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# Compulsory Purchase Order Decision

Inquiry Held on 26-28 October 2022

Site visit made on 28 October 2022

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

**an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities**

**Decision date: 3 January 2023**

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**Case Ref: PCU/CPOP/T0355/3295397**

**The Royal Borough of Windsor & Maidenhead (Nicholsons Shopping Centre and Surrounding Area at High Street, Queen Street and King Street, Maidenhead) Compulsory Purchase Order 2022**

- The Order was made under Section 226(1)(a) of The Town and Country Planning Act 1990, Section 13 of The Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981.
  - The Order was made by the Council of the Royal Borough of Windsor & Maidenhead (the acquiring authority), on 22 February 2022.
  - The Order authorises the compulsory acquisition of all interests in the land coloured pink and the compulsory acquisition of new rights over the land coloured blue, on the Order Maps numbered 1-4, as defined and described in the Order Schedule.
  - At the close of the inquiry, there were 11 remaining duly-made objections, with three other duly-made objections having been withdrawn prior to or during the inquiry.
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## DECISION

1. The Compulsory Purchase Order is not confirmed.

## INTRODUCTORY MATTERS

### *Background*

2. The Order Lands are located in the town centre of Maidenhead, within the area bounded by High Street, Queen Street, King Street and Broadway. The greater part of this area comprises the Nicholsons Shopping Centre, an enclosed, indoor shopping mall, developed mainly in the 1970s with some later additions. The freehold interest in the shopping centre is held by Denhead SARL, a 'special purpose vehicle' company incorporated in Luxembourg. In addition, the Order Lands also include the Broadway multi-storey car park, with associated retail units fronting onto King Street, and a 4-storey office building known as Siena Court. The freeholds of these land parcels are owned by the Royal Borough of Windsor and Maidenhead (RBWM) Council.
3. On 31 March 2021, the Council and Denhead SARL entered into a Development Agreement relating to the proposed redevelopment of their combined holdings in the Order Lands. The Development Agreement is also supported by a Land Swap Agreement, designed to rationalise the parties' respective interests in order to facilitate the carrying out of the development.

4. At around the same time, in March 2021, the Council resolved to grant planning permission for a comprehensive mixed-use redevelopment of the site, to be known as the 'Nicholson Quarter' development. The proposed scheme provides for a range of flexible-use units for retail, restaurants/cafes/drinking establishments, hot food takeaways, financial and professional services, assembly and leisure, and non-residential institutions, together with offices, business uses, residential development, Class C2 accommodation for the elderly, car parking and public open space. Under the terms of the hybrid application, some of these elements are specified in full detail, and others in outline. The applicant for the development was Areli Real Estate Limited, whose role is described as Denhead SARL's operating partner and development manager. Following the completion of a Section 106 agreement, the planning permission was granted on 21 October 2022.

### **The Order**

5. The Compulsory Purchase Order was made on 22 February 2022. If confirmed, the Order would authorise the compulsory acquisition of all interests in the Order Lands, and of specified rights over various adjoining properties. The Order's stated purpose is: *"...facilitating the carrying out of development, redevelopment or improvement on or in relation to the land, namely a mixed-use development comprising a mixture of employment, residential, retail, leisure, community and elderly care homes in the heart of Maidenhead town centre, together with improvements to the public realm and open space"*.
6. The interests to be acquired include the leasehold interests and occupational licences in the retail units and ancillary areas of the Nicholsons Shopping Centre, and in the parking decks and retail units of the Broadway car park. In the majority of cases, these interests are said to have now been acquired by voluntary agreement, or their terms varied to allow vacant possession to be secured prior to the planned commencement of the development. Also included is a strip of unregistered land forming part of the highway of King Street.
7. The rights to be acquired over other properties include rights of access and general construction, which would include the right to enter land, and to manage access to it, and to carry out works including protective works, boundary treatments, re-grading, resurfacing, landscaping, support works, and accommodation and reconfiguration works. In addition, rights are sought which variously include rights to oversail with cranes, to erect scaffolding and hoardings, to carry out works to service media, plant and fire escapes, and to gain access for the purposes of delivering materials and machinery, and to form temporary accesses, and to carry out maintenance or repairs. In some cases, party wall rights are to be acquired which would include rights to carry out works of demolition, support, making good, and roof protection. In all cases, these rights relate only to works to be carried out during the course of the construction of the development.

### **Compliance with statutory requirements**

8. The Order is accompanied by a Statement of Reasons. The Statement sets out the background to the Order and records that the Council's decisions to use compulsory purchase powers to bring forward the redevelopment of the site, and to make the Order, were taken through formal resolutions at two Cabinet

meetings, held on 26 February 2020 on 25 March 2021. These details have not been challenged by any party, and I have no reason to question them.

9. At the present inquiry, it was noted by some parties that the Statement of Reasons incorrectly describes the development plan for the area as including the Maidenhead Town Centre Area Action Plan, adopted in September 2011. As of the date of making the Order, that plan had in fact been superseded by the adoption of the Maidenhead Borough Local Plan, on 8 February 2022. Whilst this was a clear error on the Council's part, it does not seem to me to be one which would be likely to affect the validity or lawfulness of the Order itself. The substantive issue of the relationship of the Order to the relevant adopted planning policies will be addressed elsewhere in this decision.
10. On 23 May 2022, in its role as the acquiring authority, the Council issued a General Certificate in support of the Order. The Certificate confirms that notices of the Order were published in a local newspaper, and affixed at various places adjacent to the site, and also served by post on those known to have qualifying interests. Although the initial notices contained an error in the address for objections, they were re-served with the necessary correction, and the objection period was extended accordingly. It is not disputed that copies of the Order documents were made available at Maidenhead Library. The General Certificate was also accompanied by a Protected Assets Certificate. I am satisfied that all of these statutory requirements were properly complied with.
11. During the inquiry, Mr Hill, an interested person, questioned whether the relevant procedure for giving notice of the inquiry had been complied with, in accordance with the Compulsory Purchase (Inquiries Procedure) Rules 2007. However, for non-ministerial orders, the relevant requirement in this regard is set out at Section 11(2) of those Rules. At the inquiry, the acquiring authority produced evidence of compliance, in the form of photographs of site notices, and a certificate of billposting. In the absence of any direction from the authorising authority (in this case the Planning Inspectorate), a notice in a local newspaper is not required. Nor is there any specific requirement for the date to be published on the Council's website. In the circumstances, I am satisfied that the relevant statutory procedures were fully complied with in this regard.

### ***The objections to the Order***

12. A total of 14 objections to the Order were made. Of these, one was withdrawn prior to the opening of the inquiry (by B Bailes), and two more were withdrawn during it (Hanwell Holdings Ltd, and S Pospischil & Ms K Potts), leaving 11 remaining objections as at the inquiry's close.
13. Of these, three of the objections are from persons holding leasehold interests which are proposed to be acquired through the Order: Lee and Dean Page, Aegon UK Property Fund Ltd, and WH Smith Retail Holdings Ltd.
14. Eight of the others are from parties with interests in properties over which new rights would be taken: Lloyds Bank PLC, M James, R Harding, Brock House Investments Ltd, Telefonica UK Ltd, McDonalds Global Markets LLC, and T Fraser. The final objector, MNK Estates (UK) Ltd, has no known interests in any directly affected property.

### ***The inquiry***

15. The inquiry sat for three days, on the 26, 27 and 28 October 2022, at the Maidenhead Town Hall. Following a further exchange of written submissions, the inquiry was closed in writing on 14 November 2022.
16. The objection made by Messrs L and D Page was supported by an appearance at the inquiry. All of the other remaining objectors opted to proceed by way of written submissions, or to rely on their original objections.
17. In addition, three other interested persons were also permitted to speak at the inquiry.

### ***Site visits***

18. During the inquiry, I carried out accompanied visits to Nicholson House and Smokeys Nightclub, which are the subject of the objections by Aegon UK and L & D Page respectively. No other objectors requested an accompanied visit, but nevertheless, I was able to view the exterior of all of the remaining objectors' properties on an unaccompanied basis.
19. In addition, I also carried out a series of further unaccompanied visits during the period of the inquiry, in which I viewed the remainder of the Order Lands, plus much of the surrounding area.

### ***Post-inquiry correspondence***

20. Since the close of the inquiry, it has been brought to my attention that a legal challenge has been commenced, by way of a claim for judicial review, against the planning permission for the development of the Order Lands, granted on 21 October 2022. However, those proceedings are as yet at an early stage, and may take some time to reach a conclusion. In the meantime, the permission stands. I am not persuaded that the commencement of this challenge is sufficient grounds to justify delaying my decision on the CPO.

## **THE CASE FOR CONFIRMATION OF THE ORDER**

### ***The existing situation***

21. The acquiring authority identifies numerous shortcomings and deficiencies in the existing development on the Order Lands. Internally, the Nicholson shopping centre in its existing form is said to offer an uninteresting and somewhat sterile environment, with no sense of place and little to attract customers to spend time there. Externally, the shopping centre offers unattractive blank facades which turn their back on the surrounding streets and neighbouring properties. The multi-storey car park is described as monolithic in scale and purely functional in its design.
22. In addition, the only route through the site in a north-south direction is via a single corridor exit from the shopping centre, and then through the car park by way of the lift or stairs, to a single entry point on Broadway. This is an uninviting and somewhat daunting route, and in any event is only available during opening hours. Together therefore, the existing development creates a substantial physical barrier to pedestrian movement through and around the town centre, including between the High Street and the railway station.

23. For the most part, these criticisms of the existing buildings' design and layout are not disputed. From my own observations, I find them all to be well-founded.
24. The Authority goes on to argue that the retail units within the centre are not well suited to current day requirements, due to their excessive size, lack of variety and flexibility, and the deep-plan format which allows little scope for subdivision or adaptation. In the face of changing retail trends and shopping habits, trading performance is said to have dropped, vacancies have risen, and a downward spiral has set in, manifested in diminishing levels of footfall, occupancy and trading margins. These effects are also said to be exacerbated by rising maintenance costs and consequent high service charges.
25. As a result, the centre as a whole is now regarded by the Authority as no longer a viable asset, nor one into which any landlord would be likely to invest the significant funds that would be needed to arrest the decline. As evidence, the Authority point to the fact that the Centre's previous owner went into administration, and that the sale to Denhead SARL in 2019 was at a price some 30% below the value that was put on the site only four years earlier, and 70% less than the figure for which it sold in 2007.
26. Attention is also drawn to the Retail and Town Centre Update Study, in October 2019, which found that despite having a catchment population with well above average spending power, Maidenhead was losing trade to surrounding towns due to the unbalanced and poorly configured nature of its retail stock. In this regard, the Nicholson Centre in particular was singled out as inefficient and outdated, and ripe for redevelopment.
27. The Authority's assertions on these matters are not entirely unchallenged. Some objectors suggest that the shopping centre's decline has been brought about intentionally. Others see nothing inherently lacking in the centre as it now is. However, there can be no doubting that the Nicholson Centre is a product of its time, and that trends in retailing have changed significantly since then. On the evidence available, it seems to me that the Authority is more than likely to be right in its assessment that the shopping centre building is no longer capable of meeting modern needs.
28. There is also some force in the Authority's contention that the present time is a good one to pursue some form of radical redevelopment. The recent opening of the Maidenhead station on the new Elizabeth Line railway has evidently sparked considerable interest in the town. The progress of several major developments, including the Landing, Watermark, Waterside Quarter and Chapel Arches sites, has injected a wave of new investment in the local property market. And similar influences appear to be at work elsewhere in the Thames valley, leading to the perception of a 'silicon corridor' effect. Consequently, despite the current economic difficulties at national level, with high inflation, energy prices and interest rates, and the uncertainties resulting from recent political changes, it seems to me that in this particular location there is logic in the argument that this is the right time to capitalise on the area's sense of momentum. I agree that to do so would be in both the local and national interest.
29. Given the Order site's key position at the very heart of the town, I agree that it is important that it should be used in a way that contributes positively to Maidenhead's identity, and meets the needs and aspirations of the resident

community and local businesses. Having regard to the above matters, it is clear to me that the existing, somewhat mediocre shopping centre and car park buildings have a negative effect on the town centre's character and appearance, and on the ability of users to move freely around the town centre. The shopping centre also fails to offer the type of facilities that are required in today's market. In the light of these findings I am satisfied that, in general terms, the replacement of the existing buildings would have the potential to benefit the town's economic, social and environmental well-being.

### ***The benefits of the proposed Nicholson Quarter development***

30. At ground floor level, the proposed redevelopment scheme would provide for around 66 new, flexible retail units, suitable for a range of uses including shops, services, cafes, restaurants and leisure uses, with a total usable area of around 8,360 sq m. Although this would be a reduction in retail floorspace compared to the existing Nicholson Centre, in terms of the number of units it would represent a slight increase. Importantly, whilst a range of different sizes would be provided, these would be weighted mainly towards smaller units, which are seen as better geared to the emerging, post-covid pattern of demand, focussing on locally-based, independent retailers and 'artisan-style' shops. Based on the evidence presented, I agree with the Authority that the type of retail provision envisaged in the proposed scheme seems well suited to Maidenhead's present and likely future needs. As such, the development would contribute to improving the town centre's vitality and viability.
31. These new units would be arranged in a series of attractive, interconnected outdoor streets, small yards and squares, designed as social spaces, to accommodate planting, seating, café tables, market stalls and other activities. The two existing pedestrian connections to the High Street would be supplemented by a third, via what is now White Hart Road, and the connection to Queen Street via Brock Lane would be maintained and enhanced. A new north-south pedestrian axis would be created, with access onto Broadway, and the east-west axis via Brock Lane would be extended through the site to emerge onto King Street. At the convergence of these routes there would be a new public square, with smaller secondary spaces at other key points. All of these pedestrian routes and spaces would have active frontages, comprising mainly retail or similar uses.
32. To my mind, this layout would improve markedly on the existing development at the site in several ways. It would enhance the town centre's permeability and connectivity. It would better integrate the site with the existing street pattern, knitting it into the town's urban grain. It would provide inviting spaces for shoppers, office workers and residents to meet and relax. It would bring a sense of life and activity to otherwise dead spaces, including in the evenings. It would create natural surveillance and improved personal safety. And it would create opportunities for an attractively designed public realm, with a new sense of place, at the heart of the town centre. In all these respects, it seems to me that the development now proposed would represent a substantial improvement over the existing indoor shopping centre that it would replace.
33. On its upper floors, the development would provide for in excess of 29,000 sq m of new Class B1 office workspace, in a range of sizes and configurations, from 375 sq m to 2,600 sq m. Whilst some existing office floorspace would also be lost, mainly at Siena Court, the net addition would still amount to over



23,000 sq m. This is said to equate to about 30% of the town's forecast needs within the current Local Plan period, to the year 2033. Based on the evidence, Maidenhead is clearly a well-established regional office centre, with a buoyant market and strong demand. Although there are other office developments also in the pipeline, and some older space available for reletting, there is no evidence of any significant oversupply. I see no reason to doubt that the office elements in the proposed scheme would meet an established need, and as such, would help to sustain the local economy.

34. In terms of housing, the proposed scheme for the Order Lands would provide for up to 346 open-market apartments, plus 307 Class C2 elderly persons' units with extra care facilities, amounting to over 650 new dwellings in total. Whilst the Council currently claims a housing supply in excess of five years, it was unable to do so prior to granting planning permission for the Nicholson Quarter development, in March 2021. I also note that the Council's housing delivery test results show a pattern of persistent under-delivery for several years, before the adoption of the new Local Plan in February 2022. It is clear from this that meeting local housing needs in the Royal Borough has long been, and continues to be, a considerable challenge. The residential elements of the proposed scheme would make a substantial contribution to local housing needs. I note that there is no certainty that the development would provide any 'affordable' housing, because any such provision would depend on the outcome of a further viability review, but this does not change my view that securing the provision of around 650 dwelling units, on previously developed land in a central location, would be a substantial benefit to the town.
35. With regard to parking, the proposed scheme would provide just over 1,300 car or vehicle spaces in total. Of these, about 700 would be for public parking, and 88 would be replacements for existing private spaces which would be lost. The remainder would be dedicated spaces for the new offices, apartments, and extra-care housing. Between them, these car parks would also be capable of providing up to 125 charging points for electric vehicles. Over 800 cycle parking spaces are also proposed, in an area where little if any dedicated cycle provision appears to exist now. All of these numbers appear to broadly accord with the relevant planning policies relating to car and cycle parking. In my view, these elements of the scheme strike a sensible balance between the aims of attracting footfall and activity to the new centre, whilst encouraging sustainable modes of transport. As such, the development now proposed would bring about an improvement over the existing situation, benefitting the town's transport infrastructure, and improving the way that its movement networks function.
36. The proposed development would provide the opportunity for a range of well-designed, high quality buildings, employing modern technology, meeting current standards of energy and water efficiency. In so far as some parts of the scheme have as yet reached only the outline permission stage, I note that the reserved matters for those phases are to be controlled by reference to an approved detailed Design Code. And on a technical level, modern standards are guaranteed by the need to comply with national building regulations. In addition, the scheme would substantially increase the density of development on the site, and thus make much better and more efficient use of land in such a highly sustainable location. In all these respects, the development now proposed would represent a considerable improvement on the existing undistinguished and outdated buildings on the site.

37. The Nicholson Quarter development, excluding land acquisition and finance, is estimated to cost around £380m. Of this, some £326m is accounted for in construction costs, , and the remainder on marketing, sales, fees and contingencies. It is not unrealistic to assume that a proportion of the materials, labour and services required would be sourced locally, and therefore contribute to the local economy. The construction phase itself is expected to create around 2,400 jobs, over a 3 - 4 year period. When complete, the office and retail elements are estimated to provide for over 2,200 FTE permanent jobs. This new workforce, together with the resident population of the development, would add to the town centre's footfall, and support local businesses in the daytime and evening economies, with the additional local spending estimated at up to £11.4m per annum. Furthermore, the improved retail and leisure offer created, with its greater distinctiveness and sense of local identity, would help the town to retain more of its own retail expenditure, reducing leakage to neighbouring centres. And in addition, the development would also have the potential to act as a catalyst for further investment and regeneration in the town.
38. Having regard to all the above considerations, I am satisfied that the proposed redevelopment of the Order Lands would bring clear benefits to the town of Maidenhead, and the wider area, in terms of its social, economic and environmental well-being.

***Relationship to the planning framework for the area***

39. In the Borough Local Plan (the BLP), the Order Lands are identified as site AL1, which is allocated for a mixed use development, providing retail and community uses, 15,000 sq m of employment space, approximately 500 residential units, and a public square. Policy QP1a states that Maidenhead town centre is to be renewed and enhanced, and identifies the redevelopment of the Nicholson Centre as a key contributory element in achieving that aim.
40. Policy SP1 identifies Maidenhead town centre as part of a strategic growth location, and as a major focus for sustainable growth and regeneration, for new housing, employment, retail and leisure. Policy TR3 supports proposals that promote and enhance the role of the town centre, and particularly those that enhance or diversify retail activity.
41. Objectors question whether the detailed criteria in some of these policies, or other relevant policies such as design, car parking, affordable housing, or the provision made for specific uses, have been met in full. These issues will undoubtedly have been relevant to the Council's decision, as Local Planning Authority, as to whether to grant planning permission; and as far as I can tell, they were indeed taken into account in that decision. However, for the purposes of my decision regarding the CPO, the question is one of broad principles, i.e. whether the scheme is in general accordance with the adopted policy framework for the area.
42. To my mind, the development now proposed for the Order Lands clearly accords with the aims of the site-specific and area-specific policies of the development plan, as set out above. As such, it is aligned with the planning framework for the area.



***Prospect that the scheme will proceed***

43. According to the evidence put before the inquiry, the Nicholson Quarter development is to be funded by Tikehau Capital, a privately-owned, French-based investment and asset management business, which is Denhead SARL's parent company. Tikehau is said to have access to substantial funds for investment in projects of this type, and already has available or committed equity from shareholders and institutional investors, sufficient to more than meet the entire costs of the development from this source if necessary. Alternatively, the company is also confident of being able to attract additional investment or debt financing from other sources. Whilst the evidence on these matters has not been substantiated in detail, I have no reason to doubt it. Based on the evidence before me, I am satisfied that the necessary resources are available.
44. A number of viability appraisals have been carried out for Denhead and their partner Areli Real Estate, and in some cases these have been subject to formal review on behalf of the Council. Some objectors contend that the number of different assessments and methodologies, and apparently differing results, indicates some uncertainty or lack of clarity as to the scheme's viability. However, none of the assessments suggest that the development is unviable. Rather, the results show differing levels of profit, and of return on costs. To my mind, these differences are not particularly surprising, given their differing purposes and dates, and the inevitable changes in costs and values over time. The most up-to-date appraisal is that carried out by the Authority's witness Mr Garside, for the purposes of his inquiry evidence. That appraisal, which appears to me to be comprehensive and robust, shows an overall return of just over 20%. I have no doubt that further appraisals will be needed prior to the start of any development, and that the results may vary from Mr Garside's present figure, as circumstances continue to change, and indeed as the details of the scheme itself continue to evolve. But the same would apply to any development of this scale. I note the various detailed criticisms of these figures made by objectors, but there is no requirement for viability to be proven beyond all doubt; I have considered the matter on the balance of probability. Based on the best evidence before me now, I can see no reason to doubt that, in general terms, the development as a whole can be regarded as financially viable.
45. In addition, I note that the developers have identified a range of 'de-risking' strategies, including forward sales, pre-lets, partnering and joint ventures. If necessary, such measures could potentially enable the development to proceed, or indeed to continue, even if the rate of return were to fall below that which would normally be required. In my view, this is a prudent approach, ensuring a degree of resilience against future economic and market conditions. This reinforces my view that the scheme should be viewed as viable.
46. From the information provided, the combined effect of the Development Agreement and Land Swap Agreement is that, if and when various conditions are fulfilled, Denhead SARL would then have the right to exercise an option to acquire the Council-owned parts of the site. This would trigger a further series of obligations on both sides, including the start of demolition and excavation works by the developers, and the construction of the new car park by the Council. As objectors point out, the optional element in this arrangement does not amount to a binding commitment to go ahead with the development. But

nevertheless, it is evident that both parties have already committed a great deal of time and money to reach this stage. Indeed Denhead states that it has so far incurred expenditure of £35m on acquisition costs, running costs, and professional fees, with a further £1.5m said to have been committed in respect of the on-going CPO process. Whilst these figures have not been substantiated in detail, to my mind they appear broadly commensurate with the scale of the project, and I see no reason to doubt their accuracy. The Council too must clearly have invested considerable amounts of officer and member time and costs. To my mind, both parties have demonstrated a high level of commitment to the project, and I see no reason to doubt the continuing desire on both sides to bring the scheme to fruition.

47. From the evidence provided, Tikehau Capital's previous experience in property development has been predominantly outside the UK. But nevertheless, it does appear to have relevant experience in large projects elsewhere. Denhead SARL, as a recently-formed special purpose company, has no apparent track record in its own name, in terms of completed projects. Much the same applies to Areli, which was formed in 2018. But nonetheless, these companies are apparently each able to call on an experienced management team, augmented by external agencies, with directly relevant experience and expertise. I see no reason to doubt that the developer and their advisers have the necessary capabilities to deliver the development, and to manage the project through to completion.
48. Stopping-up Orders are needed in respect of a few small areas of public highway. These have been applied for, and the Department for Transport has confirmed that no objections were received within the relevant period. Consequently there seems no reason to doubt that the necessary Orders will be granted in due course. Aegon UK suggests that rights held in connection with Nicholson House may allow construction works to be prevented, but this assertion has not been substantiated. In any event it seems likely that the power under S.203 of the Housing and Planning Act 2016, to override easements and other rights in certain circumstances, could be used if necessary. Based on all the evidence before me, there do not appear to be any insuperable legal or physical impediments to the development.
49. Taking account of all the above matters, I am satisfied that, if the CPO were confirmed, the proposed redevelopment of the Order Lands would appear to have a good prospect of going ahead.

***Overall summary of the case for confirmation of the Order***

50. For the reasons set out above, I agree that the redevelopment of the Order Lands, as now proposed, would accord with the development plan strategy for the area, and would bring significant benefits for the social, economic and environmental well-being of the town. I also accept that, if the CPO were confirmed, there is clear evidence that the scheme is viable, and that the necessary funding, expertise and commitment would be available. The proposed development would therefore have a good prospect of proceeding. These considerations all weigh in favour of confirmation.

## **THE OBJECTIONS**

### **Objection by Mr Lee Page and Mr Dean Page (trading as Smokeys Nightclub)**

#### ***The objection***

51. Lee and Dean Page are partners in the business which trades as 'Smokeys', a nightclub located in Unit 24a of the Nicholson Centre. On the Order Map, the plots occupied by the club, together with its outdoor terrace and ancillary areas, are Nos 29, 32, 33, 34, and 1/18. The club has the benefit of a lease granted to Lee and Dean's father Ron Page, which runs to 23 June 2030. Ron Page recently passed away, with this part of his estate passing to Lee, Dean and their mother Tracey Page. The CPO proposes to compulsorily acquire all interests in the club's premises.
52. The main grounds of objection are that no suitable relocation premises have been offered, and that consequently the business faces a threat of extinguishment.

#### ***The role of Smokeys Nightclub***

53. The business has evolved out of that which was started by Ron Page in 1962, first as a café, and then as a cabaret venue, before taking on its present form as a nightclub in 1995. It has operated from the present premises since 1967. In 2007 the premises were extended to add the terrace and a second bar area, and in 2017 a major refurbishment and rebranding was carried out, said to have cost around £500,000. The name Smokey Joe's was adopted in 1995, and shortened to Smokeys in 2017. The business has always been owned and managed by members of the family.
54. The present premises are said to offer a net usable space of just over 4,000 sq ft (370 sq m) internally, plus the outside terrace, with an overall capacity for over 400 persons. Customers come primarily to drink, socialise, dance and listen to music. Although the average age is said to be 28, the overall age range is said to be broad; and the inquiry heard oral evidence from one such customer, Mr Sidwell, which appeared to corroborate this point. At its peak, prior to the Covid-19 lockdown period, the club is said to have had an overall attendance of around 100,000 persons a year. Currently it is also said to have 15,000 followers on social media.
55. The club offers regular live music acts, and over the years has hosted many artists who either were already, or went on to become, nationally or internationally well-known names. It is clear that the Page family take great pride in the club's role, in bringing high quality entertainers to Maidenhead, and also in helping new performers to get started. By their account, Smokeys is the only venue of its type, and the only one offering live music in this type of setting, in Maidenhead or the wider area. The importance of creative industries in the Borough is recognised in the RBWM Corporate Plan for 2021-26.
56. The club's licence allows it to stay open to 04.00 on most nights, and to 03.00 on the others, which is seen as a significant factor in attracting a regular clientele, and an important feature in the club's business model. Despite these hours, it is claimed that the club has been free from any significant complaints, and enjoys good relationships with the police and licensing authorities. In part this is attributed to the location of the existing premises, with the advantage of having no residential neighbours in close proximity.

57. The business is said to employ between 30 to 50 full or part time staff, depending on seasonal demands and trading conditions, with up to 20 being on site at any one time. Most of these are said to be young people, typically school leavers in their first job. Again, Lee and Dean Page are evidently proud of their record in training and developing their staff, and preparing them for the demands of the employment market.
58. According to the evidence presented, Smokeys has been instrumental in organising and supporting the regular 'Fi-Fest' summer musical event, attended by many. It has also given support to a number of local charities through sponsorship and training opportunities. In addition, it is said that the club has provided a home for persons identifying as 'LGBTQ+', by hosting regular dedicated events and a dedicated, private LGBTQ+ page on the club's website, and also providing facilities for specific groups, and generally by promoting inclusiveness throughout in the running of the club. The Authority questions the extent of the club's role in providing specifically for the needs of the 'LGBTQ+' community, but I see no reason not to accept the evidence of the club's owners on this point.
59. In March 2019, following the Community Planning Weekend held by Areli in preparation for the Nicholson Quarter scheme, the Reportback Presentation recorded a desire amongst participants for a 're-provided nightclub'. This appears to be a reference to the potential loss of Smokeys, and an indication of public support for the club's retention within the redevelopment.
60. For the most part, the evidence presented by Lee and Dean Page on all the above matters is undisputed. Based on this evidence, and my observations on my site visit, I agree that in its local context, Smokeys Nightclub is a notable, and in many ways a unique facility. It provides a leisure facility for evenings out and late-night entertainment, which evidently meets the needs of substantial numbers of loyal and regular customers, in the town and its hinterland. It is clearly appreciated and valued by those people. It also contributes to the area's social and cultural life. And in a small way, it is part of Maidenhead's history. In contrast, the loss of the club would diminish the opportunities available to local people for pleasurable relaxation and social activity. It would also reduce job opportunities, particularly in the youth sector, and openings for aspiring performers to advance their careers.
61. For all these reasons, I conclude that Smokeys Nightclub has an importance to the town which exceeds its apparent size as measured merely in terms of floorspace, turnover or financial value. The loss of Smokeys, if that were to occur, would have a significant adverse impact extending beyond the direct effects on the business itself and its owners, including on customers, staff and performers. As such, the business is one which is worthy of some effort to retain or relocate within the locality if possible.

### ***Planning status***

62. The use of premises as a nightclub is defined in the BLP as a 'main town centre use'. At national level, a similar definition is also contained in the National Planning Policy Framework (the NPPF). BLP Policy TR1 requires that the preferred locations for main town centre uses are Maidenhead and Windsor town centres, followed by district and local centres.

63. In the case of Smokeys therefore, the club's existing location in the Nicholson Centre is compliant with the most relevant development plan policy relating to leisure facilities of this kind. If the club were to relocate, another location within Maidenhead or Windsor town centres would equally comply. Any premises outside of these two centres would be sequentially less preferable, and any location outside of a town, district or local centre would be non-compliant.

### ***Personal circumstances***

64. Lee and Dean Page state that they have worked in their business, initially alongside Ron and Tracey Page, and now on their own account, for the whole of their working lives. Because of their involvement together as business partners, and the history of the business within their family, they say they see Smokeys as a central part of their family life. As such, they have an emotional attachment to it as well as relying on it financially.

65. Both also have their own family responsibilities, one as a single parent, the other as sole breadwinner for a disabled son, and a partner who is that child's full-time carer. Neither brother, by their own account, has any working experience in any other industry. Both are concerned for their futures, and those of their dependants, if the club is unable to continue.

66. These matters are unchallenged. To my mind, the evidence that Lee and Dean Page gave at the inquiry was measured and credible. I have little doubt that the effects on them and their families would be not only financial, but also mental and emotional. In all likelihood, the overall impact would be severe. This reinforces my conclusion that the loss of Smokeys Nightclub is an outcome to be avoided if other options are available.

### ***Negotiations and engagement***

#### *The Guidance*

67. The relevant Guidance<sup>1</sup> states that an acquiring authority will be expected to demonstrate that they have taken reasonable steps to acquire the land in question by agreement, and that compulsory purchase should be a last resort (Tier 1, paragraph 2). The same paragraph recognises that the use of compulsory powers will necessarily interfere with affected owners' human rights. The Guidance goes on to say that, in order to reach an early settlement, reasonable initial offers should be made, and authorities should engage constructively with claimants about relocation issues and mitigation or accommodation issues (paragraph 3).

68. It recommends undertaking negotiations in parallel with the preparation and making of an Order, as this can help to build good working relations with affected parties, and to show that the authority is willing to treat their concerns with respect; authorities should be able to show that meaningful and genuine attempts at negotiation have been pursued (paragraph 17). Paragraph 19 contains further advice on the kinds of ways in which Authorities can assist owners, so as to minimise uncertainty and anxiety.

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<sup>1</sup> Guidance on Compulsory Purchase and the Crichel Down Rules, 2019

*Period up to February 2020*

69. In the present case, Denhead SARL and Areli Real Estate began discussions with the Council, with a view to a comprehensive development, in 2017. Those discussions also involved the Council's in-house property arm, RBWM Property Company Limited. Denhead completed the purchase of the Nicholson Centre in March 2019. Later that month, the company conducted a Community Planning Weekend, to gather input from the public. For its part, the Council approved in principle heads of terms for the sale of the Council-owned interests in the site to Denhead, on 1 March 2019, then gave delegated authority to negotiate the detailed terms on 25 April, and full approval to those terms on 23 July 2019.
70. A meeting was held between Areli representatives and members of the Page family on 13 January 2020. By Dean Page's account, the meeting was brief. After outlining the draft scheme, one of Areli's directors allegedly told the Pages that a nightclub could not be accommodated, and suggested changing the business to a restaurant<sup>2</sup>. This account is not necessarily accepted by the Authority or those supporting the Order. But none of their inquiry witnesses was present at the meeting in question, and no written record appears to have been taken. Mr Page's first-hand account is therefore the only evidence on the point, and I have no basis on which to doubt its accuracy.
71. In a follow-up email dated 14 January 2019, Areli suggested the family consider relocating to existing premises, used as offices, above Holland & Barrett, in the town centre. This was viewed by the Pages but was considered to be unsuitable, due to its narrow floorplan on three floors, small capacity, fire escape issues, and what were seen as incompatible neighbouring uses<sup>3</sup>.
72. On 12 February 2020, Denhead SARL and the Council exchanged contracts on the Land Swap Agreement. A few days later, on 26 February, the Council's Cabinet approved the use of the Council's compulsory purchase powers for the development<sup>4</sup>. The details of this decision, and the reasoning behind it, have not been put before the inquiry, but as far as one can tell, this appears to have been the starting point which initiated the necessary preparatory work for the making of the Order.
73. At this stage, in relation to Smokeys Nightclub, the position was that the Pages had received a single approach, resulting in one meeting and one email. No offer had been made to acquire the Pages' lease by agreement, nor had any interest in doing so been indicated. One potential relocation opportunity had been suggested, but with little apparent consideration to the club's requirements. The discussion that had taken place with Areli appears to have started from the premise that the nightclub's lease would be brought to an end; even though at that stage the Council had made no formal or public decision to begin compulsory acquisition. The email of 14 January was perfunctory, to the point of being curt. As far as one can tell, no attempt had been made to engage constructively, or to establish any kind of working relationship. Nor had the concerns of the Page family been treated with respect. Nothing that had occurred up to this point amounted to a meaningful or genuine attempt to acquire their interest by negotiation.

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<sup>2</sup> Dean Page's proof, para 21, and in his oral evidence

<sup>3</sup> Doc H16 Pages' Timeline, and D Page oral evidence

<sup>4</sup> Mr Brazier-Dubber's proof, para 8.2.6



*Period from February 2020 to March 2021*

74. In March 2020, the Pages were contacted by Areli's agent, suggesting another possible relocation site, in a former snooker hall, also in Maidenhead town centre. According to Dean Page, the premises were not on the market, so the family viewed it externally. In doing so, they identified a number of shortcomings that appeared to make it unsuitable<sup>5</sup>. Subsequently the agent suggested a third building, a former laundry, in a village location. This was also found unsuitable.
75. On 5 May 2020, the Pages received an email from Areli's agent<sup>6</sup>, seeking their agreement to a surrender of their existing lease. In return the family was offered statutory compensation plus a financial premium. Continued temporary occupation of the club's premises was also offered, on a rent-free basis, but terminable at three months' notice. The email also referred in general terms to providing further assistance with finding relocation premises. The offer was not taken up.
76. On 15 June 2020, Areli's planning application for the Nicholson Quarter was submitted and validated. In July, the Page family contacted local councillors to seek help, and on 10 July a meeting was held with the Leader of the Council, at which the family asked whether a replacement nightclub could be provided within the development. The Leader confirmed in an email dated 15 August that this request had been passed on to Areli.
77. On 10 September 2020, a meeting was held between agents for Areli and the Page family<sup>7</sup>. The meeting is said to have discussed terms for the surrender of the existing lease and matters relating to relocation. There is no indication that anything was put in writing, and no further detail of the discussion. No further correspondence or contact appears to have ensued.
78. On 6 November 2020, after further prompting by the Page family, a meeting was held between them and Barbara Richardson, the then head of the RBWM Property Company. At that meeting, Ms Richardson raised the possibility of relocating Smokeys within part of a 'flexible use' unit on the ground floor of the proposed new car park, fronting Broadway, in Zone 4 of the development. Zone 4 is the part of the scheme that would be built and owned by the Council, rather than Areli. The unit in question did not form part of the scheme as originally submitted, but was to be included as part of a suite of revised plans that were being prepared. Those revised plans were later submitted as an amendment to the planning application, on 16 November 2020.
79. The 6 November meeting led to an exchange of emails and further discussions between the Pages and Ms Richardson, between 16 November – 22 December 2020. During this exchange the family expressed enthusiasm for the Broadway unit in principle, and provided details of their requirements, and in return sought further details, including the configuration, measurements, heights and more detailed plans. Amongst other things, they emphasised on several occasions their need for a legally-compliant outdoor smoking area, which could also double as a 'break-out' space<sup>8</sup>. Ms Richardson provided some of this

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<sup>5</sup> D Page proof para 35, Doc H16 Pages' Timeline, and oral evidence

<sup>6</sup> Doc H16, Pages' Timeline

<sup>7</sup> Doc H42, Negotiation Record Sheet

<sup>8</sup> Doc 42c: emails from Page family dated 16 and 18 November 2020

- further information, and undertook to discuss the Pages' other outstanding requests with Areli and Council officers.
80. On 13 January 2021, Ms Richardson reported that she had made some progress with these discussions, and that Areli had agreed in principle to meet the nightclub's fitting-out costs for the Broadway unit, subject to agreeing a budget. She was also taking a report to the Council's Cabinet to get approval in principle for a subsidised rent arrangement for an initial period. On 1 February 2021, she and the Pages held a virtual meeting to review progress. The family set out again that they would need to be sure that the unit offered could meet their requirements, and again requested more detailed plans<sup>9</sup>.
81. On 2 March 2021, the day before the Planning Committee meeting that was due to consider the Areli application, Tracey Page emailed to Barbara Richardson, emphasising the importance for the nightclub of having an attached outdoor space that could serve as a smoking area, and which would be fully within the club's control, for reasons of noise and security. Confirmation was sought that this could be achieved<sup>10</sup>. Ms Richardson replied on 3 March, enclosing two 'high level' example plans, and expressing the view that the relevant legal requirements could be met. Formal advice would be taken from the Council's Licensing officers.
82. In a further exchange on the same day, Mrs Page sought further reassurance in the form of a "categorical guarantee" that the smoking area could be achieved. She also expressed reservations about the L-shaped configuration depicted, with regard to the effects on the siting of the club's performance stage, and evacuation and security issues<sup>11</sup>. Ms Richardson replied that she was confident that these concerns could be accommodated with further detailed work from the architects and others. Later that day, the Committee resolved to grant planning permission, subject to the completion of the S.106 agreement.
83. On 25 March 2021 the Council's Cabinet granted authorisation to officers to proceed with the making of the CPO. The report presented to that meeting stated that "*Whilst there is constructive dialogue with all occupiers who have not yet agreed lease terms, in some instances there is a notable difference of opinion as to the level of payment due to secure varied lease terms. The use of compulsory purchase powers is therefore necessary, to ensure that vacant possession of the retail accommodation can be secured....*". Shortly afterwards, on 31 March 2021, the Council and Denhead entered into the Development Agreement.
84. Summarising this period, from February 2020 to March 2021, what the Page family received from Areli and RBWM, in total, amounted to an approach for the surrender of their existing lease, and latterly an offer to explore the potential for their relocation to the proposed new unit on Broadway.
85. With regard to a surrender, the developers' offer had included a premium in addition to statutory compensation, and it is not for me to judge the adequacy of that offer in financial terms. However, given the circumstances, of a long established family business, and two relatively young current partners with their working lives ahead of them and families to support, it should have been

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<sup>9</sup> Doc H16, Pages' Timeline

<sup>10</sup> Doc H23, T Page email 2 March 2021

<sup>11</sup> Doc H23, T Page email 3 March 2021

obvious that Lee and Dean Page's main priority would be to secure the continuation of their business. Consequently, for them this would require a settlement that not only covered their losses and other costs, but also allowed them the certainty of a suitable relocation.

86. In this regard, the efforts made by Areli and their agents seem to have been little more than a token. There is no evidence of any attempt having been made to establish the nightclub's requirements, other than in terms of square footage. In total, three opportunities had been identified and all were rejected. As far as I am aware, there is no suggestion that the Pages' reactions to those properties were misplaced. And yet no attempt seems to have been made by Areli to explore with them how to improve the chances of finding something more suitable. After the rejection of the third property, sometime in the summer of 2020, it appears that no further action was taken by Areli or their agents with regard to any other relocation sites. Whilst the Pages say they also conducted their own search, and were equally unsuccessful, that should not obscure the fact that the onus of finding a solution clearly fell on those who were proposing their displacement. From the start, Areli seem to have treated this task as a low priority, and then within a short time gave up altogether. RBWM were slow to react to this failure. At this time the CPO had not yet been made, and thus there was no legal requirement for Smokeys to move. It was incumbent on the promoters of the Order at this stage to see what could be achieved by persuasion, but no such persuasion had taken place.
87. Eventually the Council had come forward with the possibility of being able to offer part of the Broadway car park unit, and Barbara Richardson in particular evidently worked hard to progress that option. To that extent, by March 2021, the Council had now begun to engage constructively. But it is equally clear that this had only happened belatedly, after the Page family went above the heads of Areli and Council officers. Up to that point, the Council and RBWM seem to have been content to take a passive role. And in any event, despite Ms Richardson's efforts, she had not been able to assure the Pages on their principal concern, regarding the ability to provide a legally-compliant and fully controlled outdoor smoking area, which could also serve as a break-out space, overcoming noise and security issues, and replicating the role of the club's existing terrace. It had therefore not yet been established whether the Broadway unit would be capable of meeting the Pages' reasonable request for at least like-for-like capability.
88. As a result of these unresolved issues, as at 25 March 2021, when the decision was taken to proceed to make the CPO, the Council had not made any concrete offer, nor would the family have been in a position to make a decision on any such offer. Had there been a viable relocation opportunity at the Broadway unit, it seems probable that the Pages would have been willing to negotiate terms, but as things stood, they could not. The negotiation process therefore still had some way to go before it could reach any conclusion. It follows that at this stage the use of compulsory acquisition could not reasonably have been seen as a last resort.

*Period from March 2021 to February 2022*

89. In an email dated 6 April 2021, Tracey Page continued to press Barbara Richardson for answers on the question of the smoking area. In a holding reply dated 7 April, Ms Richardson acknowledged the importance of the issue and

stated that work was being done to find a solution<sup>12</sup>. Another message, dated 27 May, indicated that the answer depended on input from the Council's Building Control department<sup>13</sup>. After a delay, a further email from her dated 2 August 2021 indicated continuing uncertainty regarding both Building Regulations and Licensing, and acknowledged the need for more detailed plans to resolve these issues<sup>14</sup>.

90. Shortly after this, it appears that Ms Richardson left her post with RBWM Property Company. Over the next 7 months or so, no further progress appears to have been made, and no further contact made with the Pages. But nonetheless, the Council's position was that they were working on a solution, and had said nothing to indicate that such a solution might not still be achievable.
91. On 22 February 2022, the CPO was made and published, and notices sent to the affected parties, including the Page family. At this date however, the position remained as it was 11 months earlier, that there was no clarity as to whether the nightclub's requirements could be met at the Broadway unit. No actual offer had been made to the Page family with regard to that unit. Nor had any other realistic relocation site been identified. Throughout this period since March 2021, there had been little engagement of any kind from the Council's side, despite the action being very clearly in their court. The working relationship achieved during the latter months of Ms Richardson's tenure had been largely lost. No meaningful negotiation had taken place for nearly a year.
92. Prior to 25 March 2021, the Pages had clearly been open to an offer in relation to the Broadway unit, as long as that unit could be shown to meet their requirements. Nothing that happened between that date and 22 February 2022 suggests that the family had changed their position in that regard, in any way at all. As of this latter date therefore, the prospect of a deal for Smokeys' relocation to Broadway remained potentially available. It follows that, at the date of the making of the Order on 22 February 2022, the position remained that compulsory purchase was not yet a last resort, and could not properly have been seen as such.

#### Period March – October 2022

93. Following the making of the CPO, two virtual meetings were held between the Pages and Chris Pearse of RBWM Property Company. At the first of these, on 4 March 2022, Mr Pearse agreed to help by asking Areli for further plans of the Broadway unit. At the second, on 11 March, Mr Pearse produced some basic plans for discussion, showing alternative ways of subdividing the unit. However, he then revealed that a smoking area was not now regarded as feasible, due to problems in meeting Building Regulations<sup>15</sup>. The Pages asked about an alternative option, of setting back the ground floor frontage to create a semi-external, glazed space, but according to the Authority's meeting note, it was left back with them to "*send over their ideas*" on this.
94. In a subsequent exchange of emails, on 19 March 2022 Lee Page continued to press for further information, with a view to exploring other options for the unit's configuration. In reply, on 24 March, Mr Pearse stated that the Council

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<sup>12</sup> Doc H21, email from B Richardson 7 April 2021

<sup>13</sup> Doc H22, email from B Richardson 27 May 2021

<sup>14</sup> Doc H20, email from B Richardson 2 August 2021

<sup>15</sup> Doc H42 Negotiation Record Sheet

now intended to re-engage with Areli's design team, and that once this appointment was made, they would be able to "*properly lay out a 4,000 sq ft unit for you in a regular rectangular shape*"<sup>16</sup>.

95. On 28 June 2022, Chris Pearse sent to the Pages a 'Heads of Terms' for the Broadway unit, setting out two options as to alternative rent levels and rent-free periods. The accompanying plan showed a re-configured, largely rectangular unit, but again without any external area.
96. On 1 July 2022, David Conboy on behalf of Areli contacted the Pages, to discuss compensation. A meeting was held on 19 July, for Mr Conboy to make an assessment of the existing nightclub premises. The family sought further information from Mr Conboy regarding the Broadway unit, including ceiling heights; this was outside his brief, but he undertook to pass on their questions. Mr Conboy did confirm that a smoking area could not be provided. He also conveyed the fact that the intended programme would mean a time lag of 18-24 months, between vacant possession being required in September 2023, and the Broadway unit being ready for occupation in 2025. The meeting note records that the Pages were previously unaware of this timescale<sup>17</sup>.
97. On 21 July 2022, Mr Conboy had a telephone discussion with the Pages' agent Giles Blagden. Mr Conboy proposed separating out the issue of compensation from that of relocation, to arrive at what would effectively be a 'clean break' figure. This would include an amount in respect of fitting-out costs for a future relocation, but not tied to any particular site. The Broadway unit could be offered to the Pages on the basis of an option agreement or first refusal, leaving the family free to consider any other premises in the meantime. Mr Conboy thought that this would be more favourable to the Pages than compensation based on extinguishment of the business<sup>18</sup>.
98. This suggested way forward was confirmed by Mr Conboy in an email dated 10 August 2022. A plan showing ceiling heights for the Broadway unit was attached. Details of Smokeys' 2017 refurbishment fit-out costs were also sought. A further exchange between Mr Conboy and Mr Blagden took place on 30 August, in which discussion returned to the possibility of creating an enclosed external space at the front of the unit, which had been left with the Pages to explore; Mr Blagden commented to the effect that his clients had found this difficult, based on the limited plans available to them<sup>19</sup>.
99. In a phone call to Mr Blagden on 4 October 2022, Mr Conboy set out his proposed figures for a financial settlement for the surrender of the nightclub lease. The amount offered was made up of a sum for fitting-out at any future new premises, a sum for fees, surveys and other incidentals, and a sum for re-establishment of the business. In total, this exceeded the value of the previous offer, made in May 2020, by about four times. On 7 October, Mr Blagden rejected this offer but tabled a counter-proposal. On 11 October, Mr Conboy increased the Areli offer by about a further 12%. This appears to have been the last significant interaction between the parties before the start of the present inquiry.

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<sup>16</sup> Doc H24a: C Pearse email, 24 March 2022

<sup>17</sup> Doc H42 Negotiation Record Sheet

<sup>18</sup> Doc H42 Negotiation Record Sheet

<sup>19</sup> Doc H42a, email from G Blagden 30 Aug 2022



100. Over the course of these final negotiations therefore, from the making of the CPO onwards, the events of note were two. Firstly the possibility of providing an outdoor space at the Broadway unit was withdrawn. This was a major obstacle to any prospect of relocation to the Broadway unit, because throughout their 16 months of discussions with RBWM Property Company, the Pages had made it clear that this was their most important requirement. As to how this position came about, it appears not to be disputed that officers had tried their best to find a solution. But as far as one can tell, little or nothing seems to have been documented in terms of the options and possible solutions considered, and the reasons for their rejection, leaving the family in the position of being unable to challenge the eventual conclusion, or indeed to engage effectively in this part of the discussion. This impression is reinforced by the apparent reluctance of officers to explore Lee Page's suggestion of setting back of the front glazing.
101. Be all this as it may, it is difficult to understand why it took so long for officers to reach their conclusion that a smoking area could not be achieved, and to convey this news to the Pages. The information and expertise that were needed for this must have been freely available to either the Council or Areli. The time that was lost in this part of the process clearly undermined the Pages' negotiating position and, with hindsight, led to them wasting time that could have been spent on searching for other opportunities.
102. The second development during this final period was the new offer made to the Page family for a financial settlement. Again it is not for me to judge the adequacy of the offer itself. However, the fact that the new offer was so much higher than the one made in May 2020 suggests that the earlier one could not have been realistic; and despite the fact that the Pages responded with a counter-offer, the figures presented by either side were still a long way apart. In addition, the gap of more than two years between the offers reinforces the impression of a lack of genuine or constructive engagement in the interim. In any event, with regard to the issue of relocation, which was always the Pages' main priority, the offer provided nothing more than a potential option, for a unit which by then was known to be unable to meet the nightclub's needs. In this respect the offer afforded no security for the future of the business.

*Matters raised since the cessation of negotiations*

103. In their evidence to the inquiry, Lee and Dean Page made reference to a number of other potential issues relating to the Broadway unit, including matters relating to headroom for performance staging, ventilation, fire exits, waste storage, licensing, and the proximity to a bus stop. I agree that it would have been better if these issues had been raised at an earlier stage. But it seems likely that that task would have been made easier had RBWM been able to supply the more detailed plans and visual information that the Pages requested on numerous occasions.
104. In any event, by this stage RBWM and Areli had had over three and a half years to understand the needs of the business and how it worked. Had there been proper and meaningful engagement, with attention being given to the business's practical requirements, then it seems likely that these additional issues could have been anticipated and dealt with. Even if the issues in question may have been capable of resolution, they were potentially significant.



105. To my mind, the fact that such issues remained unidentified, so long after Areli's initial approach to the Pages, which made it necessary to consider relocation, is a further indication of the lack of meaningful engagement on their part, and that of RBWM.

*Commentary on the negotiations as a whole*

106. The Page family's existing lease gives statutory protection to their nightclub business up to June 2030. As the Guidance makes clear, they were entitled to be treated with respect, and to expect a constructive approach, having due regard for their own aspirations for the future of their business. In this context, the family's desire to secure the continuation of their business, through a relocation, either within the Nicholson Quarter or elsewhere, was a natural and reasonable aim, and one that should have been central to any meaningful negotiations. The club's evident popularity and public support might also have been expected to be taken into account in gauging what was an appropriate way of responding to the business's needs. Even though the planned development was seen as bringing important benefits to the town, RBWM and their partners were still under a duty to have regard to the impacts on affected owners, and to mitigate such effects where reasonably possible.
107. However, throughout this process, the only relocation site identified by RBWM or Areli that was ever a serious prospect was the Broadway car park unit. Although a handful of other sites were tentatively suggested, it seems fairly clear that little or no effort was expended on any of those other options. The Broadway unit ultimately proved to be unsuitable, leaving the Page family facing the prospect of having to close their business without any acceptable replacement premises in sight. And even after this, the development's promoters failed to renew the search for any other relocation options. The failure of the Authority and their partners, over a period of more than three years, to provide the Pages with any viable relocation options to keep their business alive, demonstrated a lack of genuinely constructive engagement.
108. Furthermore, despite the efforts made by some officers, the repeated failure to provide plans with the level of detail reasonably requested by the Pages, and the delays in exploring the issues and constraints relating to the smoking area, showed a lack of urgency and corporate commitment on the part of both RBWM and Areli. As a result of these failings, it was only after the CPO was made that the Pages were confronted with having no remaining relocation options. It was also only then that they were apparently given any information about the timescale, and the need for an 18-24 month closure period. In the circumstances, the unexplained delay in reaching this point was unacceptable, and a further indication that the Authority and their partners failed to engage constructively, and failed to treat the Pages with proper respect.
109. In reviewing the above matters, it is salient in my view to note that at all times throughout the process, it was open to the development partners to consider making provision for a nightclub with Smokeys' requirements, elsewhere within the Nicholson Quarter development itself. Nothing prevented the developer from exploring such a solution, either by redesigning Zone 4 to enable the Broadway unit to meet the club's needs, or by making provision in one of the scheme's other zones. Nor did anything prevent the Council from seeking this. The submission of revised application plans in

November 2020 presented an opportunity for such an approach. Areli were evidently concerned about the potential incompatibility with new residential apartments. But in planning terms, the town centre is a preferred location for a nightclub; and whilst residential development is a noise-sensitive use, that sensitivity has to be judged in the context of the town centre location, and the support that planning policy gives to mixed uses in that area, including both housing and leisure uses. The Nicholson Quarter would occupy a large proportion of the town centre, and avowedly aims to become the town's 'new heart'. If night-time entertainment uses such as Smokeys are not located there, their options elsewhere would be somewhat limited. There is no evidence that Areli or RBWM seriously considered any other possibilities for the club's relocation within the scheme apart from in the Broadway unit. In the circumstances, this in my view is further evidence of the development partners' failure to engage constructively, to mitigate the effects on the Page family and their nightclub business.

110. Whilst Areli belatedly came forward with a renewed compensation offer, shortly before the present inquiry, it was unacceptable of them to delay doing so until so late in the day. The size of the difference between this offer and their previous one, in May 2020, strongly implies that the original one was unrealistic. Furthermore, in the light of events, it is clear that that original offer was put forward on a 'take it or leave it' basis, rather than as a basis for genuine negotiation. Neither of the offers addressed in any meaningful way the Pages' desire to relocate the business. Although the most recent offer included a sum for fitting out, the costs of such works could not be fully known until a relocation site had been identified. The unnecessary delay in making any serious offer, and the failure of that offer to acknowledge the Pages' strong preference for relocation over extinguishment, reinforces the conclusions that I have come to as to the nature of the engagement process, as set out above.
111. It is possible that the Pages' insistence on an external smoking and break-out area went beyond what some other operators might require. But the point of the exercise was to relocate the existing business, not simply to make generic provision for any nightclub. In their existing premises, Smokeys has the benefit of an external terrace, which is evidently well-used. It was not unreasonable for the owners to want to achieve a like-for-like replacement for that facility.
112. It might also be possible to identify other faults with the Pages' contribution to the process. The family could have been more proactive at times. They could have been clearer about their requirements. They could have engaged their own designer to help steer the process. Had they done these things, they might have been in a better position now. But the Pages were not the instigators of the redevelopment; the job of smoothing the path for that development fell to RBWM and their partners, not to those who happened to lie in the way. The failures of RBWM and Areli to deal with the smoking area issue more expeditiously, and to give more effective help in exploring other relocation sites, were not caused by any shortcomings on the part of the Page family.
113. In the light of all the above, I conclude that, in their dealings with the Page family, the acquiring authority RBWM and their partners Areli failed to meet the requirements of the CPO Guidance. They failed to engage constructively

with regard to the relocation of Smokeys, or to establish good working relations with the owners, or to treat them with appropriate respect. Had better efforts been made, it is possible that a mutually satisfactory relocation could have been arranged. In the case of Smokeys therefore, it has not been demonstrated that the present proposal for compulsory purchase has been arrived at only as a last resort.

### ***Human rights***

114. Article 1 of the First Protocol of the Convention on Human Rights, incorporated into UK law by the Human Rights Act 1998, provides protection for the peaceful enjoyment of possessions. The unexpired term of the Pages' existing lease is such a possession, and the compulsory acquisition of that lease would therefore infringe Lee and Dean Page's rights to the peaceful enjoyment of their property. Such rights under Article 1 are qualified, rather than absolute, and therefore must be weighed against the wider public interest, having regard to the impacts on them and the proportionality of such impacts.

### ***Conclusions on the objection by L & D Page***

115. The compulsory acquisition of the Page family's lease on Unit 24a of the Nicholson Centre would in all probability result in the forced closure of Lee and Dean Page's business, Smokeys Nightclub. As things stand, the club has no satisfactory alternative premises into which it could relocate. It has no apparent prospect of finding such premises prior to the date when vacant possession would be required, and no clear prospect within any reasonable timescale, even after that date. The most likely outcome seems to be that the club would not reopen, and the business would cease trading.
116. For the two objectors, this would mean, at the least, the loss of their employment and income. In addition, they would lose the business which has been the focus of their family life for two generations. This would inevitably be a severe blow, with potential adverse consequences for their well-being, and that of their families, including children.
117. Lee and Dean Page would receive compensation. However, given the particular circumstances of their business, there is no guarantee that this would leave them in a position equal to that which they have now.
118. In any event, the potential injury to them has been exacerbated by the unsatisfactory way that they have been treated during the gestation of the proposed development and throughout the CPO process. That process has been largely characterised, on the part of the Order's promoters, by a lack of care for the Pages' legitimate concerns, a lack of constructive or meaningful negotiation, and a failure to take opportunities to mitigate the impact on them. From the way that these matters were handled, the compulsory purchase of the Pages' interest appears to have been treated as inevitable from the start, rather than a last resort.
119. For Maidenhead, the closure of Smokeys Nightclub would mean the loss of a leisure facility and performance venue which is evidently valued by many and seen as an asset to the town.
120. For the reasons that I have identified elsewhere in this decision, I am satisfied that the development of the Nicholson Quarter would bring substantial

benefits to the town, and for the Borough as a whole. However, the harm that Lee and Dean Page would suffer due to the compulsory acquisition of their business would be severe. It has not been demonstrated that the public benefits of the development could not be gained without the need for such a degree of harm to these objectors. In these circumstances, the injury caused to Lee and Dean Page, as a result of the interference with their rights of ownership, would be disproportionate to the benefits.

121. I conclude that a compelling case for the compulsory acquisition of Smokeys Nightclub has not been shown.

### **Objection by Aegon UK Property Fund Ltd**

#### ***The objection***

122. Aegon UK Property Fund Limited holds long leases on the 8-storey office block Nicholson House, and two floors of the existing multi-storey car park. The unexpired terms are 967 years and 112 years respectively.

123. The CPO proposes to compulsorily acquire Aegon's interests in the multi-storey car park (Plots Nos 1/51 and 2/3 on the Order Map). In the case of Nicholson House itself, the Order proposes to acquire just the basement (Plot B1), which houses electricity switchgear and also serves parts of the shopping centre. The loss of the basement, and its severance from the remainder of the building, have not been objected to.

124. In relation to the above-ground parts of Nicholson House (Plots Nos 101, 102 and 173), the Order proposes to acquire new rights, in respect of access and general construction, oversailing, scaffolding and hoardings, service media, and party wall works.

125. The grounds of objection are discussed below.

#### ***Grounds***

##### ***Exclusion of Nicholson House***

126. Aegon objects to the fact that the Order does not propose to acquire Nicholson House as a whole, other than the basement. In the objector's view the proposed Nicholson Quarter development should include the complete demolition and redevelopment of the existing office building. From the start, Aegon has expressed a willingness to sell its leasehold interest, and discussions were held with Areli on this basis. The company maintains that the inclusion of the building would avoid any problems during construction and result in a better scheme.

127. I accept that the inclusion of Nicholson House might potentially have had some advantages for the development; possibly including the ability to deliver additional public benefits, although the nature and extent of any such advantages have not been demonstrated. However, the scheme that is relied on to justify the CPO is the one for which planning permission has been granted, and that scheme excludes all the above-ground parts of Nicholson House. There is no evidence that the acquisition of the whole building is necessary to deliver the Nicholson Quarter as currently permitted.

128. Furthermore, for the reasons set out elsewhere in this decision, I have found that the permitted scheme would accord with the area's planning framework,

and deliver significant benefits to economic, social and environmental well-being. It is therefore not necessary to extend the development, by the inclusion of Nicholson House, to satisfy this requirement.

129. From the objector's point of view, the acquisition of Nicholson House by Denhead SARL would relieve them of their concerns regarding the impacts of construction work on the building itself and its occupiers, and also regarding any on-going effects on future lettings. But these are matters which can be taken into account in the assessment of compensation.
130. It follows therefore that a modification to the CPO to require the inclusion of the whole of Nicholson House cannot be justified. Nor would it be reasonable to refuse to confirm the Order on this basis.

Lack of negotiation

131. The basis of the objection on this ground is primarily that no financial consideration was offered to Aegon as compensation, either for the new rights sought, or for the surrender of the lease on their parking spaces. The objector also alleges a lack of clear information about the terms of the CPO prior to the date when it became formally made.
132. From the evidence provided, it appears that discussions between Aegon and Areli Real Estate commenced in early 2019, at the initiative of Aegon's agent Oxygen. In these initial meetings and discussions, the main focus was on the possibility that Denhead SARL might wish to purchase Nicholson House by private treaty. That possibility continued to be discussed intermittently over the next few years, and evidently Aegon remained keen in principle throughout, but eventually Denhead chose not to proceed with any acquisition of the building.
133. According to The Authority's summary<sup>20</sup>, a proposal for the temporary and permanent relocation of Aegon's parking spaces was first made in an email from Areli to Oxygen on 31 January 2020, and this was rejected. The next discussion on that matter took place at a meeting on 3 February 2021, when Areli informed Aegon that a CPO was being considered. As well as car parking, issues relating to construction impacts, and temporary access for Nicholson House were discussed, and a suggestion was made by Areli for some form of co-operation agreement on these issues. Following some further correspondence, the idea of a co-operation agreement was raised again in an email from Areli on 4 May 2021. This apparently received a cautious but generally welcoming response in an email from Oxygen on 2 July 2021, and was discussed at a meeting shortly afterwards on 21 July 2021.
134. At a further meeting on 2 August 2021, Areli tabled a draft Heads of Terms, on a 'without prejudice' basis. The document has not been produced in evidence to the present inquiry, but it is not in dispute that it included proposals for the surrender of Aegon's car parking lease, the provision of replacement spaces, and the granting of construction rights over Nicholson House. In an email dated 13 September 2021, Aegon rejected these terms and sought to return the discussion to a sale of the building. At a further meeting on 22 September 2021, and some subsequent phone calls and emails over the next few months, the parties maintained and re-stated these

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<sup>20</sup> Doc H39, Negotiation Record Sheet

respective positions. This remained the position up to the point when the CPO was made, on 22 February 2022.

135. Since then, discussions have taken place with a somewhat increased frequency. According to the Authority's note<sup>21</sup>, Areli have provided further information including demolition and delivery strategy reports; they have put forward proposals for a rent guarantee scheme; and to mitigate any losses, by locating their contractors' technical personnel in Nicholson House during the construction period; and they have offered to collaborate with Aegon over both parties' respective plans for works to the building. Aegon have rejected the rent guarantee scheme, and maintained their preference for an outright sale of the building. The evidence on these matters does not appear to be disputed.
136. I agree that it might have been better if the Heads of Terms had included a financial proposal of some sort, even if nominal, to recognise that what was being sought at that stage was a voluntary agreement that would benefit primarily Areli and their partners. It might also have benefited from including more detail regarding the proposed new rights, and about the intended works affecting Nicholson House. But nevertheless, the document was by all accounts a draft, and it was open to Aegon to propose amendments or additions. In putting forward their proposal, Areli had shown a willingness to negotiate an agreement, which with reasonable good will on both sides could have avoided the need for powers of compulsion in this case. In the light of Aegon's apparent refusal to consider anything other than a sale, Areli and RBWM had no choice but to pursue the CPO route in respect of the particular plots covered by Aegon's interests.
137. I note that Aegon's letter to RBWM's Chief Executive in July 2021 is said to have gone unanswered, but there is equally no evidence that the letter was followed up by Aegon themselves. This does not change my view as to where the responsibility lies for the failure of these negotiations.
138. In relation to this objection therefore, I am satisfied that the Authority and their partners took reasonable steps to acquire the necessary rights by agreement, and that compulsory purchase was used only as a last resort.

#### Effects on the structural stability of Nicholson House

139. Nicholson House and the Nicholson Shopping Centre are physically attached to each other, and the proposed development would require them to be separated. The rights conferred by the CPO would include a right to demolish adjacent structures and provide new temporary and permanent support.
140. However, it is common ground that Nicholson House was constructed as a stand-alone building, before the shopping centre. The written and oral evidence of the Authority's construction witness Tim Cole makes clear that he is now satisfied that neither building depends on the other for vertical support. This evidence is supported by a demolition strategy report and photographs. There is no technical evidence to the contrary.
141. This being so, there seems no reason to foresee any particular technical difficulties in separating the shopping centre from Nicholson House, and then carrying out the demolition of the shopping centre. It follows that the

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<sup>21</sup> Doc H39, Negotiation Record Sheet



granting of the proposed new rights, including those for party wall operations and general construction, would not appear likely to pose any risk to Nicholson House's structural integrity or stability.

142. As far as I am aware, all existing legal protections and remedies against damage or injury would continue to apply.

143. I therefore find no basis for refusing to confirm the Order on this ground.

*Pedestrian access to Nicholson House during construction*

144. During the construction period, the existing pedestrian access to Nicholson House, through the shopping centre, would become part of a construction site where demolition and building work would need to take place. Occupiers and visitors would have to pass through that area to gain access.

145. However, Mr Cole's evidence shows how safe access could be provided, using an enclosed, rigid, protective steel corridor. This could be fitted out and finished to a specification to be agreed. From the examples provided, this appears to offer a safe, tried and tested solution. All existing building site safety regulations would continue to apply.

146. I have no doubt that users would suffer some temporary reduction in amenity, but the degree of inconvenience, would be relatively minor. The objection on this ground does not justify withholding confirmation of the Order.

*Environmental impacts on Nicholson House during construction*

147. During the construction period, building works would be going on around Nicholson House on three sides. Occupiers and visitors would be likely to experience some noise, vibration and dust from construction activities. Views from the building's windows would also be dominated for a while by these activities. To a degree, these impacts could be controlled and mitigated, as set out in the Construction Environmental Management Plan, but even so, I agree it is likely that users of Nicholson House would suffer some reduction of amenity for the duration of the works.

148. However, these effects are largely ones that would arise from the construction of the development anyway, irrespective of the rights that would be gained through the CPO. The confirmation of the Order would enable some limited additional construction works that could not otherwise take place, and these would include some works to Nicholson House itself; including the severing of the connections with the shopping centre, and the recladding and alterations to the ground floor walls. But in the context of all the other works taking place in the building's vicinity, the works that are proposed to Nicholson House would be a relatively small element. The additional environmental impacts resulting from the rights provided by the Order would thus be minor.

149. In any event, temporary noise and visual impacts are a normal part of any major construction project, and are taken into account in the planning process. Noise or other impacts amounting to a statutory nuisance would be preventable under the Environmental Protection Act 1990.

150. None of these matters therefore provides any proper basis for refusing to confirm the Order.

### Effects on car parking for Nicholson House

151. Aegon's existing leased parking spaces would all be compulsorily acquired. But during construction, replacement parking of a like-for-like number is proposed at the Hines Meadow car park, which is only a fairly short walk away. On completion of the development, permanent re-provision is proposed in the new car park within the development, which would be a similar distance from Nicholson House as at present.
152. Some inconvenience would be caused to tenants of Nicholson House as a result of the greater distance of the temporary provision. But if this were to result in Aegon incurring a loss of rental income, such loss would appear to be capable of qualifying for compensation. No significant detriment seems likely to arise from the proposed permanent parking arrangements following completion.
153. Neither of these proposed temporary or permanent arrangements is guaranteed by way of planning conditions or obligations. However an agreement was evidently offered and turned down. And be that as it may, in the event of any failure by the developer to adhere to the stated proposals, resulting in loss due to a reduction in value, this would again be recoverable through the compensation process.

### Fire escape and emergency access

154. Provisions for maintaining fire and emergency access, both during construction and after, have been set out in some detail in the evidence of Mr Cole and Mr Adams. These proposals seem to me well thought out and I have no reason to doubt their adequacy. The developer and contractor would in any event be bound by all relevant safety legislation.

### Effects on lettings at Nicholson House

155. On my visit to Nicholson House, I saw that several of the office suites are currently unoccupied and on the market for re-letting. The prospect of major building works may be a factor in the current downturn in the level of occupancy, but so could other factors. It is acknowledged that, when construction starts, new lettings are likely to be adversely affected, albeit that on the eventual completion of the works, the improved external environment may mean that the eventual lasting impact is a positive one.
156. But losses attributable to the development will again generally fall within the scope of the compensation provisions. There seems no reason to doubt that any such losses relating to the likely temporary adverse impact on new lettings can if necessary be dealt with in this way.

### Effects on NHS services

157. Part of the Nicholson House office space is let to the Berkshire Healthcare NHS Foundation Trust for the provision of mental health services. The users of those services may include some who are vulnerable or have special needs.
158. However, there is no evidence that the Trust's services would be affected. Building access would be maintained. Parking would continue to be provided. Whilst this would involve a longer walk during the construction period, there is no evidence that this would be a particular problem for patients of this

service. Disabled parking is proposed to be maintained for those who need it. Despite the likely impact on environmental conditions within the building during the construction period, there is no evidence that it would become unusable for the provision of health services. The Trust has not objected to the CPO.

#### Effects on future residential conversion

159. Prior approval exists for the conversion of Nicholson House to 37 residential apartments. Although there appears to be no immediate intention to implement this permission, I appreciate the desire of the owners to preserve the benefit of it.
160. During construction the environment of the building would be affected in the ways that I have identified, and this would be likely to have some impact on the prospects of marketing residential units during that period. But after completion, the overall effect on the surroundings would be an enhancement compared to the existing situation. The likelihood of any detrimental financial impact would therefore depend to a large extent on the timing of the residential conversion, which would be a decision which would be within the building owner's own control.
161. In any event, any impact in this respect would largely relate to the effects of the development itself, and not those of the CPO.

#### Viability, funding, and impediments to delivery of the development

162. The matters raised by Aegon UK in relation to these issues are discussed in paragraphs 43-49 of this decision. For the reasons explained there, I am satisfied that, if the Order were confirmed, the development would have a reasonable prospect of delivery.

#### Planning policy and affordable housing

163. The matters raised by the objector in relation to these issues are likewise discussed elsewhere in this decision, at paragraphs 39-42. For the reasons explained therein, I am satisfied that the development accords with the policy framework for the area.

#### State aid considerations

164. When RBWM entered into the development and Land Swap agreements with Denhead SARL, that company already owned the freehold of the majority of the Order Lands. There would therefore have been little point in the Council attempting to enter into any similar agreements relating to this site with any other party. In these circumstances, the Council's preference for Denhead SARL clearly did not have the effect of denying an opportunity to any other potential bidders, nor did it distort or inhibit fair competition.

#### Human rights

165. As with any CPO, the confirmation of the present Order would interfere with Aegon's rights under Article 1 of the First Protocol. But in view of the conclusions that I have come to above, the adverse impacts on them would be relatively minor, and for the most part any financial losses would qualify for compensation. The proposed scheme could not be developed without undertaking works to, or within the demise of Nicholson House, or without the

demolition of the existing car park. The effect on the objector would therefore not be disproportionate. In my judgement, the infringement with their rights of ownership would in this case be lawfully outweighed by the scheme's public benefits.

*Conclusion on the objection by Aegon UK Property Fund Ltd*

166. I conclude that none of the matters raised in the objection by Aegon UK, either individually or collectively, are of sufficient weight to outweigh the public benefits that would be realised through the proposed Nicholson Quarter development. The objection does not provide sufficient substantiated grounds to justify withholding confirmation of the Order.

**Objection by WH Smith Retail Holdings Limited**

***The objection***

167. WH Smith holds a lease on the retail premises known as Units 16-22 (evens), on two floors of the Nicholsons Shopping Centre (plots 35 and 1/19 on the Order Map). The lease runs to July 2025. The company is also listed in the Order Schedule as the occupier of a rear yard behind these premises (plot 37), and as one of the occupiers of the main first floor service deck (plot 1/9).

168. The CPO proposes to acquire all of these interests.

**Grounds**

*Uncertainty over reprovizion or relocation*

169. WH Smith states that it wishes to retain a presence in Maidenhead, but has been unable to identify any suitable premises which will be available in time for the vacant possession date. No offer has been made to provide a new unit for WH Smith in the proposed development. No guarantee has been given as to whether the scheme will include any unit matching the company's requirements, nor whether any such unit would be made available to them.

170. The Authority says that it has suggested various options which are available, or will become so, but acknowledges that these were found unsuitable by the objector. Continuing assistance is said to have been offered. The Nicholson Quarter development will provide new retail units, and it is likely that suitable provision can be made.

171. I appreciate that the prospect of the scheme creates uncertainty, and I can understand the objector's desire for a greater degree of reassurance. Clearly it would be to the advantage of all parties if a relocation site could be identified at an early stage. However, a range of sizes of retail units is planned in the proposed scheme, and it seems probable that there would be suitable options for a WH Smith shop within the development. Even if not, when the development opened there would be likely to be some movement amongst other retailers in the town, and thus other opportunities might well arise at that stage.

172. The situation that these objectors find themselves in is therefore different from that of Smokeys Nightclub, in that there is a reasonable prospect of suitable provision becoming available, without any apparent need for changes to the proposed scheme. I am not in a position to require any undertakings from any party on a commercial matter of this nature, nor can I make a

decision that is conditional upon such an arrangement. On balance, the lack of certainty for WH Smith, regarding re-provision or relocation, does not warrant a refusal to confirm the Order.

#### Loss of the Post Office

173. The Post Office counter within the objector's existing store is an important public facility, and if it were lost due to the proposed development, that would be a big loss for the town, causing inconvenience to many. However, there is no suggestion that the Post Office service in Maidenhead is tied to operating only through a branch of WH Smith. In the event that WH Smith was unable to relocate, it seems likely that alternative provision could be made, either independently or in association with another retailer.

#### Human rights

174. The loss of the existing lease, two years ahead of its natural expiry, would infringe the objector's rights to peaceful enjoyment of their possessions. But the financial loss would qualify for compensation, and there is no suggestion that either the company or any other person would suffer hardship. The proposed scheme could not be developed without the demolition of the existing shopping centre. Overall, the injury to the company's rights would be lawfully outweighed by the proposed development's benefits to the general public.

#### Conclusion on the objection by WH Smith Retail Holdings Ltd

175. Any losses suffered by the objector would be likely to be compensated, and in the circumstances, the harm suffered would not be so great as to justify withholding confirmation of the Order.

### **Objection by Lloyds Bank PLC**

#### **The objection**

176. Lloyds Bank PLC is the leaseholder of 45 High Street, and by virtue of its lease the Bank benefits from rights of way over the yard to the rear of that property (plot 131 on the Order Map) and the accessway known as Bankside (plot 132). The lease runs to March 2027.

177. The CPO seeks new rights over both of these plots, for access and general construction, oversailing, and future access and maintenance. In the case of plot 132, rights for scaffolding and plant are also sought.

#### **Grounds**

##### Obstruction of access and emergency escape

178. The objector states that the rear yard and Bankside are needed as part of a designated fire and emergency escape route for staff and customers. The Bank has a legal requirement to ensure that this route is kept clear. Any obstruction to essential emergency routes by scaffolding, plant, or construction works could create a danger to the public and potentially result in the Bank needing to close.

179. In addition, these areas are said to be used for access to the Bank, for maintenance, by tradesmen, and for refuse collection. Obstruction of access for these purposes would cause inconvenience and operational difficulties.

180. However, from the evidence presented to the inquiry, it appears that any existing rights held by the objector or others over the land in question would not be extinguished, but rather the new rights which are sought under the CPO would sit alongside those rights. In any event, the developer and contractors would be bound by relevant site safety, fire safety and building regulations. In the extreme, compensation would be likely to be claimable for any loss of revenue suffered by the Bank.

181. In any event, the purpose of including these two plots appears to be principally for the purpose of carrying out a comprehensive upgrading of pavings, surfacing and hard landscaping treatments in the areas around the periphery of the development. This purpose would have long-term public benefits to be weighed against any temporary impacts.

#### Use of the rear access for bin storage

182. The objector states that use is made of the rear yard and Bankside for storing refuse bins. No evidence has been presented of any rights for use other than for access, but in any event, it seems likely that any interference with such use would be likely to be of relatively short duration.

#### Security

183. The objector raises a concern that the erection of scaffolding could give access to upstairs windows or flat roofs. However, no works are proposed to the Bank itself or other adjoining properties in High Street or Queen Street, so any scaffolding that may be required seems unlikely to be directly adjacent to the Bank premises.

#### Lack of negotiation

184. Discussions have evidently taken place, and a draft agreement prepared by the objector is under consideration. I appreciate that the objector would have preferred to see further progress on this, but the objector acknowledges that the developer has shown at least some willingness to engage.

#### Conclusion on the objection by Lloyds Bank PLC

185. The likelihood of significant harm being caused to the objector as a result of the new rights sought seems fairly remote. There is also a reasonable prospect of an agreement which would further reduce that risk. Balanced against the benefits of the development, the potential for harm is clearly outweighed. A refusal to confirm the Order on this basis would therefore not be justified.

### **Objection by Matthew James**

#### ***The objection***

186. Mr James owns the leasehold of one of the residential apartments at Cresset Court. The building as a whole is plot 120 on the Order Map.

187. The Order seeks to acquire new rights over Cresset Court, in relation to construction and general access, oversailing, scaffolding and party wall matters.



## **Grounds**

### Overlooking and loss of outlook

188. Mr James is concerned about a perceived loss of outlook and privacy at his apartment, arising from the proposed development when completed. However, matters relating to these issues have already been considered within the planning process, and were taken into account in the Council's decision to grant planning permission for the development.
189. The confirmation of the CPO would facilitate the carrying out of the development, but would not change or exacerbate its impacts on the privacy or outlook of neighbouring properties such as the objector's; those impacts would remain as already approved. The objection on these grounds therefore relates essentially to the merits of the original planning decision, rather than to the effects of the proposed CPO.
190. The decision that is now required, as to whether to confirm the CPO, is not an opportunity to reconsider those planning merits. As such, the objection on this ground is not relevant to my decision.

### Loss of light

191. Mr James also states that the development would cause a loss of light to the bedroom of his apartment, reducing the proportion that is well-lit from 49% to 33%. In this respect, the Authority accepts that the property in question is presumed to have a right to light, for which a claim for compensation may be made. However, in this case, such rights are said to have been reserved to the owner of the freehold<sup>22</sup>.
192. In so far as this ground of objection relates to a general impact on light, as opposed to any legal rights of light, then the objection is again concerned with the merits of the original planning application, which has already been determined, and not the merits of the Order which is now under consideration.

### Noise, dust and disturbance

193. As at Nicholson House, Cresset Court is surrounded by the Order Lands on three sides, and the apartments there would be likely to experience some noise, dust and disturbance during the construction phase. Whilst these impacts could be mitigated to a degree by the measures set out in the Construction Environmental Management Plan, it is likely that the residual effects would be noticeable to occupiers during the period of the works. However, these impacts have been taken into account during the planning process, and were considered not to outweigh the development's benefits.
194. The new rights sought under the present CPO would provide for the siting of scaffolding on land belonging to Cresset Court. This could potentially create some additional noise and disturbance during erection and dismantling, but these stages would be likely to be limited in duration. Scaffolding would not be expected to generate dust.
195. The Order would also authorise party wall works and general access and construction. But given that Cresset Court lies outside the planning

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<sup>22</sup> Doc H41: 'Compensation Eligibility of Objectors' schedule

application boundary, and the permission therefore does not authorise any actual development on Cresset Court land, it seems likely that any works undertaken at that property as a result of these particular rights would be minor.

196. In addition, the Order would also permit oversailing by cranes, but this would not normally be expected to give rise to any of the impacts which the objector is concerned about.
197. Consequently, in the context of the Nicholson Quarter development as a whole, any additional works in the vicinity of Cresset Court resulting from the confirmation of the CPO would be, at most, a minor additional element. The additional environmental impacts in terms of noise, dust and disturbance attributable to the Order would therefore be insignificant.

#### Conclusion on the objection by M James

198. I conclude that none of the matters raised in this objection provides any substantive basis for refusing to confirm the Order.

### **Objection by Robert Harding**

#### ***The objection***

199. Mr Harding has a 3-year sub-lease of part of the third floor office space at Nicholson House. On the Order Map this is part of plot 173. He is also listed as an occupier of part of plot 1/51, which is the first floor of the multi-storey car park.
200. The CPO proposes to compulsorily acquire all interests in the multi-storey car park. In relation to Nicholson House it proposes to acquire the basement, together with new rights in respect of access and general construction, oversailing, scaffolding and hoardings, service media, and party wall works.

#### **Grounds**

201. Mr Harding's objection is that in his view the Nicholson Shopping Centre and car park do not need to be redeveloped, and that to do so would be a waste of money. He also considers that Nicholson House provides good office accommodation.
202. My findings on the existing buildings, and the benefits of the proposed redevelopment, are set out in paragraphs 21-38 of this decision. To a degree, I agree with this objector, in so far as I have found that the need for redevelopment is not so overriding that it outweighs all of the objections before me. But nonetheless, the benefits of the scheme now proposed are substantial, and these benefits are recognised in my decision.
203. The development, were it to proceed, would be funded wholly by private investment. That is not to say that no public expenditure has been incurred; clearly the Council has put a good deal of time and manpower into the CPO and associated legal agreements. But the costs of construction and the risks associated with that process would be borne by the private sector, and as I have commented elsewhere, the scale of the investment involved, and the value to the local and national economy, seems to me to count in favour of the scheme.

204. I agree that the office space offered by Nicholson House serves an important function in maintaining some variation in the type, quality and cost of offices available in Maidenhead. In the proposed scheme, the existing office building is proposed to be retained, and its setting enhanced. Consequently, the overall effect on Nicholson House would be a beneficial one.

*Conclusion on the objection by R Harding*

205. The matters raised do not cause me to depart from my earlier conclusions, and thus do not warrant refusing the confirmation of the Order.

**Objection by Brock House Investments Limited**

***The objection***

206. Brock House Investments Limited owns long leases on nine flats at 57 High Street, which is numbered plot No 126 on the Order Map. The company is also listed as an occupier of parking spaces forming part of the first floor service yard of the Nicholson Shopping Centre, plot No 1/38.

207. The CPO proposes to acquire all interests in the service yard. It is also proposed to take rights over Brock House land in respect of access and general construction, oversailing, scaffolding, plant, fire escape and party walls.

***Grounds***

*Car parking*

208. The objection relates to the loss of the existing parking spaces in the multi-storey car park which are leased by the objector and allocated to occupiers of the flats at Brock House. These would be compulsorily acquired.

209. However, during construction, replacement parking of a like-for-like number is proposed at the Hines Meadow car park, which is a short walk away. On completion of the development, permanent reprovision is proposed in the new car park within the development, which would be approximately 100m from Brock House.

210. Some inconvenience would be caused to occupiers of Brock House as a result of the greater distance of the temporary provision. But if this were to result in the objector incurring a temporary loss of rental income, such loss would appear to be liable for compensation. No significant detriment seems likely to arise from the proposed permanent arrangements following completion.

211. Neither of these proposed temporary or permanent arrangements is guaranteed by way of planning conditions or obligations. However, in the event of any failure by the developer to adhere to the stated proposals, resulting in loss due to a reduction in value, this would again be recoverable through the compensation process.

*Conclusion on objection by Brock House Investments Ltd*

212. Any injurious effect on the objector arising from the changes to car parking arrangements is capable of being remedied by compensation. The objection therefore does not give rise to any justifiable reason to withhold confirmation of the Order.

## **Objection by Telefonica UK Limited**

### ***The objection***

213. Telefonica UK Limited is the leaseholder of retail premises at 61 High Street. The rear part of the premises is identified as plot 124 on the Order Map.
214. The CPO seeks to acquire rights over this rear part of the property, for access and general construction, oversailing, scaffolding, plant, and fire escape.

### **Grounds**

#### ***Effects on existing rights of way, fire escape and support***

215. Telefonica UK states that 61 High Street benefits from rights of way, fire escape, and support from adjoining land and buildings, including parts of the Nicholson Shopping Centre. These adjoining plots are to be redeveloped as part of the proposed development, and existing rights over them would be extinguished by the CPO.
216. However, the evidence produced to the inquiry by Mr Conboy, Mr Cole and Mr Adams all explains at some length how it is proposed to provide a new fire escape for No 61 and other adjoining properties, replacing the existing arrangements; and also to widen and upgrade the existing network of shared rear access passages, and incorporate these into a proposed new public realm area as part of the development. This evidence also shows how access and fire escape to the objector's property can be maintained throughout the demolition and construction process. To my mind, the effect of these works would be to achieve an improvement over the existing arrangements serving the property.
217. The rights which are sought under the Order all appear to me to be necessary for the purpose of carrying out these alterations to the existing rear access and fire escapes. Such rights would only be required during the construction of these particular works, and their effect would be limited to that period. The new rights required are also proposed to be confined to a small part of the premises. I am therefore satisfied that the new rights sought are no more than what is strictly necessary in this case.
218. The provision of the proposed works serving No 61 does not appear to be secured by way of planning conditions or planning obligations, but nevertheless it seems clear that the developer would be obligated to ensure satisfactory provision for the property by virtue of other relevant legislative provisions. In any event, any failure in this respect would be likely to give rise to compensation.

#### ***Effects on the operation of the objector's business***

219. The objector is concerned about a lack of clarity as to the extent of what would be permitted by the new rights, and the potential effects on the daily running of their business.
220. Having regard to the matters set out above, I consider that in this case the rights in question are sufficiently clear. For the reasons already stated, I am also satisfied that they are necessary, and therefore I do not consider them unduly onerous.

221. The right which is sought in relation to general construction states that exclusive possession will not be required of any part of the land for that purpose. Whilst there is no corresponding provision in relation to the other rights that are sought, there seems no reason why the exercise of any of the rights in question should be likely to result in the tenant being excluded from the premises to such an extent as to interfere with the running of their retail business.

#### *Lack of negotiations*

222. The objector states that, prior to the start of the inquiry, there was limited communication from either the acquiring authority or the developer, and no opportunity for negotiation. Latterly, a draft agreement had been received, but as at 27 October 2022, the terms as drafted were not considered acceptable.

223. The alleged lack of engagement is disputed by the Authority and Areli, who refer to discussions and correspondence with an agent acting for Telefonica, in March, August and September 2022, and also with the freeholder of the building.

224. I agree that the lateness of the draft agreement was poor practice. I am not able to judge the contents of the agreement, as the draft is not before me, but it appears that the discussions on this are on-going, and that some prospect of concluding it is seen as a possibility by both parties. Overall, I consider that the steps taken have been reasonable.

#### *Funding for the development*

225. My conclusions on the apparent availability of funds to carry out the Nicholson Quarter development, and related issues, are contained at paragraphs 43-49 of this decision. For the reasons already explained, I am satisfied that, if the Order were confirmed, the development would have a reasonable prospect of delivery.

#### *Conclusion on the objection by Telefonica UK Ltd*

226. I conclude that the matters raised in the objection by Telefonica UK Limited do not outweigh the benefits of the proposed development, and therefore do not justify refusing confirmation of the Order.

### **Objection by McDonald's Global Markets LLC and Others**

#### ***The objection***

227. The objection is made by McDonald's Global Markets LLC, McDonald's Restaurants Limited and APPT Corporation. These parties include the leaseholders and franchisee of the existing restaurant premises at 63-67 High Street. Parts of these premises are identified on the Order Map as plots 121, 122 and 123.

228. In the case of plot 123, the CPO seeks rights for access and general construction, oversailing, scaffolding, plant and fire escape. For plots 121 and 122, the Order seeks rights of oversailing only.

229. McDonald's Restaurants Limited is also listed as an occupier of parking spaces within the shopping centre service deck (plot 1/38), and the objectors



collectively state that they have rights over various parts of the shopping centre and surrounding land, including plots 68, 69, 86 and 1/48, for access, servicing, fire escape and support. In all of these plots, all interests are proposed to be acquired, and the buildings demolished.

## **Grounds**

### Servicing arrangements

230. The objectors raise concerns regarding the loss of their use of the shopping centre's service deck and goods lift. In the proposed development, loading and unloading for High Street units would take place from Nicholson Lane, using trollies. This would be at a greater distance from the objectors' premises than at present. However, the merits of this arrangement have been considered through the planning process and found acceptable, and the extinguishment of the objectors' rights with regard to the existing service deck are consistent with the planning permission. In the event that the resulting loss of convenience were to result in a reduction in the value of the objector's interest, or other financial loss, this would be a matter for compensation.

### Fire escape

231. The objectors express concerns about the need to maintain a safe means of fire escape at all times. However, the evidence presented at the inquiry on behalf of the Authority and the developer explains how it is proposed to maintain the escape route from the objector's premises, during construction and afterwards, with only minor alterations to the existing arrangements. The rights that are sought appear to me to be the minimum that is needed to ensure that these works can take place.

### Services and utilities

232. The objectors are concerned to maintain full services and utilities during construction. However, no specific rights in respect of these matters are proposed in the CPO, and in this regard therefore, the objectors' existing rights would be unaffected.

### Hours of work

233. The objectors seek assurances that access to the restaurant for construction purposes would be limited to times outside of the restaurant's trading hours. The Order would permit access to the land for general construction purposes at all times. However, trading losses due to interference with business operations would be likely to be liable for compensation.

### Boundary treatments

234. The objectors raise a concern regarding boundary treatments. A right to carry out boundary treatment works would be included in the provisions for general construction. However, the rights provided through the CPO would only remain in force for as long as needed to carry out the development. Nothing in the Order would prevent those with interests in the property from changing or replacing any boundary treatments after the completion of the development, subject to normal planning controls.

### Construction impacts

235. The objectors suggest a need for protective provisions and safeguards during construction. However, matters of site safety would be the responsibility of the contractor. Matters of general environmental impact were considered during the planning process, and controls put in place through a Construction Environmental Management Plan. Those matters cannot be revisited now in the context of the present CPO.

### Access and parking in the wider locality

236. Similar considerations apply to the issues raised by the objectors regarding access and public car parking in the wider area. These matters were also considered in the grant of planning permission. They are not affected by the CPO, and they have no bearing on my decision whether to confirm the Order.

### Conclusion on the objection by McDonalds Global Markets LLC and Others

237. For the reasons given above, I find nothing in the matters raised in the objection by these objectors to justify withholding confirmation of the Order.

## **Objection by Tom Fraser**

### ***The objection***

238. Mr Fraser represents the owners of Nos 34 and 34A Queen Street. Part of the rear yard attached to these properties is identified as plot 158 on the Order Map. Also attached to the property is part of the shared private access known as Queens Lane, which is numbered plot 157.

239. In the case of plot 158, the CPO seeks rights of access and general construction, oversailing, and access for the purpose of constructing temporary access to adjoining properties. At plot 157, the Order seeks these same rights, and in addition rights for scaffolding, plant and deliveries.

### ***Grounds***

#### Loss of light

240. The objection is stated to be to any works that affect the property including rights of light. In so far as the objection relates to rights of light, if such a right is proven, a remedy is available through compensation. If a right of light is not established, the objection on this ground appears to be primarily a planning matter, unrelated to the rights and acquisitions proposed in the present Order. No other specific grounds of objection are identified.

### Conclusion on the objection by T Fraser

241. In the circumstances, I find nothing in the objection to justify withholding confirmation of the Order.

## **Objection by MNK Estates (UK) Limited**

### ***The objection***

242. The objector refers to premises at 33-37 Queen Street. The CPO contains no proposals for the acquisition of any interests in this property, nor for the creation of any new rights over the property.

## **Grounds**

### *Loss of light*

243. The objection is stated to relate to rights of light. In so far as this ground is concerned, if such a right is proven, a remedy is again available through compensation. If the right to light is not established, the objection on this ground is a planning matter, unrelated to the present Order for compulsory purchase.

### *Disruption to businesses and residents*

244. The objection refers also to long-term disruption due to the scale of the development. Again, this objection appears to be directed at the development's planning merits rather than those of the CPO.

### *Conclusion on the objection by MNK Estates (UK) Ltd*

245. The objection provides no substantive grounds to warrant the non-confirmation of the Order.

## **INSPECTOR'S OVERALL CONCLUSIONS**

246. For the reasons set out above, I am satisfied that the redevelopment of the Order Lands, in accordance with the planning permission for the Nicholson Quarter mixed-use scheme, would accord with the BLP's policy framework for the area, and would bring significant benefits for the social, economic and environmental well-being of the town. I have found no reason to doubt that the development is financially viable, and free from impediments, and that the necessary resources are available; as such, I accept that the scheme would have a good prospect of proceeding.
247. However, I have found that the compulsory acquisition of the lease for Smokeys Nightclub would be likely to result in the club's closure, contrary to the wishes of its owners, Lee and Dean Page. The nightclub has no apparent prospect of finding satisfactory alternative premises within a reasonable timescale, and there is a consequent likelihood that the business would be forced to cease trading. The impact on the Page brothers would be particularly severe, because of the club's historic central role in their family life, and also because of their own personal commitment to it. Moreover, the closure of Smokeys would also mean the loss of a valued facility for the town.
248. This position could potentially have been avoided, had there been a proper degree of constructive engagement on the part of the acquiring authority and its partners, and a genuine willingness to explore options for the club's relocation; including all options within the proposed scheme itself that might have been able to meet the club's reasonable requirements. The failure to pursue meaningful negotiations with the Page family means that, with regard to their particular interest, it does not appear that compulsory purchase is being proposed only as a last resort.
249. As a result, despite the proposed development's acknowledged public benefits, it has not been demonstrated that those benefits could not equally be gained without the likely need for Smokeys to close, and without the consequential adverse impacts for both the objectors and the town. In these circumstances, the interference with Lee and Dean Page's human rights would be disproportionate.

250. With regard to the other remaining objections to the CPO, I have found no others that carry sufficient weight as to justify refusing to confirm the proposed Order. But nevertheless, the objection by Lee and Dean Page carries enough weight on its own for me to conclude that in this case this must be the right and necessary outcome.
251. I fully accept that the benefits of the Nicholson Quarter scheme can only be achieved on this particular site, and that they can only be realised through a fully comprehensive development. There is no realistic prospect of any alternative scheme that would allow Smokeys Nightclub to remain in situ. And I am not in any doubt that any obstacle to the delivery of the present scheme would represent a significant setback to Maidenhead's regeneration. But these considerations do not outweigh my findings that the effects of the present Order on the objectors Lee and Dean Page would be disproportionate; and that the Order has not been shown to be a last resort.
252. I conclude that it has not been demonstrated that the confirmation of the Order is justified by a compelling case in the public interest.
253. The Order is therefore not confirmed.

*J Felgate*

INSPECTOR

## APPEARANCES

### FOR THE ACQUIRING AUTHORITY:

James Pereira KC, assisted by Daisy Noble of Counsel  
(Instructed by Dentons LLP)

They called:

Ian Brazier-Dubber  
MRICS, BSC(Hons), PGDipTP, MSc

Marcus Adams  
DipArch, MA Urban Design, RIBA,  
ARB

Tim Cole  
HNC Building Construction

Richard Garside  
BSc(Hons), MRICS, Registered Valuer

Peter Twemlow  
BA(Hons), MSc, MRTPI

Will Robinson  
MSc, MRICS

David Conboy  
MSc MRICS

Managing director, RBWM Property Company

Managing Partner, JTP Architects

Project Manager, Blue Sky Building Ltd

Director, Newsteer Real Estate Advisers

Director, DP9 Planning Consultancy

Development Director, Areli Real Estate

Director, Newsteer Real Estate Advisers

### FOR L & D PAGE:

Annabel Graham Paul, of Counsel  
(Instructed by Blandy & Blandy)

She called:

Dean Page

Lee Page

Joint owner of Smokeys Nightclub

Joint owner of Smokeys Nightclub

### OTHER INTERESTED PERSONS:

Cllr Gurch Singh

James Sidwell

Andrew Hill

Cllr Neil Knowles

Councillor for St Marys Ward

Local resident and customer of Smokeys

Local resident

Local Councillor



## **DOCUMENTS TABLED AT THE INQUIRY AND SINCE**

(Numbers as per the list compiled by the acquiring authority, except where shown)

- B16 Executed S106 agreement, dated 20 October 2022
- B17 Planning permission Ref 20/01251, dated 21 October 2022
- H14a Equality Impact Assessment for CPO, 4 February 2021
- H14b Equality Impact Assessment for BLP, 30 November 2021
- H15 Statement of Community Involvement, May 2020 (extract)
- H16 'Timeline of emails and meetings' (L & D Page)
- H17 Email from Areli, 14 Jan 2020 (Page doc 1)
- H18 Email to councillors, 7 March 2021 (Page doc 3)
- H19 Email to Cllr Haseler, 28 Feb 2021 (Page doc 4)
- H20 Email from B Richardson, 2 Aug 2021 (Page doc 5)
- H21 Emails to/from B Richardson, 6/7 April and 22 March 2021 (Page doc 6)
- H22 Email from B Richardson, 27 May 2021 (Page doc 7)
- H23 Emails to/from B Richardson, 25 Feb and 2/3 March 2021 (Page doc 8)
- H24a Emails to/from C Pearse, 19 and 24 March 2021 (Page doc 9)
- H25 Plans attached to email dated 28 June 2022 (Page doc 10a)
- H26 Heads of Terms (Page doc 10b)
- H27 Emails from D Conboy, 1 July 2022 (Page doc 11)
- H28 Emails to/from Cllrs Stimson and Carroll, 2 July 2020 (Page doc 12)
- H29 Emails to/from Cllr Johnson, 6 Aug – 2 Oct 2020 (Page doc 13)
- H30 Emails from G Blagden and J Wright, 9/10 March 2020 (Page doc 14)
- H31 Letter from Areli, 28 Feb 2019
- H32 Emails from G Blagden and B Richardson, 13 Jan 2021 (Page doc 17)
- H33 Emails to/from J Lees and W Allen, 13, 16, 17 Nov 2020 (Page doc 20)
- H34 Emails to/from Monitoring Officer, 16 – 22 March 2021 (Page doc 21)
- H35 Local press item dated 1 April 2021 (Page doc 22)
- H36 M Bodley – additional Appendices dated 26 Oct 2022
- H37 Opening Statement on behalf of the Page family
- H38 Stopping-Up Order correspondence with DfT
- H39 RBWM's Negotiation Record Sheet – Nicholson House
- H40 Opening Statement on behalf of the Authority
- H41 'Compensation Eligibility of Objectors' - RBWM
- H42 RBWM's Negotiation Record Sheet – Smokeys' Nightclub, with attached:
  - H42a\*: Emails D Conboy/G Blagden, 19 July – 30 Aug, 2022
  - H42b\*: Plan – Zone 5 GF level
  - H42c\*: Emails to/from B Richardson and E Harris, 16 - 27 Nov, 2020
  - H42d\*: Emails to/from B Richardson, 17 Dec 2020 – 13 Jan 2021
  - H42e\*: 3 plans of GF unit with heights and measurements
  - H42f\*: Emails D Conboy/G Blagden, 19 July – 10 Aug, 2022
- H43\* Inquiry notice, with photos and Certificate of Billposting
- H44 Letter to Cllr Haseler, 28 Feb 2021 (Page doc 2, duplicate of H19)
- H45 Smokeys' existing lease plan; and 5 x alternative layout options for Zone GF
- H46 Smokeys' event advertisements
- H47 Unit 24a, Smokeys' existing lease areas schedule and plans
- H48 RBWM Licensing Policy
- H49a Transcript of Planning Committee meeting, 3 March 2021 (L & D Page)
- H50 Closing Submissions on behalf of the Page family
- H51 Closing Submissions on behalf of the Authority
- H52 Letter from Blandy & Blandy, 1 Dec 2022 – re filing of JR claim
- H53 Letter from Dentons LLP, 6 Dec 2022 - response

\* Inspector's numbering