

**THE LONDON BOROUGH OF MERTON (EASTFIELDS NO.1) COMPULSORY PURCHASE ORDER 2022**

**THE LONDON BOROUGH OF MERTON (HIGH PATH NO.1) COMPULSORY PURCHASE ORDER 2022**

**THE LONDON BOROUGH OF MERTON (RAVENSBURY NO.1) COMPULSORY PURCHASE ORDER 2022**

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**CLOSING SUBMISSIONS OF THE ACQUIRING AUTHORITY**

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**Preliminary**

1. This public inquiry (**'the Inquiry'**) has considered the merits of, and the objections to, the above named compulsory purchase orders, (**'the Orders'**). Following completion of the evidential stage of proceedings, the London Borough of Merton (**'the Council'/'the Authority'**) as acquiring authority, respectfully submits that the case for confirmation of the Orders is overwhelming.
2. As the Inquiry is aware, the Authority made the Orders pursuant to its powers under Section 226 of the Town and Country Planning Act 1990, with a view to enabling the regeneration of the Eastfields, High Path and Ravensbury Estates (together, **'the Estates'**). The Authority has long sought to effect such regeneration, and to that end it promoted (and subsequently adopted) a development plan document expressly for that purpose (being the Estates Local Plan, adopted in 2018). The scheme of regeneration as a whole is referred to as the Merton Estates Regeneration Programme (**'the MERP'/'the Scheme'**). Kickstart phases on all three Estates have already begun (Phase 1 on both High Path and Ravensbury is complete, and Phase 1A on Eastfields has commenced).
3. However, the reality is that such an ambitious programme of regeneration as the Scheme can only be achieved by the Council resorting – at least in some form – to compulsory acquisition; the number of property interests involved means that the requisite land assembly exercise could not be secured without it. The Orders will enable delivery of the next phases in the Scheme, being Phase 1 at Eastfields, Phases 2-3 at High Path and Phases 2-4 at Ravensbury.

4. Both law and guidance require that before compulsory purchase powers are authorised, the authority seeking those powers must demonstrate a compelling case in the public interest, so as to justify the interference with private rights. In seeking to demonstrate that public interest case in the present context, the Council has called evidence from six witnesses. Their evidence supports and makes good the various propositions set out in the Council's Statements of Reasons and Statements of Case; it provides a comprehensive justification for why it is that the Orders should be confirmed.
5. These Closing Submissions do not seek to rehearse that evidence in detail, but will instead look to summarise the salient evidential points established by the various witnesses. They will do this chiefly in two contexts; firstly they will address the outstanding objections to the Orders (**'the Objections'**), and secondly they will speak to the compelling case.
6. However, before doing so, the submissions first briefly touch on proposed modifications to the Orders.

#### **Modifications**

7. As the Council noted on the opening day of the Inquiry, its lawyers have written to the Inspectorate confirming that certain of the rights to light which it proposed to acquire, and which accordingly it had included in the Schedules to the Orders, were no longer deemed necessary for delivery of those phases of the Scheme the subject of the Orders. As such, the Council sought to modify the Orders to exclude those rights.
8. The relevant correspondence is at CD8.5 and 8.6. The schedules to those letters identify all the interests which should be omitted from the Orders in their final (confirmed) form. CD8.5, the letter dated 6<sup>th</sup> October 2023, is concerned with the High Path Order; CD8.6, the letter dated 21<sup>st</sup> December 2023, is concerned with the Eastfields and Ravensbury Orders (together, **'the 2023 Letters'**).
9. As was explained in open session of the Inquiry, those interests identified in the schedules to the 2023 Letters had originally been included in the Orders on a precautionary basis, since there could be no question of a relevant interest, which was required in order for development to be delivered, being omitted. However, further analysis undertaken by Mr Kidd (of Delva Patman Redler) regarding the impacts of the proposed development, and

further analysis of the land registry documentation by Trowers & Hamlins LLP (Clarion's solicitors) demonstrated that in each case, either:

- The property interest in question did not in fact benefit from a right to light (because, for example, such right had been retained by the freeholder when the leasehold interest had been acquired); or
- The proposed development would not interfere with the right to light enjoyed by the property.

10. It is on that basis that the Inspector/Secretary of State is respectfully requested to modify the Orders as per the 2023 Letters.

### **The Objections**

11. As at the close of this Inquiry, there are only 7 Objections maintained in respect of the Orders. Of these, only five are made by statutory objectors, and of those five, three relate to a single property (18 Gilbert Close). As the Council stated in Opening Submissions, it now reiterates in Closing Submissions; such minimal volume of objection is remarkable, particularly when one pauses to bear in mind that the Council is seeking the Orders in connection with the regeneration of three substantial housing estates, and needs to acquire a very large number of interests in order to achieve land assembly, even for just the discrete phases of the Scheme which are the subject of the Orders. In this regard, at the outset it was necessary to acquire more than 180 leasehold/freehold property interests, as well as more than 150 rights to light.

12. In a moment, these submissions will address each of the Objections in turn. However, before doing so, the Council notes as significant the fact that no objecting party has actively participated in the Inquiry, and none has submitted substantive evidence beyond their letters of objection. In particular, there is no material evidence to set against the comprehensive evidential package advanced by the Authority in support of its case.

13. In due course the Council will submit that the very small number of objectors, the very limited material they have sought to adduce in support of their objections, and the very limited participation in these proceedings, is a direct reflection of the strength of its case, and a direct consequence of the very significant efforts to which it and its developer partner (Clarion Housing Group – '**Clarion**') have gone to in devising the Scheme and engaging with affected communities.

### **Non-Statutory Objections**

14. These submissions first address the case as put by those objectors to the Orders who are 'non-statutory'; that is, the Authority is not seeking to acquire any right or interest from these parties.

#### 46 Priory Close

15. NAME REDACTED holds an interest in 46 Priory Close, as a property investment (he is not resident). The Council is not seeking to acquire that interest. In his objection letters (CD11.5 and 11.6) REDACTED does not raise any substantive ground of objection; instead he simply asserts that he will not "*sell his property in any circumstances*".

16. It is respectfully submitted that the merits underpinning the High Path Order, (as summarised in the following section of these submissions), are such that it should be confirmed notwithstanding this objection.

#### 8 Hudson Court/22 Ryder House

17. NAME REDACTED hold their interests as property investments (they are not resident). They objected to the High Path Order by way of letter (CD11.11), apparently on the assumption that "*...light to the properties will be obstructed*". In fact there is no interference with the light enjoyed by either property, and the Council is not seeking to acquire any rights to light enjoyed by those properties. Accordingly, the Orders should be confirmed notwithstanding this objection.

#### 23 Norfolk House

18. NAME REDACTED objected to the High Path Order. Her letter of objection (CD11.15), which the Council understands was drafted together with her son NAME REDACTED, who is also resident with her at the property, raised a number of discrete issues. The objection was apparently made on the mistaken assumption that there will be interference with rights enjoyed by the property; in fact there will be no such interference. As confirmed to the Inquiry, the High Path Order will not provide for the acquisition of the leasehold interest in the property (held by NAME REDACTED jointly with her grandson NAME REDACTED), nor will it interfere with any right to light (the modification proposed will exclude that right from the Order).

19. Although some Inquiry time was spent addressing the various points raised in the Objection, late on the first day of the Inquiry the Council received notification from NAME REDACTED (who has power of attorney for his grandmother) that her Objection to the High Path Order was withdrawn (Inquiry Document 3). As such, these submissions do not address it further.

### **Statutory Objections**

20. The submissions now turn to those Objections made by statutory objectors.

#### Flat 3 Kent House

21. NAME REDACTED objected to the High Path Order (CD11.16) on behalf of her father, the non-resident investment owner of the property, on the basis that the proposed acquisition of the right to light enjoyed by his property would “devalue” it. No evidence was submitted in respect of this assertion.

22. Mr Kidd expressly addressed this issue, concluding that on the basis of his technical assessment, any impact on the light enjoyed by the property would be de minimis and imperceptible. As such there would be no impact on value. It is respectfully submitted that there is no basis to go behind Mr Kidd’s expert assessment.

23. Notwithstanding there would be no impact on value, the Council/Clarion have nevertheless offered a nominal compensation payment of £50 (which most of the other owners in the block have agreed/accepted), together with an ex gratia payment of £1,000, to reflect the fact of their being a (notional) impact on the property, however small. The Council’s only further observation is that NAME REDACTED Objection also notes that in all other respects she supports the Scheme as “*a benefit to the community*”. As such the Objection does not provide any basis not to confirm the High Path Order.

#### Abbey Road Properties

24. There are objections filed by the owners/occupiers of a number of properties on Abbey Road. The ‘lead’ objector in this regard is NAME REDACTED, and the Inspectorate has treated these objectors as a single Objection in procedural terms. Again, the issue raised here is as regards impact on rights to light.

25. Once again, this ground of objection was addressed by Mr Kidd. He confirmed that on the basis of his technical analysis there would be a minimal/imperceptible impact caused to some

of the properties on Abbey Road (and none to others), and that no evidence/report of any kind has been submitted to the Inquiry to gainsay his assessment. The new dwellings to be constructed will in fact be *set back* from the building line of the existing development, and although the crest of the new roofline will be higher than existing, the effective eaves height will be lower (see CD11.2). Thus no material harm will result, and this Objection provides no basis not to confirm the High Path Order. Indeed, heads of terms have been agreed with all seven landowners who have objected.

### 18 Gilbert Close

26. The three Objections lodged in respect of 18 Gilbert Close are made by NAME REDACTED and NAME REDACTED respectively, as the leasehold owners and occupier of the premises. Objection letters are provided to the Inquiry as CD11.7, 11.8 and 11.9. The property comprises the final leasehold interest across the three Estates where there is an objection to the Orders.

27. A number of points of objection are raised, all of which have been comprehensively addressed by the Council in the evidence of its witnesses. In particular, matters are addressed in the evidence of Ms McConnell, which sweeps up all the various points taken. The Council does not look to repeat the evidence of its witnesses in this regard, but nevertheless makes the following observations:

- The first ground of objection raised relates to a complaint that properties on the High Path Estate which are due to be demolished, have been occupied by persons from off the Estate. Ms McConnell addresses this issue comprehensively in her proof. Pending demolition of properties, in certain cases they have been offered to dispossessed persons from the Eastfields Estate on an assured shorthold tenancy basis. Other properties have been occupied by persons serving as 'property guardians'. Such temporary use of the properties is manifestly better than their standing idle, with the risk of squatting and vandalism that that entails.
- Second, the objectors contend that some ethnic communities have been treated differently/better than them, such that they have been prejudiced in engaging with the compulsory purchase process. In particular it is suggested that the Tamil community has had preferential treatment. Ms McConnell rejected this criticism in the strongest terms (XC), noting that the objectors (being part of the Bengali community) had not been treated any differently to any other community. She pointed out that correspondence has been

translated into 8 languages (including Bengali), and that where an interpreter has been required (such as was the case with a particular Mandarin speaker) it has been provided to assist in engagement. Ms McConnell also noted that no allegation of this type had been made by the objector previously, and that in fact he had attended and engaged in community consultation events. As such, this ground of objection is strongly refuted.

- Thirdly, criticism is made of the Council/Clarion's engagement, suggesting that there has been inadequate communication with the objectors. Such criticism is again, strongly refuted. Ms McConnell's written evidence outlines the very significant engagement with the local community, and she expanded on that evidence in (XC). There is no question of the Council/Clarion having just *'put a letter through the door'* as is suggested. On the contrary, numerous public events have been held, some of which (Ms McConnell confirmed) were attended by NAME REDACTED, who engaged constructively with Clarion personnel. As such this ground of objection is rejected.
  
- Fourthly the objectors make a complaint as to the offers of replacement property in place of 18 Gilbert Close. Such complaint is not well-founded. As was clear from the explanation provided by Ms McConnell (XC), Clarion/the Council has been at pains to offer replacement accommodation in respect of 18 Gilbert Close, and indeed currently has available a suitable property, which has level accessibility, which it is holding for the objectors. No possible criticism can fairly be levelled at the Council/Clarion in this regard.
  
- Lastly, the objectors complain that no valuation of their property has been undertaken by the Council/Clarion. Ms McConnell explained (XC) that in fact, extensive efforts had been made by Clarion to secure access to the property, in order to undertake an inspection for valuation purposes. Repeated offers of dates had been made, many of which had gone unanswered. In addition, various appointments for inspection by Clarion's valuation team had been cancelled by the objectors, notably due to their having had to isolate in connection with COVID. Of course no criticism is made of the objectors in this regard; circumstances in recent years have proved extremely challenging for a number of reasons. However, the Council/Clarion strongly refutes any suggestion that it is responsible for no comprehensive valuation having been completed. The Council has made all reasonable efforts and more to undertake an inspection, and in the absence of having been able to

secure access has undertaken a kerbside valuation, and offered compensation consistent with other similar homes on the Estate.

28. In closing on the matter of objections, the Council reiterates certain of the matters stated in opening. Notably, there is *not one* Objection maintained in respect of either the Eastfields Order or the Ravensbury Order, whilst at High Path, as regards the freehold/leasehold interests to be acquired, only one single property maintains an outstanding statutory Objection (18 Gilbert Close). Four other objections are maintained, but these relate to Rights of Light, and are general assertions unsupported by evidence<sup>1</sup>).

### **The Compelling Case**

29. Turning now to address the matter of the compelling case, the Authority revisits in closing those issues which it addressed in opening, noting certain of the key statements made by witnesses in the course of the evidence.

### **The Housing Position**

30. As previously stated, the key benefits to be secured through the Orders relate to the provision of housing, and the social and environmental benefits associated with that housing. Once again, the Council considers these on a qualitative and quantitative basis.

### **Qualitative Issues**

31. The condition of the existing accommodation across the three Estates was addressed in the evidence of both Mr Ham and also Mr Robbins. Their evidence was supplemented by the extensive survey work commissioned by Clarion to assess the fabric of the existing housing stock following the Stock Transfer Agreement completed in March 2010 ('the STA').

32. The Inquiry was taken to extracts of certain of the reports which related to High Path (on the basis of an objection which has since been withdrawn); those reports entirely supported the position adopted by Mr Ham and Mr Robbins. Indeed, the now uncontested position before the Inquiry is that much of the existing housing stock across the Estates is life-expired. Some

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<sup>1</sup> This is true in respect of three of the four other Objections. That relating to 46 Priory Close does not raise 'lighting issues' or indeed any other issue; it is simply a bare assertion of objection.



properties were constructed as early as the 1930s, others date to the 1950s/1960s, whilst even those constructed in the 1970s or 1980s were built long before modern standards/practices were adopted in respect of issues such as energy efficiency.

33. The evidence of Mr Robbins, and the reports underlying that evidence (at CD9.1 and following) confirm that across the Estates there are problems with damp and mould, with flat roofs, guttering and window fittings/casements now no longer fit for purpose; indeed, the OrLit Housing at the Ravensbury Estate is legally classified as defective. Perhaps most significantly, the evidence has confirmed also that almost all the existing accommodation is inefficient in terms of thermal performance. The importance of this lies not only in its environmental consequences, but also in the fact that it means that the existing properties are unnecessarily expensive to heat.
34. In addition to the external integrity of the properties, internal fabric is also worn out and past its terminal expiry. Mr Robbins' evidence spoke to this issue also, for example as regards kitchens, and once again there is no evidence from any objector to contest the position. The Inquiry will have noted also the written evidence to the effect that in many cases room sizes are small and below Nationally Described Space Standards (and also those of the London Plan), resulting in cramped conditions, whilst provision of outside space is often deficient or even lacking altogether.
35. In these circumstances, it is a matter of major significance that the Orders will provide for delivery of accommodation that is well laid out, that is dry, that is spacious so as to comply with current standards (including those of the London Plan, as Ms Butler confirmed (XC)), and which occupants can better afford to keep warm (with all accommodation having Energy Efficiency Ratings of B or better, as compared to the current ratings of C, D or even E).

#### Quantitative Issues

36. In common with other parts of London, there is a pressing need for housing in the London Borough of Merton. The evidence of Ms Butler, spoke to the nature and extent of that need; both in terms of the new accommodation that policy requires the Council to deliver, and also in terms of the overcrowding currently experienced across the three Estates. In this regard, she noted (XC) that overcrowding was a particular issue at High Path, and one which the Council was particularly keen to address.

37. Looking at the Scheme in the round, in terms of housing numbers, the position is that the MERP will deliver up to 3,272 dwellings across the three Estates, in place of the 1,175 which currently exist – an increase of 2,097 – with the majority of the new provision located at High Path, which has excellent public transport links. Mr Ham confirmed (XC) that in terms of the phases of development which are the subject of the Orders, the net position is that The Eastfields Order will deliver a net gain of 49 units (201 replacing 152), the High Path Order will produce a net gain of 321 (487 in place of 166) whilst the Ravensbury Order has a net positive result of 82 (179 in place of 97). As such, it is not only the Scheme that produces a net increase; the Orders themselves will lead to net increase in provision (+452).
38. Further, as noted in opening, the quantitative issue is not simply a question of housing numbers, it is also a matter of bedroom provision. Indeed, ultimately the Scheme will provide for approximately 5,900 bedrooms in place of 2,500 as existing – an increase of approximately 3,400. It is also a question of typology; Mr Ham and Ms Butler explained (XC) that across certain Estates there was a shortfall of certain types of unit. The fact that unit types have been identified with a view to meeting these particular shortfalls, is what will ensure that the Scheme (and the Orders as part of that Scheme) serve to meet the chronic overcrowding issues which the Council has identified.

#### Final Remarks as to Housing

39. The final matter which the Council notes in this context is the extent and nature of the benefits which the new housing will bring. These were identified in opening, but such is their significance the Council makes no apology for emphasising the position. The homes which Clarion will be able to construct should the Orders be confirmed, will serve to benefit the social, economic and environmental interests of the area, because they will afford families the chance to live in a dry, warm, affordable home, with enough room for all members of a household, and with all the security and the indirect benefits which that opportunity brings (in terms of matters such as children's education, and health).
40. In the balancing exercise to be undertaken by the Inspector, these benefits must weigh extremely heavily in favour of confirmation of the Orders.

#### **Delivery**

41. Turning to questions of delivery, the Council makes the following observations.

### Clarion

42. The Scheme, and indeed those phases of the Scheme enabled by the Orders, will be delivered by Clarion, the pre-eminent affordable housing landlord in Britain. As the Inquiry has already been told, Clarion:

- currently owns some 125,000 units of affordable housing, (accommodating some 350,000 residents)
- constructed some 2,032 units (78% of which were affordable) in the past financial year, and
- has another 21,000 new homes in the pipeline.

43. Mr Ham pointed to the experience of Clarion in delivering largescale development and also the financial resources of Clarion, noting that in the last financial year its turnover was £1billion, and that it invested some £605million in existing housing stock. No party to the Inquiry has challenged Clarion's bona fides, in this respect – whether in terms of resource or experience. The position in terms of Clarion's commitment to delivery – both of the relevant phases and the Scheme more generally – is answered conclusively by Mr Ham's evidence (XC), and by the board minute he spoke to (Inquiry Document 1). There is no question but that Clarion will deliver, if the Orders are confirmed to enable them to do so.

### Planning

44. Planning matters were dealt with by Ms Butler. Her evidence spoke to the longstanding policy commitment to delivery of the Estates' regeneration, and the adoption of the Estates Local Plan as part of the Council's development plan in February 2018.

45. She also confirmed (XC) that planning permission been granted in outline for the totality of the Scheme, and that reserved matters approval has all been granted for all phases of development which are the subject of the Orders, save in respect of Phases 3B & C of High Path. However, she also confirmed that is because the application is pending, awaiting final confirmation of the government's second staircase regulations for tall buildings, and that there is no reason to believe that reserved matters approval will not be forthcoming when those regulations are published. The Inquiry can also note that Mr Ham confirmed (in answer to a question from the Inspector) that whilst the introduction of a second staircase into the design for some of the High Path blocks may result in a small reduction in unit numbers, it will not necessarily do so.

46. As such, the question of planning policy & permission does not pose any obstacle to delivery of the Scheme. On the contrary, the Scheme is consistent with both national policy (in particular the NPPF) and also local policy (in the form of the development plan). Further, it benefits from planning permission. There is no Objection grounded in any planning matter; no dispute that the proposed development benefits from planning permission, no assertion that it is contrary to policy.

### Conclusions

47. On this basis, the Council respectfully submits the Inquiry should conclude that once the Orders have been confirmed, those phases of the Scheme which the Orders will facilitate will be delivered. Consistent with guidance set out in national policy, there is no impediment to that delivery, such that the Inspector can be confident that once the Orders are made, development will proceed.

### **Engagement**

48. The last issue which the Council addresses in the context of summarising its compelling case in support of the Orders, is the efforts to which it and Clarion have gone to engage with affected owners/occupiers of the Estates. This matter was addressed in the evidence of Mr Clarke Vallance (of Savills) and Ms Iona McConnell (of Clarion).

49. The relevant requirements of national policy as to the obligations on acquiring authorities to engage and negotiate with affected parties, were set out in opening.

50. Following the hearing of the evidence, the Council reiterates what it said in that opening; namely that in the case of the Scheme, the policy of engagement pursued by Clarion/the Council represents the absolute gold standard in terms of what it means to promote the regeneration of a residential estate.

51. Ms McConnell (in answer to questions posed by the Inspector) explained how from the very outset, the Council/Clarion have sought to keep communities apprised of their intentions, consulting occupiers/landowners as to what was envisaged. Such engagement has been meaningful, with the output of consultation exercises informing the design of the proposed development, resulting in an iterative process of refinement of those proposals.

52. In addition, Mr Vallance explained (XC) how the Council's 'Ten Commitments' (CD8.1), coupled with Clarion's 'Offer' (CD8.2-8.4) have ensured that regeneration of the Estates will not be achieved at the expense of the rights of individuals. Mr Vallance spoke to the details of the Clarion Offer, and what it means in practice. He also confirmed that in all his long experience working in the field of compulsory acquisition and estate regeneration, he had never known a more thorough, and essentially 'generous', offer to residents. The approach of Clarion and the Council represents best practice; indeed it goes beyond best practice and serves to raise the bar above and beyond the practice which acquiring authorities have adopted to date. It is respectfully submitted that it is in large part because the Clarion Offer provides so carefully for residents to remain 'on Estate' should they wish to do so, that there are so few objections to the Order.

### **Concluding Remarks**

53. Law and practice provides that the Orders may only be confirmed in circumstances where the Authority has demonstrated a compelling case in the public interest. In closing, the Authority respectfully contends that such compelling case has manifestly, and resoundingly been demonstrated.

54. The Orders will deliver real, tangible and substantial benefits. There is virtually no opposition to the Orders, by reason both of those benefits, and also of the efforts made by the Council/Clarion to engage with affected parties, and to acquire interests by agreement. As was stated in opening, the lack of Objections to the Orders, and the lack of active participation at the Inquiry by the few remaining Objectors, tells its own story.

55. It is on this basis, and having regard to these considerations, that the Council contends the Inspector should confirm the Orders, in their modified form.

**Alexander Booth KC**

21<sup>st</sup> February 2024

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