IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT
Neutral citation number: 2017 EWHC 2713 (Admin)

CO/2373/2017
CO/2371/2017
CO/2498/2017

Royal Courts of Justice
Tuesday, 26th September 2017

Before:

MR JUSTICE DOVE

B E T W E E N:

(1) ALEXANDER KUZNETSOV
(2) BRAGINZUK LLC

Claimants

- and –

(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

(2) LONDON BOROUGH OF CAMDEN

Defendants

B E T W E E N :

THE QUEEN on the application of
ALEXANDER KUZNETSOV

- and -

(1) BRAGINZUK LLC

(2) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Interested Parties

J U D G M E N T

A P P E A R A N C E S

MR MARK EVANS QC (instructed by Direct Access) appeared on behalf of the First and Second Claimant.

MR G MACKENZIE (instructed by the Government Legal Department) appeared on behalf of the First Defendant.

MR MATT HUTCHINGS QC (instructed by the Borough Solicitor) appeared on behalf of the Second Defendant.

MR JUSTICE DOVE:

1 This claim concerns the first defendant's confirmation of the London Borough of Camden (Bacton Low Rise) Compulsory Purchase Order 2015 ("the CPO"), a CPO which was promoted by the second defendant. The first claimant brings two claims. The first claim is brought under s.23 of the Acquisition of Land Act 1981 and the second claim is an application for judicial review of the second defendant's decision to issue a general vesting declaration pursuant to the CPO. On 21 July 2017 Holgate J ordered a rolled-up hearing of that judicial review. The second claimant brings a claim under s.23 of the 1981 Act only.

Procedural matters

2 At the hearing of this matter, issues were raised by Mr Matt Hutchings QC on behalf of the second defendant in relation to whether or not there was evidence to support the contention that Mr Mark Evans QC was properly instructed by the second claimant on whose behalf (along with the first claimant) he appeared. The second claimant are a Russian company. Directions were given in the form of an order dated 2 August 2017. Pursuant to that order further documentation has been produced by the second claimant, in particular a power of attorney and a further document attesting to the ability of the person with the benefit of the power of attorney to act on behalf of the second claimant and instruct counsel on behalf of the second claimant. I am satisfied, having considered that documentation, that Mr Evans was properly instructed to act on behalf of the second claimant at the hearing of this matter.

3 Before proceeding to the detail of my decision, it is only right that I should reflect my gratitude to all counsel instructed in the case. I was particularly grateful to Mr Evans who carefully focused the issues in the claimants' cases upon which the merits were to be argued.

The pleadings which have been lodged in this case raised a great many allegations. Often, similar allegations were expressed in a variety of different ways. What Mr Evans was able to do, and which was of considerable if not invaluable assistance to the court, was to identify from the pleadings those matters which could properly be advanced on behalf of the claimants. As a consequence, and as he confirmed at the hearing, any other matters which had been raised in the pleadings were not being relied upon or pursued. Mr Evans provided an extremely helpful note, which I attach as appendix 1 to this judgment, setting out in brief note form the arguments which were pursued on behalf of the claimants.

4 I should also note that, whilst a bundle of authorities was provided to the court by the second defendant, at the hearing an issue was raised in relation to the first claimant's further authorities. There was on analysis one further relevant authority which is dealt with below which was comprised within that bundle and which I have taken into account in reaching my decision.

The facts

5 In 2010 the first claimant purchased a leasehold interest in 150 Bacton Low Rise. He extended the term of that leasehold in 2013. The lease contained an entitlement to the "easements rights and privileges" included in the second schedule to the lease. That second schedule at para.1 contains the following:

> "1. Full right and liberty for the Tenant and all persons authorised by him (in common with all other persons entitled to the like right) at all times by day or by night to go pass and repass over and along the Common Parts provided nevertheless that the Tenant shall not cause or permit the obstruction of any of the Common Parts by furniture vehicles or otherwise."

6 The term "Common Parts" was defined by the lease in the following terms:

> "'Common Parts': The entrance porch corridors hallways buildings lifts and staircases (if any) and any other parts within the Block and vehicular and pedestrian

ways forecourts or drives refuse bin stores gardens (if any) and any other areas inside or outside the Block but within the Estate which are not intended to remain private and which are to be enjoyed or used by the Tenant and occupiers of the Premises in common with the occupiers of the other flats in the Block or on the Estate but excluding the roads and footpaths (if any) which are or which become public roads and footpaths."

7 The lease also contained a covenant in relation to subletting which was placed upon the first claimant as the leaseholder. That covenant provided as follows:

> "3.25. Upon any assignment subletting or underletting to obtain a direct Deed of Covenant (in a form prepared by the Solicitors for the time being of the Landlord) by the assignee sublessee or underlessee with the Landlord to observe and perform the covenants and conditions of this Lease and to pay the Landlord's reasonable legal fees in connection therewith."

8 In April 2011, the second defendant commenced consultation in relation to the potential redevelopment of the Bacton Low Rise Estate ("the Estate"). The Estate was built in the 1960s and comprises 99 dwellings of which 87 are in a socially rented tenure and 12 are leasehold units. In the statement of reasons produced for the purposes of the CPO, the second defendant stated as follows:

> "Structural Considerations:
>
> 4.3. In 1999/2000 the estate underwent major refurbishment funded through the Capital Challenge programme. By 2011 the homes were once again showing signs of failure. The individual boilers installed in 2000 now need replacing, the windows are ill fitting and draughty and many of the handles have broken. The roofs and patios leak badly particularly after heavy rainfall and the brick work and concrete are spalling and have cracks. The ends of each block cause dampness in flats from cold bridging and poor condition of the brick walls.
>
> 4.4. The 2011 stock condition survey indicated a unit cost of £40,000 - £50,000 would be needed to remedy these defects, which would have resulted in a chargeable cost to each leaseholder. Refurbishment was considered to be uneconomic. Moreover the majority of tenants were in favour of the estate being demolished and new homes built rather than another round of major repairs carried out that would

not address the high heating bills or the inherent design defects of the estate that induce anti-social behaviour."

9 On 12 September 2012 the second defendant's Cabinet approved a redevelopment strategy for the Estate along with the adjacent district housing office site ("DHO site") owned by the second defendant. On 23 November 2012 a planning application was submitted which was granted conditionally on 25 April 2013, accompanied by a shadow obligation under s.106 of the Town and Country Planning Act 1990. The redevelopment scheme comprised phase 1, which was the DHO site, and further phases by way of a scheme of demolition and redevelopment of the Estate.

10 Negotiations occurred with occupiers of the Estate, including the first claimant. Eventually it became apparent to the second defendants that a CPO would be required. On 19 May 2015 the first claimant completed a requisition for information form and identified himself and eight other occupiers of the property. He gave the address of the property as his home address. He identified the second claimant as being an occupier and that they were also interested in the property and gave an address in Moscow for them.

11 On 26 October 2015 the second defendant made the CPO, and on 29 October 2015 notice of making the CPO was published in the Camden New Journal. The second defendant provided instructions to that newspaper that, as required by the legislation to which I shall turn in due course, the notice of making the CPO be placed in the paper for two weeks. In fact, that did not happen and the notice did not appear in the edition of that newspaper published on 5 November 2015.

12 The CPO was sent to the first defendant for confirmation on 20 December 2015. The first claimant and Oxana Kuznetsova and Svetlana Kalinia objected to the CPO. These latter two individuals had been identified as occupiers of the premises in the requisition for information. The second defendant caused a public inquiry to be arranged in order for the examination of the objections which had been made. Arrangements were made to hold the

public inquiry on 10 May 2016, but that date ended up being vacated. Further arrangements were made for the inquiry to occur on 15 and 16 June 2016, but again these dates were also vacated. On 14 June 2016, in redacted emails which were provided to the first claimant following a subject access report by him, the following appears:

> "Subject: Planning Inspectorate - CPO - (Bacton Low Rise) [...]
>
> Please see the confirmation letter attached.
>
> Regards."

13 On day two of the hearing, in response to submissions made by the first claimant, the second defendant disclosed to the court the wider context of this redacted email. It turned out when that documentation was produced that the redacted parties to this correspondence were the case officer at the planning inspectorate ("PINS") and Ms Jennifer Lunn, a lawyer employed by the second defendant. The confirmation letter was a letter from PINS confirming that the inquiry would now be held on 2 August 2016. In fact, that date was not used and the inquiry did not proceed on that date. A further date was identified of 2 September 2016.

14 An email between correspondents who are again redacted which emerged from the claimant's subject access request, relating to the run-up to the inquiry and written on 1 September 2016, provides as follows:

> "Subject: RE: Bacton Low Rise
>
> [...]
>
> Sorry but can you give me a ring sometime today please. Mr K phoned me this morning and the Inspector and myself just want to make sure we have all bases covered.
>
> Thank you."

15 Once more at the hearing of this matter further emails either side of this email in unredacted form were provided to the court by the second defendant. From those further emails it is clear that this email forms part of an exchange between Ms Lunn and the PINS case officer

in relation to ensuring that the inspector and the second defendant had all of the documents available for the purposes of the forthcoming inquiry.

16 The first claimant contended that the notification of the date of 2 September 2016 was not sent to him and in fact he only discovered that that was the date when the inquiry would be occurring via the clerk to the barrister who he was proposing to instruct for the purposes of the hearing. This issue and applications to adjourn the inquiry and for the disclosure of documentation were addressed by the first claimant to the inspector on the first day of the public inquiry, namely 2 September 2016. The second defendant resisted these applications, and in relation to the question of whether or not the first claimant had been served with the notice produced evidence from one of their officers, Ms Rebecca Ellis, with accompanying photographs taken at the time when it was said that service was effected by posting the notice through the door of the first claimant's property.

17 The inquiry sat over two days. It sat, as I have already recorded, firstly on 2 September 2016. It was then adjourned and the second day of the inquiry occurred on 8 September 2016. On the first day of the inquiry, the Council's case was heard. On the second day of the inquiry, the proceedings were given over to hearing the first claimant's case. As there was inadequate time for closings to be presented orally, there was a subsequent submission of written closings by each of the main parties.

18 In her report to the first defendant, the inspector addresses her response to the first claimant's applications and the events of the inquiry in the following terms:

> "*Mr Kuznetsov's application to adjourn the Inquiry due to him not being served with notice of the date of the Inquiry*
>
> 5. The Inquiry was originally scheduled for 10 May 2016 but was vacated at Mr Kuznetsov's request due to him not being in the country at that time. Re-arranged dates of 15 and 16 June 2016 were also vacated because the time limit for service provided for in Rule 7(1) was not complied with. Further re-arranged dates of 2 and

3 August 2016 were also vacated when the notice addressed to Mr Kuznetsov, sent by special delivery, was returned by the Royal Mail. At the Inquiry on 2 September 2016 Mr Kuznetsov applied for an adjournment on the basis that he had not been properly served.

6. The essence of Mr Kuznetsov's application was that the notices had not been posted through his front door; that the door in the photographs exhibited to the Council Officer statutory declaration was not his; that he had not received any notice through the post because the post-man could not get access to his property; and that the notice was defective.

7. The Council, at the request of NPCU, had undertaken service of the notices on each of the objectors by posting them through the letter box at 150 Bacton and by posting letters by first class post and special recorded delivery addressed to each of the three objectors. Those sent by special recorded delivery had been returned as undelivered. A statutory declaration to this effect was made by Rebecca Ellis who also gave oral evidence to the Inquiry. In her oral evidence Ms Ellis said that, given that there was only access to No 150 via a fob-system on the entrance door to the dwellings, arrangements were made to give access to the post-man on a daily basis between specified hours.

8. There is an error in the letter dated 20 July 2016 exhibited to the statutory declaration in that it refers to a statement having to be provided by 6 June 2016; this was explained by Ms Ellis as an error in compiling the statutory declaration and she confirmed that the actual notice served on Mr Kuznetsov and the other objectors had been amended to the correct date.

9. I was satisfied that the photograph Mr Kuznetsov provided of his front door pictured the same front door as that in the exhibit to the statutory declaration. Although after the event, I noted on my visit that No 150 was the only front door in the whole of the block that had not been covered by a steel door. Taking the cases put by Mr Kuznetsov and the Council into account I was satisfied that all reasonable steps were taken to give notice to Mr Kuznetsov and the other two objectors of the dates of the Inquiry in accordance with Rule 10.

Mr Kuznetsov's application to dismiss the application for the CPO and/or to adjourn the Inquiry on the basis that the Council has failed to comply with the Rules and disclose relevant documents

10. Mr Kuznetsov has made a series of applications in similar terms dating back to May 2016. His main points are that he had asked the Council to disclose a large number of documents pursuant to the Rules, the Freedom of Information Act 2000 and the Data Protection Act 1998 but they had not been disclosed and that the Council had not complied with Rules in that, among other things, it failed to send the statement of case to each remaining objector within six weeks of the relevant date; the statement of case as filed was defective; and the documents were not available for inspection.

11. The Council's submissions are in writing supported by a witness statement which sets out the requests made by Mr Kuznetsov and the numerous responses by the Council. The Council's main points are that the requirements of Rule 7 with regard to the disclosure of documents it intends to rely on or put in evidence had been complied with; requests for disclosure under the Freedom of Information Act 2000 are not a matter for the CPO procedure; and many of the documents requested by Mr Kuznetsov were not necessary for a fair resolution of the matters in issue.

12. Rule 7(5) gives a discretionary power to the Inspector to require any person who has sent a statement of case to provide further information. I declined to exercise that discretion because many of the documents listed in Appendix 1 to Mr Kuznetsov's document dated 23 May 2016 were appended to the Statement of Case; were appendices to the various proofs of evidence; were not relevant to the issues in the CPO process; and other documents, such as the National Planning Policy Framework, the London Plan and the Council's Local Development Framework were publicly available documents.

Mr Kuznetsov's submissions of unfair treatment before and at the Inquiry

13. Mr Kuznetsov set out a number of matters in his closing submissions about what he perceives to have been unfair treatment before and at the Inquiry. These include documents being returned to him; a limit on the time he was allowed to cross-examine the Council's witnesses; not being able to cross-examine the makers of one witness statement and one proof of evidence; not being allowed to give oral evidence; being asked inappropriate questions by the Council; and his closing submissions being limited to 30 pages.

14. The Council in its closing submissions did not refer to the way in which I conducted the Inquiry but did comment that Mr Kuznetsov produced large volumes of detailed evidence which he sought to introduce without notice and almost all of

which was introduced to the Inquiry as a concession to his lack of experience. The Council submitted that it and I strove to accommodate Mr Kuznetsov's requests whilst keeping the volume of documentation manageable (and therefore fair to both Parties) and seeking to maintain the focus of the Inquiry on matters relevant to the decision that had to be made.

15. The Inquiry was scheduled for two days. A large number of documents had been submitted by Mr Kuznetsov prior to the Inquiry and some bundles, received on 30 August 2016, were returned to him by the Planning Inspectorate on the basis that they had been submitted too late but they had been sent to and received by the Council. I agreed with the Council's suggestion on day one of the Inquiry that Mr Kuznetsov should produce a document outlining the relevance of the bundles and, depending on what that document said, a decision would be made which, if any, would be accepted. In the event, following receipt of the document, bundles D and E and extracts from bundle F were produced to the Inquiry.

16. With regard to the timings at the Inquiry, the opening and matters relating to service, including evidence by Ms Ellis, and other procedural matters took one and a half hours. Mr Kuznetsov had raised the question of English not being his first language on many occasions in the lead up to the Inquiry as had another objector, Ms Kuznetsova, therefore the Council had arranged for an interpreter to be present. During the first hour and a half of the Inquiry Mr Kuznetsov had been asked if he wanted the interpreter to remain but he said he did not. As Ms Kuznetsova was not present the interpreter left. From the discussions that took place it was evident to me that Mr Kuznetsov had no problems whatsoever either understanding or speaking English and the Council's advocate and representatives confirmed that they had no difficulty in understanding his spoken English. I also had no difficulty in understanding Mr Kuznetsov.

17. After a short adjournment Mr Kuznetsov advised the Inquiry that he was withdrawing from the Inquiry but that he was not withdrawing his objection. Mr Kuznetsov left just before 12 noon. The Council called its first witness Mr Tucker, and about 10 minutes later Mr Kuznetsov returned. Mr Tucker's evidence-in-chief lasted about 40 minutes and Mr Kuznetsov's cross-examination took approximately one and three quarter hours.

18. Ms Araoye had provided a proof of evidence setting out her, and the Council's, dealings with Mr Kuznetsov but she was unable to attend the Inquiry and her

manager, Miss Farr, provided a statement and gave evidence to the Inquiry. Her evidence-in-chief took about five minutes and Mr Kuznetsov cross-examined her for forty minutes. Mr Bashforth's evidence-in-chief took about forty minutes and cross-examination lasted for about an hour.

19. Day two of the Inquiry began at 09.30 with further procedural matters relating to the objectors who had not attended the Inquiry and at about 10.00 Mr Kuznetsov began to give his evidence. He had provided a document prior to the Inquiry called 'summary' which had five paragraphs on the first page, followed by 35 pages of text. I had said in the opening that I considered this to be Mr Kuznetsov's proof of evidence and summary and he had not contradicted me. In the circumstances I asked him to read the summary, which he declined to do and produced another document of 53 pages headed 'summary'. I advised him that this was not a summary and I would not let him read it. Mr Kuznetsov then produced the documents that are listed and there were discussions about whether they should be admitted or not.

20. The production of documents by Mr Kuznetsov took about one and a half hours and I considered that these documents formed his evidence and there was no need for him to give oral evidence given that he could not have introduced any further material. In addition, a considerable amount of his evidence was not based on fact as was borne out in cross-examination. Mr Kuznetsov was given the opportunity to read a summary of his case but he chose to amend his case to one which was much longer and if he had been permitted to read it, it would have caused considerable disruption to the timetabling of the Inquiry. As all the documents were available in written form I do not consider that Mr Kuznetsov was prejudiced in any way. I adjourned for originally one and a half hours but extended this period for a further 15 minutes at the Council's request, for the Council to consider the documents. Mr Kuznetsov's cross-examination was about two and a half hours.

21. The Inquiry had been scheduled for two days. Given my unavailability in the immediately following week; Mr Kuznetsov's and the Council's advocate's unavailability in the following two weeks; my unavailability in the three weeks thereafter; and the delay that has occurred in the matter, I agreed to closing submissions being submitted in writing. I directed Mr Kuznetsov to provide his by 16.00 hours on Friday 16 September 2016 and the Council by 12 noon on Monday 19 September 2016. Given the volume of documentation submitted by Mr

Kuznetsov, and their repetitive nature, I limited Mr Kuznetsov's closing submissions to 30 pages.

Inspector's Conclusions on procedural matters

22. As I advised Mr Kuznetsov throughout the Inquiry, it is a matter for the Secretary of State to decide whether the procedural matters and formalities, including the conduct of the Inquiry, were properly applied and carried out."

19 Although in the version disclosed as part of the subject access request the parties to the correspondence to which I am about to refer are redacted, the reality is that it is obvious that on 3 September 2016 an email was written by the inspector to the case officer at PINS. Within that email she describes the events that had occurred on the first day of the inquiry. The email was written (obviously, from its date) prior to the second day of the inquiry on 8 September 2016 and therefore prior to the first claimant presenting his case. The email provides as follows:

"Subject: Bacton Low Rise

A very brief outline of the events of Friday:

Mr K turned up at 9.58 with his trolley of files. I had to ask him several times to wait with his application while I completed the formalities of opening. He then made his application to adjourn and produced a photograph of his front door which was so obviously the front door shown in the Council's photographs that if it hadn't been so time-wasting it would have been laughable. I refused his application after hearing his submissions and evidence from Ms Ellis who had made the stat dec and who I asked to confirm that in addition to posting through the door the notice had also been posted by special delivery (returned by the Royal Mail) and by first class post - not returned and the postman has access to the flat every day between 10.00 and 11.00.

I refused his application for further disclosure as the documents he wanted were not relevant to the matters I had to report on.

I tried to find out whether there were any other occupiers of the flat and he said he had tenants but did not name them, he confirmed they had tenancy agreements but when I asked to see them he said they were in a safe in Moscow.

Mr K then said he was at a disadvantage because he didn't have legal representation, to which I replied there was nothing I could do about that save to do my best to assist him as far as I could, and then he said he was also at a disadvantage because English was not his first language. I pointed out that he seemed to be managing all right so far but if he had any difficulty there was an interpreter present to assist him. He then said he did not need or want an interpreter so she left on the understanding that she could be contacted should anything arise.

The Council had no objection to me seeing the three bundles sent in and returned provided Mr K produced a note of which documents were relevant and why - he has until 5.00 on Monday to produce this to give the Council's barrister time to consider it given her commitments. As they are Mr K's documents it seems to me reasonable that he should know why he wants me to see them and the point they make.

When I asked the Council's barrister to open her case Mr K said he was withdrawing from the Inquiry. By then it was 11.30 so I said I would adjourn for 10 minutes for him to think about it. He did but decided to leave. We arranged a site visit at 5.00 that afternoon and he left. Very unfortunately he came back 10 minutes later.

His so called cross-examination was awful; it was more like submissions than questioning and he kept repeating things, especially irrelevant things, as I kept telling him, so in the end I had to time limit him. There is a fine line between him being allowed to have his say and the Council complaining that I gave him too much leeway and extended the time of the Inquiry unnecessarily. The Council eventually finished its case at 6.10 (all had agreed that they were happy to carry on save for a very half-hearted attempt by Mr K at 5.15 to say he wasn't feeling well...).

The site visit is going to take place at 5.30 on Wednesday and the Inquiry is resuming at 9.30 on Thursday. I plan to give Mr K until about 12.00 to give his evidence, then cross examination. I may, unusually, allow closing in writing - it depends on what Mr K and the Council say.

Then I go on holiday to return to write it up."

20 On 4 January 2017 the inspector provided her report to the first defendant. She reported the second defendant's case on the benefits and funding and delivery of the scheme in the following paragraphs:

“32. In 1999/2000 the Estate underwent major refurbishment funded through the Capital Challenge programme. By 2011 the homes were once again showing signs of failure and the 2011 stock condition survey indicated expenditure of £40,000 - £50,000 per unit would be needed to remedy defects which included replacement boilers, replacement windows, roofs and patio leaks, spalling brick work and concrete exposing the steel reinforcement rods, and dampness from the poor condition of the brick walls. The costs of remedying the defects would have been chargeable to each leaseholder and the majority of tenants were in favour of the Estate being demolished and new homes built rather than another round of major repairs that would not address the high heating bills or the inherent design defects of the Estate, especially those that contribute to anti-social behaviour. The Council therefore considered it was uneconomic to attempt to refurbish the existing properties.

33. In addition, the outcome of a housing needs survey undertaken in February 2011 showed that residents liked the space standards of their homes; they liked living in Gospel Oak; they liked their neighbours; and they liked the strong sense of community on the Estate but they had complaints about water penetration, damp, mould growth, anti-social behaviour, the cost of heating and draughty windows. Older residents had problems with the number of stairs inside their homes which ranged from four flights for a two-bedroom maisonette to five flights for a three-bedroom maisonette. Of the 68% respondents to the survey, over 80% were in favour of demolition and new build and the Tenants and Residents Association worked closely with the Council to develop the Scheme.

34. The overall Scheme seeks to provide 294 residential units split across market, intermediate and social rent tenures with the aim of facilitating a mixed and balanced community in accordance with Local Plan Policy, the housing needs of existing tenants and financial viability considerations. The Scheme represents an uplift of 195 homes beyond the existing 99 homes (87 social rented and 12 leaseholder units). The number and mix of the approved Scheme of 60% private and 40% social units is likely to be varied by the proposed planning application which will include an additional 20 homes.

[...]

40. The Council is committed to the Scheme and funding will be through the use of its own funding and borrowing. The Council’s Cabinet approved a budget for the

Scheme in September 2012 which includes the costs of leaseholder acquisition. The Council has the funds to acquire the remaining interest and has agreed funding to demolish the building once it is vacated as per the contractor's programme. The Council has funds to develop the Estate and carry out the redevelopment. The structure of the funding is based on developing sites that the Council owns to re-provide the existing number of units to be demolished and to sell enough additional units to cross-subsidise the cost of providing the units for social rent, with the aim of maximising social housing within the balanced budget of the Scheme. The Scheme is designed to break-even but Mr Tucker explained that the financial backup is available should there be any difficulty. The Greater London Authority has granted the project £1.5m towards the units for social rent in Phase 1 and a similar amount in Phase 2 conditioned on the units completing within a specified time frame. Phase 1 is almost completed and the Council is satisfied that there are no fundamental impediments to the implementation of the Scheme and that the Scheme is likely to proceed and be completed if the CPO is confirmed."

21 Turning to the objections to the CPO, she recorded the first claimant's preliminary point about other occupiers of his premises in the following terms:

> "46. Mr Kuznetsov has also referred to five businesses which occupy No 150 as part of an arrangement whereby their employees stay at No 150 when they are visiting the United Kingdom. These businesses have played no part in the CPO process at all.
>
> 47. Mr Kuznetsov provided no documentary evidence about these occupiers, said he had not spoken to them about the CPO process and also said that although they had tenancy agreements the actual documents were in a safe in Russia and could not be produced. He also said that none of the occupiers were entitled to notice to terminate their occupation."

22 The inspector went on to record the first claimant's objections so far as material to these proceedings in the following terms:

> "49. *The CPO was made on the assumption of non-existing reports and surveys; the Councillors have been misled to believe that the Scheme complies with the adopted policies.* The decision to demolish the existing Estate and rebuild as opposed to renovate without demolition was made by the Cabinet based on a belief that the

renovation costs total £5m for the Estate and £40,000 - £50,000 per house. This belief was based on the assumption that a report prepared on a stock condition survey in 2011 'indicated expenditure of £40,000 - £50,000 per unit would be needed to remedy' existing defects. Given that national and local planning policies as well as statutory acts state that the demolition is a measure of last resort, the reliance on the existence of the report in question was a material consideration. However, as was revealed subsequently, the survey has not been undertaken and the report the decision makers relied on has never existed.

50. This is confirmed by the evidence which was submitted at the Inquiry. First, an email from Julia Farr to Jennifer Lunn and Tayo Araoye dated 11 May 2016 confirms that 'no further expense was incurred on undertaking a condition survey of stock that was destined for demolition and new build'. Second, an email sent by Jennifer Lunn to Adam Tucker and Julia Farr on 20 May 2016 in which it is admitted that the Council is not going to disclose the viability report. Third, an email from Jed Young stating 'I am not sure if this was a specific survey for Gospel Oak as part of capital challenge or an extract of a whole borough survey'.

[...]

63. The number and size of social rented houses will be considerably lower than the present and the Scheme therefore fails to deliver the alleged goal of the CPO of maximising affordable housing. Contrary to Policy H7, only 28 homes are expected to be 'large homes', as defined by the Council in the Local Plan. This is less than 50% of the large homes in the estate owned by the Council on behalf of the general public at present (60 homes).

[...]

65. Mr Tucker confirmed that Phase 1 of the Scheme does not depend on the outcome of the CPO application. The Statement of Case also confirms that the affordable housing units in Phase 1 have been allocated to social tenants while market sale units will be available for sale on the market from June 2016. This confirms that any benefits of Phase 1 do not depend on the CPO and, therefore, shall be disregarded when assessing whether the CPO powers have to be approved.

[...]

69. *Special parliamentary procedure*. Pursuant to s.183-184 of the Secretary of State CPO Guidance, the Bacton CPO is subject to the special parliamentary procedure

required under s.19 of the Acquisition of Land Act 1981 which clearly states that the special parliamentary procedure is required when the CPO includes 'rights over land which is, or forms part of, a common, open space, or fuel or field garden allotment'.

70. Clause 2 of the lease gives the lessee the right to use the open spaces and public gardens located at the Bacton Estate and rights over common parts. The lease specifically includes in the meaning of common parts, gardens and any other areas inside or outside the block but within the Estate which are not intended to remain private. The lease, however, does not deprive members of the general public from using the open spaces at the Estate.

71. Since the CPO affects the rights over such open spaces and gardens, the Special Parliamentary Procedure has to be complied with, under s.19 of the Acquisition of Land Act 1981, unless the Secretary of State gives a certificate on one of the three statutory grounds. Since none of the grounds applies, no certificate has been issued by the Secretary of State.

[...]

76. *Failure to sell as well as consider selling the Estate to a third party.* The Council received offers from at least two potential buyers and at least one of the offers was £40 million. The Council had a duty to consider the offers and sell the Estate to the buyers if the benefits of the consideration offered exceeded the benefits of the proposed Estate demolition. It is argued that the sale would have allowed the Council to achieve a considerably higher increase in the affordable housing stock compared with the Scheme. It was unreasonable and contrary to the public interests to disregard the offers to buy the Estate, especially since the result would be materially superior to the outcome of the suggested demolition Scheme. The key parameters of the offers as well as some (but not all) benefits from selling the estate are present in Letters from [Mr Kuznetsov] to the Council dated 28 June 2016 and 4 July 2016.

[...]

90. *Failure to serve the planning application notices.* The Council has made at least 3 planning applications: The original planning application was submitted in 2012, followed by two minor material amendment applications which were submitted in 2014 and 2015. If this was the case, the evidence of such notices would be included in the response to Mr Kuznetsov's Subject Access Request (SAR) since they have to be individually addressed and served. But none of the 3 or more notices required by

law is present in the response to the SAR confirming his personal observation that the notices about the applications for planning permissions have not been served to the affected leaseholders, including Mr Kuznetsov.

91. The issue of the lack of notices is further exacerbated by the evident conflict of interest in the instant case since the Council has been acting as (i) the applicant for the planning permission; (ii) the body reviewing and approving such permissions; (iii) the body setting the policies and the party on both sides of the s.106 shadow agreement."

23 The inspector went on then to record the second defendant's response to these and other objections raised by the first claimant. She recorded their responses in the following paragraphs, in particular so far as relevant to the present case:

"110. *Whether the CPO should be subject to Special Parliamentary Procedure.* Mr Kuznetsov relies on s.19 of the Acquisition of Land Act 1981. However, firstly, s.19 applies to the purchase of land which is open space as defined (or of new rights over such land), whereas the land it is sought to acquire is No 150 which is a flat within a building and therefore not the purchase of open space on any possible definition. S.19 does not apply merely because the scheme behind the acquisition involves the development of open space, nor does it apply when the effect of acquisition is to extinguish existing rights over such land.

111. Secondly, although the Estate contains open areas which function as communal amenity space laid out for the benefit of the residents of the Estate and their visitors, and that Mr Kuznetsov has a right in common with those other residents to make use of that amenity space, and even if members of the public make use of one of those squares despite the controls on entry, the land within the Estate does not meet the s.19(4) definition of open space for these purposes which is 'any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground.'

112. *Whether alternatives to the CPO should be pursued.* Mr Kuznetsov submits that the Council should have adopted alternative means to achieve the stated objectives of the CPO. Firstly, Mr Kuznetsov relies on references to the potential acquisition of the entire Estate by a third party for a price of £40m. It is said that with this capital receipt the Council could acquire a large number of properties and use them for the provision of a larger number of affordable housing units than will be provided in the

scheme underlying the CPO. However, the documents relied upon by Mr Kuznetsov himself make clear, the Estate is not for sale. Even if the Council did sell there is no scheme indicating what might become of the Estate and to do so would be to let down those many individuals who are looking forward to the regeneration of the Estate pursued by the Council.

113. Secondly, Mr Kuznetsov says that there is encouragement given in policy to make good use of unused buildings for housing purposes, particularly commercial buildings of which there is said to be a plentiful supply. There is no need for the Council to show that its Scheme is the only way of meeting the regeneration objectives but since these include the need to address the problems of the Estate itself it would not be possible to meet all the Scheme objectives on a different site.

114. Thirdly, an alleged claim that alternatives to demolition, for example, refurbishment of the existing buildings were not considered. The Council relies on the Statement of Reasons at paragraphs 4.1-4.4 and the Cabinet report referred to, both of which provide clear evidence of the basis upon which the Council decided to demolish in preference to refurbishment. Ms Lunn explains as far as possible that the £40,000 - £50,000 estimate per dwelling for the Estate's refurbishment was derived from a Borough wide survey in 2011-12 and that updates to it suggest the cost now would be even higher. This does not mean that the figure is an average for the Borough as a whole; Mr Kuznetsov may have misunderstood this evidence. The source of the figures for the unit costs of refurbishment (one of several reasons for preferring redevelopment over refurbishment) has been difficult to trace but is described and provided, so far as possible, by Ms Lunn.

115. *The planning applications*. Mr Kuznetsov disputes the significance of the 3 planning consents which authorise the scheme underpinning the CPO, claiming not to have been served with notice of them so as to enable him to participate in the process. The Council's response contained within Mr Bashforth's statement is a complete answer to this point.

[...]

119. The development within Phases 2 and 3 consists of the following: Demolition of the buildings within the Estate (99 flats of which 87 are for social rent); the construction of 140 dwellings (including 71 affordable dwellings) in the southern part of the new development (Phase 2); and the construction of 87 market dwellings and three business units in the northern part of the new development (Phase 3).

> 120. Mr Kuznetsov submits that the Secretary of State should ignore the benefits of Phase 1 of the scheme given that its delivery is not dependent on the CPO. He cites in support of this submission, two legal authorities which confirm that 'unconnected' benefits should not be taken into account in confirming a CPO. The legal proposition is not in doubt but it is submitted that Phase 1 is very closely connected to the Estate such that it forms part of the same project.
>
> 121. The detailed officers' report recommending the grant of planning permission addresses the whole scheme (Phases 1-3). It describes the Estate proposals; and sets out the phasing/decanting strategy, demonstrating the close interrelationship of the three Phases. In addition, there is a funding relationship between Phases 2 and 3 and Phase 1 in that the first phase effectively enables the Estate to empty in readiness for the more commercially viable redevelopment of the Estate. Thus, Phase 1 is directly connected to and is indeed part of the scheme which is facilitated by the CPO. It is therefore only proper that the justification for the CPO is closely related to the justification for the scheme given planning permission in 2013 (and varied since).
>
> 122. Mr Kuznetsov disputes the public benefits of the scheme in planning terms, relying in particular on the NPPF and the Camden Local Plan, on the following grounds: Firstly, the number and mix of affordable housing units. Mr Bashforth sets out the proposed number of affordable housing units at table 3.1 of his proof which takes into account all permissions to date. As he confirmed orally under cross-examination the scheme accords with affordable housing policy despite not meeting the 50% target. As he put it 'the Council has maximised affordable housing' which is the policy objective and the committee report itself addresses the mixture of sizes within the social rented units and the reasons for the chosen mix which was in accord with the Local Lettings Policy. As Mr Tucker explained there is provision within the planning consent and shadow s.106 for an increase in affordable housing should viability permit and the Council is seeking to provide as much affordable housing to meet needs as it can. Not only this, unlike a commercial developer it does not take a profit on the regeneration scheme."

24 The inspector expressed her conclusions as follows, citing the source for those conclusions in the referenced paragraphs which she brackets, thereby adopting the matters set out in those paragraphs as the justification and reasons for the conclusions which she reached. Those conclusions are expressed in the following terms:

“133. Although the Council confirmed that all statutory formalities have been complied with the objector, Mr Kuznetsov, disputed this [4]. Mr Kuznetsov had made a number of procedural applications and had submitted a large volume of documentation prior to the Inquiry as well as making procedural applications at the beginning of the Inquiry. I had considered these procedural applications before the Inquiry opened and on that basis earlier dates for the Inquiry were not effective. I re-considered Mr Kuznetsov’s procedural points at the beginning of the Inquiry and was satisfied that, apart from the question of service of notice of the Inquiry, he had not raised any new points [10-12]. With regard to the service of the notice, I was satisfied on the evidence that Mr Kuznetsov, and the other remaining objectors had been properly served and the correct time period had been given [5-9]. I was also satisfied that Mr Kuznetsov had been provided with all the relevant documentation by the Council and that the Council had acted in accordance with the Rules. I also take the view that Mr Kuznetsov was given every opportunity to present his case, both in writing and orally, and that he was only prevented from raising matters that were not relevant to the Inquiry or those that would have prolonged the Inquiry unnecessarily. In doing so I was aware that the production of new documentation and evidence at this late stage would have been prejudicial to the Council [13-21].

[...]

136. The Scheme would involve the comprehensive redevelopment of the existing Estate to provide 294 dwellings (177 market, 10 intermediate and 107 social rented units) and three employment units (Class B1) in buildings ranging between two and eight storeys, new and altered public realm, landscaping and vehicular and pedestrian links/accesses. The residential units will comprise 11 town houses, 42 maisonettes and 241 flats. The Scheme results in an additional 195 homes, of which 30 are affordable, as well as increased housing standards, quality and associated open space [29 and 34].

137. The Development Plan at the time the planning applications were considered included The Camden Core Strategy, Development Policies, the Local Plan and the London Plan. The purpose for which acquisition of the Order Land is sought accords with the adopted development plan [39]. Planning permissions, which would allow the delivery of the Scheme have been granted [38]. The minor alterations application and variation of the mix of housing that will shortly be made will not substantially affect the Scheme [27]. Following community engagement, the Council has a clear,

well-documented support for the Scheme [32-33]. There would be an overall 40% affordable housing provision within the Scheme which is supported by Council Policy, the Council decision to approve the Scheme and the GLA [34, 122 and 129].

138. The Estate now represents a poor quality urban residential environment. It has fundamentally remained unaltered since the blocks were built in the 1960s. The blocks are generally of poor quality and do not meet up-to-date housing standards, in that among other things they suffer from water penetration, damp, mould growth, anti-social behaviour, and draughty windows. [32]. Older residents had problems with the number of stairs inside their homes which ranged from four flights for a two-bedroom maisonette to five in a three-bedroom maisonette [33]. They are at the end of their economic life and refurbishment is not an option [32 and 33]. There is a great need for all types of housing, particularly affordable housing, in the borough [36] and the Estate is included in the Council's overall Community Investment Programme which is a long term programme bringing together a range of work considering how best to use the Council's assets to improve, shape and transform key places and services within Camden, whilst simultaneously addressing a critical capital funding gap. The programme is and will continue to make an important contribution to the delivery of objectives within the Local Plan, particularly harnessing the benefits of economic growth, tackling inequality, and investing in communities to ensure sustainable neighbourhoods and delivering value for money [36].

139. The objections raised by Mr Kuznetsov are wide ranging and voluminous. It is relevant that, despite the length of time in which this matter has been proceeding, Mr Kuznetsov had not read the report to Committee in respect of the scheme or the planning approvals that had been granted [102]. The objections made by Mr Kuznetsov were not based on factual evidence in that, among other things, he had no professional evidence to substantiate his claim that the refurbishment costs would not be the amount cited by the Council [114]; he had not obtained any professional advice about the value of his property [109]; his submissions about the funding of the Scheme were based on a misunderstanding of the Council's position [40, 65 and 120]; similarly, Mr Kuznetsov's concerns about what he perceived to be insufficient provision of affordable housing were also based on a misunderstanding of Council policy. [63 and 122]

> 140. The Scheme underlying the CPO would achieve substantial public benefits and these would outweigh any disadvantage to Mr Kuznetsov's interests in No 150 [36, 37, 118-129]. The Council has gone to considerable lengths to attempt to negotiate with Mr Kuznetsov [109]. There are resources available for the CPO and for the delivery of the Scheme [40]. From the information before me there is no good reason to believe otherwise.
>
> [...]
>
> 144. Overall, from the evidence presented, I am satisfied that there is no feasible alternative to confirming the CPO for the comprehensive implementation of the Scheme, and the Council has made reasonable efforts to acquire the leaseholders' interests by consent.
>
> 145. There were some procedural irregularities at the beginning of the inquiry process with regard to the timing of the inquiry and the service of notice but these were resolved and the inquiry proceeded in accordance with the Rules. There was no infringement of Mr Kuznetsov's human rights with regard to Article 6(1) of the European Convention on Human Rights either during the inquiry process or the Council's approval of the Scheme.
>
> [...]
>
> 148. In my opinion the pressing need to promote and improve the economic, social and environmental well-being of the borough through its Community Investment Programme and increase in the amount of housing justifies this interference. The CPO is therefore a necessary course of action to deal with the situation, and strikes an appropriate balance between the public interest of achieving long-term regeneration and the private interests in the affected land. There is clear evidence that the public benefit would significantly outweigh the private loss and, consequently, there is a compelling case in the public interest for confirming the CPO."

On the basis of these conclusions the inspector recommended to the first defendant that the compulsory purchase order subject to a modification be confirmed.

25 On 7 March 2017 the first defendant issued his decision letter in respect of the CPO. That decision letter provided as follows:

“Procedural issues

4. The Secretary of State notes from the Inspectors report (IR 5-21) that the objector Mr Alexander Kuznetsov made a number procedural applications with regard to i) not being served with notice of the date of the Inquiry; ii) the Council has failing [sic] to comply with the Rules and disclose relevant documents; and iii) unfair treatment before and at the Inquiry.

5. The Secretary of State also notes the Inspectors comments (IR 145) that there were some procedural irregularities at the beginning of the inquiry process with regard to the timing of the inquiry and the service of notice, these were resolved and the inquiry proceeded in accordance with the Rules.

6. With regard to the procedural applications, the Secretary of State has carefully considered the evidence and agrees with the Inspectors conclusions at IR 22, that the procedural matters and formalities, including the conduct of the Inquiry, were properly applied and carried out.

[...]

Post-inquiry representations

9. The Secretary of State has taken account in reaching his decision of a number of post-inquiry representations made by Mr Kuznetsov. These were not seen by the Inspector at the Public Inquiry. The correspondence is listed at Annex A to this letter. The Secretary of State has concluded that the information provided by Mr Kuznetsov is similar and comparable to the representations made at the public inquiry, and while they have been considered, no reason is seen to disagree with the Inspectors finding and conclusions.

Decision

10. The Secretary of State for Communities and Local Government has carefully considered whether the purposes for which the compulsory purchase order was made sufficiently justify interfering with the human rights of the qualifying persons under section 12(2A) of the Acquisition of Land Act 1981 and he is satisfied that such interference is justified. In particular he has considered the provisions of Article 1 of the First Protocol to, and Article 8 of, the European Convention on Human Rights. In this respect the Secretary of State is satisfied that in confirming the compulsory purchase order a fair balance would be struck between the public interest and interests of the owner and occupants.”

Thus the decision of the first defendant was to accept the recommendation of the inspector and to confirm the second defendant's CPO.

26 On 13 April 2017 the second defendant made the general vesting declaration following confirmation of the CPO in order to give effect to it.

The law

27 The CPO was promoted exercising the power under s.226(1)(a) of the 1990 Act, which provides as follows:

> "226. Compulsory acquisition of land for development and other planning purposes.
>
> (1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area
>
> (a) if the authority think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land."

28 The law in relation to the making of CPOs is contained in the Acquisition of Land Act 1981. In relation to notices that are required, s.11 and 12 of the 1981 Act provide as follows:

> "11. Notices in newspapers.
>
> (1) The acquiring authority shall in two successive weeks publish a notice in the prescribed form in one or more local newspapers circulating in the locality in which the land comprised in the order is situated.
>
> (2) The notice shall–
>
> (a) state that the order has been made and is about to be submitted for confirmation
>
> (b) describe the land and state the purpose for which the land is required
>
> (c) name a place within the locality where a copy of the order and of the map referred to therein may be inspected, and

(d) specify the time (not being less than twenty-one days from the first publication of the notice) within which, and the manner in which, objections to the order can be made.

12. Notices to owners, lessees and occupiers

(1) The acquiring authority shall serve on every qualifying person a notice in the prescribed form-

(a) stating the effect of the order,

(b) stating that it is about to be submitted for confirmation, and

(c) specifying the time (not being less than twenty-one days from the service of the notice) within which, and the manner in which, objections to the order can be made.

(2) A person is a qualifying person, in relation to land comprised in an order, if

(a) he is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land, or

(b) he falls within ss.(2A)."

29 Section 19 makes particular provision for when a CPO authorises compulsory purchase of certain types of land as follows:

"19. Commons, open spaces etc.

(1) In so far as a compulsory purchase order authorises the purchase of any land forming part of a common, open space or fuel or field garden allotment, the order shall be subject to special parliamentary procedure unless the Secretary of State is satisfied–

(a) that there has been or will be given in exchange for such land, other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attach to the land purchased, or

(aa) that the land is being purchased in order to secure its preservation or improve its management.

(b) that the land does not exceed 250 square yards in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public,

and certifies accordingly.

[...]

(4) In this section–

[...]

'open space' means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground."

30 Applications to the High Court of the kind brought by the claimants in this case are governed by s.23 and 24 of the 1981 Act. They provide as follows:

"23 Grounds for application to High Court.

(1) If any person aggrieved by a compulsory purchase order desires to question the validity thereof, or of any provision contained therein, on the ground that the authorisation of a compulsory purchase thereby granted is not empowered to be granted under this Act or any such enactment as is mentioned in section 1(1) of this Act, he may make an application to the High Court.

(2) If any person aggrieved by–

(a) a compulsory purchase order, [...]

desires to question the validity thereof on the ground that any relevant requirement has not been complied with in relation to the order or certificate he may make an application to the High Court.

(3) In subsection (2) above 'relevant requirement' means–

(a) any requirement of this Act, or of any regulation under section 7(2) above, or

(b) any requirement of the Tribunals and Inquiries Act 1992 or of any rules made, or having effect as if made, under that Act.

[...]

24 Powers of the court.

[...]

(2) If on the application the court is satisfied that–

(a) the authorisation granted by the compulsory purchase order is not empowered to be granted under this Act or any such enactment as is mentioned in section 1(1) of this Act, or

(b) the interests of the applicant have been substantially prejudiced by any relevant requirement (as defined in section 23(3) above) not having been complied with

the court may quash the compulsory purchase order or any provision contained therein, or the certificate, either generally or in so far as it affects any property of the applicant."

31 Rules in relation to the conduct of proceedings at inquiries are provided by the Compulsory Purchase (Inquiries Procedure) Rules 2007. The specific rules which are relevant for the purposes of the arguments raised in this case are rules 7, 8, 10, 15, 16 and 17, and the relevant parts of those rules are as follows:

"7. Statements of case, etc

(1) The acquiring authority shall send a statement of case to each remaining objector and, in the case of a non-ministerial order, to the authorising authority–

(a) where a pre-inquiry meeting is held pursuant to rule 4 or rule 6(3), not later than 4 weeks after the conclusion of that meeting;

(b) in any other case, not later than 6 weeks after the relevant date.

(2) Unless every document, or the relevant part of every document, which the acquiring authority intends to refer to or put in evidence at the inquiry has been copied to each remaining objector, the acquiring authority shall send to each remaining objector a notice naming each place where a copy of those documents may be inspected free of charge at all reasonable hours until the

date of commencement of the inquiry; and each place so named shall be as close as reasonably possible to the land.

[...]

(6) The acquiring authority shall afford to any person who so requests a reasonable opportunity to inspect, and where practicable take copies of any statement or document which has been sent to it in accordance with any of the preceding paragraphs of this rule; and shall specify in the statement sent in accordance with paragraph (1) the time and place at which the opportunity will be afforded.

8. Inquiry timetable

(1) Where a pre-inquiry meeting is held pursuant to rule 4 or 6 the inspector shall, and in any other case may, subject to the provisions of rule 10(1)(b) arrange a timetable for the proceedings at, or at part of, an inquiry and may at any time vary the timetable; any changes to the timetable shall be notified to every person entitled to appear at the inquiry.

[...]

10. Date of inquiry

[...]

(2) Unless the authorising authority agrees a lesser period of notice with the acquiring authority (where it is not that authority) and with each remaining objector, the authorising authority shall give not less than 6 weeks' written notice of the date, time and place fixed by it for the holding of an inquiry to –

(a) every remaining objector; and

(b) every person who has sent an outline statement under rule 5 or a statement of case under rule 7.

[...]

15. Evidence at inquiry

(1) A person entitled to appear at an inquiry to give, or to call another person to give, evidence at the inquiry by reading a statement of that evidence shall send to the inspector and (in the case of non-ministerial orders) to the acquiring authority, a copy of that statement and, subject to paragraph (2), a written summary of it together with any relevant supporting documents.

(2) No written summary shall be required where the statement mentioned in paragraph (1) contains not more than 1,500 words.

(3) The statement and the summary (if any) shall be sent to the inspector and to the acquiring authority not later than–

(a) 3 weeks before the date fixed for the commencement of the inquiry, or

(b) where, pursuant to rule 10, a timetable has been arranged which specifies a date by which the statement of evidence and summary shall be sent to the inspector, that date.

(4) Unless paragraph (2) applies, only the summary shall be read at the inquiry unless the inspector permits or requires otherwise.

[...]

16. Procedure at inquiry

(1) Except as otherwise provided in these Rules, the inspector shall determine the procedure at the inquiry.

(2) Unless in any particular case the inspector, with the consent of the acquiring authority, otherwise determines, the acquiring authority shall begin and shall have the right of final reply; and the other persons entitled or permitted to appear shall be heard in such order as the inspector may determine.

(3) A person entitled to appear at the inquiry by virtue of rule 14(1) or (2) shall be entitled to call evidence, and the acquiring authority and the remaining objectors shall be entitled to cross-examine persons giving evidence, but, subject to paragraphs (2), (4), (5) and (7), the calling of evidence and the cross-examination of persons giving evidence shall otherwise be at the inspector's discretion.

(4) The inspector may refuse to permit–

(a) the giving or production of evidence;

(b) the cross-examination of persons giving evidence; or

(c) the presentation of any other matter

which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may

submit to him in writing any evidence or other matters before the close of the inquiry.

[...]

17. Site inspections

(1) The inspector may make an unaccompanied inspection of the land before or during the inquiry without giving notice of his intention to the persons entitled to appear at the inquiry.

(2) The inspector may, during the inquiry or after its close, inspect the land in the company of a representative of the acquiring authority and any remaining objector; and he shall make such an inspection if so requested by either the acquiring authority or by any remaining objector before or during the inquiry."

32 These rules are of course supplemented where necessary by the common law principles of fairness, including principles relating to real and apparent bias. In relation to the rules of fairness in respect of public inquiries, in *Bushell v Environment Secretary* 1981 AC 75, Lord Diplock observed the following with respect to the highway inquiries with which that case was concerned at page 96H to 97F:

> "It is evident that an inquiry of this kind and magnitude is quite unlike any civil litigation and that the inspector conducting it must have a wide discretion as to the procedure to be followed in order to achieve its objectives. These are to enable him to ascertain the facts that are relevant to each of the objections, to understand the arguments for and against them and, if he feels qualified to do so, to weigh their respective merits, so that he may provide the Minister with a fair, accurate and adequate report on these matters.
>
> Proceedings at a local inquiry at which many parties wish to make representations without incurring the expense of legal representation and cannot attend the inquiry throughout its length ought to be as informal as is consistent with achieving those objectives. To 'over-judicialise' the inquiry by insisting on observance of the procedures of a court of justice which professional lawyers alone are competent to operate effectively in the interests of their clients would not be fair. It would, in my view, be quite fallacious to suppose that at an inquiry of this kind the only fair way of ascertaining matters of fact and expert opinion is by the oral testimony of

> witnesses who are subjected to cross-examination on behalf of parties who disagree with what they have said. Such procedure is peculiar to litigation conducted in courts that follow the common law system of procedure; it plays no part in the procedure of courts of justice under legal systems based upon the civil law, including the majority of our fellow member states of the European Community; even in our own Admiralty Court it is not availed of for the purpose of ascertaining expert opinion on questions of navigation–the judge acquires information about this by private inquiry from assessors who are not subject to cross-examination by the parties. So refusal by an inspector to allow a party to cross-examine orally at a local inquiry a person who has made statements of facts or has expressed expert opinions is not unfair per se.
>
> Whether fairness requires an inspector to permit a person who has made statements on matters of fact or opinion, whether expert or otherwise, to be cross-examined by a party to the inquiry who wishes to dispute a particular statement must depend on all the circumstances. In the instant case, the question arises in connection with expert opinion upon a technical matter. Here the relevant circumstances in considering whether fairness requires that cross-examination should be allowed include the nature of the topic upon which the opinion is expressed, the qualifications of the maker of the statement to deal with that topic, the forensic competence of the proposed cross-examiner, and, most important, the inspector's own views as to whether the likelihood that cross-examination will enable him to make a report which will be more useful to the minister in reaching his decision than it otherwise would is sufficient to justify any expense and inconvenience to other parties to the inquiry which would be caused by any resulting prolongation of it."

33 The majority of the House of Lords concluded that there had been no unfairness in excluding cross-examination of the promoter's witnesses about the department's basis for deriving traffic growth to establish the need for the motorways in question as that was a question of Government policy, and not suitable for investigation by individual inspectors at individual inquiries.

34 The leading case in relation to the question of bias is *Porter v Magill* [2002] 2 AC 357. Lord Hope distilled the legal test in relation to bias at paras.102 to 103 of his speech in the following terms:

"102. In my opinion however it is now possible to set this debate to rest. The Court of Appeal took the opportunity in *In re Medicaments and Related Classes of Goods (No 2)* [2001] 1 WLR 700 to reconsider the whole question. Lord Phillips of Worth Matravers MR, giving the judgment of the court, observed, at p.711 A-B, that the precise test to be applied when determining whether a decision should be set aside on account of bias had given rise to difficulty, reflected in judicial decisions that had appeared in conflict, and that the attempt to resolve that conflict in *R v Gough* had not commanded universal approval. At p.711B-C he said that, as the alternative test had been thought to be more closely in line with Strasbourg jurisprudence which since 2 October 2000 the English courts were required to take into account, the occasion should now be taken to review *R v Gough* to see whether the test it lays down is, indeed, in conflict with Strasbourg jurisprudence. Having conducted that review he summarised the court's conclusions, at pp.726H-727C:

> '85. When the Strasbourg jurisprudence is taken into account, we believe that a modest adjustment of the test in *R v Gough* is called for, which makes it plain that it is, in effect, no different from the test applied in most of the Commonwealth and in Scotland. The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased.'

103. I respectfully suggest that your Lordships should now approve the modest adjustment of the test in *R v Gough* set out in that paragraph. It expresses in clear and simple language a test which is in harmony with the objective test which the Strasbourg court applies when it is considering whether the circumstances give rise to a reasonable apprehension of bias. It removes any possible conflict with the test which is now applied in most Commonwealth countries and in Scotland. I would however delete from it the reference to 'a real danger'. Those words no longer serve a useful purpose here, and they are not used in the jurisprudence of the Strasbourg court. The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

35 A number of other legal principles to be applied in assessing the legality of the approach of an inspector and subsequently the Secretary of State in the assessment of decisions to confirm a CPO in a s.23 application can be specified as follows:

(1) The court must be astute to distinguish between cases brought under s.23(1), where the allegation is that there was no power in the circumstances to make the CPO, and cases brought under s.23(2) involving an allegation that a "relevant requirement" (that is, a requirement of the 1981 Act or the rules) has not been complied with. In the latter case, the claimant must show substantial prejudice to his or her interests: see s.24(2).

(2) There are no special rules for the court to apply in considering a s.23 application. The standard public law principles apply, bearing in mind that, given the draconian nature of the powers being exercised, the Secretary of State must be satisfied that there must be sufficient justification for the merits of making the order. Alternative means of meeting the needs served by the CPO can be relevant to the merits: see *De Rothschild v Transport Secretary* (1988) 57 P & CR 330.

(3) It is inadmissible to seek to argue the merits of the decision in a s.23 application unless as part of an irrationality challenge which will itself be an extremely difficult task, bearing in mind the expertise of the tribunal at the inquiry and also the decision maker. This is an error of law jurisdiction under s.23 of the 1981 Act, and matters of judgment and the weight to be given to material considerations are matters which are for the decision maker: see *Newsmith Stainless v Secretary of State* [2001] EWHC (Admin) 74.

(4) Questions of fact are also for the decision maker to determine. There is only a narrow jurisdiction in public law terms in relation to errors of law: see *E v Secretary of State for the Home Department* [2004] EWCA Civ 49; [2004] QB 1004 at para.66, in which Carnwath LJ, giving the judgment of the court, recorded as follows:

> "First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence must have been 'established', in the sense that it was uncontentious and objectively

verifiable. Thirdly, the appellant (or his advisers) must not been have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning."

(5) A s.23 application can be based on the adequacy of the reasons in the inspector's report or the Secretary of State's decision. In judging whether the reasons are legally adequate, the court will apply the following principles:

(a) The documentation is to be read in a straightforward manner with its purpose as a piece of administrative decision-making, as opposed to it being a statute or some sort of legal instrument, in mind: see *Clarke Homes v Secretary of State* (1993) 66 P & CR 23 per Sir Thomas Bingham MR at 261-272, and *De Rothschild* per Slade LJ at 342.

(b) The decision should be read as a whole bearing in mind it is addressed to a well-informed audience. The findings of the inspector should be examined broadly, not forensically dissected sentence by sentence: see *Save Britain's Heritage v Secretary of State* (1990) 60 P & CR 539 at 547-8 cited in *Stewart v Secretary of State for the Environment and Vale Royal DC (*1991) 62 P & CR 135 at 147-8; see also *ELS Wholesale (Wolverhampton) Limited v Secretary of State* (1987) 56 P & CR 69 at 78-9.

(c) It is not necessary for a decision maker, in stating his reasons, to deal with every single material consideration involved in the decision. The decision maker must have regard to every material consideration but need not mention them all. What the reasons must address are the principal controversial issues: see *Bolton MDC v Secretary of State* (1995) 71 P & CR 309 per Lord Lloyd at 313-314.

(d) The law in this area was definitively summarised by Lord Brown in *South Bucks District Council v Porter (No. 2)* [2004] UKHL 33; [2004] 1 WLR 1953 at para.36 of his judgment in the following terms:

"36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and

what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

The first claimant's grounds in the s.23 application

36 The first claimant's grounds which are put before the court for consideration in this judgment were carefully distilled by Mr Evans for the purposes of his argument. Whilst as can be seen from appendix 1 to this judgment he analysed them in terms of arguments that were put against the Secretary of State and the inspector or against the inspector alone, I propose, with respect, to analyse them under the legal principles which are applicable to the issues raised by the first claimant.

37 The first headings to which I address are the questions of fairness, which can be subdivided into procedural grounds and then the allegations of bias. I then turn separately to the substantive grounds which are raised in relation to the inspector's decision.

Fairness

38 The first claimant relied upon allegations of procedural fairness as well as allegations related to actual and apparent bias. The allegations were relied upon both individually and cumulatively in an endeavour to demonstrate that the recommendation which the inspector reached and the first defendant adopted was arrived at by unfair process.

Procedural grounds

39 The first claimant relies upon a significant number of procedural issues in this part of the case. They can be enumerated as follows:

(i) Failure to notify him in relation to the applications for planning permission for the consents which were relied upon by the second defendant as underpinning the scheme;

(ii) Failure of the second defendant to provide its statement of case in accordance with timescales provided by the rules set out above;

(iii) Failure to make documents available for inspection in accordance with the rules, notwithstanding statements they were available;

(iv) Rejecting the submission by the first claimant of his documentation prior to the inquiry. This is relied upon both in itself, but also by contrast with the approach taken to the second defendant by PINS where, as set out above, discussions occurred prior to the inquiry about the provision of documentation by the second defendant to PINS;

(v) Failure to provide notice in a paper for two consecutive weeks as required by s.11 of the 1981 Act;

(vi) The inspector reached conclusions about the service of the notice of the inquiry upon the first claimant by reference to her site visit without consultation with the first claimant and without affording him an opportunity to deal with the basis upon which she found against him;

(vii) The refusal of the first claimant's application for an adjournment. This is said to have been unlawful in the circumstances;

(viii) The refusal of the first claimant's application for disclosure, which again is contended to be unlawful in the circumstances;

(ix) The inspector's restriction of the first claimant's evidence and his presentation at the inquiry, and also the restrictions upon him cross-examining the witnesses of the second defendant, are contended to have been unlawful.

40 I deal with the submissions made in relation to each of these points and my conclusions as follows.

(i) Failure to notify the first claimant of the planning applications

41 The first claimant's complaint was identified by the inspector at paras.90 and 91 and responded to by the second defendant in para.115 of the inspector's report. The complaint is that this illegitimate failure to notify him of the planning applications was part and parcel of the second defendant's prejudicial behaviour, and, moreover, demonstrated illegality in relation to the planning permissions which underpinned the scheme. It is submitted that the inspector did not deal with the point in her report.

42 In my view, this point is without merit. Taking the first claimant's case at its highest, and assuming that there was illegality in the consultation in respect of all three of the applications for planning permission, they are all of them now long past the time when that illegality could have been established by an application for judicial review. Indeed, no such application for judicial review in relation to any of those planning permissions has, so far as the court papers disclose, ever been made. The well-established presumption of regularity in public law would, therefore, apply to those planning permissions. No challenge having been made to their legality, they are to be regarded as being unassailably lawful and thus, although the point was raised before the inspector, it was irrelevant.

43 Insofar as this point is raised as a reasons challenge in respect of the inspector's report, in my view it is clear that it was not and could not have been a principal controversial issue in the light of the matters which I have set out. Thus there is no substance in this ground of challenge.

(ii) Failure of the second defendant to supply its statement of case in accordance with the timescales provided for by the rules

44 In Ms Lunn's evidence to the inquiry, referred to by the inspector at para.11 of the report, she states that the statement of case was not signed for as being received until 29 March 2016. The first claimant contends, in my view correctly, that this was later than the time prescribed by the rules. This is, it is submitted on his behalf, a further example of procedural irregularity by the second defendant, condoned by the inspector and the first defendant, which infects the decision with illegality.

45 It is important, in my judgment, to note first and foremost that this ground is brought in relation to a requirement of the rules. It was a requirement of the rules which, as I have already observed, was undoubtedly broken. The statement of case was not served in accordance with the timescales required by the rules. However, in accordance with s.24(2) of the 1981 Act, the first claimant must show that his interests were substantially prejudiced by virtue of this failure. In my judgment, there is no basis for any such suggestion.

46 Firstly, the breach occurred well in advance of when the inquiry was eventually heard and several months before he was called upon to present his case. There was more than adequate time to facilitate him understanding the nature of the second defendant's case. This latter point is especially so when a comparison is undertaken between the statement of case and the statement of reasons, and it is noted that the statement of case was in reality little more than a restatement, or modest development, of that which was already firmly in the public domain through the statement of reasons. I am thus not satisfied that the first

claimant was prejudiced by the second defendant's failure in this respect and therefore the requirements of s.24 of the 1981 Act are not made out.

(iii) and (viii) Failure to provide documentation by way of inspection and failure to provide disclosure

47 The first claimant complains that he was prejudiced by an unlawful failure to provide inspection of documents or disclosure of them and that this prejudiced his preparation of his case and undermined the integrity of the process.

48 The inspector dealt with these submissions at paras.10 to 12 of her report. These were, in my view, obviously mixed conclusions of fact, discretionary judgment. In terms of her factual conclusions, she accepted that the second defendant's case, that access to the documentation had effectively been provided through appending them to the statement of case or to proofs or that they were publicly available documents. This conclusion is not something which, in my view, is capable of being disturbed, nor does the evidence which has been produced in the case underpin that factual conclusion or give rise to anything which might engage the *E* jurisdiction. There is no reason to disturb that factual conclusion.

49 In terms of her discretionary judgment, there was, in my view, no error of law which has been identified. Part of the first claimant's concerns in this respect relates to documents which he requested pertinent to issues about viability and stock condition, to which I shall return in relation to the substantive grounds. His concern is that there is no evidence on these issues or that the evidence is fragmentary and unreliable.

50 In respect of this aspect of the case, however, the first claimant has not identified any document which actually exists and which was relevant and necessary for a fair resolution of the matters in issue which was not ordered to be disclosed or which should have been provided to him. His case is rather that there were documents which did not exist and which led to the case being fundamentally flawed. That is a contention which, as I have indicated,

I shall return to when considering the substantive grounds as opposed to the procedural grounds.

<u>(iv) Rejecting the submission by the first claimant of the documents he provided prior to the inquiry by contrast with the treatment of the second defendant by PINS</u>

51 As the inspector recorded in para.15 of her report, documents were submitted by the first claimant shortly prior to the inquiry which were sent back to him and rejected by PINS. This, it is submitted, was procedurally unfair to the first claimant. It is submitted that it was especially unfair when contrasted with the treatment of the second defendant who was, as one can see in the email correspondence, in close dialogue with PINS, discussing in detail with them the provision of documentation to the inspector.

52 In my view, on analysis there is no substance in this point. The fact is that in this respect the first claimant's submission of documents was in breach of the rules, and PINS were correct and perfectly entitled to return them to him. There is, in my view, a clear distinction to be made between the first claimant's submitting evidence of documentation outside the requirements of the rules, and PINS and the second defendant having a dialogue about ensuring that the inspector had access to a complete set of the CPO documentation and evidence which had been provided for the public inquiry and which had been made available prior to the public inquiry.

53 I am thus not satisfied that there is any substance in this aspect of the first claimant's case.

<u>(v) Failure to comply with s.11 of the 1981 Act and publish a notice in the newspaper for two consecutive weeks</u>

54 Whilst prior to the hearing the first defendant and the second defendant disputed that there was a breach of this requirement, on day two of the hearing they both accepted, when a full copy of the edition of the relevant newspaper of 5 November 2015 was produced, that there

was a breach of s.11 of the 1981 Act. It is unfortunate that this admission was made so late in the day. Be that as it may, the first claimant in any event contends that this failure, ultimately accepted by the first and second defendant, is a further example of procedural irregularity and illegality infecting the integrity of the process.

55 In my judgment, it is clear that there has in this respect been a breach of the requirements of the 1981 Act. The question is, however, whether the first claimant can establish pursuant to s.24(2) of that Act that he was substantially prejudiced by the breach. In my view, on the evidence before the court that is simply not possible. He clearly became aware of the existence of the CPO by other means and indeed was able to object to the CPO and then subsequently participate in the formal statutory procedures in evaluating the merits of the CPO. Thus, the omission to advertise the CPO on two separate occasions in reality caused no prejudice to the first claimant at all.

56 In these circumstances, this aspect of the claimant's case cannot succeed.

(vi) The inspector reached conclusions about the service of the notice of the inquiry by reference to her site visit without providing the first claimant with the opportunity to respond

57 Mr Evans submitted that it was concerning and illegitimate for the inspector to take account of what she had seen at the site visit in resolving the factual issue as to whether notice of the inquiry had been properly served. It was unfair, he submitted, not to provide the first claimant with an opportunity to respond to this point.

58 Having carefully considered those submissions, I am satisfied that they are without substance. Since the rival contentions in respect of the question of whether or not the notice had been properly served depended on photographs of the property provided by each party, there was, in my view, every good reason for the inspector to use the opportunity of her site visit to provide her with further material in the form of a visual inspection to resolve that

issue. She noted fairly in her report that her site visit was after the event and took that into consideration. There was, however, in my judgment, no need for the inspector to put her observations at the site visit back to the first claimant before reaching her conclusions. She could, in my judgment, perfectly fairly rely upon her site visit findings as part and parcel of her assessment in resolving this issue without further reopening it for the first claimant's comments. In my view, therefore, there is no substance in this contention.

(vii) The refusal of the first claimant's application for an adjournment was unlawful

59 The circumstances of the application for an adjournment relied upon by Mr Evans were that the first claimant had not been able to access the documents he required, had not received proper disclosure, had had his documents returned to him by PINS, and had only found out about the inquiry by accident via an enquiry of counsel's clerk, and that he came before the inspector as a litigant in person who had wanted to have the advantage of legal representation. In the light of all these features of the case, Mr Evans submitted that the inspector should properly have granted an adjournment so that these problems could be corrected.

60 Clearly, some of the circumstances relied upon in this ground overlap with some of the earlier grounds, for instance in relation to disclosure. For the reasons which I have already given, the complaints in relation to grounds (ii), (iii), (iv) and (viii) of this aspect of the case cannot be sustained. The inspector had found as a fact and was satisfied that the first claimant had been served with notice of the inquiry. It followed that she could be satisfied that there had been opportunity afforded to him to prepare for the purposes of the inquiry. As she noted, specific arrangements were made for dealing with the first claimant's documentation. It was considered and admitted so far as relevant, and time was available between the hearing dates of the two days of the inquiry for the inspector to address it and assimilate it.

61 In these circumstances, I am not satisfied, bearing in mind all of the interests which were in play before the inspector, including the interests of the second defendant, that it was unfair or otherwise inappropriate to refuse the first claimant's application for an adjournment. This was an exercise of the inspector's discretion in relation to procedural matters. It was a discretion to be exercised in a fact-sensitive manner, bearing in mind the particular circumstances of the case. Having scrutinised those circumstances, I am satisfied that this aspect of the claimant's case cannot succeed.

(ix) The inspector's restriction of the first claimant's evidence-in-chief and cross-examination at the inquiry was unfair and unlawful

62 As the inspector records at para.19, the first claimant was not permitted to read what he had produced as a summary. In addition, his cross-examination was curtailed and he was not permitted to ask all the questions which he wanted. He could not cross-examine Ms Lunn who had submitted a witness statement to the inquiry. By contrast, he was cross-examined at length by the second defendant's counsel. This, it was submitted by Mr Evans, was further evidence of unfairness to the first claimant in the inquiry procedure.

63 It is clear to me from the papers which have been lodged in respect of this application that the first claimant disputes the timings for the presentation of evidence and cross-examination which have been recorded in the inspector's report. That is not a dispute that the court is equipped to resolve and it is certainly not an error of fact which engages the *E* jurisdiction. The court therefore has to approach the matter on the basis of the timings recorded by the inspector. In any event, in my view, little or nothing turns on those detailed timings. The position is that r.16 provides the inspector with a very broad discretion to determine the appropriate procedure under r.16(1), which includes a broad discretion to regulate the ambit of cross-examination. This is reinforced by the common law position expressed in *Bushell*. The purpose of cross-examination is to test the evidence in relation to the issues about which the decision maker has to form a view, and for the cross-examiner to

adduce further evidence relevant to that party's case about the merits of whether or not the order should be confirmed. The effectiveness of a cross-examination is not measured by its length but by the quality of the questions which are asked. Experience suggests that some of the most effective cross-examinations, and the most devastating presentations by counsel, are in fact those which are succinct, focused and to the point, demolishing a witness's evidence, rather than submitting it to a prolix and time-consuming exploration of every contention raised. It must be accepted that some topics may take more time to investigate than others. However, I am satisfied that the time which was given by the inspector to the issues which were in play in the present case were more than adequate. In relation to the question of whether or not Ms Lunn should have been cross-examined, it is important to observe that her witness statement dealt with procedural and not substantive matters, and in the light of the fact that the second defendant had not called her as a witness it was, in my view, reasonable and proportionate of the inspector not to require that she be cross-examined.

64 Thus, having reviewed the circumstances of the case, I am not satisfied that there is any substance in the complaints raised in respect of the manner in which the evidence was received by the inspector or her regulation of the cross-examination of witnesses at the inquiry.

65 I have examined each of the procedural complaints individually and collectively. I reject them. There is no substance, therefore, in the overarching and consequent complaint that the first defendant failed to inquire into procedural irregularities or that his conclusion in relation to those procedural irregularities was in error. There were no legal procedural errors in the preparation for and conduct of the inquiry, and the first defendant was entitled to adopt the conclusions of the inspector in that respect.

Bias

66 There are a number of pieces of evidence which the first claimant relies upon in this connection. Firstly, the email of 14 June 2016 with "confirmation letter attached". He contends that this shows that minds had already been made up about the confirmation of the CPO and therefore the first defendant had a closed mind in relation to whether or not the order was to be confirmed. Similar submissions were made on behalf of the first claimant in relation to the email of 1 September 2016 referring to "all bases covered". Again, it was submitted that this shows that the decision maker had a closed mind and had made the decision before the inquiry ever started.

67 I can possibly understand how the first claimant's suspicions may have been aroused by the redacted form of these emails. Once, however, they are seen in unredacted form and in their proper context, there is no substance to the claimant's concerns in this respect. The first email simply refers to a confirmatory letter in respect to a proposed change of date for the inquiry. The second email is merely part of an exchange seeking to establish that all the necessary documents were available to the inspector. There is no evidence at all, in my view, in relation to bias or a closed mind on behalf of the inspector or the decision maker in these emails.

68 The third basis upon which the bias argument is advanced arises from the inspector's email of 3 September 2016, which, it is submitted, shows a clear animus on the part of the inspector against the first claimant, such that it would not have been possible for him to have been given a fair hearing. Attention is focused on the phraseology used by the inspector, such as, "If it hadn't been so time-wasting it would have been laughable" and "very unfortunately he came back 10 minutes later". It is pointed out that this email was written in between the two sessions of the inquiry and so shows the inspector's state of mind before she had embarked upon hearing the first claimant's case.

69 In response to these contentions, the first and second defendants emphasise that this email was in effect, they contend, part of a private conversation between the inspector and the case officer at PINS. It is pointed out that the email reflects the positive efforts made by the inspector to assist the first claimant and does not support the contention that she had lost her independence and impartiality.

70 Of all of the points raised by the first claimant in his s.23 challenge, this is the one which has given me the greatest pause for thought and the greatest cause for concern. I am wholly unsurprised that the first claimant would feel upset and aggrieved at the way in which the inspector expressed herself in this email. The wisdom of writing such an email is, to put it as neutrally as I can, questionable on a variety of fronts. In truth, it was not a private conversation, as it was an email which could always be disclosed in precisely the manner which has occurred in this case. But whether or not the email should ever have been written is not, in truth, the issue; the question is whether it shows actual or apparent bias and whether a fair-minded and informed observer, having considered all the facts, would conclude that there was a real possibility that the inspector was biased.

71 In my view, the email must be read as a whole and the view taken in relation to it include the fact that it references the efforts which the inspector genuinely made to assist the first claimant in terms of interpretation facilities and giving him time to reflect upon whether he should withdraw from the inquiry. The comments made about the production of the photograph no doubt reflected the inspector's frustration at what she considered was the first claimant taking a very bad point. Equally, her observation that it was very unfortunate that the first claimant returned was undoubtedly borne out of her exasperation at what she considered to be the first claimant's subsequently demonstrated poor presentational skills and lack of focus on relevant issues at the inquiry. It is not uncommon, with the best will in the world, for a tribunal to become vexed by a participant if they are focusing on bad or irrelevant points, or if their presentation is repetitious or unhelpful. The expression of that

feeling during the course of a hearing is sometimes necessary to bring home to a participant that an important feature of an effective hearing is using time efficiently, and focusing on the issues which will make a difference to the decision. The observations in this email would not, against this background, in my view lead the fair-minded and informed observer to the conclusion that there was a real possibility that the inspector was biased. She was venting her frustration and irritation with the first claimant's presentation of his case. That is a world away from concluding that there was a real possibility she was biased and not capable of independently and objectively evaluating the first claimant's case from the documentation and the oral evidence with which she was presented. Her asides in the email would not give rise, in my view, to the conclusion that there was a real possibility that she would not stick to her important task of providing real and independent scrutiny to whether or not the CPO should be confirmed in the light of the first claimant's objections.

72 The final basis of the first claimant's case is that during the evidence of one of the second defendant's witnesses, Mr Adam Tucker, the inspector asked whether tenants would be moving back in "when the Bacton building will have been demolished". It is submitted that this further demonstrated a closed mind and the fact that the inspector had already concluded that the Bacton Estate was going to be demolished and the order confirmed.

73 That is a submission that I am afraid I am quite unable to accept. What was occurring in using this expression was the inspector posing a hypothetical question for the witness to address. It is very common at public inquiries of this sort that both the parties, and also the inspector, pose hypothetical questions of this kind. That is done as a necessary and important part of testing the evidence and gaining a fuller understanding of the proposals, or what may happen if those proposals do or do not proceed. Posing a question is not, in my judgment, evidence of bias, and therefore this submission cannot be accepted.

74 Having considered all of the submissions made on behalf of the claimant in respect of questions of real and apparent bias, for the reasons I have set out above I am not satisfied that they provide a basis upon which the claimant can succeed. Again, having considered these matters alongside all the allegations raised by the first claimant cumulatively I am not satisfied that any illegality has been demonstrated.

Substantive issues

75 I now turn to the substantive issues which are raised by the first claimant and distilled in the notes provided by Mr Evans in appendix 1 as being those matters which the claimant continues to press upon the court, notwithstanding the breadth and multiplicity of the aspects of complaint raised in the pleadings.

76 I set out the grounds and deal with them as follows.

(1) The approach to viability and the absence of a stock condition report

77 Whilst these two issues, namely the question of viability and the absence of a stock condition report, were pursued at various times separately, they are to some extent interlinked and related and it makes sense to deal with them in my judgment under one heading. As the inspector noted at para.32 of her report, the CPO decision was informed by a "2011 stock condition survey" which purported to demonstrate that the costs of repair and refurbishment of the Estate were prohibitive. As the inspector noted at paras.49 and 50 of her report, the first claimant objected on the basis that the stock condition survey did not exist and had never been undertaken. The evidence submitted to the inquiry by Ms Lunn and referred to by the inspector in this respect was in the following terms:

> "14. I have tried to locate further information in relation to how the Council derived the unit cost of £40,000 - £50,000 if it were to refurbish the estate to remedy defects (as referred to in paragraph 4.4 of the Council's Statement of Case). However I have been unable to locate a single report or collection of documents that are still held by

the Council to explain how the 2011 figures were derived. I have been informed by the Council's Finance Department that the Council's stock condition survey is held on a live database which is updated over time. The last major refresh of the stock condition database took place in 2011/12 as part of the borough-wide survey, and updates are made to the database as works are completed or assets amended. As such, the data quoted in relation to the 2011 stock condition survey has been updated and the original data is no longer held. The current workbook showing the current stock condition data and estimated costs is attached at Appendix 1. This indicates that an expenditure of approximately £57,431 per unit is required (not including internal works).

> 15. The Council's position is that this document is of very peripheral relevance to the issues. It is not relied upon by the Council in support of its case for confirmation of the Order. I emphasise this because I do not know precisely why the average cost of refurbishment is now higher than in 2011. In addition, the Council went through a very through consultation process spanning several years in relation to options for the estate and a large majority of residents supported the proposal to demolish the existing buildings and build new homes, rather than carry out another round of major repairs."

It will be recalled that these paras.14 and 15 of the witness statement were cross-referred to in the passages from the inspector's report which I have set out above.

78 The first claimant contends that the inspector's decision was irrational in that it could not be rational to approve the CPO without the evidence of a stock condition survey and, in particular, without the evidence of the stock condition survey of 2011. Alternatively, the first claimant submits that the decision which was reached was based on a mistake of fact, that mistaken fact being that a stock condition survey existed when it did not.

79 He also contends that the inspector reversed the burden of proof in relation to the issue of the stock condition survey in para.139 of her report. He submits that she effectively required him to prove the position in relation to stock condition, rather than it being a necessary prerequisite of the second defendant's case. Further, he submits that the conclusions in para.139 were unlawful as there was no basis upon which the inspector could

have concluded that the scheme was viable as no viability study was produced to prove that the scheme was viable and deliverable, notwithstanding his requests that he be allowed to see the same.

80 I am not satisfied that these submissions have substance. Firstly, in relation to the 2011 stock condition survey, it is clear that the second defendants produced through Ms Lunn that documentary evidence which they relied upon as being the exercise described in the paperwork as amounting to the 2011 stock condition survey. The only lacuna in that is (as pointed out in Ms Lunn's evidence) that the figures within the database have moved on as the database was live and regularly refreshed, and the actual figures from the 2011 stock condition survey had been superseded and were no longer available.

81 True it may be that the first claimant can dispute, albeit semantically, that the documentation which the second defendant produced was not what he would properly have regarded as being a stock condition survey because it was based on generic figures from a borough-wide database, but that is, in my judgment, perfectly obviously a merits argument which does not demonstrate that what the inspector concluded was irrational. In para.139 she was entitled to observe that the material which was before her was in reality the only evidence on the topic of refurbishment and repair and, by cross-reference to para.114 of her report, to endorse the second defendant's contentions that this documentation provided costs which were a reliable basis for decision making.

82 The first claimant's concerns about the absence of a viability exercise are also misplaced. It will be recalled that the inspector dismissed them by reference to paras.40, 65 and 120 of her report in her conclusions at para.139. In my judgment, this was an approach which cannot be faulted legally. In particular, in para.40 the inspector noted that, whilst the scheme was designed to break even, it was underwritten by the second defendant who had financial backup available to ensure that it would, in any circumstances, be delivered. Thus,

there was ample evidence upon which the inspector could conclude that the first claimant's concerns were misplaced and the scheme could properly proceed.

83 The inspector did not, in my view, reverse any burden of proof in para.139; she simply identified the evidence which was available to her and upon which she could rely in reaching a recommendation for the first defendant. Whilst there is complaint made by the first claimant that he was refused permission to commission his own survey in relation to the condition of the Estate, the inspector had to proceed to reach a decision on the basis of the evidence which she had and which had been presented to her. That included the evidence on costs that the second defendant had produced and the evidence of her own site inspection. The decision which she reached was clearly lawfully open to her on the material she had before her, including the first claimant's submissions about what he considered were shortcomings in the second defendant's evidence. On that issue, the decision which she reached and which is set out in her report as I have recorded above was one which was entirely legally defensible.

<u>(2) The application of affordable housing policy</u>

84 The first claimant contends that the inspector failed to understand and properly apply affordable housing policy. The relevant parts of policy H4 of the second defendant's local plan provide as follows:

> "The Council will aim to maximise the supply of affordable housing and exceed a borough wide strategic target of 5,565 additional affordable homes from 2015-2030, and aim for an appropriate mix of affordable housing types to meet the needs of households unable to access market housing.
>
> We will expect a contribution to affordable housing from all developments that include housing and provide one or more additional homes. The Council will seek to negotiate the maximum reasonable amount of affordable housing on the following basis:
>
> [...]

e. an affordable housing target of 50% applies to developments with capacity for 25 or more additional dwellings;

[...]

We will seek to ensure that where development sites are split or separate proposals are brought forward for closely related sites, the appropriate affordable housing contribution is comprehensively assessed for all the sites together. The Council will seek to use planning obligations to ensure that all parts or phases of split or related sites make an appropriate affordable housing contribution."

85 The essence of the first claimant's case is that the case made by the second defendant, recorded by the inspector in para.34 of her report in relation to affordable housing, was not compliant with this policy. That case advanced by the second defendant depended upon reliance upon the affordable housing provided in phase 1. It is submitted that phase 1 was not part of the Bacton Estate but, as a question of fact, the pre-existing DHO site and therefore could not properly to be taken into account in assessing whether or not the affordable housing policy at policy H4 had been satisfied for the purposes of the development facilitated by the CPO. The association of the phase 1 part of the land within the figures advanced by the second defendant was in truth, it was submitted, contrary to policy H4.

86 Further, it was submitted that this approach of taking into account the affordable housing benefits on phase 1 was unlawful as it involved taking account of a benefit in respect of an unconnected site which was not part of the land which was subject to the CPO. As such, it was inappropriate to do so and indeed contrary to the decision of the Supreme Court in *Sainsbury's Supermarkets v Wolverhampton City Council* [2010] UKSC 20.

87 Having carefully considered the evidence and the submissions, I am satisfied that they are not well founded. First, as the inspector noted in para.121, phase 1 was integrally linked to the scheme since it physically provided accommodation to enable the emptying of phases 2 and 3 of residents and their decanting into phase 1, so as to facilitate the development of

phases 1 and 2. The *Sainsbury's* case is not, in my judgment, in point, in that phase 1 was clearly related to the overall scheme and part and parcel of it. In the inspector's report set out above, in particular at para.121, the factual basis for this analysis is made plain.

88 The policy itself clearly contemplates the comprehensive assessment of affordable housing which is being made across "closely related sites". The inspector was therefore correct, in my judgment, to observe that the first claimant's concerns were based upon a misunderstanding of the Council's policy which clearly and properly contemplated an examination of the affordable housing across all three phases of the proposed scheme and which underpinned the case which was advanced in relation to the benefits of affordable housing which were accepted by the inspector and the first defendant.

(3) Section 19 of the 1981 Act was engaged in relation to the open space areas of the Estate

89 The first claimant contends, as he did at the inquiry, that s.19 of the 1981 Act applies to the open space areas of the Estate and therefore the first defendant needed to be satisfied that the special tests set out above in that section have been met before he could confirm the CPO.

90 In my view, there are formidable difficulties with this argument. Firstly, it is clear that the open space relied upon was not within the definition provided for by s.19(4) of the 1981 Act, as it was not land laid out as a public garden or used for public recreation; it was land which was incidental to the estate and over which the first claimant had rights to pass and repass as a consequence of his lease.

91 This leads to the second formidable difficulty identified by Mr George Mackenzie, who appeared on behalf of the first defendant: that the interest being acquired from the first claimant was in the form of the first claimant's lease and therefore merely his right to pass and repass the garden land. The CPO did not acquire any interest in the open land itself.

Thus s.19 was not in reality engaged in the CPO process at all and the contention that the process was flawed by failure to apply s.19 cannot be supported.

(4) Failure to consider alternatives

92 This submission is linked to the complaints about viability and the stock condition survey. It is said that the inspector failed to properly consider alternatives to redevelopment and that her failure to do so was unlawful both in terms of irrationality and also in terms of failure to take account of material considerations.

93 These are submissions which, again, I am afraid, I have to conclude are without substance. In fact, at para.138 of her report the inspector provided carefully reasoned conclusions based upon her own evaluation of the urban environment as to why refurbishment was not a tenable option. This led to her conclusion in para.144 that there was no feasible alternative to the order which was before her. I refer also to the observations which I have made in respect of substantive ground 1. In summary, I see no legal error in the inspector's conclusions in this respect and no basis upon which her judgment can be impeached.

94 To conclude in relation to the substantive grounds advanced by the first claimant, I have been unable to accept there was any legal error in the inspector's approach. There was a proper balance on the evidence between the public and the private interests which were engaged, in that the first defendant adopted what I regard as being the legally unimpeachable conclusions of the inspector. The decision which the first defendant reached was, in my judgment, lawful.

The second claimant's s.23 application

95 It is suitable at this stage of the judgment to deal with the second claimant's application under s.23 of the 1981 Act. The second claimant's claim as identified in the claim form relies upon the failure to place a notice in the newspaper for two consecutive weeks as

required by s.11 of the 1981 Act, and a failure to notify the second claimant under s.12 of the Act of the existence of the CPO and its having been made. Reliance is also placed on the requirements of s.19 of the 1981 Act.

96 For the reasons which I have set out above and which I adopt in considering the second claimant's claim, the arguments made under s.19 of the 1981 Act cannot be supported and must fail. In relation to the second claimant's contentions in respect of s.12 of the 1981 Act, it is important to note that the factual position put to the inspector and recorded by her at paras.46 and 47 of her report was that there was an arrangement for the employees of some businesses to stay at the first claimant's premises when they were in the UK. No documents were available and none were produced to the inspector in connection with this point.

97 In a witness statement dated 4 May 2017 in these proceedings, Ms Volevodova on behalf of the second claimant asserts that on 5 February 2015 the second claimant "entered into an agreement to rent part of the premises" at 150 Bacton Rise. In a witness statement of 20 June 2017 and made in the course of the first claimant's parallel proceedings, the first claimant states as follows:

> "20. I confirm that a lease agreement has been signed with Braginzuk LLC in November 2014 and the tenor of the lease is from 5 February 2015 until 5 December 2021. In fact, this was the very reason for the termination of the holiday let agreement referred by the Council at the enquiry. In fact, not being legally trained, I contacted the Land Registry at the end of 2014 to check what needs to be done to register the lease. I have been advised that not only the leases under 7 years don't have to be registered but, in fact, cannot be registered in the Land Registry even if the parties wish to do so. As confirmed at the inquiry, I have a written lease agreement with Braginzuk LLC but my original copy had disappeared after my shed B8 had been broken on 9 April 2016 (this was reported to the police and the Local Authority). However, as was confirmed at the enquiry, the Braginzuk LLC has the original copy of the agreement and I have also obtained a copy."

98 The inconsistencies within this material, and in particular the inconsistencies between this evidence and that which the inspector recorded at para.47 of her report, for instance in relation to the availability of a lease document, will be noted. It is also relevant to note that enquiries by the second defendant of the Russian authorities show that people who were identified individuals objecting to the CPO were also involved as shareholders with the second claimant.

99 Examining that material, the conclusions which can properly be drawn in the context of these proceedings are, in my view, as follows. Firstly, there was no evidence before the decision maker of any substance at all that the second claimant was a qualifying person under the definition operated by s.12 of the 1981 Act. All that was said in evidence and recorded by the inspector at the time of her inquiry, and all that was available, therefore, to the first defendant at the time of the decision, was that there were arrangements for employees to stay at the first claimant's property when they were visiting the UK, and no documentation was provided so as to crystallise or confirm the legal nature of that arrangement. That, therefore, was the factual basis upon which the inspector and the first defendant had to proceed. In my judgment, nothing that has been produced since gives rise to any error of fact such as to engage the jurisdiction under the case of *E*. There are no established facts which show that the inspector and the first defendant proceeded on the basis of a factual error.

100 Taking what the inspector recorded as the factual basis for the decision and examining its legality, I am satisfied that such occasional and sporadic use, unaccompanied by any supporting documentation explaining the nature of the relationship between the first and second claimants, could not bring the second claimant within the definition of a qualifying person. I accept the submission made by Mr Mackenzie on behalf of the first defendant that the meaning of "occupier" in the language of s.12 requires some permanence or persistence in that occupation, and not an occasional or visiting use of the character which was

described to the inspector. As I have indicated, subsequent evidence produced in the context of these proceedings, whilst unsatisfactory and inchoate, is certainly not of a quality that enables the jurisdiction afforded to this court by the case of *E* to be invoked. That evidence, it has to be noted, is inconsistent in some respects with the position which was put before the inspector both as to the nature of the relationship and the availability of documentation.

101 It follows that on the basis of the reasons which I have set out above I am satisfied that there was no breach in this case of s.12 of the 1981 Act. There was, however, undoubtedly a breach of s.11 of the 1981 Act for the reasons which I have set out above. Again, it is still necessary for the second claimant to show that they were prejudiced by that breach of the requirements. I am not satisfied that they are able to demonstrate any such prejudice for the following reasons. Firstly, the second claimant has not provided any evidence in these proceedings of any matter which it would have raised before the decision maker which was not already before the decision maker as a consequence of the objections, evidence and documentation provided by the first claimant. The complaints which are relied upon in the documentation provided in this case are similar to and mirror the concerns of the first claimant which were raised and considered by the inspector and subsequently the first defendant in any event. Thus, there is no prejudice in that respect. Secondly, since as I have indicated above the documentation before the court establishes that individuals involved as shareholders with the second claimant were also objectors to the CPO, it is highly artificial to contend that the second claimant was unaware of the CPO process and unable to participate in it. Thirdly, a notice was sent on 29 October 2015 to the second claimant at 150 Bacton Low Rise. It is surprising that the letter was not forwarded on if that were the case, or did not otherwise come to the second defendant's attention, if in fact they were using those premises with any material degree of frequency or regularity as has been suggested.

102 Thus, even had a breach of s.12 of the 1981 Act been made out, and even in respect of the established breach of s.11 of the 1981 Act, I am not satisfied that the second claimant can succeed. It follows that their claim must fail.

The first claimant's judicial review of the general vesting declaration

103 Having reviewed the first claimant's grounds of judicial review in relation to the general vesting declaration made by the second defendant, it relies in the pleaded case upon essentially the same grounds as were raised in the statutory review. In his skeleton argument, the first claimant raises some further allegations. Those relate, firstly, to the extent of land included within the general vesting declaration and complains in respect of the extent of land being included within it. However, these points were not developed in the oral argument which was presented before the court; nor is it explained how it might be that this extension of the land affected might affect the first claimant, who, it will be obvious, has an interest solely and to the extent of the leasehold interest which is acquired under the CPO. Thus, I do not consider that, even if this factual point were made out, it could give rise to the court giving the first claimant relief.

104 Secondly, in the skeleton argument, the first claimant's grounds are extended so as to embrace the matters which were raised by the second claimant in its s.23 challenge. For the reasons which I have set out above, the second claimant's claim is without substance, and therefore these matters relied upon by the first claimant in his skeleton argument in respect of the judicial review must be dismissed.

Overall conclusions

105 For the reasons which I have set out above, the first and second claimants' applications under s.23 of the 1981 Act must be dismissed. So far as the first claimant's judicial review is concerned, it comes before me as a rolled-up hearing. I would have granted permission for many of the points raised to have been argued. The only point which I consider to have

been unarguable was that raised under s.19 of the 1981 Act. The other points raised I would have considered to be properly arguable, albeit that in the final analysis, for the reasons I have given, the first claimant's judicial review must fail.

APPENDIX 1

KUZNETSOV & BRAGINZUK LLC
V
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNEMENT
&
LONDON BOROUGH OF CAMDEN

CLAIMANT'S DISTILLATION OF ISSUES TO BE CONSIDERED BY THE COURT

1. **As against the Secretary of State and Inspector**

- Failing to monitor/investigate the impact of admitted procedural failings and their effect on C
- 14 June 2016 email
- 1 September 2016 email
- Rejection of C's documents despite short notice; compare with latitude re LA's docs – 31 August email (C;s skel para76)
- Refusal of adjournment despite short notice
- Emails p 925
- Inspector's note p 961 – "very unfortunately" etc
- Return of tenants " when Bacton will be demolished"
- Case management against C – restrictions on evidence
denial of XX of material witness
- Conclusions drawn re 20 July service & failure to communicate/consult re observations of door on site visit.
- Allegation of bias.
- Unlawful transfer of burden of proof onto C re viability & other issues
- Inappropriate approach to viability argument, bland acceptance of LA assurances of funding & ignoring 2 independent reports indicating non-viable issues – lack of proper reasoning in report on issue.
- Balance of public/private interest
- Denial of natural justice

2. **Against the LA**

- defects in notice and service from original pp applications to late service of Statement of Reasons to 20 July "service"
- failure to publish notice 2 consec weeks

- issue of prejudice to C by above
- issues of notice & service re Braginzuk
- failure to make documents available for inspection despite statements that they were so available
- refusal of disclosure
- utter confusion over stock condition survey leading to

misleading of cabinet & council as to repair costs

leading to potential erroneous decision as to regeneration & CPO

resultant failure to consider any alternatives to demolition

leading to neglect and decay of site

remaining confusion over repair costs – specific or generic?

- Viability - argument tainted from out set by above
    - Lack of clarity over figures
    - Failure to disclose material evidence – viability report
    - Refusing permission to C to commission own survey

- Housing stock & affordable housing
    - Misreading of H4 – "additional housing"
    - Aggregating Phase 1

- S19 issues
- Denial of natural justice