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Secretary of State for Levelling up, Housing and Communities
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18 November 2021

**OBJECTION TO THE LONDON BOROUGH OF RICHMOND UPON THAMES
(TWICKENHAM RIVERSIDE) COMPULSORY PURCHASE ORDER 2021**

FIRST OF TWO OBJECTIONS:

**See also: OBJECTION TO THE ACQUISITION OF PUBLIC OPEN SPACE USING
SECTION 19 OF THE ACQUISITION OF LAND ACT 1981, AS PROPOSED UNDER
THE LONDON BOROUGH OF RICHMOND UPON THAMES (TWICKENHAM
RIVERSIDE) COMPULSORY PURCHASE ORDER 2021**

See also:

**APPENDICES as attached to the 'Objection to the Acquisition of Public Open
Space using Section 19 of the Acquisition of Land Act 1981'**

Appendix 1: Trust's demise within the Diamond Jubilee Gardens

Appendix 2: Order Land Council Finance Committee 20.9.2021

Appendix 3: Overlay of Order Land on Existing Gardens (plots 63 and 76)

Appendix 4: Flood Zones Planning Application Design & Access Statements

Appendix 5: Embankment Vehicle/Cycle Corridor

Appendix 6: Examples of events in existing Gardens (photos/posters)

Appendix 7: Planning Application Daylight, Sunlight and Overshadowing Report -
External Amenity Areas

The Twickenham Riverside Trust ("the Trust"), leaseholder of the Diamond Jubilee Gardens ("the Gardens"), wishes to lodge an Objection to the London Borough of Richmond upon Thames ("the Council") (Twickenham Riverside) Compulsory Purchase Order 2021.

The Trust holds a 125-year lease of the Diamond Jubilee Gardens, expiring in 2139 and Plots 63 and 76 are within the Trust's leasehold demise and registered under Title Number TGL410191 and are included in the aforementioned CPO.

See Appendix 1 to this Objection for Background and History of the Trust, the Diamond Jubilee Gardens and the proposed development.

This letter specifically addresses and objects to the Council's Compulsory Purchase Order. By separate letter the Trust is also objecting to the Council's Section 19 application use of the relevant legislation to support the acquisition of public open space. We would ask that the Secretary of State considers the contents of that Objection alongside this Objection.

The Trust wishes to raise the following **Objection** to the proposed CPO:

1. NO COMPELLING CASE HAS BEEN ESTABLISHED FOR A CPO AT THIS STAGE AND IT IS NOT AN ACT OF LAST RESORT

In law and Government Policy, the Acquiring Authority is required to make a compelling case for the CPO in the public interest, which justifies the acquisition of third-party interests in the land and the use of compulsory purchase powers, and to do so only where the use of those powers is an avenue of last resort.

There must be clear evidence that the public benefit of a compulsory acquisition will outweigh the private loss. The onus of proof is on the Acquiring Authority – in this case the Council – to demonstrate that a compelling public interest case exists. That compelling case cannot be made out if the Acquiring Authority cannot demonstrate that compulsory acquisition is *necessary*, such as if the land/rights which are sought to be acquired can be secured voluntarily, or exceed those required for the scheme.

The Trust argues that the use of the CPO powers is premature as the negotiating process has not been exhausted, either in terms of time-lines set by the Council or in terms of the exploration of other ways in which the scheme's objectives could be achieved.

Specifically:

1.1 While the negotiations between the Trust and the Council have been protracted, they have taken place against the backdrop of a constantly changing development proposal.

The original competition concept scheme (from September 2019) underwent two major redesigns in July/August 2020 and December 2020, both changing it radically – the first in response to significant requirements imposed by the Environment Agency and the second (also reacting to complications relating to flood defences) to change the whole manner in which traffic access to the Embankment should operate.

These changes took the design a long way away from the competition-winning

design of September 2019.

1.2 At almost every stage of the discussions and negotiations, the Council has been unprepared, in that it was not offering a definitive proposal to the Trust.

An initial “final offer” was made in June 2020 of re-providing Diamond Jubilee Gardens, rejection of which would result in the Council having to “fully consider its options” (the first indication of its readiness to use CPO powers, should the Trust not agree to its proposals).

Similarly, the Council has issued public statements that there has been an ‘in principle’ agreement with the Trust since January 2021 on the Heads of Terms of an agreement, when – in reality – elements of these were still being discussed in April 2021 and beyond and when no discussion (other than on amenities and landscaping) had taken place on the critical attachment to those terms containing the plan of the re-provisioned Gardens.

During and since this time, too, the overall scheme – eg layout and location of open space, vehicular movement on the site, heights of buildings – continued to change. The actual re-provision offer to the Trust was confirmed only in June 2021 (some 12 months after the Council’s initial “final offer” when it had indicated it was already considering its “options”).

1.3 The Trust was duty-bound to wait until this stage (June 2021) and only then to seek independent surveyor advice on the relative value of the Council’s re-provision offer. This is requirement of the Charities Act.

The Trust commissioned this advice in May 2021 and the Qualified Surveyor’s Report was issued in August 2021. However, in September 2021, the Council changed its CPO strategy significantly to focus on both Sections 19(1)(a) and 19(1)(aa) of the Acquisition of Land Act 1981. This in turn necessitated the Trust’s surveyors revisiting their August 2021 advice. A revised report has only been received in November 2021, by which time the CPO had already been made.

1.4 The Council’s intention to go down the CPO route was confirmed at the Finance, Policy & Resources Committee meeting of 16 November 2020. The application of the CPO process to the Gardens was initially withheld and not confirmed until later in June 2021.

With the proposed re-provision and the design of the scheme itself continuing to evolve in further iterations in December 2020 and into 2021, it can be reasonably concluded that, rather than representing an avenue of last resort, the Council’s intended use of CPO powers underpinned and informed its interactions with the Trust from that moment on. The Trust’s responses were also conditioned by that threat.

1.5 The Council's response to the question whether the purposes for which the Order Land is to be acquired could reasonably be achieved by alternative means within a reasonable timeframe is simply that the balance is right between buildings and open space with reference to the Twickenham Area Action Plan.

The Trust does not consider that the Council has investigated in a practical way whether its purposes (and the frequently mentioned likes/dislikes highlighted in its public consultation in January 2021) could have been achieved through changes to the scheme.

1.6 The Council has not exhausted its attempts to secure land and rights by agreement and as such the CPO is premature and should not be granted.

2. THE COUNCIL HAS NOT PROVED ITS CASE THAT THE PUBLIC OPEN SPACE HAS BEEN INCREASED AND IMPROVED – EITHER IN THE RE-PROVISIONED GARDENS OR IN THE SCHEME ITSELF

The Trust has been advised that the offers of re-provision and exchange land fail to meet the statutory requirements as set out in Section 19 of the Acquisition of Land Act 1981. The proposed exchange land is not considered to provide public amenity which is 'equally advantageous' compared to the existing public open space and should not therefore be deemed to contribute to the amenity to the exchange land.

In regard to the Gardens, the position is further complicated by the fact that, in a failure to take account of their designation as public open space and the public's use of that public space established over the past 10 years, the Gardens were erroneously entered on to the Brownfield register in 2017 as promoted by the Council.

The separate objection relating to section 19 of the Acquisition of Land Act 1981 sets out these considerations in greater detail.

3. THE TRUSTEES ARE DUTY-BOUND TO CONTEST THE CPO

The Council's decision to make a CPO on land which includes the Diamond Jubilee Gardens was a deeply disappointing and aggressive act considering talks between the Trust and the Council to deliver a negotiated settlement are ongoing and are at an early stage given the changes to the scheme.

But, having been put into a legal process by the Council which seeks to remove public land demised to the Trust for the next 118 years, we have a duty to respond. To not object to the CPO process would be a failure of those fiduciary duties and prejudices the Trust's objective of ensuring that public open space is protected for the people of Twickenham and all those who use the riverside.

This does not mean the Trust opposes a redevelopment of Twickenham Riverside. On

the contrary. The Trust was founded in 2011 with the primary purpose of ‘preserving, protecting and improving, for the benefit of the public, the riverside and its environs’. Twickenham Riverside is a location of particular historic, riverine and cultural significance and the Trust strongly supports the objective of regeneration and removal of the derelict areas and other improvements. Riverside redevelopment is long overdue in Twickenham and we take our duty as a key stakeholder in the process extremely seriously.

However, the Trust has a statutory obligation, as defined by the Charity Commission, to ensure the quantum and quality of public open space which exists today on the Riverside is protected and preserved for the benefit of the public.

Additionally, the CPO contains no offer of a future demise to the Trust reflecting the lease that the Trust enjoys today. The Statement of Reasons refers in several places to the absolute title it is seeking to the Gardens: “If the Order is confirmed, the Council will be able to execute a General Vesting Declaration which will give the Council absolute unencumbered freehold title to the Order Land”.

In its description of relations with those owning interests in the Order Land, the Council records a significant amount of engagement with the Trust and refers to Heads of Terms for the acquisition of the Gardens on the basis of a draft issued on 30 April 2021. The Trust notes that these were marked “Subject to Contract, Council Approval & Without Prejudice” and were not a binding document – and, for the reasons given in 1.2 above, have not yet been signed off by the Trust. The Council had the opportunity here to express its intention to offer a new lease, but has not done so.

As a result, there is a risk that the Trust will no longer have any title to the public open space of the Gardens and will therefore not be able to meet its objectives. The Trust therefore has no alternative but to object to the CPO.

4.THE COUNCIL HAS NOT YET SECURED PLANNING PERMISSION FOR ITS PROPOSED DEVELOPMENT OF TWICKENHAM RIVERSIDE

Planning permission was not granted before the making of the CPO. The Planning Application (21/2758/FUL) had a scheduled decision date of 25 November 2021. However, the Application is not being decided at this meeting, and a date in January has been indicated, though not definitively.

Accordingly, the Planning Officer’s recommendation to approve or reject the application is not yet known.

As of the date of this submission, 309 Objections, 42 Observations and 223 Supporting Comments to this Planning Application can be viewed online at:

https://www2.richmond.gov.uk/lbrplanning/Planning_CASENO.aspx?strCASENO=21/2758/FUL&DocTypeID=52#docs.

Among the Objections, many concerns expressed relate to the loss of the existing Gardens and the impact of the development on the proposed reprovision, to the disbenefit of the current and future users, including:

- the replacement of the present Gardens – a cohesive, enclosed, single-level, multi-functional, flexible public open space – by a series of unconnected spaces over several levels;
- the failure of the proposed public open space to provide for the range of activities involving school-age children and families with small children, to include ballgames (football, cricket, tennis) and informal group or solo physical activities (frisbee/ball etc throwing, roller-blading, scootering) currently provided in the existing Gardens and protected from vehicular movements;
- the siting of the proposed main events area (identified as a “Town Square”) down on the Embankment, in the vulnerable-to-flooding Flood Zone 3, in contradiction to the Borough’s planning strategies being brought forward in response to climate change;
- the negative impact of the planned public house contiguous to the re-provisioned Gardens, as a result of the inevitable overspill of patrons into the new public open space.

In a wider planning context, both the Planning Application and the CPO Statement of Reasons reference the Twickenham Area Action Plan, July 2013 (TAAP) extensively. In many places, the Trust would argue, they do so erroneously and selectively.

The TAAP should be read in conjunction with the May 2013 Planning Inspectorate report, which highlights several key physical constraints on any proposed development of Twickenham Riverside (referenced in the TAAP). The Planning Application has failed to address these constraints.

Important assessments and audits also remain outstanding in regard to the Planning Application, in spite of reassurances to both the parties addressed by the CPO and local stakeholders. These include safety audits addressing the key areas of proposed vehicular movements on the Embankment at the bottom of Wharf Lane and Water Lane, both of which would adjoin the re-provisioned Gardens offered. The Port of London Authority has requested a condition be placed on any grant of planning permission, requiring these audits to be brought forward.

Moreover, Experimental Traffic Orders (ETOs) are to be trialled on the site, which have a bearing on part of the re-provisioned land. Until the results of these are known, it will remain unconfirmed as to whether a significant aspect of the Planning Application – which is also being promoted as a wellbeing in the context of the CPO – can in fact be implemented.

Nor does the arrangement with the Port of London Authority (PLA) appear yet to be in place. In September 2021, the PLA noted, within the context of a wider-ranging response to the Planning Application (not available for public view on the Council's Planning Portal), that the Framework Construction Environment Logistics Plan (FCMP) states that:

LBRuT owns the freehold of the Site with the exception of the riverside Embankment, which is maintained by LBRuT but owned by the Port of London Authority (PLA). The PLA have agreed and signed Heads of Terms with LBRuT for the sale of this land Design.

To which the PLA commented:

To confirm at this time this is incorrect and the agreement between LBRuT and the PLA is not yet signed and agreed and requires amendment.

The above relates to two areas of land which are part of and/or adjoined to the re-provision land.

The Trust notes, finally, that the Planning Application has been submitted without an Environmental Impact Assessment, following a Screening Opinion from the Planning Authority (which is the developer in this instance) – in spite of its sensitive riverside location.

All of the above demonstrate the making of the CPO is premature.

5. THE ACQUIRING AUTHORITY IS UNABLE TO DEMONSTRATE THAT IT HAS THE FUNDS REQUIRED IN ORDER TO IMPLEMENT THE SCHEME BEING PROMOTED BY ITS CPO

Until very recently, no financial detail regarding the Acquiring Authority's CPO scheme has been publicly available, being the subject of non-public 'pink papers' discussed at various Committee meetings over the past 18 months.

However, in a marked change, some figures are now being released for the first time. Twickenham Riverside was Agenda Item 6 at the Acquiring Authority's Finance, Policy and Resources Committee on 15 November 2021:

3.12 The viability report completed at the end of Stage 3 was based upon a traditional developer viability appraisal model and has been updated to show the financial investment to the Council as approximately £11.2m. A number of grants have been secured to reduce this figure, leaving an unfunded element of approximately £7.5m. Where possible, additional external funding will be applied for to further reduce this gap. The costs and values used are estimates at this stage, and so may be subject to change as the project moves forward. The

£11.2m does not include the river activity zone costs mentioned above which, subject to approval, will be included going forward.

At the meeting, the Committee voted to include, subject to future approval, the unspecified funding required to bring forward the river activity zone.

The Lead Officer on the proposed development informed the Committee that the scheme (unfunded by c.£7.5m, with additional unspecified costs relating to the proposed riverside activity zone) would not be brought before the Finance Committee again until May/June 2022, when a procurement process would have taken place to appoint a contractor.

The above indicates clearly that the Council has yet to either secure or approve funding for the scheme being proposed under its CPO.

For all the reasons given above, the Twickenham Riverside Trust calls on the Secretary of State to reject the Council's CPO in respect of the Diamond Jubilee Gardens on Twickenham Riverside.

More historical background is provided in the **Appendix** to this document and we stand ready to provide any other information that may be helpful for your consideration of this issue.

Luke Montgomery Smith

Chair, Twickenham Riverside Trust

Appendix 1

BACKGROUND AND HISTORY

more available on www.twickenham-riversidetrust.org.uk

The **Twickenham Riverside Trust** was established in 2011, primarily in response to some 30 years of multiple failed plans for the development of the riverside site of the former Twickenham Baths and Swimming Pool, which had closed in 1981. In 2009, the then Leader of the Council proposed: “a trust for Twickenham Riverside ... which would enable the community, local businesses, people of goodwill to come together to help fund and create a green alternative working in partnership with the Council ... [and] that the Council should be prepared to vest that land in perpetuity for the people, so that never again can any other Council come forward with a plan to sell it off to a developer.”

The founding Trustees were apolitical campaigners having emerged from several local campaigns aimed at resisting large-scale development on Twickenham Riverside in favour of creating a riverside park. The Trust’s objects reflect the aspirations of local residents (expressed via a 8,500-signature petition to Downing St and a referendum in which 2,000 local residents took part) – to “preserve, protect and improve, for the benefit of the public, the riverside and its environs at Twickenham”.

The **Diamond Jubilee Gardens** (DJG) were created in 2012, and designated as public open space. They are situated within the Twickenham Riverside Conservation Area and are adjacent to Thames Policy Area, Metropolitan Open Land and the River Thames. They were a substantial extension and enhancement of a smaller riverside park opened on part of the pool site in 2004. In 2014, the Council awarded a lease of 125 years to the Trust, affording the Gardens additional protection from development going forward.

Incremental improvements have been made to the Twickenham Riverside area over the past 15 years (Jubilee Gardens 2004, Diamond Jubilee Gardens 2012, extensive Embankment hard landscaping 2014), representing an investment upwards of £2m. These have been recognised in the Twickenham Area Action Plan as part of a phased approach, with “each phase taking account of the overall future layout”.

Following a change of Administration (from Conservative to Liberal Democrat) in 2018, proposals were brought forward by the new Administration to re-provide the existing DJG as part of a wider **development of Twickenham Riverside**, one that would include not only the remaining Council-owned derelict pool site buildings adjacent to the DJG, but also a private car park alongside the pool site, and three commercial buildings on Twickenham’s high street (both of these additional sites having been purchased by the previous Administration in 2015)

The Trust agreed that it would consider the **re-provision of the Gardens** in a reconfigured Twickenham Riverside – subject to its objects and certain principles of development, which were adopted by the Council in its brief for the June 2019 RIBA Design Competition.

In September 2019, the Trust expressed its preference for the Hopkins design concept, subject to more detailed information and discussions as it was developed.

Immediately following the appointment of Hopkins in February 2020, the Trust raised a number of concerns relating to key ways in which the design did not reflect the agreed principles.

In June 2020, with the concept scheme remaining unchanged, the Council put its first “final offer” to the Trust. As mentioned under para 1.1 of this submission, this was followed soon after by the major changes to the concept and continuing changes and refinements of the Heads of Terms in a constantly changing environment which continued up until July 2021.

November 2021