

**The Urban Regeneration Agency**  
**(Edge Lane West, Liverpool) Compulsory Purchase Order (No. 2) 2007**

**Leasehold Reform, Housing and Urban Development Act 1993, Part III**

**Acquisition of Land Act 1981**

**4th DRAFT/**

**OBJECTION OF ELIZABETH PASCOE**

**The Urban Regeneration Agency  
(Edge Lane West, Liverpool) Compulsory Purchase Order (No.2) 2007**

**WHEREAS:**

1. Elizabeth Pascoe (hereafter ‘the Objector’), of 11 Adderley Street, Kensington, Liverpool L7 2QJ has received notification of the making of the above Compulsory Purchase Order (hereafter ‘the CPO’) by the Urban Regeneration Agency (hereafter ‘the Acquiring Authority’).

2. The relevant notification of the making of the CPO issued by the Acquiring Authority and received by the Objector is dated 9<sup>th</sup> July 2007 and specifies that objections must be made ‘before 7<sup>th</sup> August 2007’.

3. The CPO is made subsequent to a previous Order (The Urban Regeneration Agency (Edge Lane West, Liverpool) Compulsory Purchase Order 2005). That Order was quashed by the Administrative Court (Forbes J.) on the application of the Objector pursuant to s.23(1) of the Acquisition of Land Act 1981: *Pascoe v First Secretary of State* [2006] EWHC 2356 (Admin); [2006] 4 All E.R. 1240 because the Secretary of State and his Inspector failed properly to direct themselves in law when considering the attempt of the Acquiring Authority to take the Objector’s property against her will.

4. The Acquiring Authority has made the CPO purporting to act under powers conferred by the Leasehold Reform, Housing and Urban Development Act 1993 (hereafter ‘the 1993 Act’). In particular, s.162(1) of the 1993 Act confers a power of compulsory acquisition of land on the Urban Regeneration Agency ‘for the purpose of achieving its objects or for purposes incidental to that purpose’. The ‘main object’ of the Agency is detailed in s.159(1) of the 1993 Act, namely to secure the regeneration of land which, in accordance with s.159(1)(a), is land of one or more of the descriptions (hereafter ‘the statutory descriptions’) specified in s.159(2) of the 1993 Act and, in accordance with s.159(1)(b), which the Agency having regard to guidance given by the Secretary of State under s.167 of the 1993 Act, determines to be suitable for regeneration.

**The said Elizabeth Pascoe hereby OBJECTS to the CPO on the following grounds:**

5. The making of this second CPO is oppressive and reckless. The land owned by the Objector does not fall within any of the statutory descriptions of land referred to in s.159(1)(a) and s.159(2)

of the 1993 Act. The Objector's property, which is occupied and used as a dwellinghouse, is not vacant, nor is it under-used or ineffectively used. Further, the Objector's property is not contaminated, derelict, neglected or unsightly, nor is there any actual or apprehended collapse of the surface which could result in such circumstances occurring. Accordingly, since the Objector's property is non-qualifying land there is no primary factual basis for the exercise of powers of compulsory acquisition by the Acquiring Authority in respect of the Objector's property.

6. The Acquiring Authority had not carried out a survey of the Objector's property prior to resolving to make this CPO. It is axiomatic that the Acquiring Authority has again failed properly to direct itself in law. Without giving the requisite prior written notice of intention to enter occupied land, attempts have been made to gain access to the Objector's property and other properties contained within the Order lands for the purpose of carrying out surveys. Those attempts have been made subsequent to the making of the CPO and are therefore *ultra vires* and hence unlawful. Accordingly, the Acquiring Authority has failed properly to direct itself in law (and thus acted unlawfully) in (a) purporting to conclude that the Objector's property falls within any of the statutory descriptions of property specified in s.159(1)(a) and s.159(2) of the 1993 Act; (b) prejudging the factual position before purporting to exercise its statutory powers; and (c) seeking to rectify the error after the relevant statutory powers of entry had ceased to be exercisable. Having misdirected itself in relation to the exercise of its powers the Acquiring Authority is not entitled to conclude that the Objector's property is 'suitable for regeneration' within s.159(1)(b).

7. The Acquiring Authority was required to inform itself and to take reasonable steps to obtain relevant information before seeking to exercise the power conferred by s.162 of the 1993 Act to make the CPO, rather than after the event (see *Secretary of State for Education v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1065). It therefore follows that the making of the CPO by the Acquiring Authority is based on impermissible speculation in relation to the facts relevant to the Objector's property.

8. Similarly, the Inspector to be appointed by the Secretary of State to hold a public local inquiry will be under the same obligation to acquaint himself with the relevant facts. The Objector will submit that the Inspector ought not to proceed with an inquiry into objections to the CPO for want of jurisdiction on the part of the Secretary of State to consider his report or to determine whether

or not to confirm Order. This would result in costs being wasted by the Acquiring Authority and would precipitate an application for costs by the Objector.

9. The evidential burden to be discharged by the Acquiring Authority in seeking confirmation of the CPO is substantial. In *Pascoe v First Secretary of State*, Forbes J. held that the Acquiring Authority, the Inspector and the First Secretary of State acted unlawfully in applying a 'predominately' test in attempting to overcome a shortfall of evidence when considering whether the Order lands are under-used or ineffectively used. In the absence of appraisal of individual properties subject to the CPO, there is no evidence disclosed in the Statement of Reasons of the amount of non-qualifying land. The Acquiring Authority is therefore not entitled to conclude that the Order lands are under-used or ineffectively used. In the event of confirmation of the CPO is axiomatic that the Inspector and Secretary of State will have again failed properly to direct themselves in law.

10. The main feature of the scheme underlying the CPO is the provision of an improved transport corridor at Edge Lane, principally by provision of a dual carriageway and redevelopment of properties fronting the proposed reconstructed highway. Neither section 159 (Objects of Agency) nor s.160 (General Powers of Agency) of the 1993 Act expressly enable the Acquiring Authority to purchase land compulsorily for the purposes of provision of a highway. Compulsory powers in this respect are expressly conferred on other bodies (the Local Highway Authority or the Highways Agency), but no such powers have been expressly granted to the Urban Regeneration Agency. Accordingly, the Acquiring Authority has no relevant statutory power in that behalf.

11. Although the Acquiring Authority may acquire land under s.162(1) of the 1993 Act for purposes 'incidental' to the purpose of achieving its statutory objects, in this instance the purpose (provision of an improved transport corridor) is not 'incidental' but comprises the principal purpose of the proposed compulsory acquisition. Further, s.159(4) of the 1993 Act specifies the means by which the Urban Regeneration Agency should achieve its objects, expressly placing emphasis on securing that land and buildings are brought into effective use.

12. Absent its consideration of the facts relevant to the Objector's property, the Acquiring Authority has acted *Padfield* unreasonable in purporting to use its regeneration powers for the purposes of provision of a highway through occupied land.

13. The Objector's property is contained within a renewal area (the Kensington Renewal Area) within the meaning of the Local Government and Housing Act 1989 (hereafter 'the 1989 Act'). The renewal area was declared by Liverpool City Council on 10<sup>th</sup> December 2004. In accordance with s.93(2) and (3) of the 1989 Act, the objectives of the renewal area designation are to achieve: (a) improvement or repair of premises consisting of or including housing accommodation; (b) proper and effective management and use of housing accommodation; and (c) well-being of the persons for the time being residing in the area. There is therefore a presumption that such housing accommodation within the renewal area should be improved or repaired, where necessary, rather than demolished and redeveloped. The 1989 Act does not confer powers to provide or improve a highway. Accordingly, the proposed compulsory acquisition of the Objector's property and of properties fronting Edge Lane is in conflict with the statutory purposes of declaration of the housing renewal area and therefore *Padfield* unreasonable. The Statement of Reasons for making the CPO does not address this conflict and makes no mention of the renewal area designation.

14. The Acquiring Authority has failed to comply with the requirements of paragraph 17 of ODPM Circular 06/2004 *Compulsory Purchase and the Crichel Down Rules*. This Circular requires that the Acquiring Authority must 'be sure that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land affected.' In relation to the Objector's land, the Statement of Reasons for making the CPO recites but does not address the provisions of Art. 1 (protection of property) of the First Protocol to the European Convention on Human Rights, or of Art. 8 of the Convention (right to respect for private and family life). Although paragraph 14.12 of the Statement of Reasons states that 'English Partnerships has carefully considered the balance to be struck between the effect of acquisition on individual rights and the wider public interest....' it is difficult to see how the balancing exercise was performed in relation to the Objector's property in the absence of investigation or consideration by the Acquiring Authority of the relevant facts, or details of the criteria which were applied either to the Objector's property (whose dwellinghouse does not fall within any of the statutory descriptions of land), or generally in relation to other properties contained within the Order lands, or the weight which was given to each of the competing factors. Accordingly, the Statement of Reasons also fails to meet the requirements of Appendix R (Preparing the Statement of Reasons) to Circular 06/2004. In the absence of any or sufficient information addressing these issues or any submissions or conclusions as to proportionality, in particular where the Objector's property does

not fall within any of the statutory descriptions of land, the inadequacy of the Statement of Reasons casts doubt on the Acquiring Authority's case for making the CPO.

15. The land claimed by the Acquiring Authority to be required for the purposes of the scheme underlying the CPO greatly exceeds the land take reasonably required for the purpose of securing regeneration of Edge Lane West (the A5047). The objects of the Acquiring Authority's scheme can be achieved without acquisition of the Objector's property. Accordingly, the scheme is not reasonably or at all necessary, is disproportionate and therefore represents an unjustified and unlawful interference with the Objector's human rights.

16. Contrary to the requirements of paragraphs 20 and 21 of ODPM Circular 06/2004, insufficient information is given in the Statement of Reasons for making the CPO detailing the cost of the scheme or how it will be funded. The Acquiring Authority state that '[T]he proposals are funded from a range of sources....and private sector funding from Bellway Homes.' The Statement of Reasons (paragraph 10.2) refers only to 'the current budget' for 'site assembly and site clearance'. In the absence of any further substantive details of the resource implications, in particular in respect of the cost of implementing and completing the Acquiring Authority's scheme and whether funding is likely to be available within a reasonable timescale, the CPO ought not to be confirmed.

17. Although outline planning permission for the proposed redevelopment of the Order lands has been granted by Liverpool City Council, detailed planning permission had not been sought prior to the making of the CPO, otherwise than in relation to the improvement, widening and realignment of Edge Lane. The grant of outline planning permission assumes confirmation of the CPO. It is not, however, a reason for its confirmation.

18. It has not been established that there is a need for the Acquiring Authority's scheme. The relevant section of Edge Lane is capable of selective improvement within the four lanes of traffic that it presently accommodates but without the wholesale loss of dwellings and other buildings that confirmation of the CPO would authorise. An alternative scheme (referred to as 'Plan B' in the Statement of Reasons for making the CPO) has been promoted by a group of local stakeholders, using the acronym BEVEL (Better Environmental Vision for Edge Lane). The scheme proposed by BEVEL is clearly superior to that of the Acquiring Authority. It would

require less funding, would be less intrusive and would meet the Acquiring Authority's objective of achieving an improved gateway to the City Centre.

19. Residential and other accommodation fronting onto Edge Lane can and should be repaired and improved under the less intrusive powers conferred on Liverpool City Council by the Local Government and Housing Act 1989. Repair and improvement of the substantial buildings fronting onto Edge Lane will provide an impressive 'gateway to the City'. Wherever possible housing accommodation in the relevant area should be repaired and improved, as has already been successfully achieved at Jubilee Drive, and also at Kensington at which the many of the historic frontages to the highway have been successfully and impressively refurbished.

20. Any actual or perceived failure in the local housing market that may exist is partly attributable to, or in the alternative has been exacerbated by, the activities of the Acquiring Authority and its partners. Therefore no reliance can be placed upon the Acquiring Authority's evidence in this respect. Properties that have already been purchased voluntarily by the Acquiring Authority, or by Liverpool City Council, Liverpool Land Development Company Ltd, or Community 7 (the relevant Registered Social Landlord), have not been occupied subsequent to their acquisition. Instead, they have been secured but left in a manner which fosters an impression of dereliction and decay, with consequent blighting effects, under which ambitions for compulsory purchase of additional land might be considered to be more readily achievable. The Acquiring Authority has therefore attempted to present a *fait accompli*. Accordingly the Inspector cannot place any reliance on circumstances created by the Acquiring Authority. Further, these properties have not been demolished, thus implying a lack of confidence in the scheme underlying the CPO on the part of the Acquiring Authority or its development partners.

21. The Acquiring Authority's Statement of Reasons for making the CPO does not establish a 'compelling case in the public interest' for making the CPO, as required by paragraph 17 of ODPM Circular 06/2004.

22. In summary, the Acquiring Authority action in making the CPO is oppressive, it has no statutory powers compulsorily to acquire the Objector's land or to develop a highway as the principal element of the regeneration proposals. The Acquiring Authority has also failed to comply with several requirements identified in Circular 06/2004. If, contrary to the above, the CPO is

confirmed, it is clearly vulnerable to further challenge in the High Court under s.23 of the Acquisition of Land Act 1981, which could result in the CPO being quashed.

23. The CPO should therefore be withdrawn forthwith to avoid any further wasted costs.

24. The Objector hereby places the Acquiring Authority on notice (together with its partners, servants, agents, advisors and representatives) that its actions could be construed as public misfeasance. The Objector therefore reserves her rights in that respect. Furthermore, the Objector reserves her right to damages under the Human Rights Act 1998.

25. The Objector reserves the right to alter, amend or supplement these grounds of Objection.

Dated August 2007

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For and on behalf of Elizabeth Pascoe