

Twickenham Riverside Trust
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Eel Pie Island
Twickenham TW1 3EA

Secretary of State for Levelling up, Housing and Communities
Planning Casework Unit
5 St Philip's Place
Colmore Row
Birmingham B3 2PW

18 November 2021

**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**

SECOND OF TWO OBJECTIONS:

**See also: OBJECTION TO THE LONDON BOROUGH OF RICHMOND UPON
THAMES (TWICKENHAM RIVERSIDE) COMPULSORY PURCHASE ORDER 2021
See also: APPENDIX 1 to the 'Objection to the Compulsory Purchase Order' for
Background and History of the Twickenham Riverside Trust, the Diamond Jubilee
Gardens and the proposed development.**

As leaseholder of the Diamond Jubilee Gardens ("the Gardens") the Twickenham Riverside Trust ("the Trust") would like to lodge an objection to the proposed acquisition of the Gardens by way of compulsory purchase order ("CPO") by the London Borough of Richmond upon Thames ("the Council") in reliance upon statutory powers to acquire open space conferred by the Acquisition Of Land Act 1981 ("the 1981 Act").

The Trust holds a 125-year lease of the Diamond Jubilee Gardens [see Appendix 1: 'Trust's demise within 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.

This letter specifically addresses and objects to the Council's Section 19 application use of the relevant legislation to support the acquisition of public open space. By separate letter the Trust is also objecting to the Council's proposed compulsory purchase order which, if granted, will authorise the acquisition of the Diamond Jubilee

Gardens in which the Trust holds a long leasehold interest. 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:

The Council and the Trust are in agreement that the whole of the Gardens comprises public open space and that, accordingly, to validly exercise CPO powers the Council must satisfy the requirements for the acquisition of public open space set out in Section 19 of the 1981 Act.

As a registered charity, the Trust is duty bound to seek independent professional advice before disposing of any of its land (whether by agreement or otherwise). Accordingly, the Trust has obtained an independent report by the surveyors, Carter Jonas, on the validity of the grounds for the acquisition of open space by means of CPO being relied upon by the Council and more generally on the quantity and quality of the public open space that the Council is offering to re-provide if the CPO proceeds. This objection is informed by, and made pursuant to the recommendations of, such advice and is a requirement of the Charities Act.

BACKGROUND

Under the 1981 Act, open space has protection against a CPO. To avoid special parliamentary procedures, under section 19 of the 1981 Act, the Council must show which exemptions within that section apply or provide land in exchange for the open space being acquired. The exemptions being proposed by the Council are (in respect of part of the Gardens) contained in section 19(1)(a) of the 1981 Act and (in respect of the remaining part of the Gardens) contained in section 19(1)(aa) of the 1981 Act.

The Council has provided a plan which shows (and colours) three separate parcels of land: (i) the open space owned by the Trust which the Council is seeking to acquire under s19(1)(a) and which, after the CPO, will no longer be designated as open space (*'the Red Land'*), (ii) the open space that the Council is proposing to provide pursuant to s19(1)(a) as open space in exchange for the Red Land (*'the Green Land'*) and (iii) the open space owned by the Trust which the Council is seeking to acquire under s19(1)(aa) and which the Council intends to continue to use as open space after the CPO (*'the Orange Land'*).

This plan is attached at Appendix 2: 'Order Land Council Finance Committee 20.9.2021'

Under s19(1)(a), the Secretary of State must be satisfied 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 person in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attached to the land purchased."*

Under s19(1)(aa), the Secretary of State must be satisfied that *“the land is being purchased in order to secure its preservation or improve its management”*.

Until as recently as 10 September 2021 the Council had indicated (in their draft Statement of Reasons shared with the Council’s Finance, Policy and Resources Committee on 28 June 2021) that they would be relying solely upon s19(1)(a) in order to acquire the Trust’s open space (and to provide exchange land) and there was no indication that it would be relying upon the provisions of s19(1)(aa).

However, crucially, the legislation does not permit an acquiring authority to provide as suitable replacement open space land which, prior to the land exchange, was already existing public open space.

The Council, upon realising that it would be impossible for it to reuse existing open space as exchange open space in order to satisfy s19(1)(a), then had no option available to it but to rely on a hybrid use of s19 by acquiring the Orange Land using a separate procedure – s19(1)(aa) – where no exchange land needs to be offered.

In order to achieve this (and, importantly, to ensure that the exchange land was no less in area than the area being acquired under s19(1)(a) – impossible now that the Orange Land could not be included), the Council changed the exchange land being offered so that it now included a large area of additional land (adjacent to Water Lane). This land forms part of the Green Land.

It is to be noted that this strip of land – situated between proposed retail premises and a newly introduced two-way highway – had not been mentioned to the Trust as potential open space prior to 20 September 2021 and has never been offered to the Trust in the Heads of Terms issued by the Council regarding the re-provision of new open space to the Trust under a new lease.

The use of s19(1)(aa) by the Council is no more than a convenient way of avoiding the problem of having insufficient exchange land available to satisfy the land being acquired pursuant to s19(1)(a). There is no justification for the use of s19(1)(aa) and its application is on false pretences and should be rejected.

OBJECTION TO USE OF SECTION 19(1)(a)

When determining whether s19(1)(a) is satisfied one must only consider the merits of the exchange land compared to those of the land being acquired under that section. Accordingly, the benefits of the CPO scheme as a whole are not to be considered and nor is the Orange Land.

Therefore, the relevant assessment to be made is whether the Green Land is as equally advantageous to the public as open space as the Red Land. In our opinion, and in that of the Trust’s surveyors, it is not.

The Government’s guidance on the use of s19(1)(a) powers states that, when determining equality of advantage, the Secretary of State may have regard to a number

of factors in relation to the exchange land including its size, its proximity to the acquired land, the prospects of improvement that exist at the date of exchange, and the character and features of the exchange land when compared to the acquired land. Whilst the character and features may differ, it is important to assess whether they provide overall equality of advantage.

Whilst it is accepted that the size of the exchange land (1,919 square metres) is greater than that of the acquired land (1,359 square metres), the survey commissioned by the Trust concludes that it falls significantly short of providing anywhere close to the same equality of advantage as the open space that it would replace.

To accompany the descriptions below, see Appendix 3: 'Overlay of Order Land on Existing Gardens (plots 63 and 76)'.

The **Red Land** – being the land which the Council wishes to acquire and no longer provide as public space – largely comprises a raised, level rectangular parcel of land. This includes (amongst other things) a secure early-years children's play park, the majority of the café premises (including public toilets), external seating for customers of the café overlooking the river and riverside, and an area of artificial turf which is used by the public for a variety of purposes and occasional events.

The raised area of the Red Land is adjacent to the raised area of the Orange Land and together currently comprise a single, approximately rectangular, large area of cohesive open space (the Diamond Jubilee Gardens, 3,000 square metres) which is all on one level, sitting predominantly in Flood Zone 1, and provides excellent multi-purpose recreational and relaxation space for the general public.

The **Green Land** – being the land which the Council wishes to provide as new open space in exchange for the Red Land – is very different. It is an oddly shaped amalgam of parcels of land that sit within the Council's proposed scheme but with large areas being on the periphery of that scheme and quite disconnected from the proposed central re-provision of the existing Gardens.

Throughout, the land is at varying levels and large parts of it sit within designated Flood Zones 2 and 3 and, as a result, are more vulnerable to flooding than the existing land situated almost entirely (85%) in Flood Zone 1.

Parts of the Green Land are the main cycle route through the scheme and will also be subject to occasional vehicular use. Other parts sit directly next to the public highway with two-way traffic and newly introduced reversing manoeuvres by vehicles delivering to and servicing the adjacent Eel Pie Island.

We set out below the principal reasons why we believe the Green Land to be less advantageous as public space than the Red Land:

1. **Flooding** – Based upon the flood maps provided as part of the Planning Application, it has been calculated that 929 square metres of the Green Land

sits either within Flood Zone 2 or Flood Zone 3, which means that these areas have a significant risk of flooding. Just over 15% of the Red Land sits within Flood Zones 2 and 3, with the rest being within (the lower-risk) Flood Zone 1.

As stated in the Council's flood and open space strategies, there is a clear distinction between the areas above the 1-in-100 +35% flood level and the rest of the site. We are of the view that the locating of so much of this new open space in an area that is at significantly greater risk of flooding will have a potentially severe negative impact on the use and enjoyment of that space.

On that basis, the 929 square metres of Green Land within Flood Zones 2 and 3 should not be considered as equally advantageous as the Red Land.

See attached Appendix 4: 'Flood Zones Planning Application Design & Access Statements'

2. **Play area** – the Red Land includes the entirety of the enclosed children's playground. No such space is provided for on the Green Land. Whilst a new play area is proposed as part of the proposed development, it is located predominantly in the Orange Land with only a small part in the Green Land, and therefore it cannot be considered when assessing equality of advantage conferred by the exchange of land under s19(1)(a).

Pertinently, when assessing equality of advantage, the 'public' means principally the section of the public which has hitherto benefitted from the compulsory purchase order land and, more generally, the public at large. With regard to the playground, it has clearly been young children and their parents and carers who comprise the section of the public who currently benefit from such area. It is difficult to conceive how the provision of the Green Land will be equally advantageous to this group. It contains no play area and large parts of it (the area which runs alongside Water Lane) are relatively narrow, unsecure, and paved areas at various levels sitting between the retail units in the proposed development and the newly proposed two-way public highway in Water Lane.

3. **The Café** – The majority of Café Sunshine sits within the Red Land. It is a popular community café which employs differently abled staff. It also includes toilets which are available for public use. Under the current lease arrangement between the Council and the Trust, the Council is responsible for running the café, but the intention is that this will pass to the Trust in 2024.

The Green Land includes neither a café nor public toilets. Whilst a new café and toilets are proposed as part of the new development, this cannot be considered when assessing equality of advantage conferred by the exchange of land under s19(1)(a). The many members of the public who frequent the existing café will not benefit from this facility through the provision of the Green Land as open space.

Additionally, the Trust's potential loss of income from the café will have an adverse impact on its ability to subsidise its future events and activities, meaning that it is more likely to have to charge the public for attending events without the means of subsidising this through income generated from the café.

4. **Vehicular access** – The raised area of the Red Land that is part of the existing Gardens is enclosed and inaccessible to traffic. This renders the area safe for members of the public of all ages to use the open space for its intended purpose.

By contrast the Green Land is open with no clear visible boundaries and with large parts of it adjacent to and only in part raised above the level of the public highway.

That part of the exchange land situated on the Embankment is also the main cycle route through the scheme.

In addition, this part of the Green Land is also to be made subject to vehicular rights of way for servicing, refuse and recycling. Whilst this access route is intended to be controlled by way of demountable bollards, the vehicular rights will have a detrimental effect on the character and features of the land and this area can in no way be considered to be as equally advantageous as the amenity provided by the Red Land.

See attached Appendix 5: 'Embankment Vehicle/Cycle Corridor.'

5. **Events space** – The Green Land seeks to provide a new events space (sometimes described by the Council as a "Town Square"). This sits entirely in Flood Zone 3 (with a high probability of flood risk) and is subject to vehicular rights of way (as detailed above).

It also comprises large stepped areas rendering it an events space on differing levels and subject to potential accessibility issues. This is being proposed in lieu of the amenity currently being provided by the Red Land.

The existing Gardens already contain (within the combined Red Land and Orange Land) a large single-level, accessible events area comprising the two areas of artificial grass and a large paved area, none of which is with a high probability of flood risk or subject to traffic. Nor is it a main cycle route.

The offer of this event space within the exchange land is therefore considered to be less advantageous than the event space that is already provided.

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

6. **Lack of cohesion with existing open space** – The Red Land largely comprises a large rectangular area which sits immediately next to the Orange Land and, together, the raised areas of the Red Land and the Orange Land form a large, roughly rectangular and cohesive area of open space which is of a size and form that is reflective of their use as public open gardens.

Once the Red Land is removed and replaced by the Green Land, the open space looks very different. The overall space provided by the Green Land will now be predominantly relatively narrow staggered terraces, of limited amenity value when compared to the existing Gardens, and paved areas/landscaping which travel the length of Water Lane up to where it meets King Street.

This Water Lane area (which was officially added to the Council's proposed open space offering only on 20 September 2021) is essentially public street-scaping and may well have its merits in its own terms. However, it is a very different and poor substitute to the amenity and advantage provided by the Red Land (both alone and when considered alongside the Orange Land) as public gardens.

7. **Size** – On the face of it, the land being offered by way of exchange provides 560 square metres of additional space beyond the space provided by the Red Land. However, size is also a consideration in the context of determining whether the exchange land is equally advantageous.

Those areas within the Green Land which are either in Flood Zones 2 and 3 or which are occupied by steps amount to 938 square metres of less advantageous land. This would leave 981 square metres of Green Land, lesser in size – when considering equally advantageous land – by 378 square metres than the Red Land. And that is before one considers the other areas of land that we consider to be less advantageous, as set out above and below.

Accordingly, the equally advantageous land provided by the Green Land represents a significant reduction of equally advantageous open space when compared to the Red Land (1,359 square metres).

8. **Proximity** – A significant part of the Green Land is the area that leads up alongside the proposed new retail units in Water Lane. This area is substantially further away from the riverside context enjoyed by the Red Land and accordingly relates more closely to the retail environments of King Street and Church Street than to the open space provided by both the existing and proposed riverside Gardens. In terms of proximity, it is therefore not as advantageous.
9. **Date of exchange** – The date upon which equality of advantage is to be assessed is the date of exchange. This is interpreted to mean that the exchange land must be set out for open space purposes before the existing

open space is acquired. However, it is noted that this may not be possible as it is likely that the exchange land will be required to facilitate the development.

Whilst it is acknowledged that it might be permissible to allow for a delay in the provision of the exchange land if there is an overall advantage in doing so, no exchange land management plan has been produced by the Council.

In particular there is no plan which formally sets out the existing condition of the Green Land, the management aims in respect of its future use, the landscape and ecological quality and the maintenance actions and regimes necessary to achieve those aims. It is therefore difficult to confirm that the delay in the provision of the exchange land is compensated by other benefits.

- 10. Daylight/sunlight** – From our interpretation of the “Internal Daylight, Sunlight and Overshadowing Report” that accompanies the Council’s Planning Application, we are of the opinion that the Green Land will receive less daylight and sunlight than the Red Land. This is particularly so given the proximity of the new and existing buildings in Water Lane to the Green Land.

However, because of the late change as to what constitutes the exchange land, further detailed assessments have not been provided and therefore need be carried out to properly assess this issue.

It is also revealing to note that the above report identifies the “three external amenity areas” on the scheme as “all [the] relevant amenity areas”: (1) the raised central landscaped area between the Wharf Lane and Water Lane Buildings and the terraced lawns area in front of the Water Lane Building; (2) the Embankment ‘Town Square’ and stepped seating area; and (3) the Embankment area in front of the Wharf Lane Building. The report concludes that “the proposed development will offer excellent access to sunlight in all areas of amenity provided.”

However, it is to be noted that these “all areas of amenity” identified in the Report do not include the Water Lane area being proposed by the Council at this late stage as open space exchange land.

See attached: Appendix 7: ‘Planning Application Daylight, Sunlight and Overshadowing Report - External Amenity Areas’

OBJECTION TO USE OF SECTION 19(1)(aa)

The Council has stated that it intends to rely on s19(1)(aa) in order to acquire the Orange Land. By using this section, the Council is stating that the Orange Land is being acquired to secure “its preservation or improve its management”.

The Government’s guidance on compulsory process and the Crichel Down Rules state

that, in some cases, the acquiring 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.

However, the guidance also makes clear the types of circumstances where this will apply. A typical example might be where an open space which is privately owned may be subject to development proposals resulting in a loss to the public of the open space. An alternative example might be where the local authority wishes to acquire privately owned open space which has been neglected or poorly maintained and which it then proposes to maintain as open space itself.

In the light of the guidance and relevant case law it is difficult to understand the Council's reliance on s19(1)(aa) in seeking to acquire the Orange Land on the basis that it needs to acquire the land in order to improve or preserve its management.

The Council's reliance on this section is especially incomprehensible in the context that it is the Council itself who is currently responsible for the repair and maintenance of all the Gardens, including the Orange Land. Under the terms of its lease to the Trust (which was agreed only seven years ago) the Council assumed responsibility for the repair and maintenance of the Orange Land for the first 10 years of its 125-year term. That repair and maintenance responsibility then passes to the Trust in 2024 for the remaining 115 years of the term.

Is the Council proposing to rely on its own perceived failure or inability to maintain that part of the existing Gardens that constitute the Orange Land as a lawful reason to exercise draconian powers of compulsory purchase? Or is it implying that it doesn't have faith in the Trust to comply with its lease obligation when this responsibility passes to the Trust in 2024?

Either way, this reliance by the Council on s19(1)(aa) is improper and in our view has only arisen as a result of the Council's recent realisation that they cannot acquire the Orange Land through the s19(1)(a) route, since that section does not allow a local authority to exchange new open space for land which is existing open space.

Accordingly, we find the Council's reliance on s19(1)(aa) to be fundamentally flawed and therefore an inappropriate use of the legislation.

For all the reasons stated above the Trust calls upon the Secretary of State to reject the Council's CPO and Section 19 application in respect of the open space at Diamond Jubilee Gardens on Twickenham Riverside.

Luke Montgomery Smith
Chair, Twickenham Riverside

Appendices to this Objection

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