

**The MAYOR'S OFFICE FOR POLICING AND CRIME (PERIVALE)  
COMPULSORY PURCHASE ORDER 2020**

**The Local Government Act 1972,  
The Local Government (Miscellaneous Provisions) Act 1976  
And  
The Acquisition of Land Act 1981**

**NOTE OF ORAL RULING AND FURTHER DIRECTIONS**

Made on Tuesday 18 May 2021 @ 1000 hours via Microsoft Teams platform

**This Note was amended on 25 May 2021 to revise the submission dates for updating evidence and rebuttal evidence in paragraphs 39-41. The changes are made following representations by the main parties.**

1. This is a note of the ex tempore ruling made on an application for adjournment of the Inquiry following the commencement of the Inquiry.
2. The application for an adjournment was made by Counsel, Mr Wald QC, on behalf of SEGRO (PERIVALE PARK Limited), hereinafter referred to as SEGRO, a statutory objector to the Mayor's Office for Policing and Crime (Perviale) Compulsory Purchase Order 2020 (the CPO) and the landowner of the Order Land.
3. The application for adjournment was resisted by Mr Harwood QC, representing the Mayor's Office for Policing and Crime (MOPAC), who are the acquiring authority seeking confirmation of the CPO.
4. There are no other remaining statutory or other objectors.

*SEGRO's application for adjournment*

5. SEGRO is the current owner of the Order Land, having acquired the freehold interest on 5 June 2020. It seeks to resist the compulsory acquisition of its land. Mr Wald referred to open offers made by SEGRO to MOPAC on the 23 March 2021 for a five year lease (outside the terms of the Landlord and Tenant Act 1954 (the Act)); a second offer of the 27 April 2021 for a five year flexible lease (outside the terms of the Act) which was rejected on 4 May 2021 and a third offer made on 27 April 2021 for a 10 year flexible lease outside the terms of the Act.
6. On Thursday of last week SEGRO communicated an offer to MOPAC for a 15-year lease with Landlord and Tenant Act protection. Mr Wald

confirmed that the offer was made on an open basis but that it replicated a previous offer made on a without prejudice basis within the preceding two months.

7. Mr Wald now seeks to lift the without prejudice veil on a limited basis and rely on the date and making of this earlier offer to address any allegations of delay of the part of SEGRO. He cites the judgment in Berkeley Square Holdings Limited & Others<sup>1</sup> and in particular the exceptions set out in relation to the without prejudice rule at paragraph 27 (5).
8. SEGRO now seek an adjournment of the Inquiry scheduled to commence on 18 May 2021 to enable the offer to be fully considered. He made 14 short points in support of his application.
  - i. MOPAC are a public body relying on the exercise of compulsory purchase powers and as such must establish a compelling case in the public interest.
  - ii. As a public body they must act reasonably.
  - iii. SEGRO have owned the Order Land for less than 12 months.
  - iv. MOPAC had held the Order Land on a leasehold basis for 15 years and have discharged their statutory duties during that time without impediment.
  - v. The end date of the lease of 28 September 2021 has always been known to MOPAC.
  - vi. MOPAC negotiated unsuccessfully for a lease and then resolve to utilise CPO powers.
  - vii. MOPAC has pursued a CPO against SEGRO after offering to buy the Order Land at a price far short of the market rate.
  - viii. MOPAC made the CPO on 2 October 2020 and resolved to allow the Director of Property Services to enter into negotiations with SEGRO regarding a long-term lease that secures the provision of VRES functions<sup>2</sup>. MOPAC's outline business case<sup>3</sup> (dated August 2020) concluded that "*Comparing the scores across each of these categories of analysis, the analysis in the IA shows that Option B (Long Term Lease-Perivale) is the preferred option*". It is clear, therefore that MOPAC were seeking a lease as their preferred option.
  - ix. SEGRO have worked hard to provide MOPAC with what it wanted in terms of its preferred option in terms of the offers made.
  - x. Gowlings objection letter<sup>4</sup> sets out the opposition of SEGRO to the making of a CPO on the basis that, inter alia, MOPAC has failed to make all reasonable efforts to engage with SEGRO to acquire the Order Land by agreement and further, that MOPAC has failed to demonstrate that all the Order Land is required

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<sup>1</sup> Berkeley Square Holdings Limited & Others v Lancer Property Asset Management Limited & Others [2021] EWCA Civ 551

<sup>2</sup> Core Document 7 page 1

<sup>3</sup> Core Document 33 paragraphs 172-175

<sup>4</sup> Core Document 9

and that there is no alternative site or alternative means of bringing about the objective of the Order.

- xi. A determination needs to be made to see if MOPAC has done what is necessary to explore terms. MOPAC are saying there is not enough time to consider the offer made last week, not that it is not possible to reach a negotiated solution. On this basis SEGRO seeks an adjournment to enable the latest offer to be considered. SEGRO had made the offer on an open basis and there will have to be an understanding as to the offers made and received.
- xii. To the extent that MOPAC might say the lease terminates on 28 September 2021 and we need to expedite matters- this is a bad point. SEGRO are happy to grant an extension to the deadline.
- xiii. It will be necessary to consider the offer to determine whether the preferred option of a 30 years leasehold and the terms on which it is offered has been properly explored.
- xiv. An adjournment of the Inquiry is plainly in the public interest and consistent with the overriding objective to allow some additional time bearing in mind that SEGRO have not long held the land. SEGRO say the search for alternatives is half-hearted. If MOPAC has failed to engage, then the view might be taken that the Inquiry should proceed and SEGRO can put the efforts of MOPAC to the test. This is not in the public interest if a negotiated agreement can be reached, it is surely in the public interest to provide that option with an opportunity.

*MOPAC's Response to the Application for Adjournment*

- 9.** Mr Harwood QC appears for MOPAC and he sought to resist the application for adjournment on their behalf. He contends that the submissions on behalf of SEGRO contain an improper reference to without prejudice communications and they should not be relied upon. The circumstances here are not analogous to the examples in the Berkeley Square judgment, there is no question of a strike out of proceedings or delay or acquiescence. The parties have been negotiating on a without prejudice basis.
- 10.** Turning to the substantive application, Mr Harwood contends that it is premised on a misunderstanding of the Inquiry process and the role of the Inquiry. Compulsory Purchase Orders are a mechanism for enabling a public authority to acquire land where there is no agreement. If the CPO is confirmed, then the land can be obtained without agreement.
- 11.** Before confirmation, the confirming authority must be satisfied that there is a compelling case in the public interest and must determine whether or not the Acquiring Authority has made adequate attempts at obtaining the land. It is not the role of the Inspector to decide what negotiations should have taken place. Those are matters to be determined by the Lands Tribunal.

- 12.** It is usually the case that, behind the scenes, negotiations do take place between the Acquiring Authority and relevant landowners. Some landowners are willing to negotiate and some are not. It is not the role of a CPO Inquiry process to delay proceedings whilst negotiations take place. Adjournment should not be used as a mechanism to hold up the Acquiring Authority or to strengthen the landowner's position.
- 13.** In terms of negotiations in this matter, the parties are not on the same page. SEGRO have rejected MOPAC's offers for purchase and they have not responded to the purchase offers.
- 14.** With regard to the history of negotiations, MOPAC commenced discussions with Hermes (the previous landowners) in 2017. During those discussions Hermes rejected the request for a long-term lease and indicated that they wished to redevelop the site. SEGRO acquired their interest in June 2020 and have served counter notices under s26 Landlord and Tenant Act 1954 in response to the request for a renewal of a business tenancy. SEGRO's position is one of opposition to any renewal of MOPAC leases.
- 15.** Discussions have taken place between the parties and SEGRO have got to the point of making various lease offers. None of the matters are agreed. MOPAC says that the principle and the detail are not agreed. It is MOPAC's decision to seek to acquire the land, they have made no decision to take a long lease. MOPAC are present on the site under a lease and there would be no issues with regard to occupancy if a long lease were granted by a benign landlord. Even if a long lease of 15 years, with a 15-year renewal period were agreed, the expectation is that SEGRO would want removal at the end of that period. There is no reason to believe that MOPAC's need for the site would evaporate after 30 years.
- 16.** MOPAC knows the site is under threat. There are difficulties finding very large sites in London. This is not a position which is likely to get any easier. MOPAC is happy to negotiate but the assumption that MOPAC would like a long lease is not correct- it is a question of all of the details, including how much. The parties may continue negotiating but those negotiations will not reach a successful conclusion. There is no suggestion that the parties are about to agree.
- 17.** The request for an adjournment in the hope of there being agreement, in circumstances where the business tenancy is due to end in September 2021 is inappropriate. If Landlord and Tenant Act proceedings are brought, SEGRO will resist. Such proceedings would buy some additional time but would not provide enough time for MOPAC to relocate. These CPO proceedings have been brought because they are needed to secure the long-term future of the land. There is no basis for an adjournment.

- 18.** In response to my questions, Mr Harwood confirmed that the open offer of a 30 year lease had not been formally rejected, that MOPAC were happy to continue discussions but there was no reason to think that they would be successful and that even if a 30 year lease were obtained, there would still be a degree of risk to MOPAC operations which would occur at the end of the 30 year period.

*SEGRO response*

- 19.** A 30-year lease would ensure that MOPAC had a benign landlord for 30 years. Notwithstanding the Landlord and Tenant Act notices, SEGRO have made it clear that they are willing to offer a 30-year lease. At the end of that period MOPAC could use CPO powers but who knows what its operational requirements would be at that time.
- 20.** With regard to lifting the without prejudice veil, we are not applying for strike out, but this is one example which falls squarely within the examples at subparagraph 27(5) of the judgment.
- 21.** It is reasonable for a party seeking to avoid the compulsory purchase of its land to ask: have adequate attempts been made to secure alternatives to compulsory purchase. The Statement of Case confirms that MOPAC is seeking protection and the 30-year lease would afford that protection. Mr Mathieson in his evidence expressed a desire to have an option to renew for 15 years in case they no longer had a need for the site, for example due to the prevalence of electric vehicles at that time.
- 22.** MOPAC are a public authority who appears to be actively standing in the way of seeking alternatives to the exercise of CPO powers. It is difficult for MOPAC to contend that CPO powers are pursued as a matter of last resort.

**INSPECTOR'S RULING ON ADJOURNMENT**

- 23.** This is an application for adjournment of an Inquiry into the request for confirmation of a CPO made by an acquiring authority, MOPAC. The request for adjournment is made by the one remaining statutory objector and owner of the order land, SEGRO.
- 24.** For the reasons which follow, I am going to grant the request for adjournment for a period of three months.
- 25.** Facts and a brief chronology: The Statement of Case supporting the CPO sets out the need for the MOPAC Vehicle Recovery and Examination Scheme (VRES) to be on the Order Land. Those reasons include the following:
- To secure VRES facilities in a sustainable manner,
  - The only viable means of ensuring continuity of VRES,
  - Retains existing facilities,

- Loss of Order Lane would cause severe failures in the Metropolitan Police Service.

- 26.** The Statement explains the need for the CPO to secure continuation of VRES is premised on the expiration of the two leases on the 28<sup>th</sup> September 2021. It is relevant to note that, in the background, notices under the Landlord and Tenant Act 1954 have been served. A section 25 notice was served by MOPAC requesting the renewal of a business tenancy and a section 26 counter-notice was served by SEGRO refusing the request. Those notices open the door to the commencement of proceedings under the Landlord and Tenancy Act 1954 which would extend the MOPAC right to occupy in the short-term pending conclusion of the proceedings. Those proceedings could be defeated by the landlord's aim to redevelop.
- 27.** With the impending end of the lease in mind, MOPAC began exploring various options over the last 3 years. Those options have included a search for alternative sites, consideration of splitting the operations on the site to various other sites, purchasing the freehold and exploring leasehold options. MOPAC have concluded that the Order Land offers the only opportunity of providing continuation of the VRES services and as such, it contends that there is a compelling case in the public interest and it is therefore necessary for MOPAC to acquire the freehold interest by the exercise of compulsory purchase powers.
- 28.** Chronology: It is useful to set out a brief chronology of key events:
- September 2018- MOPAC request a 3-year lease extension, which is refused by Hermes
  - September 2019: MOPAC sought 10-year extension without break, Hermes agree to this for parcel 1 but not parcel 2. Hermes indicate an interest in redevelopment of the site and proposals are put forward to MOPAC.
  - 14 May 2020: MOPAC offer to purchase Order Land from Hermes
  - 5 June 2020: Order Land is sold to SEGRO along with the remainder of the Perivale Industrial Estate
  - 20 July 2020: MOPAC offer to purchase Order Land from SEGRO
  - 30 September 2020: MOPAC serves s26 Notice requesting 15-year lease
  - 26 November 2020: SEGRO serves counter notice
  - 25 May 2021: MOPAC increased offer to purchase the Order Land
- 29.** Within these proceedings there have been a series of open offers made by SEGRO on or around 23 March 2021 for a 5-year lease outside the protection of the 1954 Landlord and Tenant Act. On Thursday of last week SEGRO made an open offer to MOPAC of a 15-year lease, renewable for a further term of 15-years within the ambit of the 1954 Act. This would provide MOPAC with 30 years uninterrupted user.

- 30.** That latest open offer has not been formally rejected and Mr Harwood informs me that without negotiations continue. In addition, the email from Michelmores, the representatives of MOPAC, indicating that there is no agreement in principle, and they do not see any prospect of an agreement being reached prior to the close of the Inquiry, scheduled this week.
- 31.** I have set out the brief facts and chronology. MOPAC now wish the Inquiry to proceed. Mr Harwood reminds me that usually it is the case that negotiations go on behind closed doors in these cases and that it is not my role to decide what negotiations should take place. He contends that it is not appropriate to delay the CPO Inquiry to allow negotiations to take place.

*Reasons*

- 32.** It is not my role to determine appropriate land values or rental incomes. In deciding whether or not to confirm the CPO I must have regard to the appropriate tests set out in The Crichel Down Rules and government guidance. One of the questions which I must ask myself is whether the acquisition is necessary as a matter of last resort. To answer that question, it will also be necessary to consider whether reasonable efforts have been made to acquire the land by agreement or whether the objectives could be satisfied by any other means and ultimately whether there is a compelling case in the public interest for compulsory acquisition.
- 33.** In this case the position of SEGRO, who have been landowners for a relatively short time, has evolved throughout the proceedings and there has been a very recent offer of a 30 year lease which would provide continuous uninterrupted occupation of the land for a period of 30 years.
- 34.** Given what is at stake and the relevant chronology of events, as well as MOPAC previous efforts to secure a lease in 2019 and given the stated aims of MOPAC to secure uninterrupted use of the Order Land for VRES facilities, I have concluded that the open offer of last week needs careful consideration and it is right to afford an opportunity to both parties to explore their respective positions. At first blush it would appear that the grant of a 30-year lease may well satisfy the stated aims set out in the Statement of Case regarding the need for this scheme on the Order Land.
- 35.** Of course, it may well be that terms cannot be agreed between the parties and negotiations fail. However, given the chronology of events and the sequence of offers I am satisfied that this is a serious offer worthy of investigation by the parties. I am further satisfied that in order to enable a proper exploration of the offer, a relatively short period of adjournment will be required.
- 36.** I am aware that in some CPO cases, an unwilling landowner might seek adjournment to frustrate or delay the CPO process or to

strengthen their negotiating hand. However, I am fully satisfied that that is not the case here and the offer represents a genuine attempt by a landowner to obviate the need for compulsory acquisition. As such adjournment in these circumstances is justified, fair and proportionate.

37. Finally, in arriving at my decision on the adjournment request, I must make it clear that I have not taken into account the existence of any without prejudice offers or the timings of such offers. It has not been necessary for me to come to a view on this matter.
38. Following discussions between the parties the Inquiry resumption date was agreed to be 10am on Wednesday 1 September where it will sit for 4 days (1-3 September and Tuesday 7 September 2021).

#### Further Directions

39. The parties shall be at liberty to produce a Statement of Common Ground or updating Position Statements by 4pm on 6<sup>th</sup> August 2021. Such statements shall be sent to the case officer, the other party and MOPAC shall publish them on the Inquiry website within 2 days of receipt.
40. All witnesses shall be at liberty to produce any short updating statements by 4pm on 6<sup>th</sup> August 2021. Such statements shall be sent to the case officer, the other party and MOPAC shall publish them on the Inquiry website within 2 days of receipt.
41. All witnesses shall be at liberty to produce short rebuttal statement (in response to updating statements only) by 4pm on 27<sup>th</sup> August 2021. Such statements shall be sent to the case officer, the other party and MOPAC shall publish them on the Inquiry website within 2 days of receipt.
42. The Inquiry shall continue to be heard virtually unless the parties make a written request to the Planning Inspectorate, with a suggested venue, no later than 4 weeks before the resumption of the Inquiry. The request will be put before the Inquiry who will make a decision on whether the Inquiry should become an in-person event.

*Karen L Ridge*

INSPECTOR



The Case Officer is Ms Rachel Newman

Her details are as follows:

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