149;

[25] Minutes of the Planning Sub-Committee, Monday, 25 June 2011.
[26] Urban Space Management (May 2008), at pgs.16-17.

b. The Council's Statement of Reasons indicates that it plainly failed to undertake that exercise;

c. The Council's Statement of Case attempts to remedy this failure, but fails to do so:

i. It comes too late to justify the Order, which the Council has already made;

ii. It relies on the findings in the EIAs, without any proper or rigorous exercise of independent judgment;

iii. It ignores or overlooks serious flaws in the reasoning contained in the EIAs and merely adopts snap-shot conclusions;

iv. It ignores or overlooks the inadequacies of the S106 Agreement, in light of all of the evidence; and

v. It ignores or overlooks evidence given to the Council's Planning Sub-Committee by URS that, however the conclusions contained in the EIAs are expressed, "*there could be no certainty"* because *"it was not possible to predict how successful the new market would be"* for existing traders or their communities.

53. In the premises, in circumstances in which the Council has overlooked material considerations and failed to properly exercise its Public Law Equalities Duty, the Secretary of State should refuse to confirm the Council's Order.

54. The available evidence strongly suggests that, for the vast majority of market traders, the Order Scheme is unlikely to enable their continued trading – creating a high risk of negative equalities impacts for the Traders, their communities, and their children. The Council and the Secretary of State has a legal duty to properly and

rigorously consider these factors before any decision can be made about compulsory purchase.

Objection 3: Unjustified Interference with Human Rights and Indirect Discrimination

55. Approval of the Order Scheme would also constitute a disproportionate interference with the human rights of the Traders, their communities and children, and amounts to unjustified and illegal indirect discrimination against protected groups.

56. The Council's Statement of Reasons admits (at para 16.1) that its decision to make the Order engages the rights contained in Article 8 of the ECHR and Article 1 of Protocol 1. However, there is a complete failure by the Council to specifically consider whose rights are engaged and the level to which the Order interferes with those rights or gives rise to unjustified discrimination. Further, Article 14 of the ECHR, which prohibits discrimination, is not mentioned by the Council at all and does not appear to have been considered by it.

57. The Council states, boldly, that "*any interference caused by the Order*" would fall within the relevant exceptions "*having regard to the substantial and compelling public benefit*" of the development.[27] There is no evidence here that the interferences with human rights have been properly considered or that a meaningful proportionality assessment has been undertaken.

58. Although the language of proportionality is used in the Council's Statement of Case (at paras 18.29-18.31), merely asserting that the Council has carefully balanced interferences with human rights is no substitute for providing evidence as to whose

[27] Council's Statement of Reasons at para 16.3

rights have been considered, which factors have been taken into account in the balancing exercise, and why the overall outcome is proportionate.

59. Para 18.29 of the Council's Statement of Case indicates that the Council only considered the "*human rights of those with interests in the Order Land*", which appears to cover the Traders but fails to account for the Article 8 rights of others within ethnic minority communities, including their children, who rely upon the Market for the social, cultural and family benefits which they derive from it.

60. The failure to address these rights is another fundamental and serious failure by the Council which needs to be assessed in light of the severe risk which the Order Scheme poses to the continuance of the Market, including its impact on current Traders, their communities and children.

61. Article 8 of the ECHR, which applies to all actions of public authorities under section 6 of the Human Rights Act 1998, provides that:

> *"(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

62. The right to private and family life is clearly engaged in respect of those who live within the Order Land. But, critically in this case, Article 8 rights are also engaged in respect of all those who carry out businesses in the Market or rely upon it as a

social and community centre – including the Traders, the wider Latin American community, other ethnic minority groups and their children.

63. It is for these reasons, largely social and cultural, that the European Court of Human Rights confirmed in *Niemietz v Germany* [1992] ECHR 13710/88 at [29] that "*respect for private life must . . . comprise to a certain degree the right to establish and develop relationships with other human beings*", and that Article 8 extended to professional or business activities because "*in the course of their working lives . . . the majority of people have a significant, if not the greatest, opportunity of developing relationships with the outside world*". As stated more recently in *SH v Austria* (2011) 52 E.H.R.R. 6 at [58], the notion of "private life" in Article 8 is "*a broad concept which encompasses, inter alia, the right to establish and develop relationships with other human beings, the right to 'personal development' or the right to self-determination as such*". Social interaction and the ability to develop relationships within particular groups of people is therefore protected by Article 8.

64. The destruction of the Market therefore constitutes a grave interference with the Article 8 rights of those who work there and of those for whom the Market is a means of establishing and developing relationships with their families, cultural or ethnic groups and the outside world, including members of the Latin American community and their children.

65. Article 8 also needs to be considered against the background of Article 27 of the International Covenant on Civil and Political Rights (likewise binding on the UK), which provides that "*in those states in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their own group, to enjoy their own culture, to profess and practice their own religion, or to use their own language*". Rights of minority groups to cultural development are therefore to be given due weight in any balancing exercise.

66. There is no evidence that the Council has specifically considered these categories of Article 8 interference or established any clear justification for effectively destroying the Market and/or pricing out existing Trader under the Order Scheme, which will have obvious and potentially catastrophic consequences for the Latin American community, their families and children.

67. Further, Article 1 of Protocol 1 provides that:

> *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
>
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

68. This is clearly of particular relevance to the Traders who are likely to lose their business and livelihoods as a result of the Order Scheme, without adequate compensation or the financial ability to take advantage of the proposed new market facilities, given the anticipated rent increase of at least 300%.

69. Finally, Article 14 of the ECHR prohibits discrimination in the following terms:

> *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*

70. Article 14 does not provide a free-standing right but rather protects against discrimination in the enjoyment of the rights and freedoms set out in the European Convention on Human Rights.

71. The Article 8 and Article 1, Protocol 1 interferences with human rights which result from the Order would be particularly felt by those of Latin American and other ethnic minority descent, which gives rise to indirect discrimination on the basis of race and/or colour under Article 14. The leading case on indirect discrimination under Artile 14 is *DH and Others v The Czech Republic* (No. 57325/00 ECHR, 13 November 2007), decided by the Grand Chamber of the European Court on Human Rights. In accordance with the principles enunciated in that case, indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. As things stand, the CPO measures will affect *only* ethnic minorities, who are being disproportionally affected by the development. The Council has not objectively shown this to be a proportionate measure. It follows that confirmation of the CPO would amount to indirect discrimination on the groups of racial or ethnic origin and a violation of Article 14 of the ECHR.

72. Further, the proposed Order indirectly discriminates against women in violation of Article 14, as it is likely to be prove harder for female traders to find alternative sources of income after being displaced from the Market in comparison with male traders.

73. It is submitted that the Council has failed to discharge its burden of demonstrating that these various and severe interferences with rights under Articles 8 and 14 and Article 1 of Protocol 1 are proportionate and has not, in fact, carried out any proper

or structured balancing exercise which takes into account the true gravity of the interference or properly considers its indirectly discriminatory effects.

74. In those circumstances, the Traders maintain that the interference which the Order will cause to their rights and those of the users of the Market will be wholly disproportionate and that the the Secretary of State should refuse to confirm the Council's Order.

Objection 4: Failure to Consider the Best Interests of Children

75. In respect of the many children within the Latin American community for whom the Market facilitates and advances family, social and cultural life, the Council has failed to put specific weight on the best interests of the children when making its decision as to whether there is adequate justification for interference with their Article 8 rights.

76. Reference has already been made to comments from Latin Corner UK that:

> *"Many of our children from multicultural backgrounds rely on Seven Sisters Market/Pueblito Paisa to enjoy a sense of a village community, especially in an absence of youth centres across the country."*[28]

77. The nature of the Market as a family and community centre was further alluded to by film director, Klearjos Eduardo Papanicolaou, when he described the Market as:

> *"a brilliance in which public and private, social and commercial, native and foreign, are merged into a social attitude of inclusiveness – an example of humanity exceptionally embedded into urban space. It is a market imbued with a 'living room' feeling made up*

[28] https://www.change.org/p/save-uk-s-only-latino-village-pueblito-paisa-in-seven-sisters-indoor-market-wards-corner?recruiter=54809858&utm_source=share_petition&utm_medium=email&utm_campaign=share_email_responsive

of informality and spontaneous cosmopolitanism. Imagine trying to cross a corridor amid multilingual chatter, and being blocked by a child practicing karate."[29]

78. This social impact of the Market is also evidenced by the Planning EIA, which records (at para 7.4.4) that "*the loss of the existing shops and market poses a potential threat to the cultural connections of the Latin American community employed at and visiting the market, given the evidence that the market provided a hub for social as well as commercial interaction for this group*." Despite this factual finding, there is no discussion in the Planning EIA or the CPO EIA of the adverse impact the Order will have on the social development and opportunities of the children within the Latin American community or within the other ethnic minority groups who use the Market as a key means of building relationships.

79. Further evidence comes from four handwritten letters to the Council dated 10 October 2016 from children of the Market Traders (aged between 9 and 13 years' old). These letters state that:

a. The Market is a "*second home*" for these children;

b. "*I can see my friend*";

c. "*This place brings me to a lot of memories*";

d. The Market "*is the best place there's for kid and adults where we can all get along*";

e. "*I think you shouldn't close this market because this is a great place for young children to be with their friends*".

[29] https://www.sevensistersmarketfilm.com/

80. It follows that the interference of the Order with the Article 8 rights of the children who benefit from the Market as a social and family hub requires a specific form of consideration which is wholly absent from the EIAs commissioned by the Council, the Council's Statement of Reasons and its Statement of Case.

81. The Supreme Court in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4 confirmed at [33] that Article 3 of the United Nations Convention on the Rights of the Child 1989 requires that the best interests of children be "*a primary consideration*" in any proportionality assessment under Article 8, meaning that "*they must be considered first*" – although "*they can, of course, be outweighed by the cumulative effect of other considerations*".

82. Article 3 of the United Nations Convention on the Rights of the Child 1989 itself provides that:

> *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

83. Specific further guidance on the principles which apply to an assessment of the best interests of the children was given by the Supreme Court in *Zoumbas v Secretawry of State for the Home Department* [2013] UKSC 74 at [10]

> *"(1) The best interests of a child are an integral part of the proportionality assessment under article 8 of the Convention;*
>
> *(2) in making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration;*

(3) although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant;

(4) while different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play;

(5) it is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations;

(6) to that end there is no substitute for a careful examination of all relevant factors when the interests of a child are involved in an article 8 assessment; and

(7) a child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."

84. The Council, and those carrying out the EIAs, have wholly failed to treat the best interests of the children affected by the Order as a primary consideration in their decision-making process, or as integral to any proportionality balancing exercise under Article 8. They have plainly treated a wide range of factors as inherently more significant than the best interests of the children and have not analysed the interests of the children in any orderly manner, leading to a significant undervaluing of their interests. There has been an insufficient investigation of the children's circumstances in the existing Market or of what would be in their best interests (taking into account their family units, cultural communities and social habits in addition to the risks posed by the Order to the continued existence of the Market and its community).

85. In light of this abject failure to consider the best interests of the children as a primary consideration, the Order should not be confirmed and the Council's conclusion at para 16.11 of its Statement of Case that "*the Council is satisfied that the*

use of its powers of compulsory acquisition pursuant to section 226(1)(a) of the Act is proportionate" must be viewed with extreme caution and scepticism.

86. In the premises, the best interest of the children affected by the proposed Order are served by maintaining the Market for the development of their social ties, culture, community and language.

Objection 5: Failure to secure the future of the Market

87. As explained above, the Council's case is premised upon the erroneous assumption that the S106 Agreement secures the future integrity of the Market as a social and business centre for the Latin American community and other ethnic minority groups. Indeed, the Council's Planning Sub-Committee Report dated 5 May 2012 found at para 8.6.4 that "*the re-provision of the indoor market is a key element of the scheme*".

88. In fact, as set out above, the S106 Agreement fails to secure the future of the Market and instead facilities the destruction of the Market and the introduction of entirely new facilities and traders. In particular:

a. It is wholly unrealistic to think that the proposed 300% to 1000% increase in rent will facilitate continued trading by the Latin American community and other ethnic minority groups.

b. Although Clause 3.2 of the S106 Agreement requires the Developer to provide the Traders with a 30% reduction in this new rent for the first 18 months of occupation of the proposed new market, there is no evidence that the Traders will be able to increase profitability to cover such an enormous increase in rent.

c. Although the URS, AECOM and the Council appear to have assumed that the S106 Agreement should enable a "*significant proportion*" of the Traders to

continue trading in the proposed new market, this is unsubstantiated by evidence and runs contrary to AECOM's own consultation of affected businesses, which revealed that[30]:

i. 75% of those surveyed considered that the proposed re-provision of the Market would be unlikely or highly unlikely to support existing businesses to continue to operate and 8.3% were unsure how their businesses would be affected;

ii. 50% of those surveyed considered that the proposed new rent-levels would be unlikely or highly unlikely to support existing businesses to continue to operate and 35.7% were unsure how their businesses would be affected;

iii. 46.2% of those surveyed considered that the proposed funding towards relocation costs and the rent reduction for the first 18 months of the proposed new market would be unlikely or highly unlikely to support existing businesses to continue to operate and 30.8% were unsure how their businesses would be affected;

iv. 73.3% of those surveyed considered that the proposed financial assistance from the Council would be unlikely or highly unlikely to support existing businesses to continue to operate and 26.7% were unsure how their businesses would be affected.

89. Any conclusion that the S106 Agreement secures the long-term future of the current market by reasons of projected increased footfall or spending is also fundamentally undermined by URS's evidence to the Council's Planning Sub-

[30] CPO EIA, table 27, p. 53.

Committee on 25 June 2012 that "*there could be no certainty around this issue as it was not possible to predict how successful the new market would be*".[31]

90. It is submitted that, on full consideration of all of the current evidence, there is no rational basis for believing that the S160 Agreement secures the long-term future of the Market – either as a centre of cultural diversity or as a home for the Latin American community or as a place of business for the current Traders. All of the evidence suggests that the current Traders and communities will be priced-out of the new market facilities and replaced by those able to pay much higher rents – to serve those living in the high-end flats which will comprise the residential aspect of the Order Scheme.

91. Finally, the Traders note that where, as appears to be the case here, the Council or the Secretary of State makes a decision which is premised on an erroneous or mistaken understanding of the true effect of a section 106 agreement, that decision is liable to be set aside by the courts: see *Hertfordshire County Council v Secretary of State for Communities and Local Government* [2011] EWHC 1572 (Admin).

92. As the S160 Agreement in this case fails to secure the future of the Market, contrary to the Council's own intentions, it is submitted that the Order should not be confirmed.

Objection 6: Failure to protect Community and Heritage Assets

93. The Order Scheme also risks serious harm to community and heritage assets which should be protected.

94. Policy 7.8 of the London Plan advises that "*development should identify, value, conserve, restore, re-use and incorporate heritage assets, where appropriate*".

[31] Minutes of the Planning Sub-Committee, Monday, 25 June 2012.

95. Section 12 of the NPPF further provides that:

a. "*Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise*" (para 129);

b. "*When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification*" (para 132);

c. "*Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss*" (para 133); and

d. "*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal*" (para 134).

96. It is therefore important to have regard to the fact that significant parts of the Order Land are located within the Seven Sisters/Page Green Conservation Area and include several locally-listed buildings.

97. These heritage assets have been given little or no weight in the Council's Statement of Reasons and are dealt with extremely briefly in the Council's Statement of Case

on the basis that the harm to the conservation area would be "*less than substantial*" (para 8.29)

98. Further, the Market's cultural and community importance was recognised by the Council when it designated the Market as an ACV in May 2014, pursuant to an application by the Wards Corner Community Coalition under the Localism Act 2011.

99. Section 88(1) of the Localism Act 2011 provides that a building or land may only be designated as an ACV if "*in the opinion of the authority* –

> *(c) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and*
>
> *(d) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community."*

100. Although the status of the Market as an ACV is not a prohibition on compulsory purchase, the importance of preserving the Market for the social well-being of the local community, including Latin American and other ethnic communities, should be a weighty consideration when assessing both the Order Scheme and the proposed Order and it is submitted that the loss of this cultural asset would necessarily constitute substantial harm to the local environment and social well-being.

101. The Traders submit that the Council has placed wholly inadequate weight on the manifest local, cultural and architectural importance of the Market and of the wider conservation area:

a. In respect of the Market as an ACV, it has failed to recognise the significance of the Market or of the harm to the Market which will result from it being destroyed and replaced with a new market of an entirely different character;

b. In respect of the wider damage to the conservation area, it has disregarded evidence from English Heritage in 2008 in which it stated:

> *"We do not consider that the replacement buildings offer sufficient merit to justify demolition and consider that a scheme which takes a conservation-led approach should be pursued.*
>
> . . .
>
> *By virtue of the removal of the existing street plan and all buildings of any historic note, the new development does not enforce the sense of place or local characteristics and cannot be considered to enhance the conservation area"*[32];

c. The Council's Planning Sub-Committee Report dated 5 May 2012 also record various objections at para 8.15.4, including that:

(i) "*English Heritage objected to the previous application and object to the revised scheme*". In particular, "*the scale and form of the new development is not considered to preserve or enhance the defined character of the conservation area. Nor can it be considered to enhance or better reveal its significance*";

(ii) Tottenham Conservation Area Advisory Committee and Tottenham Civic Society also commented that "*the loss of heritage buildings, especially the landmark locally listed Wards Corner buildings would destroy the historic character of the area. It will also create [a] big gap*

[32] http://www.thetottenhamindependent.co.uk/news/2225791.display/

in the High Road Historic Corridor and conflicts with the Council's policy for the High Road as a whole . . . The proposal is unlikely to create any regeneration of the area and will result in continued blight and vacant shop units like in other areas in Tottenham . . . The future of the site lies in refurbishing Wards Corner, which is basically in sound condition, and having an imaginative scheme which can build on the independent businesses there."

d. English Heritage wrote a letter to Haringey on 11 June 2012 to further oppose the Order Scheme on the basis that it would cause harm to the significance of the conservation area and that it "*remains to be convinced that such a development will deliver long term sustainable benefits consistent with the harm to significance*".[33]

e. SAVE Britain's Heritage wrote a letter to Haringey on 25 June 2012, objecting to the Order Scheme on the basis that loss of the Ward's Corner building "*would represent a devastating blow to the history and character of Tottenham*", that "*demolition would mean the loss of an important local heritage asset*" and that the developments would cause "*considerable damage to the special character of the conservation area because of the unsympathetic design, bulk and massing*".[34] SAVE Britain's Heritage has confirmed, in letter dated 2 May 2017, that it maintains its opposition for the reasons given in its letter of 25 June 2012.[35]

102. In the premises, the Council has placed inadequate weight on the status of the Market as an ACV or the protection of the conservation area of which the Order Land is a part. There is a risk of substantial harm to the conservation

[33] English Heritage Letter dated 11 June 2012.
[34] SAVE Britain's Heritage letter dated 25 June 2012.
[35] SAVE Britain's Heritage letter dated 2 May 2017.

area and of the complete destruction of a valued community asset. These reasons are sufficient to justify a refusal to confirm the Order.

Objection 7: Failure to provide Affordable Housing

103. The Order Scheme also fails to provide any affordable housing and does not fit the statutory development plan.

104. Although Policy 3.1 of the London Plan expressly recognises the pressing need for more homes in London, Policy 3.12 states that Boroughs should seek "*the maximum reasonable amount of affordable housing . . . when negotiating on individual private residential and mixed-use schemes*".

105. Further, the Haringey Unitary Development Plan, SP3 3.2 provides that:

a. "*Provision and access to high quality and affordable housing is a key priority in Haringey's Sustainable Community Strategy*" (para 3.2.1);

b. "*Affordable housing shall be achieved by . . . subject to viability, sites capable of delivering ten or more units, will be required to meet a borough wide affordable housing target of 50%, based on habitable rooms*" (p. 62);

c. "*In line with the NPPF, affordable housing is defined as that provided to eligible households whose needs are not met by the market. Types of affordable housing include social rented, affordable rented and intermediate housing. The Council require a range of products and an appropriate balance of affordable housing to meet housing need in the borough. The strategic target for tenure split is currently 70% affordable rent (including social rent) and 30% intermediate affordable housing products. This is based on current evidence of housing need and affordability in the borough*" (para 3.2.19); and

d. "*The SHMA (2011) provides clear evidence of housing need in the borough, both for affordable and market housing. Within this, there is a significant need among those on lower incomes for affordable housing at a level equal to social rents. Consequently developers of private housing will be expected to deliver affordable housing at rent levels that are truly affordable to local people, having regard to local housing need and affordability*" (para 3.2.20).

106. Given this pressing need for more affordable housing in Haringey and the express recognition in the statutory development plan that affordable housing is usually required to form 50% of any new development of ten or more units, it is highly surprising that the Council has concluded that the Order Scheme fits the statutory development plan despite provided zero affordable housing across its proposed 196 residential units.

107. Council's Planning Sub-Committee Report dated 5 May 2012 sought to justify the decision to permit a development containing no affordable housing by asserting at paras 8.13.4 and 8.13.5, without explaining the basis for its view, that the Developer has demonstrated that "*it is not possible to develop the site and provide affordable housing*" and that "*a number of nearby housing developments which include affordable housing are under construction or have been granted consent recently*".

108. This conclusion is repeated by the Council in its Statement of Case at paras 18.9 and 18.10, albeit with further evidence being given that the Developer's affordable housing 'toolkit' appraisal was submitted to the District Valuer, who concluded that "*the provision of affordable housing would make the scheme consented pursuant to the Planning Permission unviable*" and that the Council has come to the same view.

109. Given the size of the proposed development (comprising 196 residential flats), the large-scale business of the Developer (Grainger Plc), and the significant need for affordable housing for local people, it is difficult to understand why the Council has formed the view that any form of affordable housing would be unviable. A development comprising zero affordable housing should be assessed critically

against the background of a policy which would usually require at least 50% affordable housing.

110. Although the views of the Developer and the District Valuer must be taken into account in analysing the viability and benefit of the Order Scheme, viability is a question which will need to be considered in detail by reference to the specific input values which were used to produce the 'toolkit' results (which are presently unknown to the Traders). It is submitted that the Council has not yet demonstrated cogently or convincingly that the provision of affordable housing in any proportion greater than 0% would be unviable and it may well be that a proportion of affordable housing less than 50% would be viable – especially given the Council's admission in its own Statement of Case (at para 11.3) that the Developer "*is a leading residential property developer*" with assets of "*approximately £2.7 billion*" and "*profit before tax in 2015*" of *"£50 million*".

111. Of course, the provision of affordable housing may be commercially unattractive for the Developer where this would be likely to reduce its overall profits, but that is not, of itself, sufficient to make the provision of affordable housing as part of the proposed development unviable – especially when the evidence from the District Valuer to the Council's Planning Sub-Committee confirmed that the Developer's profit levels from this "no affordable housing" scheme would be in the 15-20% range, albeit closer to 15%.[36]

112. Further, if the provision of any affordable housing would make the entire development unviable, this calls into serious doubt the benefits of the Order Scheme for the local community (most of whom will not be able to afford to share in the housing benefits of the Order Scheme).

[36] Minutes of the Planning Sub-Committee, Monday, 25 June 2012.

113. In the premises, the Order Scheme provides zero affordable housing and is, absent detailed and convincing justification, inconsistent with the Council's statutory development plan, such that the Order should not be confirmed.

Objection 8: Limited Evidence as to the Benefits of the Order Scheme

114. In assessing whether the development would promote or improve the economic, social or environmental well-being of the local area it is vital to bear in mind the likely negative impact of the development in:

a. Destroying the Market and displacing the Latin American community (as well as other ethnic minority groups) in Tottenham, thereby removing a key site of cultural growth and flourishing and an acknowledged tourist attraction;

b. Destroying locally listed buildings and a key ACV, in a manner which English Heritage, Tottenham Conservation Area Advisory Committee and Tottenham Civic Society all consider to be fundamentally harmful to a conservation area and to the historic character of the local area;

c. Providing exclusively unaffordable housing in one of the most deprived areas of London, thereby excluding the overwhelming majority of local residents from the housing benefits of the development; and

d. Risking unemployment for Traders and employees at the Market.

115. Although an increase in housing supply can be generally welcomed and the introduction of a new market may have some ancillary economic benefits for the local area, these are outweighed by the substantial disbenefits of the Order Scheme – which would cause fundamental harm to, rather than improvement of, the economic, social and environmental well-being of the local area and local people.

116. Even the supposed economic benefits of the new market are put in serious doubt by the evidence given to the Council's Planning Sub-Committee by URS that, as set out above, "*there could be no certainty"* because *"it was not possible to predict how successful the new market would be"* for existing traders or their communities.

117. The Council has placed considerable weight on the Order Scheme being "*a catalyst for the wider regeneration and investment*" of Tottenham and as a "*key gateway to Tottenham*"[37], but has not explained what this means beyond the anticipated net increase of full-time jobs of between 190 and 250 and increased annual net resident expenditure within local ships or services of around £2 million.[38]

118. No justification has been given for the supposed £58 million in economic benefits said to be brought by the Order Scheme, apart from reference to a report entitled '*Seven Sisters Regeneration Project Economic Benefits Assessment*' by Nathaniel Lichfield & Partners – which was only provided to the Traders on 26 April 2017 and in respect of which the Traders reserve the right to make further submission in due course.

119. Even assuming that the Order Scheme brings these uncertain economic benefits to the local area, it is submitted that these fall far short of justifying the substantial social and environmental disbenefits of the Order Scheme and the negative economic effects which will be felt by the low-income local residents, the Latin American community and other key ethnic minorities forming the majority of the local population – who will be overlooked and displaced as part of the proposed development.

120. Where a proposed development would provide economic advantages for only part of a local community but cause substantial economic hardship for others and overall negative impacts on environmental and social well-being, a compulsory purchase order should not be made and, on the present evidence, the benefits of the Order fall well short of justifying its approval.

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[37] Council's Statement of Case, para 8.40.
[38] Council's Statement of Case, paras 8.40 to 8.41.

Objection 9: There are Alternatives Plans and Possible Locations for Development

121. Careful consideration must be given to alternatives to the Order, including the suitability of alternative planning proposals and examination of alternative locations to the land which is being acquired.

122. In this respect, the Council has opted to dismiss the Alternative Scheme which was put forward by the Wards Corner Community Coalition and received planning permission on 25 April 2014.[39] This appears to have been rejected by the Council due to a lack of funding and the perceived lesser benefits which such a proposal would achieve.[40]

123. However, this overlooks the serious deficiencies in the Order Scheme, the resultant destruction of the Market and the social and environmental harm which the Order Scheme would cause. The Alternative Scheme would be more consonant with the Council's statutory development plan and is responsive to the concerns of Tottenham Conservation Area Advisory Committee that the future of the site should entail refurbishing Wards Corner, which is in sound condition, and having an imaginative scheme which can build on the independent businesses there.

124. Further, it is relevant that the Developer has submitted proposals to develop the Apex House site, which is one road away from the Order Land. Its aim is to provide 163 new homes on that site.[41] In addition, the Developer has already purchased approximately 49% of the Order Land.

125. Given these circumstance, the Council ought to have considered whether the increased housing purposes which are driving the Order Scheme can be achieved without recourse to compulsory purchase by:

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[39] Council's Statement of Case, para 8.75.
[40] Council's Statement of Case, para 8.75 to 8.81.
[41] http://apexhousedevelopment.co.uk/our-submitted-proposals/

a. Expanding the plans for Apex House to include increased housing; and/or

b. Developing the land which is already owned by the Developer.

126. It is submitted that there are good prima facie grounds for believing that Apex House and the land already under the Developer's control would be adequate for a commercial residential development comprising all (or a substantial proportion) of the 196 new homes proposed by the Order Scheme, such that there is no pressing need for compulsory purchase in this case.

127. In the premises, there are alternative plans for the Order Land which better balance the need for development with the rights and interests of the Market, the local community, social cohesion, environmental well-being and conservation. There are also alternative means of substantially increasing the supply of housing in the Tottenham area, and achieving the key economic benefits of the Order Scheme, without recourse to compulsory purchase. It follows that the proposed Order should not be confirmed.

Objection 10: No Compelling Case for Compulsory Purchase

128. In summary, there is no compelling case for compulsory purchase:

a. The Order Scheme does not accord with the National Planning Policy Framework (NPPF) because it does not pursue sustainable development. Nor does it fit with the Local Plan.

b. The Council's decision-making is vitiated for breach of their Public Sector Equality Duty;

c. The Order Scheme would involve unjustified interferences with human rights and constitute indirect discrimination against ethnic minorities;

d. The Council has wholly failed to take into account the best interest of the children affected by the Order, in breach of domestic and international law;

e. The Order Scheme fails to secure the future of the Market, in part because the Council has fundamentally misunderstanding the meaning and practical effects of the S106 Agreement;

f. The Order Scheme fails to protect important community and heritage assets;

g. The Order Scheme fails to provide much-needed affordable housing;

h. The Council's evidence as to the economic, social or environmental benefits of the Order Scheme is limited and there are substantial disbenefits; and

i. There are alternative plans for the Order Land and possible alternative locations in which the proposed development (or a substantial part of it) could take place.

129. The Council's case must be compelling, and in this respect it is notable that the Inspector dealing with the recently proposed redevelopment of the Shepherd's Bush Market Area recommended that the compulsory purchase order in that case should not be confirmed – despite the plans purported to provide for 212 new residential units and enhancement of the market.

130. The subsequent decision of the Court of Appeal upholding a challenge to the decision of the Secretary of State to confirm that order (which had not been recommended for approval by the Inspector) recorded the main basis for the objections to the CPO in that case and how they were dealt with by the Inspector:

> *"In section 4 of her report the inspector summarised the case for the council and Orion. That case included the following elements:*
>
> *'4.3.2 <u>The character of the market is one of small independent traders</u> providing a diverse mix of products in food, fashion and household, mainly to the local population, combined with a specialism in textiles and haberdashery which attracts customers from a much wider area. <u>It is ethnically diverse</u> in its nature and offers the opportunity for*

independent businesses to trade in an affordable environment not found elsewhere in the area.

4.3.9 The market also offers opportunities not available elsewhere for the local population (particularly among the ethnic communities) to establish small and start-up businesses in affordable premises, a role that will be enhanced by the regeneration scheme.

4.7.1 The council has always maintained that protection and continued operation of existing traders is its central objective.

4.7.5 It was crucial for the council to be assured that there were sufficient commitments from the developer to ensure retention of existing traders in the market and Goldhawk Road.'

Affordability and the continuing operation of existing traders were therefore key components of the scheme. It is worth noting that what the council and Orion relied on as giving protection to existing traders were the provisions of schedules 15 and 16 to the section 106 agreement. It was not suggested in the inspector's summary of the case for the council and Orion that any particular additional protection for existing traders was to be found in the conditions attached to the planning permission.

In section 7.1 of her report the inspector summarised the objections made by the Shepherd's Bush Market Tenants' Association. They included:

'7.1.5 …The owners have already begun to approach leaseholders asking for an exorbitant rent increase of £30 per square foot per annum. This is a real threat to tenants' livelihoods, as many businesses presently pay only £10 per square foot.

7.1.7 No funds are to be directed towards repairing or refurbishing the interior of the arches. The arches are iconic to Shepherd's Bush market and its key original feature …

7.1.8 [Shepherd's Bush Market Tenants' Association] and stall holders have repeatedly requested design proposals for the new stalls. But none has been forthcoming. Tenants are concerned that replacement stalls will not meet their needs."

7.1.13 …The CPO will deprive members of any further trading opportunities, as members are only able to trade where rents are affordable. There is nowhere else for traders to go should the rents become affordable beyond reach.'

16 Section 12 of the report contained the inspector's conclusions. It is necessary to set out large parts of it:

'12.6.10. Overall, the Orion redevelopment proposal has the potential to bring about significant improvements in the physical environment of the area, boost the area's economy and generate the social benefits associated with an improved market. The CPO would equally contribute to the area's well-being as an essential tool in facilitating delivery of those benefits.

12.6.11. The benefits described would only materialise if the essential ingredients and uniqueness of the market and the Goldhawk Road shops are retained. In other words, if the development provides the requisite financial as well as physical conditions for an independent, small-scale, diverse and ethnic mix of traders and shopkeepers to continue trading at the market and on the Goldhawk Road frontage. Those objectives rely on safeguards to ensure that existing businesses or new operators with similarly qualitative and diverse offerings are protected as far as possible during and after the redevelopment process. The effectiveness of schedules 15 and 16 of the section 106 agreement is a vital element of the consented scheme in this regard and considered below.'

She recorded at para 12.6.12: 'Protection and continued operation of existing businesses has been the council's central objective.' The council was satisfied that there was sufficient protection and, after some initial ambivalence, the mayor agreed. For market traders the protection lay in schedule 15 to the section 106 agreement. At para 12.6.14 she noted that a rent and service charge freeze would 'provide a level of certainty during the construction period'; and at para 12.6.15 that the lettings policy would be 'crucial to maintaining the unique nature of the market, and to retain as well as attract independent local retailers, through affordable rent levels'. She referred to the requirement to establish a continuity fund and said, at para 12.6.16, that it would provide the necessary protection against hardship and would provide financial certainty and assistance 'during the interim period'.

The inspector then turned to consider condition 6. She pointed out that the form and details of the replacement stalls would only be confirmed when that condition was discharged and said, at para 12.6.17:

'The stallholders therefore remain ignorant of the size, form, or positioning of replacement stalls. Equally, the sizes of retail units are unknown … Stall and shop holders will be offered new premises but not necessarily on a 'like for like' basis.'

Her conclusion on that point at para 12.6.18 was:

'Without knowledge of the replacement provision intended, the traders cannot fully comprehend their future, nor plan for it. That level of uncertainty is unacceptable and provides a poor basis for assessing the extent to which existing traders could or would relocate to the refurbished market. The section 106 provides no guarantees in that regard.'[42]

131. It is submitted that substantially the same concerns arise in the present case about the future of the Market and, accordingly, the Order should not be confirmed.

Conclusions

132. The Traders have set out in detail their reasons for opposing compulsory purchase in this case and respectfully invite the Secretary of State not to confirm the Order.

133. The Traders reserve their right to refer to any documents as deemed appropriate and this Statement of Case is served without prejudice to the further arguments which the Traders may raise at the inquiry hearing in due course.

Monica Feria-Tinta

Tom Leary

20 Essex Street

2 May 2017

[42] See *Horada v Secretary of State for Communities and Local Government* [2016] EWCA Civ 169 at [13]-[19]

LIST OF ANNEXES