

Your Reference



Our Reference
671283/NXH03/BMS01

By Hand

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Government
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28 October 2020

To whom it may concern,

The Mayor's Office for Policing and Crime (Perivale) Compulsory Purchase Order 2020

1. INTRODUCTION

- 1.1. We act on behalf of Segro (Perivale Park) Limited ("**Our Client**") and we write in relation to the Mayor's Office for Policing and Crime (Perivale) Compulsory Purchase Order 2020 ("**the Order**"), of which a copy has been sent to our client, which was made by the Mayor's Office for Policing and Crime ("**MOPAC**") on 6 October 2020.
- 1.2. Our Client is the registered proprietor of the Order Land (as defined in the Order) and the wider Perivale Industrial Park. Perivale Industrial Park was originally constructed in the 1970's and contains approximately 33 industrial units, of which the Order Land is part. The units on the premises are used for industrial and storage and distribution uses, with some ancillary office uses.
- 1.3. MOPAC has served on our Client, as a qualifying person, a notice dated 6 October 2020 together with accompanying documents.
- 1.4. The Order as made is for the proposed compulsory purchase of our Client's land of which MOPAC is currently a tenant in order to continue use of the Order Land by MOPAC for a Vehicle Recovery and Examination Service ("**VRES**") which provides a vehicle recovery, removal, forensic examination, storage and disposal service across the western part of London.
- 1.5. Our Client wishes to object to the making of the Order based on the below grounds of objection and will seek to make representations at any public inquiry held by the Secretary of State for Housing, Communities and Local Government ("**the Secretary of State**"), should its objection be maintained in the absence of any agreement between our client and MOPAC. Our Client's grounds of objection are as follows:

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- (a) Ground One – MOPAC has failed to demonstrate that it has made all reasonable efforts to engage with our Client to acquire the Order Land by agreement.
- (b) Ground Two - MOPAC has failed to demonstrate that the entirety of Order Land is required for the claimed statutory purpose and that there is no alternative site or sites or alternative means which would serve MOPAC's stated needs for the same purpose equally instead of seeking powers to acquire compulsorily the land of an unwilling landowner.
- (c) Ground Three – MOPAC has failed to provide any or any substantive information as to the sources of funding available for acquiring the land.
- (d) Ground Four – MOPAC has in overall terms failed to demonstrate a compelling case in the public interest to acquire the relevant land for the purposes claimed and which are a proportionate interference with Segro's rights under Article 1 of the First Protocol of the European Convention on Human Rights

2. GROUND ONE – MOPAC HAS FAILED TO MAKE ALL REASONABLE EFFORTS TO ENGAGE WITH OUR CLIENT TO ACQUIRE THE ORDER LAND BY AGREEMENT

- 2.1. As set out in the Secretary of State's guidance on "Compulsory purchase process and the Crichel Down Rules" ("**the CPO Guidance**") the exercise of compulsory purchase powers are to be used only as a measure of last resort, when all other options to acquire the Order Land by agreement have failed.
- 2.2. MOPAC does not contend, let alone demonstrate, that it is using its powers of compulsory acquisition as a measure of last resort, this is because it is clear that this is simply not the case.
- 2.3. MOPAC started operating from the Order Land in or about 2005 having obtained planning permission and on the basis of a leasehold interest. MOPAC has known that its leases were due to end for some considerable time. MOPAC engaged with the previous landowner with respect to an extension of the leases and not on the basis that MOPAC needed to own the freehold of the Order Land in order to continue its VRES operations.
- 2.4. Our Client purchased the site which includes the Order Land some 4 months prior to the making of the Order.
- 2.5. MOPAC made an unacceptable offer to purchase the land from the previous owner and then made an equally unacceptable offer to our Client.
- 2.6. In the Statement of Reasons MOPAC appears to have dismissed the prospect of entering into a long lease of the Order Land on the undemonstrated basis that this would not present long-term security for the operation of the VRES at the Order Land. There has therefore been no discussion, consideration or negotiation on MOPAC's part with our Client as to the potential of a new long lease of the Order Land.

- 2.7. MOPAC has failed to demonstrate why a long lease of the Order Land would not provide it with a viable option for the continuation of the operation of the VRES, notwithstanding that such arrangements have apparently been acceptable up until now.
- 2.8. MOPAC refers to its negotiations with landowners of the Order Land to date at Section 10 of the Statement of Reasons. MOPAC first began contact with our Client, the current landowner, on 20 July 2020, when it made an offer to purchase the Order Land. Our client met with MOPAC on 18 August 2020 discuss MOPAC's use and operations of the Order Land.
- 2.9. MOPAC acknowledges that MOPAC and our Client are currently in discussions regarding the acquisition of the Order Land by agreement but our Client maintains that such discussions should have predated (and ideally obviated the need for) the promotion of the Order.
- 2.10. By its own admission, MOPAC has not exhausted all routes to acquire the Order Land and therefore the Order was not made as a last resort – in fact the Resolution dated 29 September 2020 which authorised the making of the Order, states that the Director of Property Services may enter into negotiations with our Client "regarding a long term lease that secures the provision of VRES functions", which evidences that MOPAC is well aware that the Order has not been made as a last resort. Therefore it should not be confirmed by the Secretary of State.

3. GROUND TWO – MOPAC HAS FAILED TO DEMONSTRATE THAT ALL THE ORDER LAND IS REQUIRED AND THAT THERE IS NO ALTERNATIVE SITE OR ALTERNATIVE MEANS OF BRINGING ABOUT THE OBJECTIVE OF THE ORDER

- 3.1. In order to confirm the Order, the Secretary of State must be satisfied that MOPAC has demonstrated that the Order Land is required for the statutory purpose of the CPO and there is no alternative site or means of achieving the purpose of the Order.¹
- 3.2. It is MOPAC's suggestion in the Statement of Reasons that the VRES cannot be delivered at any alternative site or sites across London. It is our Client's view that this has not been and cannot be demonstrated.
- 3.3. MOPAC sets out the needs for the VRES at the Order Land and not at an alternative site as follows:
 - 3.3.1. The specialist forensic facilities would have to be replaced;
 - 3.3.2. The Order Land is a suitable size for the VRES facilities;
 - 3.3.3. The Order Land is built out and equipped for the operation of the VRES;
 - 3.3.4. The Order Land is well located for the Metropolitan Police Service and public needs;
 - 3.3.5. The location of the Order Land allows a cost effective delivery of the required service levels;
 - 3.3.6. The Order Land is reasonably accessible by public transport for the public visiting to recover vehicles.

¹ See *De Rothschild v SST* [1989] 1 All E.R. 933 and *Sharkey v Secretary of State for the Environment* [1991] 63 P. & C.R. 332

- 3.4. Of all of the above requirements, none of them is extraordinary or unique to the Order Land. Each of them could equally apply to other land. The points regarding the replacement of the specialist forensic facilities and the equipment at the Order Land are not points relating to the land itself but to additions that MOPAC has made and which could also be added to an alternative site.
- 3.5. MOPAC has failed to demonstrate that other land, whether or not currently within its control, could not be made available as an alternative site to the Order Land without resort to powers of compulsory acquisition.
- 3.6. By way of example, the Northolt site which MOPAC has discussed at paragraph 5.11 of the Statement of Reasons appears to provide a largely suitable site. However, MOPAC has sought to dismiss this site on the purported basis of constraints on the practicalities of manoeuvrability of large and bulky vehicles and a lower amount of car parking spaces. MOPAC has not apparently even considered what changes could be made to the layout of the Northolt site to accommodate such large and bulky vehicles. This is clearly a significant omission and illogical basis upon which to dismiss this site.
- 3.7. More generally, it is clear that the approach adopted by MOPAC is based on its preference to stay on the Order Land as a matter of convenience as reflected in their comment that relocation lead time is a clear factor. The test as a matter of law is not one of convenience but necessity.
- 3.8. At paragraph 5.19 of its Statement of Reasons, MOPAC claims to have requested that its agent, Knight Frank, contact numerous London estate agents in a search for alternative sites. However, no suitable sites are said to have come forward.
- 3.9. It is notable that MOPAC did not instruct its agent to search for alternative sites themselves. It appears that MOPAC has in fact never carried out a search for alternative sites that are not within the control of the Metropolitan Police or the Greater London Authority.
- 3.10. This is simply not nearly enough to satisfy the Secretary of State that no suitable alternative site or sites or means to continue the operation of the VRES have been properly explored and or assessed on any proper basis. It means MOPAC cannot show that the Order Land is necessary.

4. GROUND THREE – EVIDENCE OF SUFFICIENT FUNDING

- 4.1 MOPAC has failed to provide any or any substantive information as to the sources of funding available to them for the acquisition of the Order Land. This is an essential requirement (see paragraphs 13 and 14 of the CPO Guidance) and in our Client's view especially so when the evidence to date is that MOPAC has no proper understanding of the value of the Order Land.
- 4.2 The Statement of Reasons provides no evidence of sufficient funds and merely assert at para 7.1 under Impediments that "*sufficient funds have been made available to carry out the compulsory purchase*".
- 4.3 The Statement of Reasons acknowledges that "*availability of funding*" (para 1.1.12) is a fundamental requirement but nonetheless fails even to attempt a demonstration of the same. Without such demonstration the CPO cannot be justified.

5. GROUND FOUR – THERE IS NO COMPELLING CASE IN THE PUBLIC INTEREST TO ACQUIRE THE ORDER LAND FOR THE PURPOSES SOUGHT BY MOPAC

- 5.1. It is well-established law and policy that a compulsory purchase order should not be made or confirmed unless there is a compelling case in the public interest to do so. There must be clear and compelling evidence provided by the acquiring authority that there is sufficient public benefit from a compulsory acquisition to outweigh the compulsory acquisition of a person's land.
- 5.2. Our Client recognises that the functions performed by the VRES may be an important part of MOPAC's operation and are important to the wider public for the reasons illustrated by MOPAC in its Statement of Reasons.
- 5.3. However, in all the circumstances MOPAC has not put forward a compelling case that the continued provision and operation of VRES is dependent upon the use of compulsory purchase powers and their use now. Any such powers may only be used as a last resort, and may not be used as a matter of convenience.
- 5.4. Our Client considers that the Order would amount to an unjustified and disproportionate interference with its rights under the Human Rights Act 1998 and in particular, Article 1 of the First Protocol thereof, which provides for the protection of property and the peaceful enjoyment of possessions.
- 5.5. MOPAC has not adequately demonstrated that the interference with our Client's private property rights is justified and outweighed by the benefit to the public interest that would arise out of the confirmation of the Order and the subsequent compulsory acquisition of its property. MOPAC has stated that it has carefully considered the balance between individual rights and the wider public interest but it has not explained what that balance is or how it has come to its conclusion that the wider public interest outweighs the individual rights of our Client.
- 5.6. MOPAC's reasoning for the need for compulsory purchase powers to secure the continuation of the VRES scheme on the Order Land is solely as follows:
- 5.6.1. MOPAC would prefer to stay on site and renew its leases of the Order Land which are due to expire on 28 September 2021; and
- 5.6.2. MOPAC is concerned that our Client intends to redevelop the Order Land and refuse a renewal of its lease.
- 5.7. MOPAC makes no mention of our Client's private property rights under Article 1, Protocol 1 of the ECHR and nor does it explain why the compulsory acquisition of the Order Land outweighs these rights. Accordingly, it cannot have discharged the requirement to show that there is a compelling case in the public interest to acquire the Order Land.
- 5.8. Our Client does intend to analyse a potential redevelopment of the Order Land. This redevelopment will provide Ealing with high quality industrial space to meet the demands of modern businesses and have a transformational impact on the regeneration of Perivale Industrial Park. It will provide sustainable, carbon neutral space with flexible layouts to suit a variety of uses and appeal to a range of occupiers from SMEs to blue-chip companies.
- 5.9. As part of the redevelopment process, our Client will be undertaking a master planning analysis of the Order Land to demonstrate its redevelopment potential in terms of land use and quantum of development. This will permit an assessment of its impact on the surrounding area and the Borough

as a whole. This analysis will clearly demonstrate the minimal economic contribution that the acquisition of the Order Land for MOPAC's purposes would make to the local area, when compare to a comprehensive redevelopment of the Order Land for uses appropriate to the local area.

- 5.10. Perivale Industrial Park is allocated in the London Borough of Ealing's Local Plan (adopted 3 April 2012) as a "Strategic Industrial Location". The Local Plan defined Strategic Industrial Locations as "the borough's strategic employment land and are the primary focus for general industrial and warehousing uses." (see page 15)
- 5.11. The Borough's planning policy in relation to employment land along the A40 corridor from Northolt to Perivale is "to retain and attract new business development along the A40 Corridor by maintaining a sufficient supply of industrial land, and encouraging sustainable, commercial development" (policy 3.2).
- 5.12. The Local Plan also goes on to note that the "London Plan also specified the retention of 'strategic industrial locations' in Northolt-Greenford-Perivale, comprising industrial areas developed in the inter-war years. It notes that these areas continue to meet demands for business premises and employment opportunities in Ealing and outer West London."
- 5.13. The Draft London Plan (consolidated changes version July 2019) identifies the London Borough of Ealing as a borough in the 'Provide Capacity' category. This category is attached to London Boroughs where strategic demand for industrial, logistics and related uses is anticipated to be strongest. The Plan encourages such Boroughs to deliver intensified floorspace capacity in either existing and/or new locations accessible to the strategic road network and in locations with potential for transport of goods by rail and/or water.
- 5.14. The Order Land is not safeguarded for use by MOPAC for the purposes of delivering the VRES or any other purpose and neither the London Borough of Ealing's Local Plan, nor the London Plan, make reference to the importance of the Order Land or the VRES to MOPAC and the wider Borough and city.
- 5.15. MOPAC even admit, at paragraph 5.19.5 that "industrial land is being lost rapidly". To that end it is clearly a factor that weighs the enforced use of the Order Land at the cost of preventing our Client from having the opportunity to redevelop the Order Land to provide that important industrial use and which is supported within the Perivale Industrial Park and sought after by the London Borough of Ealing and the Mayor of London.
- 5.16. The making of this Order would therefore be in direct conflict with the stated policy aims of the London Borough of Ealing and the Mayor of London in retaining and enhancing the industrial and warehousing offering at Perivale Industrial Park. However, our Client's redevelopment plans are in accordance with local planning policy and will deliver substantial economic benefits to the Borough.

6. CONCLUSION

- 6.1. For the above reasons our Client strongly resists the confirmation of the Order and reserves the right to make further representations and submissions as this matter proceeds and further information becomes available.
- 6.2. We should be most grateful if you would be kind enough to acknowledge safe receipt of this letter.

Yours faithfully

Gowling WLG (UK) LLP

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