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# Compulsory Purchase Order Decision

Site visit made on 29 November 2024

**by John Felgate BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 18 December 2024**

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## **The Braintree District Council (Towerlands Park, Braintree) Compulsory Purchase Order 2024**

**Case Ref: PCU/CPOP/Z1510/3348353**

- The Order is made under Section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981.
- The Order is made by Braintree District Council and is dated 19 June 2024.
- The Order authorises the compulsory acquisition of about 2.45 hectares of vacant land, as shown on the Order Map and as described in the Order Schedule.
- The Order's stated purpose is to: *"facilitate the carrying out of development, redevelopment or improvement on or in relation to the land, to enable a residential scheme comprising new housing (including affordable housing), together with associated accesses, infrastructure, services, parking, public realm and landscaping, thereby contributing towards the promotion and/or improvement of the economic, social and environmental well-being of the area"*.
- The Order is subject to one objection.

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### **Decision**

1. The Order is hereby confirmed.

### **Procedural Matters**

2. The Council, as Acquiring Authority (the AA), has provided a General Certificate, stating that all the relevant statutory requirements relating to the service and posting of notices, and for the making available of copies of the relevant documents, both at the Council offices and online, have been complied with. The AA has also certified that the Order does not affect any 'protected assets'. As far as I am aware none of these matters are disputed. On this basis, I am satisfied that these legal formalities have been carried out with proper due diligence and in accordance with the relevant legislation and regulations.
3. On the Order Map and Schedule, the Order Land is divided into two plots. Plot 2 is distinguished from Plot 1 only by the existence of a water main, managed by Anglian Water Services Limited. That company has made no representation on the Order. For the purposes of my decision, the distinction between Plots 1 and 2 has no significance, and I have therefore considered both together. In this decision, references to 'the Order Land' include both Plots 1 and 2.
4. The sole objection to the Order is made by the Coopers' Company and Coborn Educational Foundation (CCCEF), a registered educational charity. CCCEF claims to be the lawful freehold owner of the Order Land, and has applied to

the Land Registry for its ownership to be registered. That claim remains to be determined by the Land Registry. The validity of the claim is disputed by the AA, and on this basis, the AA also disputes whether CCCEF is entitled to be treated as a 'qualifying person'<sup>1</sup>. However, in a letter dated 11 September 2024, the Ministry of Housing, Communities and Local Government states that the objection has been accepted as a 'remaining objection'<sup>2</sup>. I have therefore considered the CCCEF objection on this basis. In any event, in the Order Schedule, CCCEF's interest is listed as 'reputed owner', and I am satisfied that this correctly reflects the current position.

5. Amongst the submissions and evidence provided by the AA and the objector in relation to the present Order, there are some items which relate also to the question of the unresolved ownership. However, the decision as to whether to accept CCCEF's application to become the registered owner of the Order Land is a matter for the Land Registry in the first instance. For the avoidance of doubt, I have not formed, or attempted to form, any view as to either the merits of the claim, or the likely outcome.
6. There is no dispute as to the fact that the Order Land is also the subject of a lease currently held by Repairbrook Limited, the lead developer of the surrounding development site known as Towerlands Park. This lease expires in 2055. The Schedule confirms that this leasehold interest is excluded from the Order.

### **Background to the Order**

7. Until relatively recently the whole of the Towerlands Park site, including what is now the Order Land, is said to have been used as a golf course and equestrian centre, and as a venue for outdoor music events. During the preparation of the Braintree District Local Plan (the BDLP), in 2017 and 2018, the site was identified as a strategic growth location. When Part 2 of the plan was adopted in July 2022, the site became allocated under Policy LPP 19 for comprehensive development, to include up to 575 new homes and other facilities.
8. During the course of this process, in April 2019, outline planning permission was granted on the site (Ref. 19/00786/OUT) for a development of 575 dwellings, including both market and affordable housing, plus retail and community facilities, and formal and informal open space. The Order Land is included in this permission, and is designated as area R12. On the approved parameter plans, this part of the site is allocated mainly for residential development, plus part of a linear park, part of a circular footpath and cycleway, and a surface water drainage basin.
9. Construction work on the Towerlands development is said to have commenced in around 2021, under an agreement between Repairbrook and Dandara Eastern Limited, a housebuilding company. On my visit, I saw that several sectors of the development have now been completed and occupied, including much of areas R10 and R11, which border the Order Land on its eastern and northern sides.
10. As far as the Order Land itself is concerned, I saw that the site currently comprises, for the most part, an area of bare land with little vegetation,

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<sup>1</sup> Under S. 12(2) of the Acquisition of Land Act 1981, a 'qualifying person' includes an owner, lessee or tenant

<sup>2</sup> Under S. 13A(1) of the Acquisition of Land Act 1981, a 'remaining objection' is a 'relevant objection' by a 'qualifying person', which has not been withdrawn or disregarded

enclosed on all sides by contractors' fencing. In the southern part of the Order Land, a drainage swale has been created, and appears to be now in use.

### **Legal Framework and National Guidance**

11. Section 226(1)(a) of the Town and Country Planning Act 1990 permits the making of a compulsory purchase order where the acquisition is considered to facilitate the carrying out of development, redevelopment or improvement of the land, subject to the requirement, in Section 226(1A), that such action must be likely to contribute to the promotion of the area's economic, social or environmental well-being.
12. The relevant national guidance is found in *Guidance on the Compulsory Purchase Process* ('the Guidance'), issued by the Ministry of Housing, Communities and Local Government in October 2024. Amongst other things, acquiring authorities should be able to demonstrate that their plans for the land are clear and realistic, and are consistent with the development plan for the area. Authorities should also show that the acquisition of the land is necessary to achieve the Order's aims, and that reasonable steps have been taken to acquire the land by agreement. Overall, it must be shown that a compelling case exists, in the public interest.

### **The Acquiring Authority's Case**

13. In the present case, the AA submits that the Towerlands Park site is a vital element in the BDLP's overall planning strategy for Braintree District. The completion of the development is seen as essential, to ensure that the District is able to meet its housing growth targets, and other key strategic planning objectives.
14. The Order Land is seen as an integral part of the Towerlands scheme, due to its size and its central location within the development. If developed in accordance with the existing outline planning permission, the Order Land would be expected to accommodate 66 dwellings, in a mix of sizes and tenures, making up the balance of the 575 permitted on the site as a whole. The development of the Order Land would also enable the completion of the linear park and main pedestrian/cycle route, which are intended to serve the development as a whole, and which would form key parts of its overall green infrastructure network. To date, it has not been possible to secure the implementation of any of this development on the Order Land.
15. The AA considers that it has used all reasonable endeavours to identify the owner of the land and to negotiate for its acquisition by agreement. Although latterly the potential interest of CCCEF has been identified, the Authority considers that the evidence produced in support of that body's claim is unconvincing. As long as doubt remains, negotiations for the purchase of the land would not be meaningful. And in any event, CCCEF has made clear that it does not wish to enter into any such negotiations.
16. In the AA's submission, the confirmation of the Order would result in the Order Land being developed in accordance with the planning permission, bringing the completion of the remaining 66 dwellings, open space and movement routes. Such development would bring opportunities not just to integrate the Order Land itself with the surrounding development, but to improve connectivity and permeability between other parts of the Towerlands site, thus enhancing the coherence of the scheme as a whole. It would also secure the future

management of the drainage swale and ensure that this would remain available in perpetuity to serve the wider development. In addition there would be economic benefits resulting from the construction work and supply chain effects.

17. Conversely, if the Order were not confirmed, the AA contends that all of these benefits would be lost. Site R12 would be likely to remain unused for at least the next 31 years. During that time, the freeholder would be unable to regain possession due to the existing lease; but the remaining term would be insufficient to enable the leaseholder, or any other party, to carry out any development. The condition and appearance of the land would therefore deteriorate, and the boundaries would have to be secured, for reasons of safety and to prevent fly tipping or antisocial behaviour. The land would thus become a blight on its surroundings.
18. The development of the Order Land in accordance with the existing permission is considered to be clearly achievable within a reasonable timescale. Under the terms of an agreement with the AA, Repairbrook is said to have underwritten the costs of the acquisition of the Order Land, including any compensation, with a view to carrying out the development of the 66 dwellings itself. With regard to the open space, footways, cycleways and drainage swale, the company is bound by obligations in the existing Section 106 agreement, and is also said to have entered into contractual obligations with Dandara. Repairbrook has produced evidence that the necessary funds for these works are available. A good market is anticipated for the finished properties. All of the land and rights required for access to the Order Land are said to be held by Repairbrook's parent company, the Unex Group. No legal or other impediments are known that could affect the scheme's implementation.
19. In the light of the above, the AA submits that the development of the Order Land would contribute to the area's economic, social and environmental well-being, and would accord with the adopted planning framework. Repairbrook's scheme for the land is seen as realistic and financially feasible. No other means is seen whereby the development could be achieved without the whole of the Order Land, or without the need for compulsory acquisition. On these grounds it is argued that there is a compelling case, in the public interest, for the confirmation of the Order.

### **The Objection**

20. The CCCEF is a registered charity, whose origins lie in a bequest of land in the vicinity of Bocking, near Braintree, made through the will of Priscia Coborn, in the year 1701. The charity's original aims were to use the rents and profits from the land to provide schooling for poor children in the London parish of Bow, and to support the widows and children of deceased clergymen. CCCEF now owns and manages the Coopers' Coburn and Company School, which is based in Upminster and admits pupils from Bow and other parts of Tower Hamlets Borough.
21. In response to my request for further information, CCCEF has provided copies of various additional documents. These include the will and codicil of Priscia Coburn, an extract from an Act of 1816 relating to Priscia Coburn's Charity, a management scheme for the charity dated 1873, a printed statement by Dr Ian Frood, and CCCEF's application to the Land Registry, including forms ST1 and FR1.

22. CCCEF states that the Order Land forms part of the land that was bequeathed by Priscia Coborn for educational purposes. The education of young people remains a priority, and the charity considers that it has a responsibility to ensure that the original purposes of the gift are respected and upheld.
23. CCCEF objects to the present Order on the grounds that the proposed development would fail to provide any educational benefit, either for pupils of the charity's existing school in Upminster, or for those of local schools, which is said to be contrary to CCCEF's charitable obligations. Although the land has long been subject to a lease, and currently remains so, the charity wishes to ensure that when that lease expires, the land can resume some kind of role in pursuit of its former charitable purpose. In this regard, CCCEF states that it has a duty to protect its charitable assets, and it is considered that the confirmation of the Order would conflict with this.
24. In addition, CCCEF contends that it would be wrong to proceed with confirmation of the Order whilst the charity's claim for registration of its ownership is still being dealt with by the Land Registry.

### **The Authority's response to the objection**

25. In response, the AA submits that although the 1701 will refers to land at Bocking, which is nearby, there is no evidence that this included the Order Land. Neither this nor any of the other documents produced by the objector establishes any clear link between the Order Land and CCCEF. The charity's application to the Land Registry appears to rest principally on the basis of adverse possession, but such a claim seems ill-founded, because for the last 20 years or more, physical possession of the land has been held by Repairbrook and its predecessors under the lease. During that time, no rent has ever been demanded by CCCEF, nor paid.
26. Furthermore, the AA contends, CCCEF's actions throughout suggest that the charity itself was not even aware of the land until the Authority made enquiries in connection with the Order. This is shown by the fact that some of the evidence which has been produced now was not disclosed earlier, either at the time of the AA's initial approaches in 2021, or in response to a statutory requisition for ownership information, in April 2023. CCCEF's application to the Land Registry was only made in July 2024. In the AA's view, this sequence of events demonstrates a lack of conviction on CCCEF's part as to the merits of their own claim.
27. The AA states that the Land Registry's current guidance suggests a minimum processing time of 17 months. This would mean the earliest date for a decision on CCCEF's application would be towards the end of 2025. In this case however, the period may be longer, due to the case not being straightforward. In the Authority's view, it would be disproportionate to put the Order on hold for such a length of time, especially given the pressing need for housing.
28. In any event, even if CCCEF's ownership claim is eventually accepted, the most that could be granted would be possessory title. This would still leave open the possibility that another party could come forward with a superior claim at some future date. For the purposes of development, it would be necessary to show title absolute, in order to reassure developers, investors and purchasers that the scheme was free of this risk.

29. With regard to CCCEF's charitable aims and obligations, the AA contends that the submitted evidence again fails to support the objector's case. It is accepted that the will established two trusts, but the purposes of these were different from the aims that CCCEF now states that it seeks to protect. In any event, the Authority sees no evidence that the Order Land is that which was gifted for any of these purposes, nor that it has ever been used to support any charitable purposes.
30. The AA comments that the proper time for any objection to the nature of the development which is proposed for the Order Land would have been when consultations were carried out on the BDLP's proposed housing allocations, and on Repairbrook's planning application. No representations were made by CCCEF at either of these stages. The procedures now being undertaken in relation to compulsory purchase should not be used as an opportunity to revisit matters of land use which have already been settled. In any event, the Towerlands Park scheme makes provision for an 'early years and childcare nursery', on a site which fits with the approved masterplan, and this is considered to meet local educational needs in the way that is most suitable for the development.

### **Inspector's Reasoning**

#### *Contribution to the well-being of the area*

31. Based on the evidence presented, it seems to me quite clear that the Order Land forms an integral component of the approved scheme for the comprehensive, mixed-use development of the Towerlands Park site, which in turn is clearly an important part the BDLP's strategy for the District. The development now envisaged for the Order Land, to provide 66 dwellings with related footpaths, cycleways and open space, would appear to accord fully with the principles of the masterplan and parameter plans for the larger site, and with the relevant development plan policies for the area. The AA's submissions on these matters have not been disputed, and I can see no reason to disagree.
32. It is also clear to me that, without the inclusion of the Order Land, there would be an on-going gap in the otherwise attractive and well-planned Towerlands development. Such a gap would in my view detract unacceptably from the area's visual amenity, and from the way that the scheme functions with regard to movement, recreation and land drainage. There would also be a missed opportunity for the additional housing that the Order Land could provide, which would be likely to include mixed tenures, and the economic benefits that would flow from such development. Again the evidence on these matters is largely unchallenged.
33. On the basis of this evidence therefore, I am satisfied that the development of the Order Land in accordance with the existing outline planning permission, which the Order is designed to facilitate, would contribute to the promotion of the area's economic, social and environmental well-being, as required by Section 226(1A).

#### *Clear and realistic prospect of development*

34. From the AA's submissions, it is evidently intended that the development of the Order Land would be carried out either directly by Repairbrook, or another party acting with Repairbrook, under the terms of some form of agreement that



has been entered into with the Council. Whilst the details of these arrangements are not before me, the evidence has not been challenged. Given Repairbrook's role in the Towerlands project to date, I have no reason to doubt the company's commitment and capability to bring the development of the Order Land to fruition also. In any event, there seems no reason to doubt that the development of the Order Land as proposed, in broad accordance with the existing outline permission, would be a viable proposition, which would be likely to be attractive to other developers, funders or investors, if necessary.

35. There is no evidence of any financial, legal or other impediments. I see no reason to doubt that such a development could be carried out within a relatively short timescale. Again, none of the AA's evidence on these matters has been disputed.
36. On this basis, I am satisfied that the development which the Order is intended to facilitate would have a clear and realistic prospect of being carried out, and of completion within a reasonable timescale. In these respects, the confirmation of the Order would accord with the relevant provisions of the national Guidance.

#### *Necessity for the Order*

37. As things stand, without the Order, it is evident to me that there is little prospect of any development taking place on the Order Land within a reasonable timescale. For as long as the ownership of the land remains uncertain, the level of risk involved in any development would clearly be likely to be prohibitive. If CCCEF's claim to the ownership were to succeed, even if only on the basis of adverse possession, that uncertainty would be reduced. But there is no guarantee that this would open the way for a housing development in line with the existing permission, not least because CCCEF's current position appears to be one of opposition to such a development. Whilst it might be that CCCEF would wish to pursue some other development on the site, for charitable purposes, the land would only revert to their control in 2055. And although it would potentially be open to the parties to reach some form of agreement ahead of that time, any such negotiations would be likely to be quite difficult, given the parties' differing aims and aspirations. It follows that, whatever the outcome of the ownership question, the prospects for achieving any beneficial development on the Order Land, within the foreseeable future, are slim. In these circumstances it seems to me that, without the use of compulsory purchase powers, the potential benefits to the area's well-being, that could be achieved through such development, are unlikely to be realised.
38. From the evidence provided, it is clear that the AA has undertaken a considerable amount of work to identify potential owners. Having done so, it has then sought on a number of occasions to engage with CCCEF, in an attempt to explore the charity's ownership claim more fully. This seems to me to have been a proper course of action, in the interests of both parties. In the circumstances, it seems to me that there is little more that the AA could have done to progress any negotiations. Without further clarity about CCCEF's claim to ownership, the AA was clearly not in a position to make any meaningful offer, or to enter into any serious discussions regarding land values or compensation. I am therefore satisfied that in this case the AA's use of compulsory purchase, as a means of unlocking the site, has been shown to be

necessary, due to a lack of any other alternatives, and has thus been used only a last resort.

39. In none of the submissions before me is there any suggestion that the Order in its present form exceeds what is necessary to achieve its aims, or that the same benefits could be achieved by other means. Self-evidently, some of the Order's principal benefits, such as the potential for the completion of the missing open space and movement links within the Order Land, could not be replicated on any alternative site. There is no evidence that the number of dwellings required on the Order Land could be realised without developing the whole of the site. On this basis, I am content that there is no evidence of any realistic alternative to either the location or the extent of the acquisition proposed in the present Order.
40. Having regard to the above matters, I am satisfied that the compulsory acquisition of the Order Land, in the form proposed, has been shown to be necessary in order to achieve the Order's aims and benefits. In these respects the Order is again in accordance with the relevant Guidance.

*Consideration of the grounds of objection*

41. If CCCEF succeeds in proving its ownership of the Order Land, through its application to the Land Registry, the charity will eventually regain possession of the land at the end of the existing lease. It would then have the same range of options as any other owner, either to seek to develop or use the land for its own purposes, subject to gaining the necessary planning permission, or to sell or lease the land to another party and take an income or profit. I fully understand the charity's desire to be able to exercise what it believes to be its rights over the land, at that time, to benefit its charitable aims and obligations.
42. But that prospect is as yet quite far off, as the lease still has 31 years to run. Although it would be open to CCCEF before then (if successful in its ownership claim) to seek a surrender of the lease, to bring forward the date of gaining possession, there has been no suggestion that negotiations of that kind would be likely, or indeed have ever been considered; nor is there any evidence that they would have any prospect of success. At best therefore, CCCEF's putative interest in the Order Land is one which it seems could only realistically result in any benefit, either to the charity itself or to those whose interests it seeks to serve, in around three decades' time.
43. In the meantime, on the evidence before me, it seems that there would be little likelihood of the Order Land being put to any beneficial use. For the reasons that I have already set out, it is clear in my view that leaving the land unused for such a length of time would have significant disbenefits for residents of Towerlands Park and for the local community as a whole. Parts of the Towerlands open space and movement networks would remain incomplete. The land would be likely to become an eyesore and a hazard. The opportunity for the provision of housing would be lost or severely deferred, so that the housing needs of some local households would be likely to go unmet. And the land itself would be a wasted and unproductive resource throughout this long period of 30 years or more. In the absence of any realistic plan as to how the land could be brought into any form of use in the meantime, it seems to me that upholding CCCEF's objection would make it probable that the Order Land would become a blight on the area. These considerations carry substantial weight against the objection.



44. As to what CCCEF itself would wish to do with the land, in pursuit of its charitable aims, if and when it gains possession, the objector's submissions contain no indication of any kind. Whilst this may well be understandable, given that this prospect is as yet both distant and uncertain, the lack of clarity in this regard means that there is no basis on which to gauge the scale or nature of the benefits, if any, that might eventually accrue, either to the charity or to the wider public interest. On the evidence available, it is difficult to see how any such benefits, achievable only in the long term, could possibly outweigh the serious adverse planning consequences that would be incurred in the meantime, together with the more immediate, identifiable benefits of the housing development that would follow from the transfer of the land to the AA.
45. Furthermore, if CCCEF's ownership of the land is proven, compensation would be payable in accordance with the statutory code. This would result in a capital sum which would then be available to be used or invested for charitable purposes. There is no evidence to suggest that the amount that would be realised in that event would place the charity at any disadvantage compared to its current position.
46. I note the CCCEF's suggestion that any decision on the confirmation of the Order should await the Land Registry's determination of the charity's claim to ownership. But in view of the above, it seems unlikely that the outcome of that process could affect my conclusions. In these circumstances, I can see no proper reason to delay making my decision on the Order.
47. Overall therefore I find nothing in the CCCEF's objection to outweigh my earlier findings regarding the justification that has been shown for the Order, and the planning benefits that its confirmation would bring to the area.

#### *Human rights and equality*

48. The compulsory acquisition of the Order Land would deprive the rightful owner, whoever that may be, of the right to the peaceful enjoyment of their property. Even though that right cannot currently be exercised, the owner would still be deprived of the right to possession of the land at the end of the existing lease, and thus the confirmation of the Order would infringe their rights under Article 1 of the First Protocol of the European Convention on Human Rights, which is incorporated into UK domestic law by the Human Rights Act 1998. But the right applying under that Article is a qualified one, where such an interference is permissible, where necessary and proportionate, to secure a legitimate public aim.
49. In the present case, for the reasons set out above, I have found that the use of compulsory purchase powers is necessary, to secure the public policy aim of bringing the land into use and developing it to provide housing and public facilities, so as to help meet local housing needs and complete the wider Towerlands Park development. There is no evidence of any alternative, lesser action that could be taken instead to achieve this aim within a reasonable timescale, or without transferring the ownership of the land away from the current owner. The land is not currently occupied and the loss that would be suffered would be limited to the loss of future income or profits from the land. Such losses, where proven, would be capable of being compensated through the relevant statutory provisions. No person would suffer any direct financial or other hardship.

50. In these circumstances, I am satisfied that the interference with the owner's human rights is justified, and therefore lawful.
51. There is also no apparent reason to envisage that the effect of the Order would fall differentially on any persons with protected characteristics. I am satisfied that no discrimination of any kind, either direct or indirect, would result from the Order's confirmation.

*Whether a compelling case has been demonstrated*

52. As set out above, I have found that the development which the Order is intended to facilitate would contribute to the promotion of the area's economic, social and environmental well-being. I have also found that such development would have a clear and realistic prospect of being carried out, and of completion within a reasonable timescale. The compulsory acquisition of the Order Land has been shown to be necessary to achieve these aims and benefits.
53. With regard to the sole objection, I can find nothing to outweigh the clear planning benefits that would be likely to flow from the confirmation of the Order, and indeed it is evident that any other course would be likely to have significant negative consequences for the planning of the area. The necessary interference with the rights of the owner of the land are lawfully justified, and no adverse impacts in terms of equality or discrimination would be caused.
54. In the light of all the evidence, I am satisfied that a compelling case for the confirmation of the Order, in the public interest, has been demonstrated.

**Conclusion**

55. For these reasons, the Order is now confirmed.

*J Felgate*

INSPECTOR