



Compulsory Purchase Order Decision

Inquiry Held on 18 May, 17 August 2021 and 20-22, 26 October and 19 November 2021

Site visits made on 2 September 2021

by Karen L Ridge LLB (Hons) MTPL Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 January 2022

Order Ref: APP/PCU/CPOP/G6100/326737

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

- This Order was made by The Mayor's Office for Policing and Crime under Section 121 of the Local Government Act 1971; Schedule 3, paragraph 7(2) of the Police Reform and Social Responsibility Act 2011; section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981.
- The purpose of the Order is to secure the maintenance of the Metropolitan Police Service's (MPS) operational capacity by enabling the continuation and security of the Vehicle Recovery and Examination Service (VRES) across London for the MPS, and the Forensic Services and the Road and Transport Policing Command Facilities by the retention of the VRES facility at the Order Land.
- The main grounds of objection are the Acquiring Authority has failed to make all reasonable efforts to acquire the Order Land by agreement, the Acquiring Authority 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 Order objectives, the Acquiring Authority has failed to provide evidence of sources of funding and there is no compelling case in the public interest.
- There were two statutory objections outstanding when The Mayor's Office for Policing and Crime submitted the Order to the Secretary of State for Housing, Communities and Local Government for confirmation.
- At the close of the Inquiry there was one remaining statutory objector, namely Segro (Perivale Park) Limited.

Summary of Decision: The Order is not confirmed.

Decision

1. The Mayor's Office for Policing and Crime (Perivale) Compulsory Purchase Order 2020 is not confirmed.

Preliminary Matters

2. By letter dated 18 January 2021 the Secretary of State for Housing, Communities & Local Government notified the parties that the decision as to whether to confirm the Order should be delegated to an Inspector pursuant to section 14D of the Acquisition of Land Act 1981.
3. The Inquiry was programmed to take place on 18 May 2021. Following the opening of the Inquiry, the main objector, Segro (Perivale Park) Limited (hereinafter referred to as SEGRO) made an application for adjournment to enable a recent offer for lease to be considered by the Acquiring Authority

(hereinafter the AA or MOPAC). That application was resisted by MOPAC. After hearing arguments from both parties, I gave an oral ruling adjourning the Inquiry. In a note dated 18 May 2021 I set out the ruling and gave further directions for the conduct of the Inquiry. The Inquiry was re-scheduled and due to resume on 1 September 2021 following the submission of updating statements and short rebuttal evidence.

4. Prior to the resumption of the Inquiry on 1 September 2021 and by correspondence, SEGRO signalled its intention to make a further application for adjournment on the basis that the updating evidence submitted by MOPAC contained entirely new planning evidence from a new witness. SEGRO requested time to respond to this evidence. I therefore convened a case management conference on 17 August 2021 to hear the application for adjournment. After hearing argument, I allowed a further period of adjournment to enable SEGRO to respond to the planning evidence of MOPAC. The Inquiry therefore resumed on 20 October 2021 and sat for 4 days of oral evidence, with closings heard on 19 November 2021.
5. The Inquiry has involved a combination of remote hearings and in-person hearings in response to the operational constraints imposed by restrictions in relation to the Covid-19 pandemic and other events. This has been by agreement with the two main parties.
6. I conducted accompanied site visits on 2 September 2021 in accordance with an itinerary agreed between the parties. Notice of the Inquiry had been given to all concerned parties. There was no challenge to the AA's confirmation that all necessary statutory formalities had been completed.

The Made Order and Requested Modifications

7. On 2 October 2020 the AA made The Mayor's Office for Policing and Crime (Perivale) Compulsory Purchase Order 2020 (the "Order"). The Order was made pursuant to the MOPAC's resolution¹ of 29 September 2020 signed by the Deputy Mayor for Policing and Crime.
8. No modifications are requested to the made Order and I proceeded to examine the Order as published.

Objections

9. There were two outstanding objections at the point that the proposed Order was submitted to the Secretary of State. The first objection was submitted on behalf of SEGRO. It rests upon four grounds; failure to demonstrate reasonable efforts to acquire the land by agreement; failure to demonstrate that the entirety of the land is needed and that there are no alternatives; failure to provide information regarding funding sources; and failure to demonstrate a compelling case in the public interest.
10. The second objection was made on behalf of Ruby's Food Limited in relation to the inclusion of plot 4 in the Order. By letter dated 28 April 2021 this objection was formally withdrawn. Therefore, the Inquiry focused on the contentions of the remaining objector, SEGRO.

¹ DMPC Decision- PCD 844

11. The Scheme would not affect any land or apparatus in the control of statutory undertakers.

The Order Land and Surroundings

12. The Order Land is shown shaded pink on the Order Map². It is located within Perivale, in the London Borough of Ealing some 9 miles west of Charing Cross. The Order Land forms part of the larger Perivale Park Industrial Estate known as Perivale Park. Perivale Park was originally constructed in the 1970s and contains approximately 33 industrial units. These units are used for a wide variety of industrial and storage and distribution uses, with some ancillary office uses.
13. Perivale Park covers approximately 34 acres and is located alongside the A40, within 2 miles of the North Circular Road and onward travel into London. Access to the site by public transport is via Perivale Underground Station, a 15-minute walk to the public entrance of the Vehicle Recovery and Examination Service (VRES) facility.
14. The Order Land comprises two distinct interlinked parcels, both of which the AA say are essential to the VRES Scheme. Parcel 1 is known as Unit 16³ and is the smaller of the two parcels. It contains a steel portal framed warehouse with a two-storey interlinked office pod. Three loading doors provide access to the warehouse from the industrial estate road, with a further loading door on the gable end. Parcel 2 contains the Bilton Centre and comprises a large area of hardstanding for the parking of seized vehicles, as well as offices and a public counter area located along the Walmgate Road frontage and two smaller warehouse type buildings along the internal estate road.

Current Legal Interests in the Order Land

15. SEGRO acquired the freehold interest of Perivale Park on 28 May 2020 from the previous owner HERMES⁴. SEGRO is a leading owner, manager and developer of warehouses and light industrial property with over six million square metres of space in, and around, major cities and across Europe. Its portfolio is valued at £7.4bn serving 1,200 customers. Its Greater London property portfolio includes 12.5 million square feet of light industrial and urban logistics space⁵.
16. MOPAC has occupied the Order Land from 2005, under two leases granted on 21 October 2005. These leases were due to expire on 28 September 2021. The two leases are protected business tenancies under the Landlord and Tenant Act 1954. This means MOPAC had the right to remain in occupation after the expiry of the contractual term, and to apply to the court for a new lease. Twelve months prior to the expiry of the leases MOPAC requested new 15-year leases under section 26 of the Landlord and Tenant Act 1954. SEGRO objected to the application for the lease renewals on the grounds that it intended to redevelop the Perivale site⁶. During the currency of this Inquiry these objections have been withdrawn. I shall return to these matters later.

² Core Document 2.

³ Land Registry Title Number NGL22659

⁴ Britel Fund Trustees Limited and Postel Properties Limited.

⁵ Keep London Working document CD14, page 2.

⁶ ¶1.12 Statement of Case CD11

The Operation of the VRES Scheme

17. For ease of reference the MPS operations on the Order Land have been referred to as the VRES Scheme but it is useful to set out the full range of operations which currently take place on the land. VRES currently provides vehicle recovery, removal, forensic examination, storage and disposal services for the whole of the London Metropolitan Police Service from two centres on the outskirts of London. The Perivale Site is the principal location providing a wider range of services and more sophisticated forensic testing capabilities than its sister site in Charlton, South London. The Perivale site includes the Road Death Investigation Unit. The utilisation of two sites is due to the operational need for two strategically located sites needed to cover all London Boroughs and to be accessible by public transport. The requirements of the operation are for a large parking area and warehousing for forensic and inspection activities in a secure compound, as well as a public counter.
18. Between 1999 and July 2001 the vehicle recovery, forensics examination and storage for the MPS was outsourced to a private company, with vehicles being stored in a number of yards and industrial estates across London. In July 2001 this contract collapsed, leaving 10,000 vehicles for the MPS to dispose of at a substantial cost. Subsequently in late 2001, the dedicated VRES division was created after the MPS opted to bring the entire vehicle recovery, examination and storage in-house.
19. A number of papers detail the options considered regarding potential sites which culminated in a decision to maintain the current two-site operation at Charlton and Perivale to provide the MPS with a site either side of the River Thames to cater for situations when crossing the Thames is problematic due to congestion or bridge closures. The Perivale site became fully operational in mid-2007.

The Case for MOPAC (the Acquiring Authority)

20. The purpose of the Order is to secure the continued operation of the VRES scheme and the Forensic Services and Road and Transport Policing Facilities at the Order Land.

The VRES Scheme

21. On behalf of MOPAC, Mr Burke gave evidence as to the role and importance of VRES. The MPS is the UK's largest police service with 44,000 officers and staff. It holds national responsibilities for responding to counter terrorism and supporting the National Crime Agency. London's population is estimated to increase to ten million by the next decade and it is one of the most visited cities in the world. VRES forms an important and essential service to enable the MPS to continue to fulfil its policing and legal obligations. This includes providing a secondary front-line crime fighting service, predominantly by denying criminals the use of roads and it plays an increasing role in pursuing terrorism-related vehicle crime. VRES provides support in areas such as forensics, data collection, document verification, storage of vehicles and exhibits, terrorism-related vehicle crime, intelligence gathering, firearms and offensive weapons discoveries and disposal, vehicle registration and large-scale incident response.

22. Mr Burke further detailed the incidences of anti-social behaviour on the Order Land which is managed by a dedicated team of police officers. He highlighted the importance of recovering vehicles and transporting them to the compound in order to maintain the integrity of evidence and to minimise the risk of criminal elements seeking to hijack seized vehicles on route to the Order Land compound.
23. Commander Gordon stressed the important role which VRES plays in meeting the objectives of the Mayor of London's Police and Crime Plan 2017-2021 and in enforcing Road Traffic Act and other regulations. It is also used as a safe training area by other MPS units. Across the two VRES sites the MPS processes over 40,000 seized vehicles per annum, with some 16,000 vehicles being disposed of. A significant number of these are either unsafe to drive or are linked to criminal enterprise. The public counter at the Order Land site deals with some 35,000 members of the public annually. The operation is a 24-hour recovery operation, with an anytime collection service for the victims of crime.
24. The need for the continuation of the VRES scheme and its importance to national policing is not in dispute between the parties. Commander Gordon set out the risk of operational failure if the Perivale site or a similar facility is not available⁷. Lack of such a facility would directly impact on the ability of the MPS to gather crucial forensic and intelligence information. The Order Land is of very significant operational importance to the MPS. It currently operates as a large and secure car pound for the storage of exhibits and vehicles seized by police officers in relation to homicide, firearms discharge, rape, attempted murder, armed robbery, kidnap and fatal or non-fatal serious injury collisions. It also houses (one of only four of its' kind in the UK) secure specialist facilities for VRES forensic examinations.

Alternatives

25. MOPAC points to the alternatives it has explored both in terms of sites within its own portfolio and the conduct of a search for suitable sites. It contends that there are presently no suitable alternative sites and no suitable sites have been put forward as alternatives.

Attempts at Acquisition

26. MOPAC contend that it is expedient to use compulsory purchase powers in these circumstances given the need to retain the Perivale site and to secure its continued contribution to the policing of London. It contends that there is a de facto permanent need for the facility and there is a compelling case in the public interest for compulsory acquisition of the Order Land at this time.⁸ In essence MOPAC assert that it is essential that VRES operations at Perivale are protected for the long term and the present and previous owners have refused to give that long term protection.
27. It is further contended that MOPAC has made reasonable attempts to acquire the land by agreement from both HERMES and SEGRO. Offers have been made to purchase the land which have been refused and SEGRO has confirmed that it has no intention of selling the land. It is not a requirement to prove there are no alternative sites available and, in any event, there are presently no available alternative sites and the evidence shows that there is a shortage of potential

⁷ ¶4.1 Proof of Evidence

⁸ ¶13 Opening submissions

alternative sites. Compulsory purchase is available to enable acquisition to take place in the public interest without an agreement to acquire having been reached and the absence of a deal means that a CPO is required.

28. MOPAC explains that SEGRO acquired the site knowing that MOPAC had made a previous offer to purchase the land from HERMES and that MOPAC were contemplating the use of compulsory purchase powers. The request for confirmation of the CPO is made in circumstances where MOPAC are holding over on the lease and VRES will have to vacate the site. The position of MOPAC at the Inquiry was that the only way that the VRES scheme needs could be assured on a permanent basis was the acquisition of the freehold of the Order Land.

MOPAC's Submissions

29. The Vehicle Recovery and Examination Service (VRES) is of critical importance to the effective and efficient policing of London. Its purpose-built home at Perivale is the best operational location. There are presently no available or suitable alternative sites. In those circumstances, MOPAC's expert judgment is that it needs to acquire the freehold of the Perivale site to secure the long-term future of VRES in the public interest. This case satisfies the proper tests for confirmation of the CPO.

Inspector's Reasons

Statutory Provisions and Guidance

30. The Compulsory Purchase Order seeks to acquire rights and ownership of land shown on the Order Map, as detailed in the Order Schedule, for the purpose of securing the continuation of operations under the VRES scheme at the Order Land.
31. The Order is made under section 121 of the Local Government Act 1972 (the LG Act); Schedule 3, para 7(2) of the Police Reform and Social Responsibility Act 2011 (the PRSR Act); section 13 of the Local Government (Miscellaneous Provisions) Act 1976 (the LG(MP)Act) and the Acquisition of Land Act 1981.
32. MOPAC was established, in respect of the Metropolitan Police District, as a corporation sole, under section 3 of the PRSR Act. It replaced the Metropolitan Police Authority which was abolished by section 3(12) and whose property, rights and liabilities were transferred to and vested in MOPAC by Schedule 3, paragraph 5 of the PRSR Act. The Mayor of London for the time being is the occupant for MOPAC and, under section 19 of the PRSR Act, may arrange for any function of MOPAC to be exercised by the Deputy Mayor for Policing and Crime.
33. The statutory duties of MOPAC are set out in the PRSR Act and include the duty to secure the maintenance of the Metropolitan Police Force and ensure that it is efficient and effective⁹. The Act further provides that MOPAC has power to enter into contracts and agreements and to acquire and dispose of property (including land)¹⁰.
34. MOPAC is a principal council for the purposes of sections 120 and 121 of the LG Act, which provide the power to acquire land by agreement for the "*purposes of*

⁹ Section 3(6)

¹⁰ Schedule 3, paragraph 7(2)

any of their functions under this or any enactment". Section 12 of the LG Act provides compulsory powers of acquisition upon authorisation of the Secretary of State for those same purposes. Similar provisions are contained within the LG(MP)Act. Section 13 of that Act enables MOPAC, as a local authority, to compulsorily acquire new rights over land specified in a CPO. The rights sought under these provisions relate to the right to pass and repass with, and without, vehicles across the estate roads and the free and uninterrupted passage to and from the Order Land.

35. The Government's most recent and updated guidance on confirming Orders is contained within the "*Guidance on Compulsory purchase process and The Crichel Down Rules*" (the Guidance or the CPO Guidance) which states that AAs should use compulsory purchase powers where it is expedient to do so, and an Order should be made only where there is a compelling case in the public interest. The AA should demonstrate that they have taken all reasonable steps to acquire land and rights included in the Order by agreement. Compulsory purchase should only be a last resort to secure the assembly of land¹¹.
36. The CPO Guidance further states that any decision whether to confirm an Order will be made on its own merits, but the following factors may be considered:
- i) whether the purpose for which the land is being acquired fits with the adopted local plan for the area;
 - ii) the extent to which the purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area;
 - iii) whether the purpose could be achieved by other means, such as through alternative proposals; and
 - iv) the potential financial viability of the scheme for which the land is being acquired.

This case is highly unusual in that the CPO is being sought to ensure the continuation of a use which is already established on the Order Land, unlike most CPOs whereby land is being sought to enable a scheme or development to proceed. As such the CPO is not intended to facilitate a prospective scheme but to ensure continuation of the VRES scheme. I have not been directed to any precedents in which the AA is already in occupation of the land which it seeks to compulsorily acquire.

37. Considerations as to conformity with the development plan and national policy are therefore of limited relevance given that the VRES scheme is an existing use on an existing industrial estate. Similarly, considerations as to economic, social and environmental wellbeing are of less relevance given that the VRES scheme is not a prospective scheme and the need and national importance of the scheme is freely and rightly acknowledged by the objector. The contribution which the VRES scheme makes to the policing of London and wider national security interests is not in doubt. In this sense the VRES facility already makes a significant contribution to economic, social and environmental wellbeing.
38. For the sake of completeness, it is noted that financial viability considerations, as distinct from funding considerations, are not relevant given that the VRES scheme is fulfilling important statutory policing functions. Considerations as

¹¹ Paragraph 2 ibid

to whether the proposal can be achieved by any other means, including through alternative proposals, sit at the heart of the dispute between the parties and are dealt with at length below.

39. Having regard to the statutory requirements, the guidance, and the unusual facts of this case I have concluded that the main considerations fall into the following categories:

- Requirement for the Order and availability of necessary resources,
- Whether there have been reasonable attempts at land acquisition,
- Can the objectives be achieved by other means, including utilising existing sites (the Northolt option), searching for alternative sites, or accepting a lease of the Order Land;
- If a long lease is acceptable, can it be assured in the event of non-confirmation of the Order,
- Is there a compelling case for making the Order in the public interest.

Requirement for the Order and the Availability of Necessary Resources

40. I have already set out the importance of the VRES scheme. Commander Gordon gave evidence as to the changes in operational demands which have been seen recently, for example the use of electric scooters has increased exponentially over the pandemic and has resulted in seizure of over 300 vehicles. Over the last few years Commander Gordon confirmed that forensic capabilities have also increased. He said that the introduction of carbon neutral policies, allied to government cycles, make it more difficult to predict operational needs much beyond 5 to 7 years. He believed that there may be a greater need for space in the future such that the Perivale site may not be sufficient. MOPAC contend that the Order is required to secure the VRES facility by acquisition of the freehold interest. I conclude that a VRES facility and its continued operation is essential in the immediate and medium term in ensuring the effective policing of London.
41. The Guidance makes it clear that the AA need to show that all necessary resources are likely to be available within a reasonable timescale¹². Funding for acquisition of the site was approved in May 2020 by MOPAC which, as a public body, has a significant budget. Whilst the figure is not disclosed, as it affects negotiations over the price, the approval recorded that it would be funded from the monies, some £78m, previously committed to re-provide VRES at Northolt. This is more than SEGRO's own assessment of the market value of the Order Land which they put in the low £60millions. Given that the likely cost of any compensation payable for the loss of the freehold interest is likely to be materially less than the committed funds, I am therefore satisfied that the resources necessary to meet compensation costs would be available if the Order was confirmed.
42. Finally, I am further satisfied that, in the event that the CPO was confirmed that there would be no impediments to delivery of the VRES scheme. Confirmation of the CPO would effectively ensure continuation of an existing lawful use on the site. No planning or other regulatory consents are required.

¹² ¶13 Ibid

Attempts at Land Acquisition

43. The approach by MOPAC to the question of compulsory acquisition has evolved prior to, and during, the CPO proceedings. MOPAC first occupied the Order Land in 2007, since when its operations have evolved in terms of operational activities and there has been investment in the facilities in the Order Land commensurate with the carrying out of its statutory policing duties. Mr Mathieson gave evidence that investment has been curtailed in recent years due to the impending end of the lease periods.
44. Anticipating the end of the 15-year lease, MOPAC held initial discussions with HERMES regarding lease renewal. In late 2018 MOPAC wrote its VRES Continuity Project Outline Business Case¹³ (OBC) to explore various options. Knight Frank had been commissioned to search for alternative sites and it was agreed that the feasibility of moving the operation to a MOPAC owned site at Northolt should be explored.
45. The iteration of the OBC dated May 2020 contains a careful exploration of the medium-term risks to the operations at Perivale and set out to explore the strategic options previously set out in the Strategic Outline Case. At that point the previous landlord, HERMES, had agreed in principle to extend the lease for up to 3 years. It is also fair to point out that MOPAC, at this point, was unaware of the availability of CPO powers.
46. Following the OBC, MOPAC re-engaged with HERMES to try to obtain the 10-year lease recommended in the OBC. At that point HERMES indicated a willingness to offer a 10-year lease of Unit 16 but only a 3-year lease on the Bilton Centre. In May 2020 MOPAC made four key decisions: to enter negotiations with HERMES for the purchase of the Order Land; to explore whether MOPAC had CPO powers; not to proceed with a 3-year lease extension until satisfied that the Northolt site could be delivered; and to pause the Northolt option since it was sub-optimal but instead to keep it as an 'emergency back-up'.¹⁴
47. Offers to purchase the freehold were made by MOPAC to HERMES who did not respond. HERMES at this time were also informed that MOPAC were considering the use of compulsory purchase powers. Given the lack of any alternative sites known to MOPAC at that time and given the offer of a limited 3-year lease period and the critical importance of the VRES facility, it was entirely understandable that MOPAC should seek to explore its position with regards to the use of a CPO. MOPAC's property agent, Mr Warren, then became aware of a possible sale of the entire Perivale estate to SEGRO and he informed the agents for SEGRO (Mr Kington) that CPO powers were being contemplated for the two units. Therefore, SEGRO were on notice of the potential use of CPO powers prior to the point of purchase of the Perivale estate.
48. SEGRO purchased the Perivale estate in May 2020. A press release following the purchase announced SEGRO's intention at that time to redevelop the MOPAC site, referring to the vehicle compound as having medium term development potential¹⁵. This was confirmed by the evidence of Mr Holland who explained that the purchase was predicated on a business plan which

¹³ CD31

¹⁴ PCD747

¹⁵ MOPAC SOC ¶4.5.6

- assumed an early redevelopment of the 7.8 acre MOPAC compound/car park site, some three years after the lease expiry date in 2021.
49. Following this MOPAC repeated its offer to purchase the freehold for the two units it occupied from SEGRO. At around this time MOPAC became aware that it did indeed have powers to compulsorily purchase the land.
 50. The Addendum Outline Business Case published in August 2020 updated the economic case in terms of future options. The future options were the purchase of Perivale, a long-term lease of Perivale or a new build at the MOPAC owned Northolt premises. The options were evaluated from different perspectives (capital cost, revenue cost, overall total cost, net present social value, qualitative impact analysis and risk analysis). The composite evaluation noted that the purchase option scored well on most factors but overall put the long-term lease as the preferred option¹⁶. Building at Northolt scored badly across all categories but was retained as a contingency despite its acknowledged significant disadvantages.
 51. On 29 September 2020, on behalf of MOPAC, the Deputy Mayor for Policing and Crime took the decision to exercise CPO powers by Resolution¹⁷. Alongside progression of the CPO process, the Deputy Mayor also authorised negotiations with SEGRO regarding a long-term lease that secured the provision of the VRES functions and further confirmed that any lease agreement must be approved by MOPAC. Authority was also given for service of a notice under the Landlord and Tenant Act 1954 requesting a renewal of the leases.
 52. The CPO was made and advertised. SEGRO and others objected to the making of the Order. In the Landlord and Tenant Act proceedings SEGRO issued a counter-notice against the lease renewals stating its intention to redevelop both plots. The actions of both parties at this time are essentially the prudent actions of a commercial landlord seeking to protect its business interests and the actions of a prudent public body seeking to secure continuation of a highly important service.
 53. Discussions as to a possible freehold swap of the Order Land in exchange for the Northolt site, and a cash sum to SEGRO, came to nothing. SEGRO did not want to part with its freehold interest of the Order Land and MOPAC had understandable difficulties with any off-market sale given that it would not pass the value for money test applied by public entities. Whilst there is criticism levelled at MOPAC for failure to disclose this option to the Deputy Mayor, I am satisfied that a reasonable decision was taken that such a swap was inappropriate and therefore the matter was not progressed. I say this because best value principles demand that deals with public monies are generally done on an open market basis with open competition to secure value for money.
 54. In May 2021, a short time before the Inquiry was due to commence, SEGRO made an open offer to MOPAC of a 15-year lease, renewable for a further 15-year term (a 30-year lease) within the ambit of the 1954 Act¹⁸. When MOPAC indicated that there was insufficient time to consider the offer, SEGRO made an application for an adjournment which was contested. As previously indicated, I ruled that the open offer of a 30-year lease was worthy of consideration given

¹⁶ ¶175 Addendum OBC CD33

¹⁷ CD7

¹⁸ Landlord and Tenant Act 1954

that it may have satisfied the stated aims of MOPAC regarding the need for continuation of the Scheme on the Order Land and as such it represented a genuine attempt by a landowner to obviate the need for compulsory acquisition. This offer came to nothing and the Inquiry proceeded.

55. In its position statement of 6 August 2021 MOPAC clearly set out that acquisition of the freehold interest was the only solution to securing continuation of the VRES scheme.
56. Mr Harwood contends that the requirement to demonstrate reasonable steps have been taken to acquire all of the land and rights included in the Order by agreement is concerned very clearly with acquisition of the freehold and that the use of compulsory purchase as a 'last resort' is as a means of acquisition of the land, noting that compulsory purchase may need to be initiated to prompt a landowner to do a deal. As an aside here, I note that publication of the CPO does appear to have had the effect of eliciting offers of longer leaseholds. Mr Harwood further says that there is no policy requirement to negotiate a lease as an alternative to a CPO and still less where the AA concludes that a lease is not expedient.
57. Firstly, having regard to the above chronology, I conclude that the AA made reasonable efforts to acquire a freehold interest in the land. Turning to Mr Harwood's other arguments: it may well be that the requirement, to demonstrate reasonable steps at voluntary acquisition, was so worded as to refer to the acquisition of a freehold. This is the most likely interpretation of the guidance given that the Guidance appears to envisage a situation in which an AA has no interest in the land which is needed for a stated objective.
58. I accept that there may be no policy requirement or imperative imposed by the Guidance to seek to negotiate a leasehold interest before turning to compulsory acquisition of a freehold¹⁹. That is hardly surprising given that powers of compulsory acquisition are usually exercised for permanent schemes such as road schemes or the purchase of residential houses/flats and businesses required for regeneration schemes. In most circumstances a leasehold interest will not be sufficient. However, I remind myself again of the unusual circumstances of this case, when the AA is already in occupation of the land and has a prospect of securing a long lease. In this scenario the prospect of a long lease may be the 'other means' by which the objectives could be secured. I shall proceed to examine these matters.

Achieving objectives by other means

59. This consideration falls broadly into three categories: utilisation of MOPAC's existing estate in the form of the Northolt site; the search for, and availability of, alternative sites; and whether a leasehold interest would be sufficient to achieve the objectives.

The Northolt Option

60. The head of the VRES, Mr Burke, gave evidence about the services and facilities at the Order Land, as well as the general requirements of the VRES in terms of a site to operate from. He confirmed that a large, flat open site is needed in north west London, mainly due to the type of vehicles seized and the volume and nature of activities undertaken.

¹⁹ Closing submissions ¶20

61. In June 2019 Gleeds surveyors presented its Northolt Feasibility Study²⁰ regarding relocation of the VRES facility to the MOPAC owned site at Northolt. Five different options were considered. These included demolition of the existing Northolt buildings and provision of a bespoke 2-storey building, with the forensics and other facilities remaining at Perivale, so a split site solution. Option 2 also assumes a split site solution with forensics and some storage moving to Northolt with the majority of vehicles being stored elsewhere. Option 3 assumes storage at Northolt with forensics remaining at Perivale. Option 4 assumes a single site solution with a 3-storey building and vacation of the Perivale site. Option 5 was for relocation of the forensics team only to Northolt and partial retention of the Perivale site.
62. Mr Burke gave a comprehensive explanation as to the reasons behind the need for the VRES facilities to be located on a single large site. These included the logistics of moving vehicles whilst preserving evidence, risks to the continuity of the chain of evidence, delays in moving staff between sites and the security of the site, exhibits and personnel. This evidence was detailed and persuasive and I conclude that Mr Burke's assessment as to the site criteria needed to accommodate the VRES operation prove an accurate representation of requirements.
63. Due to the size of the Northolt site a multi-storey solution had to be considered to provide the operational and storage space required. Mr Burke explained the difficulties with a multi-storey solution which would be necessary in the event of a transfer of operations to Northolt. Difficulties would include manoeuvring larger vehicles, many of which are undriveable, to upper storeys around building support columns using vehicle lifts. I am satisfied that operating the VRES facility on a multi-level site would represent a sub-optimal solution and would compromise the safe and efficient operation of the facility.
64. For the above reasons Northolt was dismissed as a realistic option due to its constrained size. On behalf of SEGRO, Mr Kington suggested that consideration should have been given to acquisition of the neighbouring sites to Northolt in an attempt to expand the site area. Mr Warren confirmed that consideration had been given to adjoining land parcels but that the holdings were across different ownerships and tenures and it was deemed impracticable. The site at Northolt is constrained in that it is bordered by the canal to the rear and the road frontage. Expansion could be southwards by acquisition of the freehold interest of Empire Bespoke foods site. Immediately to the north of the Northolt site the land interests are in more diverse ownership, two separate and distinct freehold sites have been let to three tenants.
65. I accept that there is no evidence of approaches being made to the landowners of adjoining sites to ensure that expansion of Northolt was not possible and if this had been done, there could be no doubt that Northolt was not acceptable. However, Mr Warren on investigating the titles and landholdings came to the conclusion that this was not a feasible or likely option and was not worth pursuing further. Acquisition of the land to the north would have required three existing tenants relinquishing their interests and moving off the land. Acquisition of land to the south would have involved Empire Foods selling its interest and leaving what appears to be a fully utilised office building. Given the events which would have to occur and align before expansion of Northolt, I

²⁰ CD29

am satisfied that Mr Warren made a sensible calculation that it was highly unlikely that these interests could be acquired voluntarily.

66. Use of compulsory acquisition powers to dislodge existing tenants and acquire the freehold of the adjoining sites to Northolt was also raised. I accept the MOPAC contention that, as a public body, it would have been inappropriate to seek to use CPO powers in circumstances where it could use CPO powers elsewhere without the need to dislodge any active business operations from an existing site.
67. For the above reasons I conclude that the Northolt option was satisfactorily investigated and reasonably discounted as a viable option. It does not represent a reasonable means by which the objectives could be achieved.

The search for alternative sites

68. Mr Burke gave evidence that the service could be relocated if a suitable site could be found, although such an option would entail increased staffing costs and operating a dual operation for a time. He said that such a site would have to have sufficient flat, open space to securely store over 900 vehicles; good public transport links and good access for recovery vehicles; good security arrangements and the site would have to be a strategically appropriate location.
69. Mr Warren of Knight Frank was instructed in 2018 to conduct a search for alternative sites on behalf of MOPAC. Mr Warren sent a circular to London industrial agents informing them that he had a client looking for a site of between 6 and 9 acres of industrial land. In evidence Mr Warren said that they would have considered anything up to 12 acres²¹. Mr Warren also informed his 13 colleagues of the potential requirement so that they could also "keep an eye out" and inform him of any potential opportunities. This approach yielded 4 potential properties, but they were not situated in the right locations. In 2018 Mr Warren confirmed that there was still a firm plan to develop Northolt, but he was asked to keep a watching brief on the market.
70. During the next phase Mr Warren did a geographic information search and examined all landholdings over 6-8 acres in single ownership to see if any may be suitable. He confirmed that this exercise yielded mainly shopping centres and office parks, with very few vacant land plots and some development plots which have mostly been designated for residential development. Mr Warren confirmed that there has been a notable shortage of industrial land in London in recent years²².
71. Mr Warren explained that transactions in relation to industrial land are often opaque, with many deals being conducted 'off market' by virtue of agents putting sites to select groups of clients rather than open marketing. He contended that the need to act quickly placed MOPAC at a disadvantage as a public sector organisation making decisions by resolution which effectively delegates authority to officers to take certain actions. In my view it would have been possible for a general resolution to be made authorising negotiations with broad parameters to take place on a commercial site, with a final MOPAC

²¹ Whilst my typed note of Mr Warren's evidence records 9-13 acres, I accept that this may have been a typographical error on my part when taking a contemporaneous note of the evidence. Be that as it may, whether it was 9-12 acres or 9-13 acres the difference is immaterial.

²² SEGRO Report 'Keep London Working' at CD14.

approval, prior to commitments being entered into, much in the same way that the resolution to make the Order was taken.

72. Mr Warren and MOPAC were criticised for being insufficiently proactive and for adopting narrow search criteria. It is apparent that at the time that Northolt was under active consideration between 2018 and 2019, the search involved more of a watching brief for sites. At the end of that period a more active search was again undertaken, and particulars of the site required were again circulated. In his oral evidence Mr Warren confirmed that in 2020 he was instructed to look at both leasehold and freehold options in his search for alternative sites.
73. On behalf of SEGRO, Mr Gomez-Baldwin conducted an exercise in examining site transactions²³ which occurred between January 2018 and April 2021. Mr Warren contends that the large majority were not openly marketed on a formal basis but that, with the possible exception of the Tottenham site at White Hart Lane, the sites were not suitable for the VRES facility. Mr Warren further suggested that, as a sui generis use, MOPAC would have to be confident that they would be entitled to carry out the VRES operations on any acquired site in terms of the necessary planning consents.
74. The list of transactions produced demonstrates that industrial sites did become available, but it is notable that over a 3.5 year period the list of transactions runs to 9 identified transactions. Some of the sites would have been too small for VRES or in the wrong location. Whilst Mr Warren pointed to possible planning difficulties on other sites (for example Pentavia Retail Park), there is evidence to suggest that those difficulties were overcome by Amazon in its eventual acquisition of the Pentavia site. Mr Gomez-Baldwin also identified a list of seven development sites²⁴ which it considered may become available over the next few years. None are being marketed currently. Mr Warren confirmed that all of these potential sites were either unsuitable, in the wrong area or had delivery uncertainties.
75. SEGRO further identified three retail parks which may have been suitable. Mr Warren considered that planning permission for a change of use would be difficult to achieve and the location of retail parks in prominent locations were likely to be unsuitable for VRES. The lists produced by SEGRO were described as illustrative, in an attempt to demonstrate what types of sites could have been available for consideration by MOPAC. Whilst they are illustrative, detailed examination points to the limited number of opportunities and the difficulties in achieving a site which would reasonably align with the VRES selection criteria.
76. MOPAC's planning witness Mr Jackson-Browne was instructed late in the inquiry process and following the adjournment and he sets out the planning hurdles in terms of moving the VRES operation to an alternative site. His view was that on any suitable site identified there would be competition from other uses with direct planning policy support.
77. On behalf of SEGRO Mr Bashford was more optimistic about the possibility of VRES securing planning permission on an alternative site. His analysis was robust, looked at the whole policy canvas, including significant policy support

²³ Appendix 10 PoE 20 April 2021.

²⁴ Ibid Appendix 11.

for the nationally important function of VRES²⁵. Mr Bashford further pointed out that, in circumstances where a 30-year lease was on the table, that would provide sufficient opportunity to enable negotiations with adjoining landowners on either side of the Northolt site and to secure planning permission for an alternative use. It must be acknowledged, however, that the timing/phasing of these acquisitions are likely to be difficult to synchronise and may result in speculative acquisitions which are unattractive to MOPAC.

78. Mr Bashford was persuasive in his contentions that early engagement of a planning professional may have opened up additional planning opportunities in relation to the identification of an alternative site. I accept those contentions.
79. In terms of the approach of MOPAC to the site search exercise, it is evident that there was an initial push to investigate the industrial estate market and identify potential alternative sites. During investigation as to the feasibility of Northolt, the search was downgraded to a watching brief. Subsequently, there were calls to the market for sites to be identified but there were limited attempts to use more innovative methods to flush out potential sites by being more pro-active.
80. Concluding remarks on site search: I acknowledge that there is considerable pressure on industrial sites in London and concerns regarding the supply of industrial sites, the quantity of which has reduced in recent years. That much is acknowledged by SEGRO's own research paper²⁶. In addition, there appears to be a limited number of sites which would meet the search criteria in relation to the VRES operation in any event. Finally, within the relevant period of search there were no available, suitable alternative sites which came to the attention of Mr Warren. Knight Frank is a large and respected property management company with contacts across the industrial estate market and I am satisfied that Mr Warren sought to utilise the combined market knowledge of his colleagues in his identification of an alternative.
81. The search was not as pro-active or innovative as it could have been and there were other options, such as expansion of Northolt, which could have been more fully explored. In addition, there was a limited failure to appreciate and seek to optimise policy support for an important national facility by pre-emptive engagement with local planning authorities and existing industrial landowners. It will not be known if this would have yielded results and given the acknowledged difficulties in securing industrial sites, it is difficult to calibrate the chances of success of such an approach. On balance and having regard to the evidence in its entirety, I am satisfied that the search undertaken on MOPAC's behalf was reasonable in its scope and intensity and it was of sufficient duration given the impending expiry of the lease term and the need to explore all options.

Whether a leasehold interest would be sufficient

82. As already stated, this is an unusual CPO case in that the AA is already a leaseholder on the land of which it is seeking to acquire the freehold. MOPAC has operated its VRES facility on the site under the terms of the existing leases since 2007 without impediment. During evidence it was accepted by Commander Gordon and Mr Burke that the operation under a leasehold interest

²⁵ London Plan policies GG^ and D11

²⁶ Ibid

- had been unproblematic. Evidence was given as to the potential disruption to the service if the VRES operations had to be relocated, although Commander Gordon confirmed that a move to an alternative site was achievable and that contingency planning had taken place if the CPO was not to be confirmed. Mr Mathieson confirmed a reluctance to invest in the site towards the end of the lease period due to the uncertainty relating to continued occupation of the site.
83. Having regard to my conclusions regarding the lack of suitable, available, alternative site and the disadvantages of the Northolt option, I do accept that the best solution for the effective and efficient policing of London is for VRES to remain at Perivale from where it has successfully operated for a number of years.
84. Previously as MOPAC explored its options, the OBC and Addendum OBC countenanced both leasehold and freehold interests as possible solutions to continuation of the VRES facility and these documents express a preference for a long leasehold interest. The resolution to make the Order sets out the purpose as continuity of the VRES, and it mandates making a CPO to acquire the Order Land "*whilst continuing to negotiate for the acquisition or long lease with the landlord*". It anticipates that the stated purpose could be satisfied by either freehold acquisition or long lease. Mr Mathieson sought to explain that inclusion of a resolution authorising negotiations of a long lease was at the behest of the Deputy Mayor given her high regard for SEGRO. However, MOPAC is a public body whose officers act according to resolutions and it is my view that the resolution would have been carefully crafted to set out all steps necessary to give effect to a carefully developed strategy designed to secure the VRES operation.
85. There is a difference between the parties as to whether the resolution provides an *option* for MOPAC to enter into leasehold negotiations alongside progression of the CPO, as opposed to a firm direction or *mandate* to be acted upon. Irrespective of this, it was still incumbent on MOPAC to seek to demonstrate that its objectives could not be satisfied by any other means in the CPO process and those other means must reasonably have included a leasehold interest which had so clearly been in its contemplation up to the resolution being made.
86. The Statement of Case which sits behind the published Order sets out the basis on which confirmation of the Order was sought, and it bears repeating here:
- "...to secure the maintenance of the Metropolitan Police Service's (MPS) operational capacity by enabling the continuation and security of the Vehicle Recovery and Examination Service (VRES) across London for the MPS, and the Forensic Services and the Road and Transport Policing Command Facilities by the retention of the VRES facility at the Order Land."*
87. In April 2021 Mr Mathieson's proof repeated that the preferred option in the OBC was a leasehold agreement, closely followed by freehold acquisition. The offer of a 30-year lease²⁷ came shortly before the Inquiry was due to start and at that point MOPAC indicated that, given the limited time available, they did not see any prospect of reaching agreement. In opposing the application for an adjournment Mr Harwood confirmed that the principle and the detail (of a long lease) were not agreed. He further went on to say "*MOPAC is happy to negotiate but the assumption that MOPAC would like a long lease is not*

²⁷ It is in fact a 15-year lease, renewable for a further 15-year term but for ease of reference I shall continue to refer to it as the offer of a 30-year lease

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.”²⁸

88. At that point it appears that MOPAC were turning away from the idea of a long lease. However, during his submissions in opposing the adjournment, it was not said in terms: there is no point in adjourning to consider any form of lease because it will not be acceptable irrespective of the terms. That position appears to have crystallised following the adjournment as evidenced by the email of Mr Mathieson to Mr Gomez-Baldwin of 15 June 2021²⁹ in which he states that due to the “...substantially enhanced risk profile, the previous view that a 15-30 year lease could be acceptable is now no longer the case”. In his oral evidence Mr Mathieson reiterated that the 30-year lease was not acceptable and responded that the only acceptable form of a lease would be a 999-year lease, essentially the equivalent of a freehold interest.
89. Mr Harwood further points out that, in conducting negotiations, an AA is required to consider value for money. He says that there is no requirement that the AA should enter into a lease on commercially disadvantageous terms and that there is no suggestion that it should negotiate lease terms which would cost the public purse more than the potential liability for the CPO of the freehold interest.
90. During the Inquiry process MOPAC has revised its position from a preference in acquiring a long leasehold interest to a position whereby it contends that acquisition of the freehold is deemed expedient and the only option able to satisfy the stated objectives. I consider that any arguments in relation to achieving value for money or best value are, on their own, unlikely to constitute compelling reasons to justify the use of CPO powers. There are likely to be instances of public bodies, with CPO powers, having leasehold interests in sites. The fact that freehold acquisition may represent best value or better value for money than a leasehold interest is unlikely to amount to a compelling case in the public interest for the exercise of those powers.
91. There are three other points to make in relation to the above contentions: firstly, Mr Harwood is not comparing like with like, there are different considerations when deciding whether a negotiated leasehold interest or a compulsorily acquired freehold interest represents the most suitable option. Not only are the monetary considerations different; a lease offers more flexibility in terms of extricating the operation from the land; and compulsory acquisition requires a balance to be struck and consideration of the extinguishment of private property rights. It is not simply a matter of the cheapest option representing best value and equating to a compelling case in the public interest. Secondly, the cost of confirmation of the CPO is unknown at this point, if it is confirmed then the compensation payable will be subject to separate assessment under the compensation code. Thirdly, SEGRO has made offers for lease subject to an independent arbitration process regarding the setting of rents.
92. MOPAC has established a need for continuation of the use in circumstances where there is a distinct lack of alternatives, but it also has the option of a 15-year lease with a right to renew. MOPAC contend that a 15 year or 30-year

²⁸ Taken from my ruling of the adjournment request and my notes of Mr Harwood’s submissions

²⁹ Appendix 7 to the Proof of Evidence of Mr Gomez-Baldwin.

lease would not provide the long-term security which MOPAC need and that only a freehold interest will do. I do not accept this proposition for a number of reasons. Firstly, MOPAC have happily operated the VRES site under a 16-year lease and this has been 'unproblematic'. Secondly, as that lease neared its end, MOPAC was pursuing a plan of seeking to negotiate a longer lease. Commander Gordon gave evidence as to the time horizons over which operational planning can take place, 5 years provides the most certainty. As one approaches 30 years it becomes extremely difficult to predict operational needs in terms of what will be required by the MPS, the strategic location in which those operations should be set and the availability of industrial sites in the correct location. These variables come into play and make planning at 30-years little more than a speculative exercise.

93. Mr Mathieson explained that it is inevitable that there will still be crime long into the future and some of it will be transport related and that criminal investigations are likely to become even more complex which emphasizes the need for flexibility. He considered that there was a high degree of probability that VRES would be required well beyond 30 years.
94. Counsel for SEGRO, Mr Wald highlights the wording of the Guidance at paragraph 13 regarding the need for an AA to have a clear idea as to how it intends to use the land and which goes on to record that in the absence of such clear intentions, it would be difficult to show conclusively that compulsory acquisition is necessary, at least at the time of making the Order. He contends that the AA does not know what its long-term future need for the land might be and in circumstances where there is a leasehold interest on offer, there can be no justification for permanent acquisition. This argument holds some force.
95. In an age when transport and work patterns are evolving at an increasing pace, the time horizons over which needs can be reliably predicted reduce. There will undoubtedly be crime in the future. It is unlikely that the needs of the VRES facility will remain static, the facility and operations will continue to evolve in light of advances in forensic techniques and in response to changes in criminal activity patterns. The only matter which can be confidently predicted is that the requirements of the VRES facility in 30-years-time are highly unlikely to be the same as they are today. The operation may require more land, or it may require less. If it requires more land it may be that a third site is needed. There may be improvements in terms of reduced requirements for storage of vehicles if evidence is, for example, digitally recorded. In my view these matters cannot be known or reliably predicted at this time.
96. In addition, there may be a change of ownership of the freehold or a change in strategy of SEGRO meaning that the current landlord may, at some point in the next 30 years be willing to sell the land. In short, I am not satisfied that it has been established that at a point some 30 years in the future it is probable that the site will be required in its present form, that there would be no alternatives available at that time or that MOPAC would be faced with a landlord unwilling to either extend the lease or sell the freehold. These matters cannot be known at this time.
97. I therefore do not accept that MOPAC have established on the evidence that there is a 'permanent need' for the site³⁰. A need for the site in the short and

³⁰ Mr Harwood's contention that there are compelling reasons to seek compulsory acquisition as (a) the lease has expired and MOPAC have no rights to continue occupation and (b) there is a permanent need. ¶17 closing

medium term has been established but it has not been established beyond 30 years. This situation is unlike a new road scheme, where there is a strong probability that land will be required for a new road in perpetuity³¹.

98. The use is already in operation on the Order Land. It has been in occupation at the Order Land under the terms of a lease since 2007. There is no substantive evidence to persuade me that, if a 30-year lease could be secured, the VRES operation would be in difficulties. Even if the site was needed in 30 years and there were no suitable, available, alternative sites and there was a landlord unwilling to sell or offer a long lease, there is no suggestion that CPO powers would not be available at that time.
99. For the above reasons I conclude that, in principle, a 15-year lease, renewable for a further 15-year period would satisfy the stated objectives in terms of providing security of continuation of the VRES operations on the Order Land.

The Mechanism by which leases could be secured if the CPO is not confirmed

100. One of the key disputes at the Inquiry was the confidence which could be placed upon the offer of a 30-year lease remaining open to MOPAC if the CPO is not confirmed. The offer of a 30-year lease had been made shortly before the adjournment. At that point MOPAC had issued proceedings under the Landlord and Tenant Act for new tenancies and SEGRO had served counter-notices setting out its opposition to the grant of new leases. These counter-notices were withdrawn on the first adjournment. At the point of the resumption of the Inquiry on 20 October 2021 the two leases³² had expired and MOPAC are now holding over pending determination of the Landlord and Tenant Act proceedings.
101. Following the first adjournment I directed that both parties be at liberty to submit position statements prior to the resumption of the Inquiry. In its position statement of 6 August 2021 MOPAC explained that its current position was that the need for the VRES facility is permanent and that the negotiations had reinforced the impossibility of finding a leasehold solution which would provide MOPAC with long-term security. MOPAC say that withdrawal of the counter-notices in the Landlord and Tenant Act proceedings did not bind SEGRO who could still resist the grant of new leases within those proceedings. It contended that the assumption must be that, if the CPO is not confirmed, then the MPS would have to vacate the Perivale site and that would result in a service delivery failure for the critical VRES service.
102. In its Position Statement SEGRO reiterated its offer of long leases on the detailed heads of terms set out in Mr Kington's statement³³ of 14 May 2021. The leases were to be made within the security of tenure provisions of the 1954 Act. SEGRO set out its belief that it had gone much further than might reasonably be expected of a landowner under threat of compulsory acquisition and that SEGRO had made concerted efforts to devise a lease offer which met the stated objectives of the CPO.

³¹ Here I take perpetuity to mean either the prescribed statutory period of 125 years under the Perpetuities and Accumulations Act 2009 or the optional statutory period of up to 80 years under the Perpetuities and Accumulations Act 1964.

³² Inquiry documents 22 and 23

³³ Appendix 2.

103. Following the resumption of the Inquiry on the 20 October 2021, and after hearing oral evidence over two days, I raised the question of the potential legal mechanism which was, or could be put, in place to provide reassurance that the lease offers would remain open to MOPAC following determination of this matter. This resulted in SEGRO issuing its 'Lease Offer Position Paper' and 'Assurance Paper' accompanied by two agreements for lease, two leases and a deed of covenant³⁴ shortly before closing submissions were due. On behalf of MOPAC Mr Harwood explained that, given the volume of documentation he would not be in a position to respond in his closing submissions. There was a reasonable request for a period to enable both parties to make legal submissions in relation to the mechanism for securing the lease offers. Following this MOPAC issued its Response to SEGRO's Lease Offer Position Paper and SEGRO provided its response in reply³⁵.
104. The documents reveal that SEGRO puts forward three distinct mechanisms which, it says, the Inquiry and MOPAC can be assured would secure the continued occupation of VRES at Perivale in the event of non-confirmation of the Order, namely:
- an offer of two new 30-year leases;
 - an agreement for lease offer; and
 - a covenant in relation to the Landlord and Tenant Act proceedings.
105. Offer of new 30-year leases: the offer of 15-year leases, with the possibility of renewal for a further 15 years, was originally made on 13 May 2021. The parties had discussions regarding possible terms from that point. At the close of the Inquiry three matters had not been agreed in relation to the leases: the length of those leases; the rent and any rent-free periods; and the scope of pre-emption rights. Essentially SEGRO was offering first refusal to MOPAC if it severed the Order Land from the rest of the industrial estate and offered it for sale. This was not agreed given the greater likelihood of sale of the industrial park as a whole.
106. To give effect to the above, SEGRO delivered leases (executed by itself) to the offices of MOPAC's solicitors on 27 October 2021. The Assurance Paper records that MOPAC would have irrevocable authority to countersign the leases up to 24 November 2021. MOPAC confirmed that it did not have authority to enter into a lease and in any event, this could not be achieved by 24 November 2021. In its response SEGRO has extended the time to 15 February 2022 and confirmed its willingness to extend the period of acceptance further if MOPAC gave an indication as to how long it would take to gain requisite authority.
107. The resolution of the Deputy Mayor has already authorised negotiations as to a long lease. MOPAC has been making decisions as to the conduct of this case and as to the acceptability of offers within these proceedings. In parallel it has exercised its rights under the Landlord and Tenant Act Proceedings to request a new lease. MOPAC rightly ascribes a high importance to this site and to the continuation of the VRES facility. Commander Gordon confirmed that there was contingency planning in the event that the Order is not confirmed. It is to be assumed that that contingency planning would, in light of the offers in these

³⁴ Inquiry documents 24 to 28.

³⁵ Inquiry documents 29 and 30.

- proceedings, have made some provision to engage with those leasehold offers in the event of non-confirmation of the Order.
108. It is a basic tenet of contract law that an offer can be withdrawn at any time up to acceptance. SEGRO's purported grant of irrevocable authority to MOPAC to sign and complete the lease is a unilateral act by SEGRO, without any consideration provided by MOPAC. However, Mr Wald points out it takes two willing parties to make a bilateral agreement and he contends that SEGRO has made its offer in good faith and it can do no more.
109. Mr Wald makes other points in relation to the efforts of SEGRO to provide reassurance to MOPAC regarding the offers for lease. He asserts that the assumption underlying MOPAC's submissions is that SEGRO will resile from the offers it has made during these proceedings as soon as the Order is not confirmed. Having regard to the events and evidence within these proceedings I am satisfied that there is no material evidence to point to this. Whilst I have concluded that the publication of the CPO and these proceedings are likely to have been instrumental in eliciting more generous offers, in terms of the length of leases, there is nothing to persuade me that those offers have not been made in a genuine attempt to obviate the need for compulsory purchase or that the promises to keep the lease offers open beyond determination of this CPO are not made in good faith.
110. Indeed, the whole rationale of SEGRO is the acquisition and management of industrial land. Mr Holland set out the revisions made to SEGRO's plans in relation to redevelopment. The Order Land has the benefit of being on the periphery of the estate in a single block and with its own access from Walmgate Road. In my view this would assist in enabling the redevelopment of the remainder of the estate whilst leaving the Order Land to be occupied by MOPAC. Mr Holland confirmed the work which had been done to review SEGRO's masterplan for the site by altering the phasing of lease expiration dates on other parts of the site to free up those other parts for redevelopment on the assumption that the Order Land would not be available. On behalf of MOPAC, Mr Mathieson confirmed the high regard in which SEGRO is held by the Deputy Mayor. This was echoed by Mr Holland who explained that there is a strong relationship between SEGRO and Greater London Authorities.
111. It was suggested that SEGRO, in an attempt to escape its obligations under these proffered documents, may transfer the Order Land to another entity, even one within the SEGRO group. I view this eventuality as highly remote. It would be a complete contradiction of the manner in which SEGRO has conducted itself within these proceedings, having regard to its efforts to negotiate a lease and it would demonstrate mala fides of the highest order.
112. To overcome the need for consideration SEGRO have also executed and delivered a revised unilateral deed dated 15 November 2021 in which it gives irrevocable authority to MOPAC to execute and complete the revised new leases before 15 February 2022. SEGRO contend that any breach could be remediated by a claim for the equitable remedy of specific performance. Where there have been repeated assurances that the lease offer would remain open and, if the Order was not confirmed in circumstances where those assurances have been relied upon, then I conclude that this argument regarding a discretionary remedy has some force.

113. SEGRO have sought to address all eventualities in terms of legal criticisms of the enforceability of its offer. This includes a unilateral covenant under deed to waive the right to defend any claim MOPAC might bring in the event of a claim for specific performance of a deed.
114. MOPAC also express concerns about flaws in the lease terms. I have already concluded on the adequacy of a 30-year lease term in meeting the stated objectives. The issue of pre-emption rights is disputed by the parties. I do not consider it necessary to address this matter having already found that a 30-year lease would satisfy the objectives. The leases specify rent levels³⁶ and five month rent free periods. This was a matter in dispute between the parties who are apart to the tune of £329,000pa and 10 months rent free period. It is not my role to determine appropriate charges and therefore I make no comment save to acknowledge that the lease offer is made on a take it or leave it basis in terms of the rent and that the differential between the parties in terms of rent is in the order of about 25%. Matters of valuation are ultimately for the Lands Chamber of the Upper Tribunal.
115. Other complaints about restrictions on user, permissions in relation to works and removal of alterations are difficult to reconcile given that the existing leases contain the same or slightly tighter restrictions and the operations have not been hindered as acknowledged by Commander Gordon. Similarly, the current leases contain no ban on sales to those on the Consolidated List of Financial Sanction Targets. This provision was included to address the concerns of MOPAC regarding sales to parties who raise security concerns.
116. MOPAC contend that it has not had sufficient opportunity to fully consider the detailed terms of the leases and the Inquiry has received no evidence on these. I remain of the view that it is no part of my remit to set out the terms on which a lease could, or should, be entered into. The 30-year lease is one of three options put forward by SEGRO as a way forward. I acknowledge that it represents an option to MOPAC and it comes with a high degree of legal reassurance as to its enforceability.
117. Conditional agreement for lease: SEGRO provided an executed agreement for lease and it was delivered to MOPAC's instructing solicitors on 27 October 2021. That document purports to provide MOPAC with irrevocable authority to complete the agreement for lease within 6 months from delivery. The agreement contains all of the terms previously agreed between the parties, together with a provision for rent to be determined by an independent expert. The agreement for lease could be triggered by the service of a notice by MOPAC within 4 weeks of a decision not to confirm³⁷ or within 4 weeks of the outcome of any challenge to a decision not to confirm.
118. The same points relating to the purported grant of irrevocable authority are made on behalf of MOPAC, the document is a unilateral document without consideration having been provided and therefore it has no contractual force even though executed as a deed. I have dealt with these points above. Similarly, I have dealt with the perceived risk of SEGRO transferring the land and the provisions not being binding on any successor in title.

³⁶ £1,490,000 rent Bilton Centre and £351,000 Unit 16 with rent free periods of 5 months in each case.

³⁷ Together with confirmation that there will be no challenge to a decision not to confirm the Order.

119. The agreement contains a term that the rent is to be determined by an independent expert and MOPAC states that this provides uncertainty and moreover, any determination would be binding. With respect, that is the point of arbitration by an independent expert when rent levels cannot be agreed upon, the risk in submitting to this process is one borne by both parties. It is entirely appropriate that the outcome should be binding.
120. Issues raised by MOPAC regarding the mechanics for calculation of the term commencement date have been addressed. Whilst MOPAC has asserted that completion of the leases cannot occur until both the rent and rent-free periods have been agreed or determined, I do not see any reason why both parties could not come to agreement bound by the terms of independent arbitration as to these matters. Concerns about MOPAC having the right to refuse entry to an area declared to be of exceptional security have been addressed and restrictions on MOPAC sharing occupation of the sites has also been addressed. I further accept that there is no new contractual option for new leases and the provisions essentially grant a new lease at a rent on day 1 equivalent to the rent payable under the prior lease at expiration date.
121. The proposed new leases would contain a surrender mechanism in relation to both leases, without a corresponding obligation on SEGRO to accept a surrender. The existing leases do not contain surrender mechanisms and therefore, in this respect, the new terms would be more favourable. I have already set out my views in relation to pre-emption rights. I have concluded that, without pre-emption rights, the grant of a 30-year lease would satisfy the stated objectives of the CPO. The existing leases contain no such rights and acquisition of such rights in any new lease would represent betterment. I note that other issues raised have been addressed by amendments made by SEGRO.
122. The Bilton Centre lease contains a reinstatement provision at the end of the term which reflects the provisions in the existing leases. A clause relieving MOPAC from responsibility for decontamination or remediation works which were not necessitated by its own occupation, in other words historic contamination was suggested. SEGRO contends that it has not seen the historic environmental survey upon which the condition was based. Upon provision of this survey this is a matter which should be capable of agreement. Amendments regarding access rights to the adopted part of Walmgate Road have been included. All other matters are either agreed or capable of resolution.
123. Like the executed leases, the agreement for lease provides a mechanism by which SEGRO is seeking to both indicate its willingness to be bound to the provision of a new lease and to offer reassurance to MOPAC and to the Inquiry. In contractual terms SEGRO can do no more than it has done. Until a lease has been signed by both parties there can be no cast iron guarantees. However, having regard to the deed of covenant and the documents prepared, I am satisfied that the risks of SEGRO resiling from its stated willingness to enter into a long lease are small. I say that having regard not only to the legal arguments put forward but also taking into consideration the conduct of SEGRO during the Inquiry process both in terms of offers made and evidence regarding revisions to its redevelopment plans, and also having regard to the reputation of SEGRO and the high regard in which it was said to be held by London Authorities and the Mayor's Office.

124. Landlord and Tenant Act Proceedings: the third act of reassurance provided by SEGRO comes in the form of a deed with covenants not to object to the grant of new lease within the 1954 Act proceedings; to agree a term of 15 years; not to seek any break clauses for the landlord and to honour the terms set out in the offer for agreement for lease, with the exception of renewal options. SEGRO further offered to undertake to the Inquiry that its acknowledgement of service form to the lease renewal proceedings would be consistent with these promises and that it would be prepared to give appropriate undertakings to the relevant County Court. These undertakings were not pursued and have not been provided.
125. A new tenancy under the 1954 Act may only be granted for a term of 15 years if the parties cannot agree on an appropriate term and at a rent determined by the Court. Whilst it would not be as beneficial as a 30-year lease, it would to a large extent satisfy the objectives of the Order within the short to medium term. I remind myself that the leases under which MOPAC has occupied the site were for 16-year terms. A 15-year term would provide sufficient certainty for MOPAC to make plans and to invest in the site, much as it has done over the past 16 years.
126. The deed purports to ensure that specific performance is the remedy available for any breach and MOPAC makes the same contentions regarding the enforceability of a unilateral deed without consideration. I have dealt with these points earlier and my conclusions in relation to the small legal risks identified pertain equally here. The same applies to the successors in title point, I have concluded that there is a remote risk of SEGRO acting in bad faith and transferring the land outside its ownership to avoid being bound by these promises.
127. MOPAC contends that it is incorrect to say that the withdrawal of objection to a new lease is equivalent to an election which will provide certainty that there will be no objection to the grant of a new lease. There is some concern that the counter-notice cannot be said with any certainty to have been unilaterally withdrawn. SEGRO asserts that the withdrawal is an elective waiver of SEGRO's right to object to a new tenancy.
128. SEGRO has sought to withdraw its counter notice and to provide assurances that it would not resist the grant of a new tenancy. As the Inquiry was in its later stages MOPAC confirmed that it had issued a claim form which had not been served upon SEGRO. SEGRO served notice requiring service of that claim form to enable it to confirm its election in its pleaded case within the 1954 Act proceedings consistent with its assurances not to resist a new tenancy. At every juncture since the first adjournment SEGRO has taken steps to provide legal assurances that it will not resist a new tenancy. Its actions to date have been consistent with these intentions. Again, I acknowledge that there is some risk in anticipating events during other proceedings but in this case, for all the reasons previously stated, I am satisfied that those risks are small.
129. Concluding remarks in relation to the mechanism: I am satisfied that the leasehold offer is genuine, that the landlord has done all that it can to ensure that the offer is legally binding upon itself. I am further satisfied that the 30-year uninterrupted use of the land would satisfy the immediate and medium-longer term needs of MOPAC in securing the VRES facility. The lease would provide enough long-term security to enable investments to be made. The

grant of a 15-year lease would satisfy the immediate to medium term requirements of VRES.

Public Sector Equality Duty

130. In relation to the Public Sector Equality Duty³⁸, the Equality Act 2010 requires all public authorities, in the exercise of their functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act and to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. I am satisfied that MOPAC has discharged its duties appropriately in terms of the advancement of the CPO. As the decision-maker in this case I have also had regard to my duties under the Public Sector Equality Act, both throughout the conduct of the CPO proceedings and during my decision-making process.

Human rights implications and compelling case in the public interest

131. As a landowner SEGRO has Article 1, Protocol 1 rights. SEGRO contends that the loss of the Order Land would have amplified effects given that it is part of a larger whole and that a high value must be placed on its interest. The basis on which SEGRO operates is the developing and holding of industrial estates and loss of the Order Land would diminish its Perivale Estate as a whole.

132. The test to be applied in considering whether to confirm a CPO is whether there is a compelling case in the public interest for it to be made. This test satisfies the balancing act required when considering whether interference with Article 8 and/or Article 1 of the First Protocol constitutes a breach of the European Convention on Human Rights (ECHR) and is thus lawful and justified.

133. The Guidance advises that compulsory purchase is intended as a last resort to secure the assembly of all the land needed for the implementation of projects. It also advises that the decision-maker determining whether to confirm a CPO must take a balanced view between the intentions of the AA and the concerns of those with an interest in the land and the wider public interest. It is not essential to show that land is required immediately to secure the purpose for which it is to be acquired, but there must be sufficiently compelling reasons for the powers to be sought at this time³⁹.

134. The CPO Guidance provides that "*when making and confirming an order, acquiring authorities and authorising authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected*"⁴⁰. Importantly, the Guidance also makes clear that is not prescriptive as to what an AA needs to demonstrate since "*the confirming minister will consider each case on its own merits and this guidance is not intended to imply that the confirming minister will require any particular degree of justification for any specific order*"⁴¹.

³⁸ Section 149 of the Equality Act 2010 sets out the public sector equality duty.

³⁹ ¶ 13 CPO Guidance

⁴⁰ ¶2¶12 Ibid

⁴¹ Ibid ¶13

Overall Conclusions

135. The guidance makes clear that each CPO case must be determined on its merits. This is the latitude provided to the confirming decision maker having regard to the particular facts and circumstances of each case. I have already set out the novel elements of this case, that is the attempt by an AA to acquire the freehold interest of land which it occupies. I have concluded that the VRES operation is of national importance and that there are the necessary resources to acquire the land. I have further concluded that the search for alternative sites was a reasonable one and that there were no suitable, available, alternative sites in the search window, this includes exploration of the Northolt option.
136. Having regard to my conclusions regarding the lack of suitable, available, alternative sites and the disadvantages of the Northolt option, I do accept that the best solution for the effective and efficient policing of London is for VRES to remain at Perivale from where it has successfully operated for a number of years. I conclude that, in principle, a 15-year lease, renewable for a further 15-year period would be best placed to satisfy the stated objectives in terms of providing security of continuation of the VRES operations on the Order Land. I accept that a 15-year lease would satisfy the objectives over the immediate to medium term.
137. The three legal mechanisms by which 15/30-year leases could be secured have been explored. Of necessity SEGRO has had to provide a unilateral deed with covenants making various promises. None of these options come with a cast iron guarantee. However, for the reasons given, I am entirely satisfied as to the bona fides of SEGRO and that the risks of SEGRO resiling from any of its promises are small. I shall factor these legal risks into my final balancing exercise.
138. The deprivation of a private citizen or legal entity of their property rights is a significant matter. In this case there are specific powers given by Parliament to MOPAC, as the AA, to deprive persons/legal entities of their land, but those powers must only be exercised when the public interest "*decisively so demands*" them to be exercised⁴².
139. In these circumstances I conclude that what is effectively being sought is a CPO in the event that the site is needed in 30-years-time, there are no suitable alternatives and MOPAC is faced with an unwilling landlord. Even then it is highly likely that the option of the use of compulsory powers would be available and could be utilised at that time. Having regard to the above, I conclude that there is not a compelling case in the public interest for compulsory acquisition at this time. Displacement of the proprietary rights of SEGRO, at this point in time, is neither proportionate nor necessary on the facts of this case and interference with those rights is not therefore justified.
140. The Mayor's Office for Policing and Crime (Perivale) Compulsory Purchase Order 2020 is not confirmed.

Karen L Ridge

INSPECTOR

⁴² Lord Denning, *Prest v SS for Wales* (1982) 81 Local Government Reports 193

APPEARANCES AND DOCUMENTS SUBMITTED DURING THE INQUIRY

APPEARANCES FOR THE ACQUIRING AUTHORITY:

Mr Richard Harwood QC

He called

Commander Kyle Gordon	Commander, Metropolitan Police Service
Mr Simon Warren BA PG.Dip MRICS	Partner, Knight Frank
Mr David Mathieson MICE, MAPMgt	Partner, concerto Partners
Mr Thaddaeus Jackson-Browne BA (Hons) PG.Dip MRTPI	Director, Lambert Smith Hampton
Mr Michael Burke	Member Institute of Vehicle Recovery

APPEARANCES FOR SEGRO:

Mr Richard Wald QC and
Ms Celina Colquhoun

They called

Mr Alan Holland BSc, MRICS	Managing Director of SEGRO's Greater London business
Mr Ben Gomez-Baldwin BSc MRICS	Director of SEGRO's Greater London business
Mr Alex Kington BSc MSc MRICS	Vice President of ALTUS Group
Mr Sean Bashforth BA MA MRTPI	Board Director, Quod

DOCUMENTS SUBMITTED BY THE ACQUIRING AUTHORITY AND OTHERS DURING THE INQUIRY

- ID.1 Plan showing Northolt land and adjoining occupiers, submitted by SEGRO.
- ID.2 Schedule of Adjoining Owners to Northolt land with title numbers and details, submitted by SEGRO.
- ID.3 Extracts from Ealing Development Management DPD, submitted by MOPAC.
- ID.4 Letter to London Borough of Barking and Dagenham from Lambert Smith Hampton, dated 27 February 2020, submitted by MOPAC.
- ID.5 Minutes of LB Barking and Metropolitan Police Local Plan Engagement Session dated 26 March, submitted by MOPAC.
- ID.6 Plan of Greater London Plan of VRES recovery figures, submitted by MOPAC.
- ID.7 Plan of walking route from Perivale Station to VRES site, submitted by MOPAC.
- ID.8 Opening statement on behalf of MOPAC and Annex.
- ID.9 Opening submissions on behalf of SEGRO.
- ID.10 Email from Knight Frank to Alex Kington dated 29 September 2021
- ID.11 Freedom of Information Request Gowling WLG to MOPAC dated 31 March 2021.
- ID.12 MOPAC Freedom of Information Response.
- ID.13 FOI response reference 19.
- ID.14 FOI response reference 33(i).
- ID.15 FOI response reference 33(ii).
- ID.16 FOI response reference 54.
- ID.17 FOI response reference 62.
- ID.18 FOI response reference 66.
- ID.19 FOI response reference 86.
- ID.20 Northolt Sites Map and Ownership Details.
- ID.21 Extract London Plan 2021.
- ID.22 Lease of Unit 16, Perivale Industrial Park, dated 21 October 2005.
- ID.23 Lease of The Bilton Centre, Walmgate Road, Perivale dated 21 October 2005.
- ID.24 Lease Offer Position Paper, SEGRO.
- ID.25 Assurance Paper, SEGRO.
- ID.26 Dead of Covenant, SEGRO.
- ID.27 Two draft leases, SEGRO.
- ID.28 Two Agreements for Lease, SEGRO.
- ID.29 MOPAC response to SEGRO's revised Lease Offer Position Paper.
- ID.30 SEGRO's reply to MOPAC response.