



---

# **Report to the Secretary of State for Levelling Up, Housing and Communities**

**by Peter Rose BA MRTPI DMS MCMI**

**an Inspector appointed by the Secretary of State**

**Recommendation date: 25 October 2023**

---

## **ACQUISITION OF LAND ACT 1981**

**Application dated 4 November 2021 for Certificate pursuant to  
section 19(1)(a), section 19(1)(aa)  
and paragraph 6(1)(a) of Schedule 3  
in respect of an area of open space within  
The London Borough of Richmond Upon Thames  
(Twickenham Riverside) Compulsory Purchase Order 2021**

---

Public Inquiry held on 6, 7, 8, 13, 14, 20, 21, 22 and 27 June 2023  
Site visit carried out on 3 July 2023  
Case Ref: PCU/S19/L5810/3286304  
Associated CPO Ref: PCU/CPOP/L5810/3286701

## Table of contents

<b>Section</b>	<b>Page</b>
Table of contents	2
List of abbreviations used in this report	3
1.0 Procedural matters and statutory formalities	5
2.0 Proposed Modifications to the Order	6
3.0 The factual implications of the Modified Order arising for assessment of the section 19 Application	7
4.0 The case by the Acquiring Authority for section 19 certification	7
5.0 Summaries of objections to the Application	8
6.0 Summary responses of the Acquiring Authority	12
7.0 Inspector's assessment of objections and responses	17
8.0 Summary and conclusion	29
9.0 Recommendation	29
Appendix 1: Appearances	30
Appendix 2: Schedule of section 19 objections	30
Appendix 3: Agreed list of documents submitted during the Inquiry	31

## Abbreviations used in this report:

<b>1981 Act</b>	Acquisition of Land Act 1981
<b>Authority or Acquiring Authority (AA)</b>	The Council of the London Borough of Richmond Upon Thames
<b>Application</b>	The application dated 4 November 2021 for a Certificate pursuant to section 19(1)(a), section 19(1)(aa) and paragraph 6(1)(a) of Schedule 3 of the 1981 Act
<b>CD</b>	Core Document as listed on the Inquiry web site
<b>CPO Guidance (or Guidance)</b>	The 'Guidance on Compulsory Purchase Process and The Crichel Down Rules', MHCLG 2019 (CD 4.01)
<b>DJG (or Gardens)</b>	The Diamond Jubilee Gardens
<b>EA</b>	Equality Act 2010
<b>EPIBC</b>	The Eel Pie Island Bridge Company
<b>Exchange Land</b>	The land proposed within the Order Land as new open space to replace the Lost Open Space and as shown on the Revised Open Space Plan and measuring 1,815 sqm. The Exchange Land is also shown on Map F (CD 4.03F)
<b>Lost Open Space</b>	That part of the Order Land currently used for public recreation within the meaning of section 19 of the 1981 Act and which would be lost in the Scheme, as shown on the Revised Open Space Plan and measuring 1,336 sqm. The Lost Open Space is also shown on Map F (CD 4.03F)
<b>Modified Order</b>	The Order as set out in the Proposed Modifications and in section 5 of the Authority's Statement of Case, and in the Modified Order Schedule at INQ-04 and in the Authority's Note on Proposed Modifications at INQ-31
<b>Modified Order Land</b>	The Order Land as set out in the Proposed Modifications and described in section 5 of the Authority's Statement of Case, and in the Modified Order Schedule at INQ-04 and in the Authority's Note on Proposed Modifications at INQ-31
<b>Order</b>	The London Borough of Richmond Upon Thames (Twickenham Riverside) Compulsory Purchase Order 2021
<b>Order Land</b>	Land referred to in the Order
<b>Planning Application</b>	The application for the subsequently approved development described as 'Demolition of existing buildings and structures and redevelopment of the site comprising 45 residential units (Use Class C3), ground floor commercial/retail/cafe (Use Class E), public house (sui generis), boathouse locker storage, floating pontoon and floating ecosystems with associated

	landscaping, reprovion of Diamond Jubilee Gardens, alterations to highway layout and parking provision and other relevant works'. This was submitted to the Authority on 4 August 2021 and assigned Ref: 21/2758/FUL
<b>Planning Committee Report</b>	The report of the Planning Application dated 24 November 2022 submitted to the Authority's Planning Committee
<b>Planning Permission</b>	The planning permission dated 21 December 2022 granted by the Authority pursuant to Planning Application Ref: 21/2758/FUL
<b>Proposed Modifications</b>	The proposed changes to the Order as described in section 5 of the Authority's Statement of Case, and in the Modified Order Schedule at INQ-04 and in the Authority's Note on Proposed Modifications at INQ-31
<b>PSED</b>	Public Sector Equality Duty pursuant to the Equality Act 2010
<b>Public Inquiry</b>	The Public Inquiry held on 6, 7, 8, 13, 14, 20, 21, 22 and 27 June 2023, and 3 July 2023 (site visit)
<b>Retained Open Space</b>	That part of the Order Land currently used for public recreation and proposed to be acquired pursuant to section 19(1)(aa) of the 1981 Act and to continue to be used as open space within the Scheme, as shown on the Revised Open Space Plan and measuring 1,428 sqm. The Retained Open Space is also shown on Map F (CD 4.03F)
<b>Scheme</b>	The development to which the Planning Permission relates and as described in paragraphs 2.7 to 2.15 of the Authority's Statement of Case
<b>Scheme Land</b>	The land shown on Map E (CD 4.03E) and broadly corresponding to the site of the Planning Application
<b>Secretary of State</b>	The Secretary of State for Levelling Up, Housing and Communities
<b>Special Parliamentary Procedure (SPP)</b>	The procedure as referred to in section 19 of the Act, and pursuant to the Statutory Orders (Special Procedure) Acts 1945 and 1965, as amended by the Growth and Infrastructure Act 2013
<b>TRT (or Trust)</b>	The Twickenham Riverside Trust
<b>Web site</b>	The Public Inquiry web site compiled and managed by Gateley/Hamer and where all relevant documents can be found. The link is: <a href="https://www.gateleyhamer-pi.com">Twickenham Riverside - Gateley (gateleyhamer-pi.com)</a>

## **The London Borough of Richmond Upon Thames (Twickenham Riverside) Compulsory Purchase Order 2021**

- The Application for a Certificate pursuant to section 19(1)(a), section 19(1)(aa) and paragraph 6(1)(a) of Schedule 3 of the 1981 Act was made by the London Borough of Richmond Upon Thames.
  - The purpose of the Certificate is to allow The London Borough of Richmond Upon Thames (Twickenham Riverside) Compulsory Purchase Order 2021 to proceed in the absence of Special Parliamentary Procedure (SPP).
  - When the Inquiry opened there were 4 specific objections to the Application, but other, more general objections to the Order itself allude to similar or related concerns.
- 

### **Summary of recommendation: that a Certificate be given**

---

#### **1.0 Procedural matters and statutory formalities**

1. Whilst related to the Order, the application for a Certificate is a separate matter and falls to be determined relative to the terms of section 19 and applied in conjunction with the accompanying CPO Guidance.
2. Section 19(1) requires, insofar as a compulsory purchase order authorises the purchase of any land forming part of an open space, that the Order shall be subject to SPP unless the Secretary of State is satisfied the Scheme meets the following criteria as relevant to this case:
  - that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased (sub-section (a)), or
  - that the land is being purchased in order to secure its preservation or improve its management (sub-section (aa)).
3. Paragraph 6(1)(a) of Schedule 3 of the 1981 Act makes corresponding provision in relation to existing rights over land comprising open space. The relevant specified criterion necessary for the Order not to require SPP is that the land, if burdened with that right, would be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before.
4. Schedule 1 to the Modified Order sets out land and new rights to be purchased (excepting Exchange Land). Schedule 2 identifies Exchange Land to be purchased and vested, and Schedule 3 lists the Exchange Land to be vested.
5. Section 19(2) requires that, where it is proposed to give a Certificate under this section, the Secretary of State shall first direct the Acquiring Authority

to give public notice of his intention. He shall afford an opportunity for all persons interested to make representations and objections and cause a Public Local Inquiry to be held in any case where it appears to him to be expedient. After considering any representations or objections made, and the report of any Inquiry, the Secretary of State may then give the Certificate.

6. Following a preliminary appraisal of the merits of the proposed Exchange Land, the Secretary of State was satisfied that a Certificate could, in principle, be given, and directed the Authority accordingly, and for the Application's further consideration by way of a Public Inquiry. The intention to give a Certificate was published by the Authority on 9 and 16 December 2021 and by site notice dated 23 February 2022.<sup>1</sup>
7. In response to that publicity, four specific objections were received, as identified below.
8. The Public Inquiry was held in June 2023 on the dates specified above, and this is now the report of the person appointed to hold that event.

## **2.0 Proposed Modifications to the Order**

9. A number of modifications to the Order are proposed by the Authority. These arise both in response to objections subsequently received, but also by way of factual updates and clarifications.
10. The Modified Order Land as proposed now excludes various Plots as identified on the Proposed Modifications CPO Plan at Appendix 1 and the Revised Open Space Plan at Appendix 2<sup>2</sup> to the Authority's letter of 10 March 2023. These are further explained in Inquiry Document INQ-31.
11. The effect of the modifications would be to reduce the extent of the Order Land from 2.03 hectares to 1.72 hectares.<sup>3</sup> None of the modifications involve acquisition of any additional land such as to engage section 14 of the 1981 Act.<sup>4</sup>
12. The Proposed Modifications and the Revised Open Space Plan were issued to all interested parties on 10 March 2023. Five responses were considered at the Inquiry.<sup>5</sup>
13. The acceptability or otherwise of the Proposed Modifications are not the subject of this report. They are only relevant insofar as they may have implications for the Application. In my accompanying Order decision, I shall explain how the Proposed Modifications all fall within the scope of the Authority's power to modify, set out how the subsequent representations have been reviewed and assessed, and confirm how no party would be prejudiced by the proposed changes. My overall conclusion as relevant to

---

<sup>1</sup> Items 10 and 11 of the Authority's Compliance Note (Inquiry Document INQ-02)

<sup>2</sup> CD 4.02A and CD 4.02B

<sup>3</sup> Authority's Statement of Case, paragraph 5.5. This includes a correction to the size of Plot 25 (as explained at paragraph 5.4)

<sup>4</sup> The detailed implications for the Order and its Schedules are set out at INQ-04 and are further clarified at INQ-31

<sup>5</sup> As listed as Responses under Modifications on the Inquiry web site

this Application is to accept the Proposed Modifications, and that is the basis upon which the following section 19 matters are now considered.

### **3.0 The factual implications of the Modified Order arising for assessment of the section 19 Application<sup>6</sup>**

14. The Modified Order Land still includes open space within the meaning of section 19(4) of the Act.
15. The Lost Open Space (to which section 19(1)(a) of the Act is applied by the Order) now comprises Plots 2, 64, 76 and 86.
16. The Exchange Land (to which section 19(1)(a) is applied) now comprises Plots 24, 28, 46, 47, 52, 57, 61, 62 (as modified) and 82.
17. The Retained Open Space (to which section 19(1)(aa) is applied) now comprises Plot 63.
18. Acquisition of rights to over-sail cranes across existing open space (to which paragraph 6(1)(a) of Schedule 3 is applied) relates to Plot 70.
19. Plots 24 and 47 were mistakenly included in Schedule 2 of the Unmodified Order and are to be moved to Schedule 3. This is to reflect the fact that Plots 24 and 47 are and were owned by the Authority.

### **4.0 The case by the Acquiring Authority for section 19 certification**

20. As a result of the Proposed Modifications, the amount of Lost Open Space would reduce from 1,388 sqm to 1,336 sqm; the amount of Retained Open Space to be acquired would reduce from 2,010 sqm to 1,428 sqm; and the amount of Exchange Land would reduce from 1,919 sqm to 1,815 sqm.
21. Map S<sup>7</sup> as agreed between the Authority and the TRT identifies a total of 4445 sqm of Existing Functioning Open Space. This figure is defined to include:
  - Artificial Grass (388 sqm)
  - Planted Areas (1240 sqm)
  - Play Space/Associated Circulation & Seating (419 sqm)
  - Events Space (507 sqm)
  - Pétanque Area (126 sqm)
  - Circulation Space/Other Hard Landscaping (1680 sqm).

(The café is also shown but referenced as not being open space) (85 sqm).
22. In comparison, the Authority's Map N<sup>8</sup> identifies a total of 6005 sqm of Future Functioning Open Space. Key individual components identified (and these in sum amount to less than the overall total figure) include:

---

<sup>6</sup> As further detailed by the Authority in INQ-31

<sup>7</sup> Ref: LBR-2B(16)

<sup>8</sup> Ref: LBR-1B(6)

- Events Space (Parcels, A, B, D and G) (930 sqm)
- Highways Used as Open Space (Parcels C, D, E, F, G, H and I) (1420 sqm)
- Terraced Lawns (Parcels N, M, O, P and Q) (572 sqm)
- Play Space/Associated Seating (Parcels K and L) (433 sqm).

## 5.0 Summaries of objections to the Application

23. The Inquiry web site<sup>9</sup> formally lists 4 objections: S19-S01 (from the TRT); S19-NST01 (Jeremy Hamilton-Miller); S19-NST02 (Sue Hamilton-Miller); and S19-NST03 (Francis McInerny).<sup>10</sup>
24. Additional to the 4 representations cited in express terms relative to the section 19 Application, similar or related sentiments are variously evident indirectly or inferred throughout others of the 147 objections listed pursuant to the Order itself. All are taken into account more generally and considered on the same terms as part of this recommendation.
25. In summary, the objections maintain the Authority has failed to meet the statutory tests of section 19(1)(a): the Exchange Land would be less in area and would not be equally advantageous.
26. The TRT also maintains the Authority's use of section 19(1)(aa) to be incorrect and inappropriate.
27. The TRT's objections, whilst broadly similar to the concerns of other representees, are the most detailed of those submitted. The TRT's concerns include land for which the Authority granted the Trust a 125-year lease in 2014, the freehold of which is retained by the Authority. The TRT's qualifying interests relate principally to Plots 63 and 76.
28. The TRT collaborated with the Authority in preparing the agreed Inquiry Document INQ-41, 'Section 19 Areas of Agreement & Disagreement' and to which the substance of this report now responds.

### ***Less in area***

29. It is contended that a number of areas of land have been incorrectly/inappropriately included as replacement open space, and a number of areas of existing space have been excluded from the calculation of the current provision.
30. Those areas of proposed replacement which should be excluded are:
- the area the TRT describes as the 'Water Lane Retail Walkway' (shown marked 'R' on Map N and measuring 374.8 sqm). As proposed, I refer to this area as the **widened Water Lane**
  - **pavement planting** in Water Lane (shown marked 'U' on Map N and measuring 36 sqm)

---

<sup>9</sup> Available to view at [Twickenham Riverside - Gateley \(gateleyhamer-pi.com\)](https://www.gateleyhamer-pi.com)

<sup>10</sup> Mr Hamilton-Miller and Mrs Hamilton-Miller each addressed the Inquiry personally in other sessions relating more generally to the Order

- **pavement planting** in Water Lane (shown marked 'V' on Map N and measuring 67 sqm)
- **stepped areas** in Water Lane included by the Authority as Exchange Land but where no measurements are given on Map N (but approximately 20 sqm)
- **the terraced part of Jubilee Gardens** (existing open space proposed as Exchange Land on Map F. This forms parts of Plots 52 and 83 on the Proposed Modifications CPO Plan, and measures approximately 100 sqm).

31. Those areas incorrectly omitted as Lost Open Space are:

- open space to be redeveloped as the **Wharf Lane building forecourt** (shown as forming part of Plot 87 on the Proposed Modifications CPO Plan and measuring approximately 120 sqm)
- **the Embankment flowerbed** (shown as Plots 27 and 85 on the Proposed Modifications CPO Plan and measuring 30.9 sqm).

32. The TRT's consequential figures are that:

- the total area of lost open space would amount to 1486.9 sqm
- the total area of proposed Exchange Land would be 1217.2 sqm.

33. The TRT maintains there would be a shortfall of 269.7 sqm below the threshold required by section 19(1)(a).

***Not equally advantageous (aside from considerations of site area)***

*Summary of existing*

34. The objectors stress the DJG are a popular multi-use public open space available all-year-round. They are well-used for different purposes by different community groups and by the wider public on a daily basis, and occupy a secure location above higher risk flood zones closer to the river.
35. The main areas comprise artificial grass, hardstanding and dedicated play space, and linked to circulation areas and associated planting. Pétanque courts and a café are also available. All the sections come together to provide a safe, large and flexible area, and parts can be used jointly.
36. Section 6 of INQ-41 identifies eight aspects of disagreement in relation to 'Quality of Exchange Land'.<sup>11</sup> These also overlap with the concerns of Jeremy and Sue Hamilton-Miller and with Francis McInerny, and with other more general representations made by other objectors in connection with the Order itself. The objections in all these regards are further summarised as below.

---

<sup>11</sup> Item 1 to this submission also helpfully confirms that whilst the TRT has not independently verified the measurements, the methodology for the measurement of areas on Maps A to T has been discussed and agreed with the Authority. Accordingly, the measurements of the areas contained in CD 4.03 A to L (Maps A to L), LBR-1B(5) to (8) (Maps M to P), and LBR-2B(14) to (17) (Maps Q to T) are agreed, as is LBR-22 (Map U) at INQ-03

*(a) Comparative quality and amenity of the Events Space*

37. There are currently several adjacent areas which provide a large and flexible event space and on a single, enclosed level.
38. In contrast to the replacement Events Space (the proposed 'Town Square/Event Space'), the existing is not subject to flooding, is not bisected by the main cycle route through the development, does not form part of a highway, and is not exposed to users of a public house. The replacement provision could not be used to deliver the same recreational and leisure benefits.

*(b) Comparative impact of flooding on the existing and proposed open space*

39. The existing open space occupies a prime riverside location but in an elevated position away from adjacent areas of higher flood risk. Much of the future open space would instead occupy land closer to the river in higher risk of flooding.

*(c) Comparative quality of the Play Space (Parcels K and L)*

40. The existing area, whilst not formally enclosed, is nevertheless contained and secure, providing a quiet, safe and supervised environment for children.
41. Facilities within the proposed Play Space would be insufficient and, in common with the adjacent Lawns, the Space would have a more exposed and vulnerable setting, and an unsatisfactory relationship to the service road.

*(d) Comparative amenity value of the open space, including the impact of overshadowing, sunlight levels and the impact of the Wharf Lane building*

42. The 5-storey Wharf Lane building would be an imposing, abrupt and overbearing presence immediately adjacent to the open space.
43. The building would involve loss of views of open skies and of views towards and along the river from the open space. Sunshine would be lost and there would be shadowing and premature sunsets.
44. A large number of mature trees and hedgerows play a crucial role in providing visual stimulation and amenity to the public but would be lost to the Scheme. There would be a wholesale destruction of all but one of the trees within the DJG and so removing green aspect, habitat, biodiversity, screening and enclosure.

*(e) Impact of surrounding uses on the proposed open space*

45. The proposed public house/restaurant with outdoor terrace and seating would have the potential to undermine the peaceful enjoyment of the adjacent open space and its surroundings. This risk is further heightened by the terms of Condition NS108 attached to the Planning Permission. The Condition requires customers not to be present within the premises of the public house after 2300 hours Monday to Saturday and after 2230 hours on Sunday, and that customers shall not be present at the outside dining areas

of the public house after 2100 hours.<sup>12</sup> This may encourage greater use of alternative nearby outside areas for gatherings by excluded customers after the premises would be closed.

*(f) Impact of traffic and cyclist movements on users of the proposed open space*

46. The Events Space would be crossed by cyclists, and by vehicles at permitted times, and this would be adjacent to the Lawns.

*(g) Comparative quality of the Exchange Land as a functioning part of the open space as a whole*

47. The existing distinct open space would be lost. The replacement, by reason of its location and form, would be less functional, less secure and less environmentally friendly. The existing café facility serving the open space would also be lost.

*(h) Proximity of the Exchange Land to the riverside compared to the Lost Open Space*

48. A significant part of the Exchange Land in Water Lane would be a narrow retail walkway extending away from the riverside.

### ***Other legal submissions***

49. The TRT maintains a number of legal shortcomings in the Authority's actions. In particular, the Authority should have:

- used section 19(1)(a) in its entirety and placed no reliance at all on section 19(1)(aa));
- vested the Exchange Land in itself but also with the offer of an equivalent lease to the Trust (and with any other equivalent rights, trusts and incidents).

50. By contrast, the Authority has failed in its actions to:

- recognise that section 19(1)(aa) is an inappropriate power in these circumstances and can only be relied on where the real reason for the compulsory purchase is to improve the management of the open space. The primary reason for acquisition here is to remove the TRT's leasehold interest and so enable the Authority to reconfigure the space to its own design;
- appreciate that, in any event, an Order which is subject to certification under section 19(1)(aa) is incapable of extinguishing the TRT's legal right/privilege of its long lease of the open space with exclusive possession etc.;
- provide the Exchange Land subject to identical rights, trusts and incidents as the Lost Open Space, in particular by failing to provide it subject to the option of an equivalent lease to the TRT. Whilst there have been some negotiations concerning a potential new lease to the TRT, the Trust has

---

<sup>12</sup> CD 3.40 refers

never been offered a lease of the whole of the Exchange Land and never been offered a lease on identical terms to the existing;

- provide Exchange Land which is greater in size than the total area of open space being acquired rather than just greater than the Authority's formally defined area of Lost Open Space;
- consider the equality of advantage of the Exchange Land relative to the Lost Open Space and for which the TRT has an existing right;
- identify the public who currently enjoy the existing open space and whether the Exchange Land would be equally advantageous.

51. Section 19 should only be entitled to focus on the merits of the Exchange Land itself and not rely on general benefits associated with provision of other unrelated open space within the Scheme. The Authority has pursued a seemingly 'holistic' approach to the management of the open space within the Scheme, stating that it cannot deliver the broader proposal and its perceived benefits (including the new open space) without acquiring the Retained Open Space.
52. The Authority has created an unfair situation whereby, if the TRT had been a freehold owner of the Lost Open Space, it would have been bound to have the Exchange Land vested in it, but because it is a long leasehold owner, it gets nothing other than financial compensation. That cannot be right as a matter of principle.
53. There is no direct legal authority in relation to leasehold interests and section 19 but it amounts to a 'legal right'. Even if that is not correct, a lease would fall within the broad definition of an 'incident'. At the very least, a lease is a privilege that the TRT enjoys in relation to the existing open space, and that privilege must therefore be replicated in relation to the Exchange Land.
54. The Authority seeks to draw a distinction between what it calls 'proprietary interests' (which includes freehold and leasehold interests) and 'rights'. It is not disputed that a lease is a proprietary interest in land, but no such distinction is made within the terms of section 19.
55. As the Authority is only supposed to be acquiring open space under section 19(1)(aa) to improve its management, and not for other development purposes, the land does not come as a 'blank canvas' (as with section 19(1)(a)). In section 19(1)(aa) cases, the Order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject (section 19(3)(b) refers). Thus, anyone with a right to use the land or anyone who has any kind of legal privilege in relation to it, would continue to enjoy that post-acquisition.
56. A Certificate as sought would be legally inappropriate and should not be allowed to circumvent due process.

## **6.0 Summary responses of the Acquiring Authority**

### ***Less in area***

#### ***The widened Water Lane***

57. The Water Lane footway is being widened to increase the amount of pedestrian walkway, and so better connect the town centre to the river. The expanded pedestrian element would be wide enough to accommodate particular activities, and would connect to proposed open space to the south. A reduced built footprint to the west as a consequence of subsequent flooding constraints would allow additional public open space and for Water Lane to be broadened to positive affect.
58. The replacement open space would be at least as wide as the enclosed area of Church Street (building façade to building façade) and which has been successfully pedestrianised nearby. It would certainly be wide enough to accommodate particular public activities, such as market stalls or open-air dining linked to the adjacent commercial uses.
59. The **pavement planting** within the widened Water Lane (shown marked 'U' and 'V' on Map N) and the linked **stepped areas** would be integral elements of that same extension of open space.
60. All these areas would be new open space and are correctly identified as Exchange Land.

*The **terraced part of Jubilee Gardens** (parts of Plots 52 and 83)*

61. This area lies behind a locked gate and there is a high wall beyond which further prevents any use or access. It comprises unused scrubland.
62. This area would be a new area of open space and is correctly included as Exchange Land.

*Open space to be redeveloped as the **Wharf Lane building forecourt** (part of Plot 87), and the **Embankment flowerbed** (Plots 27 and 85)*

63. None of these Plots are included within the Modified Order as there is no need for this land to be acquired. Plot 87 is already owned by the Council, and Plots 27 and 85 are adopted highway and would remain as such within the Scheme.<sup>13</sup> There is therefore no basis to include these Plots within the calculation of open space that is lost as a result of the Order as they are not proposed to be acquired under its terms.
64. The Authority maintains the Scheme would involve a total area of Lost Open Space of 1336 sqm and a total area of proposed Exchange Land of 1815 sqm (an increase of some 36%).

***Not equally advantageous (aside from considerations of site area)***

65. The Authority's response in these regards is summarised as below.

*(a) Comparative quality and amenity of the Events Space*

66. The proposed Events Space would be placed centrally within the Scheme. It would form part of a wider area of open space that is more directly connected to the river, so enabling it to develop and celebrate the town's relationship with the Thames in a way that is not possible with the current configuration.

---

<sup>13</sup> Authority's Statement of Case, paragraphs 5.3.1 and 5.3.2

67. The Events Space would be slightly larger than the existing hardstanding and artificial grass areas combined. It would be flexibly designed to accommodate different types of event and other activity, and would be supported by tiered seating as an integral feature and affording open views across and towards the river. Nothing described by the TRT as already taking place in the DJG could not be accommodated. The opportunity would also be there for events to take place in other areas, such as the Lawns. The Space would have step-free access from the east and west and be far more accessible than the current facility.

*(b) Comparative impact of flooding on the existing and proposed open space*

68. The comparative impact of flooding on the existing and future open space is shown on Maps G and H. By virtue of its closer proximity to the river, the Scheme would result in an increase in open space within the higher risk areas of Flood Zone 2 and Flood Zone 3.

69. The evidence is that most flooding along the river edge tends not to occur in summer when a majority of outdoor events would be expected to take place<sup>14</sup>, and the Scheme offers flexibility for events to be managed and delivered in anticipation of such occurrences.

70. A large part of the Exchange Land would sit above Flood Zones 2 and 3, as would the children's Play Space and pétanque area, and parts of the Terraced Lawns where events could alternatively be held. The Scheme has been designed to include specific remedial works and associated measures to improve flood mitigation on the Order Land.

*(c) Comparative quality of the Play Space (Parcels K and L)*

71. The Play Space would be placed towards the rear of the Scheme Land to maximise views across the Future Designated Open Space to the river and to incorporate trees. It would also be positioned to allow good sightlines for surveillance and to draw children and families into the centre of the Scheme and adjacent to the café. The Play Space would be larger than the existing space and offer a larger variety of play equipment.

72. The Terraced Lawns would introduce natural grass and could offer further opportunity for play, ball games or similar.

73. The Play Space would be located near to the service road in the Scheme, but there would be a fence and an area of planting, including trees and hedges, separating the two. A climbing wall would also provide further separation and shelter from vehicle movement. Such movements would, in any case, be minimal, and the Play Space would be no more impacted by noise and air pollution than the existing facility.

*(d) Comparative amenity value of the open space, including the impact of overshadowing, sunlight levels and the impact of the Wharf Lane building*

74. The submitted lighting studies demonstrate how the new open space would experience a mix of sunlight and shade across the day, and which would be advantageous for creating a comfortable environment throughout the year.

---

<sup>14</sup> LBR-2A, paragraphs 10.11 to 10.14

They also show how the existing area is already significantly impacted by shadows from existing trees.

75. The submitted Arboricultural Method Statement and Survey<sup>15</sup> identified that approximately half of the lost trees (34) were of Category C or lower status. Of the higher quality trees, a number had serious health problems, including the Pin Oaks on The Embankment and the Hornbeams on the service road.
76. The original aim was to seek to retain as many of the better-quality existing trees as possible but, due to the health concerns, it was decided that the Scheme's long-term future would be better served by replacement.
77. The Scheme proposes extensive new tree planting along The Embankment, Water Lane and Wharf Lane in addition to areas of structured planting around the pétanque area and adjacent to the service road along the north of the Scheme Land. A total of 49 new trees would replace those being removed.<sup>16</sup>

*(e) Impact of surrounding uses on the proposed open space*

78. The aim is for the public house to be more of a gastro-style public house/restaurant rather than a conventional drinking establishment.

*(f) Impact of traffic and cyclist movements on users of the proposed open space*

79. The Scheme is forecast to achieve a substantial reduction in local vehicle movements.<sup>17</sup> That would enable improvements to the safety of users and pedestrians in and around the proposed open space, and enhance their enjoyment of the new facility.
80. It is only between the hours of 0700 and 1000 that vehicles may be generally present on The Embankment. For the remaining 21 hours of the day there should be no vehicular traffic crossing the area, save in exceptional circumstances.
81. As part of the Planning Application process, Stage 1 Road Safety Audits have been undertaken by independent engineers and subsequently assessed and reviewed in detail by the Authority.<sup>18</sup> Suitable mitigations were identified on all Stage 1 issues of highway safety, and including implications for pedestrians and cyclists, and these matters have been resolved. A further Stage 2 Safety Audit would address matters of detailed design and associated issues. The Authority is satisfied there is no basis to any outstanding concerns.

*(g) Comparative quality of the Exchange Land as a functioning part of the open space as a whole*

82. The Exchange Land would contribute to open space which would be less detached from its surroundings than the existing and would instead form a coherent and integral part of a wider development. A new replacement café

---

<sup>15</sup> CD 4.09A and CD 4.09B

<sup>16</sup> LBR-2A, paragraph 11.22

<sup>17</sup> See Transport Assessment at CD 3.14

<sup>18</sup> CD 4.08G, and CD 4.08H

facility and new public toilets would be available in support of the open space. The café would occupy a river-facing ground floor unit of the Water Lane building, with an adjacent seating area linking to the Future Functioning Open Space. Publicly available toilets would be provided within both the Water Lane and Wharf Lane buildings.

*(h) Proximity of the Exchange Land to the riverside compared to the Lost Open Space*

83. Whilst part of the Exchange Land in Water Lane would be further away from the Thames relative to the existing open space, the Scheme's provision would generally function in closer proximity to the river.

### **Other legal submissions**

*Not equally advantageous - the approach*

84. The Lost Open Space and the Exchange Land should not be considered as strictly isolated pieces of land or 'islands', with no regard to their surroundings. A common-sense approach is instead required whereby equality of advantage must have regard to context. The alternative approach would both be unrealistic and artificial.

*Appropriateness of section 19(1)(aa)*

85. The Guidance makes clear that section 19(1)(aa) may be relied upon where an acquiring authority '*may wish to acquire land to which section 19 applies e.g. open space, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space.*'<sup>19</sup> This is precisely the intention of the Authority: compulsory acquisition of the Retained Open Space would allow the comprehensive re-design of the wider area in order to re-provide a much-improved open space as part of the wider Scheme.
86. The term 'management' is much broader than the definition afforded to it by the TRT. It includes physical changes and reconfiguration of the open space in order to alter the way in which it is managed consistent with the CPO Guidance. Examples are provided by the Guidance of when section 19(1)(aa) might be used, and these include where the Authority may wish to provide '*proper facilities*'.<sup>20</sup> This makes clear that making physical changes to the open space may properly fall within section 19(1)(aa).
87. The later Blackwall Reach report (2017) submitted in evidence by the TRT<sup>21</sup> appears to indicate how, in that particular case, the powers under section 19(1)(aa) were to be used so that the land could be '*improved for inclusion in the new central park*' as part of a '*comprehensive renewal of the entire green.*' It further noted that '*the Order Land equates to around 28% of the proposed new central park, so its acquisition is important if the Council is to enable comprehensive improvements to the central open space as a whole, to create the new park and implement its intended ownership and*

---

<sup>19</sup> CD 4.01, paragraph 242, and as cited by the Authority in CD 1.9, paragraph 3.18

<sup>20</sup> CD 4.01, paragraph 242

<sup>21</sup> INQ-44.2

*management structure to make it a success for the whole community’.*<sup>22</sup> That case would appear to involve a comparable application of section 19(1)(aa) in order to acquire open space as an integral part of wider improvements.

#### *Rights and entitlements*

88. The TRT’s argument regarding a legal right is entirely misconceived; a legal interest in land (such as a lease) does not constitute a ‘right’ for the purposes of section 19(1).
89. The ‘rights’ referred to in section 19 are those similar in nature to ‘rights of common’, for example, rights of access to open space. These are the rights that the Exchange Land must be subject to, in order that it can be used in the same manner as the Lost Open Space. It does not include legal ‘interests’ in land, which are extinguished through compulsory acquisition. Indeed, nowhere is the word ‘interests’ used which it would have been if that had been intended by the legislation.
90. The correct position in law is that leases are not rights within the meaning of section 19 and would be extinguished on acquisition. This is supported by the Guidance, which explains that *‘land which is already subject to rights of common or to other rights, or used by the public, even informally, for recreation, cannot usually be given as exchange land, since this would reduce the amount of such land, which would be disadvantageous to the persons concerned’*.<sup>23</sup> This makes clear that the ‘rights’ envisaged are those associated with the use of the land as a common or open space. Indeed, if ‘rights’ included legal interests such as the TRT’s lease, then any land subject to legal interests prior to acquisition (whether leasehold or freehold) could never be exchange land; in other words, no land would ever qualify as exchange land.
91. The legislation cannot sensibly be construed in a manner which has absurd consequences. The TRT’s argument is wholly at odds with the way in which compulsory purchase operates.
92. The TRT would be entitled to compensation for the acquisition of its leasehold interest under the Compensation Code and nothing further.

### **7.0 Inspector’s assessment of objections and responses**

93. **Plot 70** comprises the steps from The Embankment to the river and is owned by the Port of London Authority. There are no outstanding objections in relation to this aspect of the Order and I have no reason to conclude the right to over-sail for the duration of the works would impair use of the steps. There is therefore nothing remaining before the Inquiry to suggest that Plot 70 would be less advantageous to the relevant section 19 parties if subject to the right as sought.
94. Four main issues then remain:

---

<sup>22</sup> Blackwall Reach report 2017, paragraphs 1.1.2, 4.9 and 6.7 at INQ-44.2

<sup>23</sup> CD 4.01, paragraph 240. (The underlining corresponds to that added by the Authority in its submission)

- whether or not the land to be given in exchange for the Plots as identified pursuant to section 19(1)(a) would be less in area;
- whether or not the land to be given in exchange for the Plots as identified pursuant to section 19(1)(a) would be equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public;
- whether or not **Plot 63** is to be acquired pursuant to section 19(1)(aa) in order to secure its preservation or improve its management; and
- matters of rights and entitlements arising from the TRT's legal submissions.

***Main Issue 1: less in area?***

95. Water Lane provides an important link between the town centre, the Scheme Land, and the wider riverside.
96. The Action Area Plan<sup>24</sup> seeks to bring the wider area of Twickenham Riverside back into active use, taking advantage of its riverside location and, significantly, improving links between the riverside and the core of the town. More specifically, it expressly identifies key objectives for the Scheme Land's allocation to include improving the Water Lane link from the town centre to The Embankment as a shared use space.<sup>25</sup>
97. The **widened Water Lane** as proposed by the Scheme would meet the Action Plan's broad aspirations and, notwithstanding the relative narrowness of the additional space to be provided and its position adjacent to the carriageway, that land would still serve, spatially, functionally and visually, as public open space. If nothing else, it would be available for people to safely stop and relax in pleasant surroundings, and to walk through, and as an integral part of the Scheme's wider continuum of open space drawing people towards the riverside. The Action Plan similarly identifies future redevelopment of the nearby 1, 1a and 1b King Street to include a set-back of building at the junction with Water Lane to create enhanced public space with views towards the river where possible.<sup>26</sup>
98. Open space comes in many forms, shapes and sizes and there is no universal prescription. The widened area of Water Lane would comprise publicly accessible open land consistent with the broad expectations of the development plan. I am satisfied the proposed land would be sufficiently characteristic of land to be used for the purposes of public recreation in accordance with section 19(4), and has been correctly included as Exchange Land.
99. The same conclusion applies to the associated **pavement planting** (shown marked 'U' and 'V' on Map N) and **stepped areas** to serve the widened Water Lane. These are incidental features of the same facility.

---

<sup>24</sup> London Borough of Richmond Upon Thames Local Plan Twickenham Area Action Plan Adopted July 2013 (CD 2.05), Proposal Site TW 7 - Twickenham Riverside (Former Pool Site) and south of King Street

<sup>25</sup> Paragraph 7.5.5.2

<sup>26</sup> Paragraph 7.5.5.4 under 'Design Guidelines'

100. The **terraced part of Jubilee Gardens** (parts of Plots 52 and 83) provides no public access and appears unmaintained and overgrown. The Authority accurately describes this site as 'scrubland'. It has no functional value as open space and, indeed, is one of a number of parcels of land which visually detract from the riverside. The area was apparently planted in 2004, but there is little convincing evidence of public access or of when or how it formed a functional part of the DJG. In any event, the permission that created the DJG was for a temporary period of five years only, and there is little formal evidence before the Inquiry to support this area's asserted lawful planning status as a public garden. Accordingly, this land as proposed has been correctly included as new, replacement open space.
101. Open space to be redeveloped as the **Wharf Lane building forecourt** (part of Plot 87), and the **Embankment flowerbed** (Plots 27 and 85) are not included within the Modified Order. They are therefore irrelevant to the calculation of Exchange Land and have not been incorrectly omitted.
102. In summary, I am satisfied the Scheme would involve a total area of Lost Open Space of 1336 sqm and a total area of proposed Exchange Land of 1815 sqm.

***Main Issue 2: equally advantageous?***

*(a) Comparative quality and amenity of the Events Space*

103. The overall Events Space, of which Exchange Land would comprise only a part, would be an area of comparable size and flexibility to the existing, but would benefit from a more open and more central location closer to the river. When accommodating events, the location and its surroundings would also be vehicle-free.
104. The upper levels of the Future Designated Open Space would look down towards the adjacent Events Space. Timber seating terraces would transition between the two levels on two sides and offer open views out towards the water as its natural backdrop and as an inherent and highly attractive feature of the Events Space design and of its wider location. The seating would also have the added advantage of doubling-up as a facility for people just to relax, to sit peacefully in the sun, and to enjoy the riverside open space at those times when events would not be taking place.
105. The Events Space and, indeed, the wider open space to be provided, would offer far better and less constrained pedestrian access, and this would be a very significant consideration for persons with protected characteristics pursuant to the Equality Act 2010 (EA), and for the Public Sector Equality Duty (PSED). This would be particularly advantageous and relevant for visitors qualifying with protected characteristics by reason of age, disability, pregnancy or maternity, and to the challenges of supported movement faced by any accompanying minders/carers/parents or guardians.

*(b) Comparative impact of flooding on the existing and proposed open space*

106. The DJG already form part of Flood Zone 1, but parts of the proposed open space, and including parts of the Exchange Land, would occupy land which is in higher risk of flooding.

107. There is little evidence of substantial, widespread flooding across the entire Order Land and any occurrence would be unlikely without warning or forecast. The flexible configuration of the various component sites, both in terms of positions and ground levels, would afford reasonable opportunities to plan contingencies for events and to mitigate against such eventualities.
108. That said, any risk to public safety must be properly taken into account and managed, and the Scheme has been designed accordingly. The Planning Committee Report sets out full details of how this would be achieved, and various Planning Conditions expressly refer to works and other matters to be addressed as the Scheme would evolve. These matters include detailed design of flood defences (Condition NS12) and provision of a flood defence wall (Condition NS61). A Flood Emergency Evacuation Plan and requirements for its annual review would also need to be in place (Condition NS102a).
109. I particularly note the Planning Committee Report identifies how the Environment Agency has confirmed the Scheme would help deliver an improved flood defence in line with local, regional, and national planning policies, and with the requirements of the Thames Estuary 2100 Plan.<sup>27</sup> I further note how the Planning Permission was granted on that basis.
110. I am satisfied that the potential serious risks and inconvenience of any likely, but still occasional, flooding, would be suitably mitigated and managed and would be far out-weighed by the wider advantages of the open space otherwise prevailing.

*(c) Comparative quality of the Play Space (Parcels K and L)*

111. The bespoke Play Space would lie mainly within the area of Retained Open Space. A small part would occupy Exchange Land. The Space would be no smaller than the existing, would benefit from a more central position better related to its surroundings. It would enjoy better access, and would offer improved facilities.

*(d) Comparative amenity value of the open space, including the impact of overshadowing, sunlight levels and the impact of the Wharf Lane building*

112. The footprint of the Wharf Lane building, and as already granted planning permission, would be set back from the river relative to the original Competition-winning position.<sup>28</sup> This reflects subsequent detailed implications in connection with flooding, and also means a substantial reduction in the building's originally intended scale and prominence.
113. The Scheme's two buildings would effectively 'book-end' the Order Land. The Wharf Lane building has been sympathetically designed to reflect its context and to discreetly echo existing townscape and riverside features. Its scale and position would combine to create a distinct and defining edge to the western side of the Scheme but in a way which balances a sense of enclosure without appearing discordant, unduly dominant or overbearing. It would also contribute to the Scheme's local identity, and that of the open space, within the wider riverscape.

---

<sup>27</sup> CD 3.37, paragraph 8.236

<sup>28</sup> See CD 3.01 for background to the Design Competition

114. The building would shield the main part of the open space from what would remain of vehicle movements in Wharf Lane, and afford surveillance across the adjacent provision. Any opportunity for surveillance would be significant relative to the more enclosed nature of the existing open space. Surveillance would enhance the safety and welfare of children enjoying the Play Space, a factor relevant to both the EA and PSED. The Scheme would also benefit from an external lighting strategy.
115. The pattern of sunlight and shadows would vary from that experienced by the current open space, but not in a way which would be unduly harmful to users. The Planning Committee Report identifies how the open space would accord with relevant national guidance.<sup>29</sup> Most of the Exchange Land would be unaffected by the presence of the Wharf Lane building in this respect.
116. The Scheme includes a clear and strong commitment to landscaping through its Landscape and Public Realm Strategy<sup>30</sup>, and in the corresponding principles established through the terms of the Planning Permission. These include various Conditions relating to replacement of existing trees to be removed and associated matters.

*(e) Impact of surrounding uses on the proposed open space*

117. There is no convincing evidence to substantiate why the particular proposed gastro-style public house/restaurant should necessarily be a source of public nuisance. There may always be occasional issues that do arise with such uses in any location and this is a prospect for the Authority to anticipate through its associated controls. These would include, for example, the terms of any disposal in its interest as landowner, and matters of general municipal regulation through the Authority's relevant licensing and enforcement services. I have no reason to conclude such provisions would be inadequate.
118. Such relatively unfounded concerns raised about the use should not be allowed to preclude the potential benefits of vitality and attractiveness which the facility would offer, possibly to the setting of the open space, but certainly to the wider Scheme. The Authority's concern is to draw pedestrians and cyclists to the area and through the town centre and the Exchange Land would undoubtedly contribute accordingly.
119. Condition NS108 is merely to ensure the use of the premises would cease at a reasonable time, not as a means intended to encourage subsequent drinking and eating in other public areas outside that site. At those hours precluded by the Condition, it is also unlikely there would be significant public use of the open space.
120. I further note that Condition NS38 of the Planning Permission relates to Open Space Management. This requires, prior to the commencement of any development, an Open Space Management Plan be submitted to and be approved by the Local Planning Authority. The Plan would be required to set out details of how all parts of the open space would be managed in a coherent and comprehensive way, and for the development to proceed in

---

<sup>29</sup> Paragraph 8.131

<sup>30</sup> CD 4.07

accordance with those approved details. I anticipate this could extend to include not just mitigation of any possible anti-social behaviour but also overlap to embrace management implications of flood risk for the open space.

121. The Scheme would also address existing surrounding areas of dereliction within the Order Land. In this regard, I note the Action Plan actually characterises the area of its wider allocation as a 'derelict site'.<sup>31</sup>

*(f) Impact of traffic and cyclist movements on users of the proposed open space*

122. A very significant benefit of the Scheme would be the opportunity for wholesale revision of traffic movements and parking arrangements along The Embankment, and in Water Lane and Wharf Lane. This would transform the environment of The Embankment and of the wider Order Land through creation of a high quality, relatively traffic-free riverside neighbourhood. Indeed, a relatively traffic-free environment is one of the formative principles of the Scheme. This would create considerable advantages for the environment of the Exchange Land and of other open space and for the safety of its users.
123. There would be no general access for vehicles along The Embankment outside the hours of 0700-1000 and there would be no physical cycle path as such. The surface would simply be available for shared use by pedestrians and cyclists and for any other activities as occurs widely elsewhere.
124. The Authority's evidence demonstrates how full and proper consideration has been given to the need to safeguard good access and to maintain public safety to an extent appropriate to the Scheme's current stage of preparation.
125. I am also satisfied that, in principle, the Scheme has remaining scope to adequately address all outstanding details of highway safety, and that the Authority would continue to proceed in a considered and iterative manner to the benefit of users of the open space. In particular, the Inquiry heard how traffic management measures would be introduced in a planned and considered way, how local interested parties would be engaged in dialogue, and how detailed aspects would be monitored and reviewed as appropriate.
126. That approach is further safeguarded by a number of Planning Conditions and which require detailed matters and arrangements to be formally submitted and approved by the Local Planning Authority in advance of any development taking place. These include Condition NS23 relating to Highway Matters and Condition NS25 relating to a Servicing and Delivery Plan. Condition NS23 would also require a Stage 2 Safety Audit, building upon the constructive findings of the Stage 1 Audit, and an Equality Impact Needs Assessment.
127. I have no reason to consider that traffic and cyclist movements should adversely impact users of the Exchange Land and nor of the wider open space.

---

<sup>31</sup> Paragraph 7.5.5.1

*(g) Comparative quality of the Exchange Land as a functioning part of the open space as a whole*

128. Map S illustrates how the Existing Functioning Open Space comprises a contained collection of various relatively distinct spaces. A sense of overall separation arises from the enclosed character of the DJG, and from its elevated and physically detached position relative to The Embankment.
129. A contrast is drawn with Map T which indicates how the Future Functioning Open Space would be more of an integrated facility, and one more open in character and generally closer to the river. Whilst set at a number of levels, the slope of the Scheme Land would be gradual and spaces would be adjacent and interconnected by readily accessible pedestrian links.
130. In comparison to the proposed Lawns, the existing artificially grassed spaces and hardstanding are each more physically discreet in their form and location, are each generally larger and more regular in shape, and their relative containment may also be advantageous for some uses, such as organised games.
131. The proposed Town Square/Event Space, however, would be a larger hard surface more regular in shape than the Lawns, and is part of the defined Future Functioning Open Space. As acknowledged by the Authority<sup>32</sup>, this area could be used flexibly for other activities and games outside the hours of 0700-1000 and outside of event times. The issue would be how that possibility is to be managed, and Condition NS38 may again have a significant role to play. The proposed Town Square/Event Space includes a relatively small element of the Exchange Land.
132. The existing artificial grass offers all-weather benefits, but the Inquiry was advised by the Authority that particular form of surfacing reflected a previous failure of natural grass due to untreated ground conditions involving remaining debris of previous structures. Whilst offering less resilience for users at certain times of the year, the alternative large expanse of natural grass would be highly attractive environmentally, and also to users at times of appropriate weather. The Landscape and Public Realm Strategy explains how the open space is designed to be a lush green space that wraps around the Play Space and pétanque courts. At times of inclement weather, flexible possibilities for use of the Town Square/Event Space would remain.
133. The open space is anticipated to be completed within 24 months of the commencement of development. This temporary unavailability would be a significant loss and disadvantage to existing users, including those with protected characteristics, but outweighed over time by the longer-term benefits which would arise. In any case, the reality is that most development of any land does inevitably incur some form of unavoidable inconvenience or cost in delivery if longer term benefits are to be realised.
134. Programming details would be considered through an Open Space Phasing Plan required pursuant to Condition NS64. This Condition effectively prioritises delivery of the open space. It requires that all areas of open space, landscaping and play provision be available as early as practicable

---

<sup>32</sup> Statement of Case at paragraph 11.106, and LBR 2A at paragraph 11.16

and, in any case, no later than prior to occupation of any building within the development.

135. Condition NS111 requires that facilities within both the public house/restaurant and the café would be formally linked to the London Borough of Richmond Community Toilet Scheme. This arrangement should ensure that clean, safe and accessible public toilets are available within those buildings as part of the development and that the facilities would thereafter be retained as such. The proposed public toilets and café do not form part of the Exchange Land but are relevant to the context of how its future users and visitors would be able to benefit from, and so be attracted to, the open space by the advantage of their nearby availability. Those facilities would enhance users' experience of the Exchange Land, and again, is a further factor relevant to the needs of users identified through the EA and PSED.

136. External lighting, power and water would also be provided around the perimeter of the open space.

*(h) Proximity of the Exchange Land to the riverside compared to the Lost Open Space*

137. The Scheme is not intended as a detached development but one integral to a much wider area. This also underlines the significance of the widened Water Lane open space as Exchange Land.

138. Whilst elements of the open space linking to the town centre via Water Lane would be more peripheral in location, most of the open space would still sit more front and centre within the Scheme, closer to the largely vehicle-free Embankment, and enjoy an impressive open outlook towards the river. Parts of the Exchange Land would be closer to the river than the Lost Open Space, and parts further away, but all would be part of a coherent, wider open space.

*Summary - equally advantageous?*

139. Although this test relates to the merits of the Exchange Land rather than to those of the wider Scheme, it still requires some appreciation of how the Exchange Land would function in the context of the Scheme's wider provision of open space, of the contribution it would make in that regard, and of the integral relationship between the two. To do otherwise would be unrepresentative and misleading of the Exchange Land's advantages. Equally, the same applies to the existing context as it relates to the advantages of the Lost Open Space it is intended to replace.

140. The existing open space and its facilities reflect a piecemeal development over time. Whilst the existing play area, gardens and associated café were only intended in their conception to be temporary, the facilities continue to be enjoyed by the local community. Notwithstanding the Action Area Plan's characterisation of the wider area, the main areas of existing open space present no pressing issues of vacancy or dereliction in themselves. I am also clear the DJG are a valued open space run by very committed volunteer members of the TRT and that the facility is well-supported by parts of the local community.

141. The issue, however, is about the physical opportunity afforded by the Scheme for regenerating the open space and how that compares to the public advantages of the existing facility. The Scheme presents a unique opportunity for the open space to enjoy a different, purpose-designed form and a more integral relationship to its surroundings as part of a wider, more comprehensive development.
142. The background to that opportunity is also relevant. The Scheme has evolved from a Competition-winning design in response to a specific Authority brief, and prepared and successfully submitted by a distinguished practice of architects and other professionals. Details of the Scheme have been carefully progressed in consultation with the TRT and, notwithstanding its various more recent objections and concerns, and changes in its membership, the proposal had also hitherto been the subject of various degrees of qualified support and encouragement from the Trust. This included confirmation in September 2019 that the Trustees were unanimous that the subsequently selected proposal, and which now forms the broad basis of the Scheme, should be preferred from those shortlisted.<sup>33</sup>
143. Discussions between the Authority and the TRT have included possibilities within the Scheme for a Future Lease/Licence Area.<sup>34</sup> The Authority remains committed to seeking to work with the TRT and to agree an appropriate arrangement.<sup>35</sup>
144. The upper photograph on page 9 of the Design Competition Invitation to Tender document<sup>36</sup> is taken from the Eel Pie Island Bridge and is a mere snapshot of the riverside from one particular view. Nevertheless, it vividly portrays the currently vehicle-dominated and physically congested environment of the Embankment. It illustrates how this significantly shapes the existing character and appearance of the wider Order Land, and creates an unattractive context for the existing open space. The Scheme would dismantle that existing physical and environmental barrier between the river and the open space, and to the considerable advantage of future users.
145. There are public objections to the open space<sup>37</sup>, but there is also support. I find that some of the questions posed by the Authority as part of its various public consultations offer helpful insights into how potential users may perceive the relative advantages or otherwise of the open space. The evidence identifies that 84% of some 800 respondents said they would be more likely or just as likely to visit the riverside after the redevelopment, with only 12% saying they would be less likely to visit. Some seven in ten respondents (73%) agreed that the Scheme would achieve the ambition of high-quality open space on the river frontage.<sup>38</sup> The Inquiry also considered written representations from 66 supporters of the accompanying Order, and a number attended the Inquiry and spoke in person.

---

<sup>33</sup> LBR-05A Appendix 15

<sup>34</sup> See paragraphs 11.38-11.68 of LBR-1A

<sup>35</sup> INQ-01, paragraphs 34 and 35

<sup>36</sup> CD 3.01

<sup>37</sup> As further evidenced by the TRT's more widely drawn 'Stop The Land Grab!' petition calling for retention of the DJG footprint, deletion of the Wharf Lane building and retention of trees. This has attracted over 3,000 signatures

<sup>38</sup> Statement of Community Involvement (CD 3.13)

146. The Authority is not pursuing the Order in any criticism of the TRT's management of its land, and I accept the relatively more enclosed nature of the existing open space may have different, contrasting benefits for the enjoyment and security of some of its users. Even so, instances of anti-social behaviour and criminal damage have taken place in the immediate area and beyond the control of the TRT. I agree the more open and publicly exposed character of the proposed open space and accompanying lighting strategy may also offer the advantage of an alternative deterrence to any such future misconduct.
147. Direct like-for-like comparison between the precise area of the Exchange Land and that of the Lost Open Space is problematic. They do not exist as distinct parcels of land in themselves and both are (or would be) integral parts of wider provision. The Revised Open Space Plan shows how the common boundary between the Lost Open Space and the Retained Open Space is arbitrary relative to existing reality on the ground. The boundary bisects existing facilities within the DJG, including the café and one of the areas of artificial grass, and various areas of planting. Insofar as the Lost Open Space may remain theoretically usable in what would then be a highly compromised and fragmented form, it is only the Play Space and its immediate surrounds to the west of the site which would remain unaffected. The Exchange Land would include part of the proposed Play Space, most of the Terraced Lawns, part of the Events Space and the widened Water Lane.
148. To the extent that direct comparison may be credible, the Exchange Land would, by definition, be different in its location, and would be of a contrasting form and shape. In comparison to the Lost Open Space, it would be more piecemeal in character and less regular in shape, but it would also be better placed in relation to the public domain, and have better exposure to the river. Visitors would enjoy its presence in accessing from the town centre. Most of the Exchange Land could still function independently of the Retained Open Space and the relative potential advantages it would offer for public recreation, whilst different in substance to the area lost, would be no less in scale.
149. A realistic and more meaningful comparison, however, recognises that both the Lost Open Space and the Exchange Land are each only partial elements of wider open space, and the advantages of each are heightened by their respective contexts. The true advantages of the Exchange Land arise from its relationship to the Retained Open Space and the synergy arising. The true advantages of the Lost Open Space similarly relate to the wider space of which it currently forms a part.
150. The Future Functioning Open Space would be larger than the existing<sup>39</sup>, would be better connected, would be far more accessible to pedestrians, and have the potential to provide a comparable range of play/recreational opportunities. The accompanying traffic management proposals would yield substantial benefits to the Exchange Land and its accompanying provision in terms of user safety and for the quality of its environment. The overall quality of the open space, of which the Exchange Land would form a

---

<sup>39</sup> Maps A and C also illustrate how the Future Designated Open Space would be greater in area than the existing

substantial part, would be superior. Further, all the principal advantages of the Future Functioning Open Space would be facilitated by the Exchange Land and would otherwise not be possible.

151. The form and character of the existing and proposed open space are different, as are their respective advantages. Even so, the CPO Guidance makes clear that the Exchange Land may not possess the same character and features as the Order Land, and it may not offer the same advantages, yet the advantages offered may still be sufficient to provide an overall equality of advantage.<sup>40</sup>
152. I am satisfied the Exchange Land, whether assessed in isolation or in true wider context, would not fail to be equally advantageous to the interested parties identified by section 19.

***Main Issue 3: improve management? (appropriateness of section 19(1)(aa))***

153. This issue is whether or not acquisition of **Plot 63** would constitute an action to improve the management of the land.
154. Map F identifies three components of open space: Lost Public Open Space (1336 sqm); Exchange Land (1815 sqm); and Retained Public Open Space (1428 sqm). Map A identifies Existing Designated Open Space to be 3370 sqm.
155. Spatially, of the Existing Designated Open Space, 42% (1428/3370) would remain in the same position as the Retained Open Space. The proposed change would be to adjoining areas either side. Lost Open Space to the west would constitute a significant but still minority element of the existing at 40% (1336/3370). The Exchange Land would adjoin and extend to the east. The Exchange Land would be of greater extent than the land it seeks to replace and would constitute 54% of the Existing (1815/3370).
156. Consistent with the Guidance's example of providing 'proper facilities', to manage is not just to mind a status quo, but embraces responsibilities to progress and to take forward. Management necessarily requires activities beyond maintenance, beyond mere caretaking or overseeing.
157. To 'improve management' of something necessarily implies, as in the case here, that the particular 'something' to be improved and its management exist both before and after some subsequent upgrading action. The effect of the Scheme is that open space would still be there, and 42% of it in the same location, but the overall improved facility would be of a different, extended and re-configured form.
158. Whilst only very limited details have been provided, the general approach to be taken to improved management of open space in the case referred to by the TRT at Blackwall Reach would seem to have some similarities.<sup>41</sup> The examples cited in the Guidance are illustrations only and do not read for application as a closed list.<sup>42</sup>

---

<sup>40</sup> CD 4.01, paragraph 240

<sup>41</sup> Paragraphs 2.10.3 and 11.5 of the 2017 report at INQ-44.2 also refer

<sup>42</sup> CD 4.01, paragraph 242

159. In identifying the circumstances in which an application for a Certificate under section 19(1)(aa) might be appropriate, the Guidance advises this may include where the Authority may wish to acquire land to which section 19 applies, but do not propose to provide exchange land because, after it is vested in them, the land will continue to be used as open space.<sup>43</sup> That is also the case here.
160. The Authority is seeking to acquire the Retained Open Space in order to fashion a new and enhanced open space of which that land would form an essential part. The acquisition of the Retained Open Space is not sought for the purposes of other development. Rather, acquisition is necessary so that the Retained Open Space can be improved and managed in a co-ordinated manner as part of a proposed wider Future Functioning Open Space.
161. I am satisfied section 19(1)(aa) is appropriate to **Plot 63**.
- Main Issue 4: rights and entitlements***
162. Section 19(1) makes no expressly stated requirement to vest land to be acquired in a previous leaseholder.
163. No express definition is offered of the rights, trusts and incidents to which section 19 refers. The TRT is a qualifying person for the purposes of section 12, but no reference is made to that status in section 19. Similarly, the Guidance's model general certificate specifically refers to leaseholders with reference to 'persons occupying or having an interest in the land'.<sup>44</sup>
164. The CPO Guidance confirms that where the acquiring authority seeks a Certificate in the terms of section 19(1)(aa), section 19(3)(b) cannot apply and the Order may not discharge the land purchased from all rights, trusts and incidents to which it was previously subject.<sup>45</sup> Consequently, the TRT maintains that land should remain subject to the existing lease or similar, as should any Exchange Land under section 19(1)(a).
165. An implication of that same argument, however, would be that, if the TRT's lease were to constitute such a right, trust or incident, such an interest would be substantively unaffected by the Order. If that were to be the case, the proprietary interests would persist and prevail and compulsory acquisition would be negated. It would also undermine the purpose of acquisition under section 19(1)(aa) in other circumstances where, for example, unlike here, improved management might be deemed necessary due to some particular negligence or mischief on the part of an existing interest.
166. This is also consistent with the contrast drawn by the Guidance in clarifying that land which is already subject to rights of common or to other rights, or used by the public, cannot usually be given as exchange land.<sup>46</sup>
167. The Guidance further states that 'the public' in regard to exchange land means principally the section of the public which has hitherto benefitted from

---

<sup>43</sup> CD 4.01, paragraph 242

<sup>44</sup> Page 88

<sup>45</sup> CD 4.01, paragraph 242

<sup>46</sup> CD 4.01, paragraph 240

the Order Land and, more generally, the public at large.<sup>47</sup> This would be consistent with the existing public users and other local stakeholders with whom the Authority has engaged and has acknowledged in its actions.<sup>48</sup>

168. In summary, these factors all draw me to concur with the Authority's submission that rights, trusts and incidents in section 19 refer to public entitlements, and not to private interests.

169. I am not satisfied the TRT would have any further entitlements in connection with its interests beyond those already accommodated by the Order.

## 8.0 Summary and conclusion

170. In relation to those Plots identified in the Modified Order and to which section 19(1)(a) has been applied, I conclude that the Scheme would involve exchange of open space not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased. The relevant Plots are referenced **Plots 2, 64, 76 and 86** as Lost Open Space, and **Plots 24, 28, 46, 47, 52, 57, 61, 62** (as modified) and **82** as Exchange Land.

171. In relation to **Plot 63** identified in the Modified Order and to which section 19(1)(aa) has been applied, I conclude that the open space is being purchased in order to secure its preservation or improve its management.

172. The proposal for **Plot 70** is compliant with the terms of paragraph 6(1)(a) of Schedule 3 for the reasons identified.

173. I therefore conclude the Modified Order to be compliant with section 19(1)(a), section 19(1)(aa) and paragraph 6(1)(a) of Schedule 3 of the 1981 Act as appropriate.

## 9.0 Recommendation

174. I recommend that a Certificate be given on the basis of the Modified Order as submitted.

*Peter Rose*  
INSPECTOR

---

<sup>47</sup> CD 4.01, paragraph 241

<sup>48</sup> See the Authority's Statement of Community Involvement (CD 3.13)

## **APPENDIX 1: APPREARANCES**

**For the Authority:**

**Andrew Tait KC**  
**Daisy Noble of Counsel**

**In specific regard to the Application, they called:**

**Paul Chadwick** - Director of Environment and Community Services,  
Councils of the London Boroughs of Richmond and Wandsworth

**Chris Bannister** - Director, Hopkins Architects

**For the Twickenham Riverside Trust:**

**Annabel Graham Paul of Counsel**

**In specific regard to the Application, she called:**

**Celia Holman** - Secretary and Trustee, Twickenham Riverside Trust

## **APPENDIX 2: SCHEDULE OF SECTION 19 OBJECTIONS**

<b>Reference</b>	<b>Objector</b>
S19-S01	Twickenham Riverside Trust
S19-NST01	Jeremy Hamilton-Miller
S19-NST02	Sue Hamilton-Miller
S19-NST03	Francis McInerny

Objector documents are available to view at:

[Twickenham Riverside - Gateley \(gateleyhamer-pi.com\)](https://www.gateleyhamer-pi.com)

### **APPENDIX 3: AGREED LIST OF DOCUMENTS SUBMITTED DURING THE INQUIRY**

The following list of Inquiry Documents, and as agreed by the Authority and the TRT at the conclusion of the Inquiry, relates to both the Order and to the Application.<sup>49</sup> The documents are available to view at:

[Twickenham Riverside - Gateley \(gateleyhamer-pi.com\)](https://www.gateleyhamer-pi.com)

<b>Reference</b>	<b>Subject</b>
INQ-01	Opening Statement on behalf of the London Borough of Richmond Upon Thames
INQ-02	AA Compliance Note
INQ-03	AA Revised Definitions
INQ-04	AA Modified Order Schedule
INQ-05	AA Update Note on Status of the Stopping Up Order
INQ-06	Withdrawal of Objection submitted by the Port of London Authority
INQ-07	TRT Opening Statement
INQ-08	AA Note on LBR-5 Appendix 35
INQ-09	Twickenham Society Additional Statement dated 7 June 2023
INQ-10	David Marlow Updated Statement dated 7 June 2023
INQ-11.1	Eel Pie Island Association and Eel Pie Boatyard Statement as read
INQ-11.2	Twickenham Working Waterfront Presentation dated September 2016
INQ-11.3	Mark Montgomery-Smith Statement as read
INQ-12	TRT Open Space and Design
INQ-13	AA Housing Delivery and Targets Note
INQ-14	Mark Brownrigg - Planning Policy on behalf of the TRT
INQ-15	Graham Strudwick Presentation as read
INQ-16	David Marlow - Notes raised on 13 June 2023
INQ-17	AA Note on Timelapse Footage
INQ-18	AA Extract from Local Plan Publication (Regulation 19) June 2023 - Site Allocation 17
INQ-19	AA Additional Note on LBR5 Appendix 35
INQ-20	AA Podium Edge Measurements Plan
INQ-21	AA Programme for Adoption of the Draft Local Plan
INQ-22	Revised Statement of Janine Fotiadis-Negreponis on behalf of the TRT
INQ-23.1	TRT Presentation for Ted Cremin Evidence
INQ-23.2	Ted Cremin - Consultation and Engagement
INQ-23.3	Ted Cremin - Negotiations
INQ-23.4	Ted Cremin - Justification
INQ-24	Agreed Existing Land Uses between the AA and TRT
INQ-25	AA Rebuttal to INQ-9 Twickenham Society
INQ-26	AA Rebuttal to INQ-10 and INQ-16 David Marlow
INQ-27	AA Rebuttal to INQ-11.1 Eel Pie Island
INQ-28	AA Rebuttal to INQ-11.3 Mark Montgomery-Smith
INQ-29.1	Road Safety Audit March 2022 submitted by Colin Heath on behalf of the EPIBC
INQ-29.2	Systra Study 1 submitted by Colin Heath on behalf of the EPIBC
INQ-29.3	Systra Study 2 submitted by Colin Heath on behalf of the EPIBC
INQ-30	Additional Submission from Deon Lombard

<sup>49</sup> The TRT also presented the Inquiry with some time-lapse film of the Scheme Land. This was viewed in the Inquiry room and not on-line by the Inquiry on Thursday 22 June. The film is retained by the TRT and any further enquiries should be directed to the Trust

INQ-31	AA Note on the Proposed Modifications
INQ-32	AA Note of Viability
INQ-33	AA Urban Heat response to Janine Fotiadis-Negrepontis
INQ-34	Further AA response to Colin Heath
INQ-35	AA CAVAT Report
INQ-36	AA Response to Ted Cremin evidence
INQ-37	AA Rebuttal to Jill Garrow
INQ-38	AA Rebuttal to Jon Rowles
INQ-39	AA Objector Wayfinding Document
INQ-40	TRT Legal Submissions
INQ-41	Section 19 Areas of Agreement & Disagreement between the AA and TRT
INQ-42	Site Visit Itinerary
INQ-43.1	TRT Closing Statement - CPO
INQ-43.2	TRT Closing Statement - CPO (paragraph 76 corrected)
INQ-44.1	TRT Closing Statement - section 19
INQ-44.2	Appendices to TRT section 19 Closing Statement
INQ-45.1	AA Closing Statement
INQ-45.2	AA Closing Statement (updated and as read)