

OBJECTIONS TO A COMPULSORY PURCHASE ORDER
ON BEHALF OF KIM'S COMMERCIAL REAL ESTATE LIMITED
THE LONDON BOROUGH OF SUTTON (ELM GROVE ESTATE) COMPULSORY PURCHASE ORDER 2024
S226 THE TOWN AND COUNTRY PLANNING ACT 1990
THE ACQUISITION OF LAND ACT 1981

INTRODUCTION

1. These objections are submitted on behalf of Kim's Commercial Real Estate Limited (the "**Objector**") in respect of the London Borough of Sutton (Elm Grove Estate) Compulsory Purchase Order 2024 ("**Elm Grove Estate CPO**").
2. The Elm Grove Estate CPO was made by the London Borough of Sutton ("**Acquiring Authority**") on 28th March 2024.
3. The Elm Grove Estate CPO is for the compulsory purchase of *"All interests (except those owned the Acquiring Authority) particularised in the Order and identified on the map referred to in the Order, being land of approximately 8,953 sq.m and is comprised of the Elm Grove Estate, Sutton"*
4. The Objector is the freehold owner of 206 High Street, Sutton, Surrey SM1 1NU ("**Property**"). The Objector is documented as a qualifying person under s12(2A)(b) Acquisition of Land Act 1981 in Table 2 of the Elm Grove Estate CPO. The relevant interest is the Objector's right to light in respect of the Property.
5. In accordance with the notice making the Order dated 10th April 2024 and sent to the Objector's registered address, the deadline for submitting objections is on or before 10th May 2024. The Objector hereby objects to the Elm Grove Estate CPO as set out in this document.

The Objector's Interest in the Order Land

6. The Objector is the freehold owner of the Property registered at HM Land Registry under title number SY304353.
7. The Objector has a qualifying interest under s12(2A)(b) Acquisition of Land Act 1981 by virtue of the Elm Grove Estate CPO impacting on their interest, namely a right to light.
8. The Property has been owned by the Objector since May 2019 and is currently occupied by a number of residential and commercial tenants.

The Objector's Address

9. The Objector's registered address is 284-288 Western Road, Colliers Wood, London SW19 2QA.

The Scheme

10. The Elm Grove Estate CPO was made under s226(1)(a) of the Town and Country Planning Act 1990. The Acquiring Authority has stated that its purpose is to facilitate the carrying out of development, re-development and improvement on or in relation to such land consisting of a regeneration scheme comprising the provision of residential units, associated amenity and open space, new pedestrian and vehicular access, landscaping and new infrastructure that will contribute to the promotion and improvement of the economic, social and environmental wellbeing of the Acquiring Authority's area.
11. The Statement of Reasons accompanying the Elm Grove Estate CPO states that the order has been made to address concerns about the quality and longevity of the homes currently located within the Elm Grove Estate and wishes to maximise the opportunities to provide new high quality housing, including affordable housing, in the Borough and enhance place-making.
12. The Statement of Reasons further confirms that the development of the Order Land will be the subject of an outline planning application. This planning application is reference DM2024/00392 ("**Planning Application**") for:

Outline planning application (with all matters reserved) for development including demolition of existing buildings and structures within Elm Grove Estate and erection of new buildings to provide residential floorspace (Class C3); retention, refurbishment and rear extension of 216-220 High Street to provide town centre (Class E), community (Class F2), sui generis and residential floorspace (Class C3); new pedestrian and vehicular access; associated amenity space, open space, public realm and landscaping; car and cycle parking spaces; plant; refuse storage; servicing; other works incidental to the proposed (phased) development; and Phase 0 enabling preliminary works in the form of demolition of two existing bungalows on-site. Further explanation (not forming part of the part of the formal description set out above): Outline application (with all matters reserved) for the demolition of existing buildings and structures and erection of buildings on three development plots ranging from five to 16 storeys (maximum) to provide up to 272 self-contained residential units; erection of a six storey rear extension and retention of 216-220 High Street to provide commercial (Class E), community (Class F2), sui generis and 10 self-contained residential units, together with provision of new pedestrian and vehicular access, associated amenity spaces and landscaping, cycle and refuse stores, parking, plant and servicing; and Phase 0 enabling preliminary works in the form of demolition of two existing bungalows on-site.
13. The Planning Application was submitted to the local planning authority on 15th March 2024 and was validated on the same date. The Planning Application is therefore in its infancy, and it cannot be confirmed that the plans and documentation submitted to date pursuant to the

Planning Application are indicative of the final proposed development for the Elm Grove Estate CPO.

14. We also note that the Planning Application is for outline permission with *“all matters reserved”*. It is therefore apparent that the final design of the scheme has not yet been determined and would not be secured by the proposed Planning Application. Further reserved matters approval(s) would need to be submitted and approved for the scheme in due course. It is noted that the description of development seeks to use a very wide proposal which could allow for a variety of development on the land.
15. Furthermore, given the stage of the Planning Application it cannot be confirmed whether the Planning Application is acceptable in planning terms and will be approved. It is therefore unclear whether it is planning policy compliant, particularly given the scale of the proposed development within the town centre. The Statement of Reasons indicates that the scheme is broadly compliant with the adopted policies in the Local Plan but does not provide sufficient detail as to why it is compliant.
16. In light of the above, it would appear that the Elm Grove Estate CPO has been submitted prematurely given that the final scheme is not clear and / or may not be planning compliant.

Objector’s history with the Order and the Scheme

17. The Objector first became aware of the Elm Grove Estate CPO by virtue of receiving a requisition notice under s16 Local Government (Miscellaneous Provisions) Act 1976 under cover letter dated 23rd January 2024. The Objector has not received any further communication or information in respect of the Elm Grove Estate CPO until they were provided with notice of the making of the Order by cover letter dated 10th April 2024.
18. We note that the Statement of Reasons dated 2 April 2024 provides that *“the Council has and will continue to take steps to consult and negotiate with all third parties that have interests in the Order Land to acquire their interests by agreement.”* The Acquiring Authority has not sought to enter into any negotiations with the Objector in respect of acquiring their interest by consent. The Objector has in fact received no contact from the Acquiring Authority in respect of acquiring their interest.
19. The Acquiring Authority has therefore failed to make any attempt to negotiate and / or acquire the Objector’s interest without the use of compulsory purchase powers. This again indicates that the Acquiring Authority has acted prematurely in making the Elm Grove Estate CPO.

Relevant Law and Guidance

20. The main guidance document for Compulsory Purchase Orders (“CPOs”) is the Department for Levelling Up Housing and Communities document ‘Guidance on Compulsory Purchase Process and the Crichel Down Rules. The document states the following:

- Acquiring Authorities should use compulsory purchase powers where it is expedient to do so but a CPO should only be made where there is a compelling case in the public interest and that the acquiring authority should be sure that the purposes for which the compulsory purchase order is made justify interfering with an interest in the land affected (paragraph 2).
- The minister confirming the order has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those with an interest in the land that it is proposing to acquire compulsorily and the wider public interest (paragraph 13).
- The confirming authority will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement. Where acquiring authorities decide to/arrange to acquire land by agreement, they will pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market (paragraph 2)
- In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant (paragraph 3).
- Acquiring authorities are expected to provide evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted, save for lands where land ownership is unknown or in question (paragraph 17).
- In paragraph 19, the guidance states that acquiring authorities should consider these steps to assist those affected by a compulsory purchase order:
 - a. providing full information from the outset about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events; information should be in a format accessible to all those affected
 - b. appointing a specified case manager during the preparatory stage to whom those with concerns about the proposed acquisition can have easy and direct access
 - c. keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure that the compulsory purchase order is made correctly and under the terms of the most appropriate enabling power
 - d. offering to alleviate concerns about future compensation entitlement by entering into agreements about the minimum level of compensation which would be payable if the acquisition goes ahead (not excluding the claimant's future right to refer the matter to the Upper Tribunal (Lands Chamber))
 - e. offering advice and assistance to affected occupiers in respect of their relocation and providing details of available relocation properties where appropriate
 - f. providing a 'not before' date, confirming that acquisition will not take place before a certain time

- g. where appropriate, give consideration to funding landowners' reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition
- Where planning permission is yet to be granted, acquiring authorities will be required to demonstrate that there are no planning impediments to the scheme assuming that any planning permission will be determined in accordance with the usual criteria of compliance with the local plan unless material considerations indicate otherwise (paragraph 15)
 - Any programme of land assembly needs to be set within a clear strategic framework, and this will be particularly important when demonstrating the justification for acquiring land compulsorily under section 226(1)(a). Such a framework will need to be founded on an appropriate evidence base, and to have been subjected to consultation processes, including those whose property is directly affected (paragraph 104)
 - It is not always necessary for a full scheme to be worked up before the confirmation of a CPO but in such cases, the responsibility will lie with the acquiring authority to put forward a compelling case in advance of resolving all uncertainties (paragraph 105).
 - The confirming authority is able to consider whether the purpose for which the land is proposed to be acquired can be achieved by any other means. This includes (but is not restricted to) whether the landowners have put forward any alternative proposals (paragraph 106).

Objections

Duty to Negotiate/Treat Compulsory Purchase as a means of 'last resort'

21. The Acquiring Authority has not discharged its duty to negotiate and cannot prove that the compulsory acquisition was a means of last resort or even necessary at this time.
22. The Acquiring Authority's contact with Objector has been extremely limited. The only correspondence they have received was the requisition notice in January 2024 and the notice of the making of the order in April 2024. It is therefore not correct for the Acquiring Authority to say in the Statement of Reasons that they have taken steps to consult and negotiate with third parties that have interests in the land to acquire their interest by agreement.
23. The Acquiring Authority has not to date made any attempts to enter into negotiation with the Objector to acquire their right to light without the need for compulsory acquisition.

Failure to provide information

24. As a result of the Acquiring Authority's failure to engage with the Objector, the Objector has very little information to be able to determine the impact of the scheme on their Property. This is particularly important for the Objector because it is not simply an acquisition of their freehold interest in the Property, it is the acquisition of their right to light.

25. The Objector would require detailed information and reports to understand how the scheme will impact their Property moving forward. This information has not been provided to the Objector and therefore they are unable to determine the impact that the proposed scheme will have on their Property.
26. The Acquiring Authority has therefore failed to provide adequate information relating to the impact of the CPO on the Objector's Property. Further information must be provided by the Acquiring Authority to the Objector so that they can assess this impact. This would then allow the Objector full opportunity to assess whether any alternative proposals could / should have been considered which would have a lesser impact on their Property and / or would have negated the need to acquire their interest.
27. Given the limited information available to the Objector they are seeking to instruct a right to light expert to assess the impact of the scheme on their right to light. A full detailed report will be drawn up in due course but given the limited time available to the Objector this is not available prior to submission of this objection. The Objector is therefore not yet fully able to assess the full impact of the CPO on their Property.
28. The Objector therefore reserves the right to make further objections to the Elm Grove Estate CPO once this report has been provided to them and they can fully understand the impact of the scheme.

Planning

29. As detailed above, the Planning Application is still very much in its infancy. The scheme has therefore not been properly considered and / or challenged by the relevant planning process and statutory consultees. As a result, it is possible that the scheme may change during the course of the planning application process, and it cannot be said that the proposal is policy compliant.
30. The Statement of Reasons indicates that the scheme is broadly compliant with the adopted policies in the Local Plan but does not provide sufficient detail as to why it is compliant.
31. In addition, the proposed description of development is extremely broad with no parameters for development set and all matters reserved. Based on the description of development the scheme would simply secure the provision of Class C3, E, F2 and sui generis uses. There is no indication within the description of development as to the number of buildings, the heights of the buildings, the amount of amenity space, number of additional dwellings and / or the amount of each use to be permitted. It is therefore not possible for the Acquiring Authority to determine the "very significant benefits" of the scheme as detailed in paragraph 1.6 of the Statement of Reasons.
32. Whilst we accept that lack of planning permission does not in itself prevent the grant of the Elm Grove Estate CPO it does create uncertainty. It is therefore the responsibility of the Acquiring Authority to put forward a compelling case in advance of resolving all its uncertainty. We would submit that this has not been done in the Statement of Reasons.

33. Furthermore it is not possible to determine from the Statement of Reasons whether an alternative scheme could be designed which would limit the impact of the development on the Property either by relocation of the proposal or consideration of alternative development. The Acquiring Authority simply note the alternative to be to not go ahead with the scheme, however, they do not consider whether any alternative proposal has been considered which would limit the impact on the Objector's Property. The Acquiring Authority has therefore not discharged its duty in this regard.

Funding

34. The Statement of Reasons does not adequately set out the financial viability of the Elm Grove Estate CPO scheme. The Acquiring Authority notes that an Affordable Housing Grant allocation of £26,625,000 has been secured from the GLA subject to achieving the necessary start on site conditions. However, it is not clear from the Statement of Reasons whether those conditions are achievable and therefore whether a significant amount of funding is available to the scheme.
35. The Acquiring Authority also indicates in the Statement of Reasons that they are seeking a development partner to deliver the scheme and that three bidders have been shortlisted to participate in a competitive dialogue process. Again, this is an indication that the full amount of funding required to deliver the scheme has not yet been acquired and may not be. This again leaves uncertainty in the Acquiring Authority's ability to deliver the scheme.

Given that the parameters of the scheme are not clear from the Elm Grove Estate CPO documentation and therefore the impact on the Objector's Property is also not clear, the Objector reserves the right to submit further objections in due course.

Irwin Mitchell LLP

9th May 2024