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Dear Special Rapporteurs, Chair-Rapporteur,

JOINT COMMUNICATION FROM SPECIAL PROCEDURES

1. I refer to your letter of 20 July 2017 in which you bring to our attention a number of potential issues relating to the regeneration of the Seven Sisters Indoor Market in London. I trust that the following information on the London Borough of Haringey (Wards Corner Regeneration Project) Compulsory Purchase Order 2016 (CPO) relating to the regeneration project as well as background to the CPO regime in general will answer your concerns.

2. Please therefore find as follows background information on the current status of this CPO and background to the CPO process in general. Answers to your specific questions are also provided. In answering your specific points, I trust you will understand that the public local inquiry into this CPO has only just concluded and the Inspector has yet to report to the Secretary of State for Communities and Local Government. In these circumstances, it would be both inappropriate and premature to make any case specific comments as this may prejudice the Secretary of State for Communities and Local Government's consideration of this CPO.

Yours sincerely,

JULIAN BRAITHWAITE

Background to this CPO

1. On 22 September 2016, the London Borough of Haringey ('the Council') made the above CPO pursuant to section 226(1) of the Town and Country Planning Act 1990 as amended.
2. The purpose of the CPO is to enable the Council to acquire compulsorily 9 hectares of land to facilitate the comprehensive regeneration of land known as Wards Corner (The Seven Sisters Indoor Market), for which planning permission has been granted. Your letter makes reference to the Elephant & Castle but this is not, in fact, located in the London Borough of Haringey but in the London Borough of Southwark.
3. The CPO was subject to public consultation for a period from 22 September 2016 to 28 October 2016. On 6 October 2016, the Council submitted the CPO to the Secretary of State for Communities and Local Government for confirmation. Following receipt of public objections to the CPO, a public local inquiry was arranged and this was held between 11-14, 18-21 and 25-28 July 2017. The public inquiry Inspector is now in the process of reporting his findings and a recommendation to the Secretary of State on this CPO. I should inform you that your letter has been passed to the public inquiry inspector to consider whether any material new facts have been raised.

Background - the compulsory purchase process

4. Compulsory purchase is an important tool to assemble land into single ownership to support the delivery of a wide variety of development projects. Used properly, compulsory purchase can enable the development of new communities, essential infrastructure and commercial facilities – all of which can support economic growth, regeneration and improvements in quality of life. It enables the acquisition of land and property in the public interest without the agreement of the owner, subject to the payment of fair compensation. While land can be acquired by agreement between the parties concerned, such voluntary approaches are unlikely to be suitable for assembling all the land needed for major projects because some owners may not agree to sell their land (or only at an unreasonably high price).
5. Local authorities and others empowered to do so use compulsory purchase powers to deliver a wide range of projects: from large-scale town centre regeneration schemes, to the refurbishment of individual empty homes. Compulsory purchase powers are also commonly used to deliver new and improved highways, utilities and other infrastructure projects.
6. The use of compulsory purchase powers for housing and regeneration projects is authorised through a Compulsory Purchase Order (CPO). Around 150 - 200 CPOs are submitted to the Secretary of State for Communities and Local Government for confirmation each year; approximately 100 of which are for housing and planning purposes. Bodies with compulsory purchase powers are known as "acquiring

authorities". Many public bodies have compulsory purchase powers, which can be used to acquire land for purposes connected to their statutory function(s).

7. On 29 October 2015, the Department for Communities and Local Government published the '*Guidance on Compulsory purchase process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion*' ('The Guidance'). The link is at <https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>. The Guidance applies to acquiring authorities when making CPOs and to the relevant Minister when considering whether or not to confirm the CPO. Among other things, the Guidance states that:

- A CPO should only be made where there is a **compelling case in the public interest** (paragraph 12);
- An acquiring authority should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected including Article 1 of the First Protocol to the European Convention on Human Rights (Right to peaceful enjoyment of property) and, in the case of a dwelling, to Article 8 of the Convention (right to respect for private and family life) (paragraph 12);
- The use of compulsory purchase powers should be a means of last resort where reasonable attempts by the acquiring authority to buy land by agreement have failed (paragraph 2);
- Acquiring authorities must demonstrate that there is a reasonable prospect of the scheme being delivered with no financial or planning impediments (paragraphs 12-15); and
- All public sector acquiring authorities are bound by the Public Sector Equality Duty (PSED) in section 149 of the Equality Act 2010. Here is a link - <http://www.legislation.gov.uk/ukpga/2010/15/section/149> (paragraph 6)

8. To use compulsory purchase powers, an acquiring authority must first make a CPO and submit it to the relevant Minister, who will decide whether to confirm it. The acquiring authority must notify all 'qualifying persons' (including relevant owners and occupiers) of the making of the CPO. The making of the CPO is advertised through newspapers and site notices to notify the general public. Remaining objectors to the CPO have the right to object to the CPO and for their objection to be heard at a public local inquiry before an Inspector who acts fairly, openly and impartially. An inspector's task is to inquire into the CPO and to elicit all the information needed to enable the Minister to decide whether or not to confirm the CPO. Both the acquiring authority and objectors have a fair opportunity at the public local inquiry to explain their case for or against confirmation of the CPO, to test the public interest justification for the CPO, and to cross-examine the other parties. The Inspector may also question the parties themselves.

9. Having conducted the inquiry and carried out a site inspection, the Inspector will then prepare and submit their report to the Minister. The Inspector's Report comprises a summary of the submissions made by the parties, a description of the lands within the CPO, an analysis on the main issues, and a recommendation to the Minister on the CPO. The Minister will then carefully consider the Inspector's Report and decide whether to confirm, modify, or not confirm the CPO on its individual

merits. In deciding whether or not to confirm the CPO, the Minister is acting in a quasi-judicial capacity. In exercising this quasi-judicial function, it is incumbent upon the Minister to act and to be seen to act fairly and even-handedly. The Minister must have regard to all relevant considerations and must not take into account any immaterial considerations. A CPO will only be confirmed where the Minister is satisfied that there is a compelling case in the public interest to justify interfering with the human rights of those with an interest in the land affected by the CPO. The reasons for the decision must be intelligible and adequate and enable an informed reader to understand the decision that has been made by the Minister. In making the decision, the Minister must also have due regard to the PSED under section 149 of the Equality Act 2010.

10. The Minister is required to send his reasoned decision letter to the acquiring authority, each remaining objector, and persons appearing at the public local inquiry. Where the CPO is confirmed, the acquiring authority is required to publish various confirmation notices.

11. Any person aggrieved who wishes to dispute the validity of a CPO, or any of its provisions, has the right, within 6 weeks of the date of the publication of the confirmation notice, to legally challenge the confirmation of the CPO on the grounds that the authorisation of the CPO is not empowered to be granted or a relevant requirement has not been complied with. Where a legal challenge is successful, the Court has the discretionary power to quash either the decision to confirm the CPO or the whole or any part of the CPO itself. A decision not to confirm a CPO may be challenged by way of a judicial review challenge.

Observations on the specific matters raised

12. Turning to the specific matters you have raised in your letter, I would make the following observations in response:

13. **Questions 1-5** ask for observations on the allegations made, how the concerns of affected parties have been taken into consideration, how the affected parties have been consulted, how the continuation of cultural activities and social interactions can be guaranteed and, finally, how the CPO represents a compelling case in the public interest.

14. While I am unable, for the reasons given above, to comment specifically on this CPO, I hope you will be reassured from what I have outlined above that the CPO process is a fair, open and impartial process. Affected parties are consulted throughout and have the opportunity to test the acquiring authority's justification for the CPO at a public local inquiry.

15. The decision about whether or not to confirm a CPO including those made under section 226(1) of the Town and Country Planning Act 1990 will be made on its own individual merits, but the specific factors which the Secretary of State for Communities and Local Government will consider (in addition to the general factors outlined above) include:

- Whether the purpose for which the land is being acquired fits with the adopted planning framework for the area;
- The extent to which the proposed purpose of the order will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area; and
- Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means to include considering the appropriateness of any alternative proposals put forward by owners of the land, or any other persons, for its reuse (Paragraph 76 of the Guidance).

16. **Question 6** invites comments on what measures have been taken to prevent poor, marginalized and minority persons from being disproportionately impacted by regeneration projects, including guidance issued by central government to local government in relation to their international human rights obligations.

17. As outlined above, all public sector acquiring authorities are bound by the Public Sector Equality Duty (PSED) as set out in Section 149 of the Equality Act 2010. Throughout the compulsory purchase process acquiring authorities *must have due regard to the need to (a) eliminate unlawful discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.* In performing their public functions, acquiring authorities must have due regard to the need to meet these three aims of the Equality Act 2010.

18. Specifically in relation to estate regeneration CPOs, the Department for Communities and Local Government has issued guidance to local authorities in its document “Estate Regeneration National Strategy: Resident Engagement and Protection (issued December 2016)”. Here is the link — (<https://www.gov.uk/guidance/estate-regeneration-national-strategy>). This sets out the Government’s expectations for how landlords, developers and local authorities should engage with residents throughout a proposed estate regeneration scheme and how residents should be protected.

19. **Question 7** asks what resettlement programmes have been considered for affected parties and how they will protect concerned people from increased vulnerability. As the confirmation process in this case is on-going, I am unable to comment specifically for the reasons set out above. However, I can assure you that the Guidance encourages acquiring authorities to take steps to help those affected by a CPO. These steps include offering advice and assistance to affected occupiers in respect of their relocation and providing details of available relocation properties where available (paragraph 18 of the Guidance refers).

20. **Question 8** concerns the availability of legal aid to assist residents and business owners who wish to challenge regeneration project CPOs. Legal aid is potentially available to challenge such CPOs under a number of provisions in Part 1 Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

depending on the circumstances (references below are to Part 1 Schedule 1 of LASPO):

- Abuse of position or powers by a public authority (paragraph 21)
- Loss of home – court orders for sale or possession of an individual’s home or eviction of the individual or others from the individual’s home (paragraph 33)
- Breach of the Equality Act 2010, under which public authorities must have due regard to the need not to discriminate against anyone on the basis of certain specified protected characteristics (paragraph 43)

21. Civil legal services provided in relation to challenges engaging these matters are within ‘scope’ of LASPO subject to the relevant means and merits tests being satisfied. Different tests for financial eligibility and for determining the merits of a case apply depending on the type of civil legal service being sought. These tests are fundamental principles of the legal aid system. The means test focuses limited resources on the most financially vulnerable and ensures that those who are most able to afford to pay for or contribute towards their legal costs do so. The merits test ensures that these limited resources are only available for the most meritorious cases.

22. Exceptional case funding (ECF) is also available for civil legal services that are outside scope (i.e. not included in Part 1 Schedule 1 of LASPO), where it is considered that the failure to provide legal aid would breach or risk breaching the applicant’s ECHR rights or rights under EU law. This ECF is also subject to means and merits testing.

23. In addition to potential eligibility for legal aid funding, domestic law also provides for Protective Costs Orders (“PCOs”), which are intended to preserve access to justice by limiting the potential costs burden on claimants. Three types of PCO may apply to CPO challenges being:

- Costs Capping Orders under the Aarhus Convention;
- Judicial review Costs Capping Orders under Part 4, Criminal Justice and Courts Act 2015; and
- Common law Protective Costs Orders

24. Moreover, paragraph 18 of the Guidance also encourages Acquiring Authorities where appropriate, to give consideration to funding a landowner’s reasonable costs of negotiation or other costs and expenses likely to be incurred in advance of the process of acquisition.

25. Furthermore, the Guidance (<https://www.gov.uk/guidance/appeals#the-award-of-costs--general>) makes clear that, where objectors are defending their rights, or protecting their interests, which are the subject of a compulsory purchase or analogous order, they may have their public inquiry costs awarded in their favour if they maintain their objections to the order and the order does not proceed or is not confirmed.

26. **Question 9** seeks information on what administrative or judicial mechanisms are in place to ensure access to remedies for individuals and groups to claim their rights.

As explained above, all 'qualifying persons' (including owners, occupiers and tenants) are notified by the acquiring authority of the making of the order and their right to object to the order. The order is also advertised to the general public through newspapers and site notices to allow members of the public to make representations on the order. Remaining objectors have the right to a public local inquiry before an Inspector to test the acquiring authority's public interest justification for the order. Orders made by acquiring authorities need to be confirmed by a Minister who will consider, among other things, whether there is a compelling case in the public interest to confirm the order. The CPO, if confirmed by the Secretary of State, can also be legally challenged through the Courts within 6 weeks of the date of the confirmation notice on the grounds that the authorisation of the CPO is not empowered to be granted or a relevant requirement has not been complied with. The Court has the power to grant interim relief suspending the operation of the CPO pending the determination of the Court proceedings. Where a legal challenge is successful, the Court has the discretionary power to quash either the decision to confirm the CPO or the whole or any part of the CPO itself and can order the unsuccessful party to pay some or all of the successful party's litigation costs to be assessed by the Court if not agreed.

27. **Question 10** seeks information about any type of affirmative actions that have been taken to ensure equality for all British citizens, in particular taking part in cultural life. I can assure you that the UK Government is committed to improving equality and reducing discrimination and disadvantage for all in the UK. As part of this commitment, the Government enacted, in 2010, the Equality Act. As outlined above, this introduced the PSED in section 149 of the Equality Act 2010 which applies to all public sector acquiring authorities and the Secretary of State. The three aims of section 149 of the Equality Act 2010, and what they require of public authorities in exercising their public functions (including decision taking), are outlined in paragraph 20 above. *In performing their public functions, acquiring authorities and the Secretary of State must have due regard to the need to meet these three aims of the Equality Act 2010.*

28. **Question 11** seeks information about the measures that the Government has taken, or is considering to take, to ensure that the business owners and individuals affected have access to an effective remedy, including adequate compensation. I have outlined above the administrative and judicial safeguards in place to ensure that the CPO process is a fair, open, and impartial process. As to the level of compensation payable, upon the compulsory acquisition of an interest in land, there is an obligation on acquiring authorities to pay fair compensation. The fair compensation payable is based on the equivalence principle - that the owner should be paid neither less nor more than their loss. Broadly, this consists of 3 principal elements being: The open market value of the land taken in the absence of the scheme; any loss caused by losing possession of the land; and compensation for damage to or for loss of value of any retained land.

29. **Question 12** asks for information on whether additional standards and due diligence has been taken in respect to the human rights of individuals belonging to specific groups. For the reasons set out above, I am unable to make any case specific comments on this CPO. However, I can assure you that when deciding whether or not to confirm the order, the Secretary of State will be very carefully

considering, among other things, whether there is a compelling case in the public interest for confirming the CPO and whether the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected.