

30 July 2008

Berwin Leighton Paisner LLP
Adelaide House
London Bridge
LONDON
EC4R 9HA

Our Ref: APP/L5240/V/06/1198485

Your Ref: PGRC/25234.1

Dear Sirs,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION BY ARROWCROFT LIMITED: Ref 02/03668/P**

**LAND ADJOINING EAST CROYDON STATION, GEORGE STREET, DINGWALL ROAD
AND LANSDOWNE ROAD, CROYDON CR0 2NF**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Ava Wood DIP ARCH MRTPI, who held a public inquiry between 18 September and 19 November 2007 into your client's application for: detailed planning permission for the demolition of existing buildings (including Wettern House, Warehouse Theatre, retail premises forming Station Approach, storage and maintenance yards and Dingwall Road multi-storey car park) for the comprehensive redevelopment comprising an arena, public plaza and spaces, car rental franchise, offices, leisure and recreational facilities, retail, food retail, restaurants and bars, residential (for sale and affordable) together with improvements to surrounding highways and public transport facilities, including a new pedestrian link to East Croydon Station and provision for a potential future new platform to serve the arena, the construction of car parks, new and amended access and service roads, the partial closure of Lansdowne Road and landscaping, on land adjoining East Croydon Station, George Street, Dingwall Road and Lansdowne Road, Croydon CR0 2NF in accordance with application number 02/03668/P dated 25 November 2002.
2. On 14 March 2006, the Secretary of State directed, in pursuance of section 77 of the Town and Country Planning Act 1990, that the application be referred to her instead of being dealt with by the relevant planning authority, Croydon Borough Council, because it was considered that the proposal may conflict with national and regional policies on important matters.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission be refused. The Secretary of State sees considerable merit in principle in an arena-based scheme as a means of regenerating the Croydon Metropolitan Centre. But, for the reasons given below, the Secretary of State agrees with the Inspector's conclusions in relation to the application

before her, except where stated, and agrees with her recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. The Inquiry into the application was conjoined with an inquiry into objections to the *London Borough of Croydon (Land west of East Croydon Station, The Gateway Site) Compulsory Purchase Order 2007 (CPO)* and the *Stopping of Highways, London Borough of Croydon, Lansdowne Road and Dingwall Road Stopping Up Order (SUO) No.1 2006*. The Secretary of State's decision on the CPO will be issued in a separate letter following this decision, and the stopping up order is a matter for Croydon Borough Council to determine.
5. The Secretary of State notes that there was a request at the pre-inquiry meeting held on 27 June 2007 for a permanent record of the full inquiry proceedings (IR1.1.4). She agrees with the Inspector's decision not to record daily proceedings, for the reasons given at IR15.3.13.
6. A number of amendments were made to the original application, as summarised at IR1.3.1 - 1.3.4. The implications are considered at paragraph 14 of this letter.
7. In reaching her decision, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted with the application in 2002 under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, together with the updates to the original ES provided in 2003, 2004 and 2007, and the additional environmental information submitted directly to the Secretary of State after the close of the Inquiry (IR2.1.1. - 2.1.5). The implications are considered at paragraph 15 of this letter.
8. Following the close of the inquiry, the Secretary of State received a number of written representations, including copies of correspondence from representatives of the applicant and the Croydon Gateway Limited Partnership (CGLP). Those making representations and the dates of correspondence are listed in section 6 of the Inquiry Document List accompanying the Inspector's Report and at Annex A of this letter. The Secretary of State has taken these representations into account in reaching her decision, but does not consider that they raise any new issues about which it would have been necessary to refer back to the parties prior to reaching her decision. Copies of the representations can be obtained upon written request to the address at the foot of the first page of this letter.
9. An application was made by Croydon Gateway Limited Partnership (CGLP) for a partial award of costs against your client. The Secretary of State's decision on this application for costs will be the subject of a separate letter to be issued shortly.

Policy considerations

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the Development Plan unless material considerations indicate otherwise. In this case, the Development Plan comprises the London Plan 2004 (Spatial Development Strategy for Greater London), as consolidated

with Alterations since 2004 and adopted in February 2008, and the Croydon Replacement Unitary Development Plan (Croydon Plan), adopted in July 2006. The Secretary of State considers that the policies most relevant to the determination of this appeal are those set out in the Statement of Common Ground and she agrees with the Inspector that key elements of the London and Croydon Plans which set the basic policy framework for considering the proposal are as set out at IR4.2.1 - 4.3.5, especially Croydon Plan Policy CMC1.

11. Material considerations which the Secretary of State has taken into account in this case include Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*; PPS3: *Housing*; PPG4: *Industrial, Commercial Development and Small Firms*; PPS6: *Planning for Town Centres*; Planning Policy Guidance (PPG) 13: *Transport*; PPG17: *Planning for Open Space, Sport and Recreation*; Circular 11/95: *The Use of Conditions in Planning Permission*; and Circular 05/2005: *Planning Obligations*.
12. The Secretary of State has also taken into account the consultation papers on draft PPS4: *Planning for Sustainable Economic Development*, published in December 2007, and draft PPS6: *Planning for Town Centres*, published on 19 July 2008, and the document: *Planning for a Better London* published by the Mayor of London on 9 July 2008. However, as these draft documents may be subject to further change, she affords them little weight.
13. The Secretary of State has also had regard to the sub-regional and local guidance outlined at IR4.4.1 - 4.4.5.

Main Issues

Scheme revisions

14. The Secretary of State has considered the Inspector's assessment of revisions to the scheme at IR15.3.1 - 15.3.6, and notes that many of the modifications involve adjustments of some magnitude (IR15.3.2). She agrees with the Inspector's assessment that the modifications brought forward during the Inquiry to address deficiencies are numerous and, collectively, alter the scheme to the extent that the implications have not had the benefit of proper consideration (IR15.3.5). In view of this, she also agrees that these late modifications cannot be regarded as simply minor amendments to the proposals as submitted but instead these require submission of a fresh planning application (IR15.3.5). The Secretary of State has not formally considered the amended plans because she considers that they collectively represent such a change to the proposals that proper consultation should have been, but was not, undertaken. She also takes the view, as set out by the Inspector at IR15.3.10, that the arguments for not accepting the new ES material reinforce her conclusion about not accepting the modified version of the scheme.

Environmental impact assessment

15. The Secretary of State has considered the process by which the shortcomings in the June 2007 Environmental Statement (ES) were addressed by the provision of new information (IR15.3.7 - 15.3.9). She agrees with the Inspector that the information provided may not be satisfactory in all respects, for example regarding trip generation, noise and air quality (IR15.3.9). For the reasons at IR15.3.10, she agrees with the

Inspector that the new material remains largely untested and, despite the wide consultation exercise undertaken, that third party interests would be prejudiced if it were accepted at this late stage. In reaching this view, she has also had regard to relevant post inquiry correspondence forwarded to her. The Secretary of State has concluded that she cannot accept the new material as part of the ES, and that the ES as originally submitted does not comply with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. In view of this, she considers that she does not presently have sufficient information to assess the environmental impact of the application. She has not requested further information because it would have been otiose to do so in respect of proposed modifications to the proposal given her decision that those modifications should not be accepted as part of the scheme to be assessed.

The Croydon Gateway Limited Partnership (CGLP) scheme

16. The Secretary of State agrees with the Inspector that the CGLP scheme for which the Secretary of State granted planning permission on the Gateway site in 2006 is a benchmark for the proposal by Arrowcroft Limited which is now before her, insofar as the CGLP scheme establishes the principles of a high density, mixed use development incorporating a high rise tower of potential world class quality (IR15.3.11). However, as the Inspector notes, the current proposal by Arrowcroft must be judged on its own merits for the purpose of assessing its planning acceptability (IR15.3.12).

Compliance with the Development Plan

17. The Secretary of State considers that the principle of mixed use redevelopment on the application site including an arena is consistent with the Development Plan, particularly Croydon Plan Policy CMC1.
18. However, she considers that the proposal does not comply with the Development Plan overall because of breaches to the relevant policies on transport and highway matters (paragraph 23 of this letter), retail development (paragraph 25 of this letter), open space requirements (paragraph 30 of this letter) and other aspects of overall design (paragraph 32 of this letter). She has therefore gone on to consider other material considerations which might outweigh this conflict with the Development Plan.

Regenerating, re-branding and changing perceptions of the Croydon Metropolitan Centre

19. As the Inspector notes at IR15.4.6, regenerating the Croydon Metropolitan Centre (CMC) is a declared priority of the Council to be pursued with some urgency. Given its size, accessibility and prominent location, the Secretary of State considers that the Gateway site is rightly regarded as the most important of the opportunity sites identified in the CMC chapter of the Croydon Plan. The primary aim of Policy CMC1 is to achieve a comprehensive mixed use development which regenerates and helps to re-brand and change perceptions of the CMC, as a modern centre capable of meeting future needs. Policy CMC1 expresses a "strong preference" for a development incorporating an arena to achieve the stated aims. The Secretary of State agrees with the Inspector that a development proposal which meets the regenerative aims and consists of a strongly preferred land use consistent with the Policy would be a significant factor in favour of a grant of permission, but that meeting the Council's preference for an arena does not, on its own, guarantee that this particular development proposal would achieve the

transforming outcomes sought by Policy CMC1 (IR15.4.7). She agrees that for that to happen, it must bring forward the benefits claimed and be deliverable (IR 15.4.8).

20. For the reasons given in IR15.4.9 - 15.4.22, the Secretary of State sees a number of substantial planning merits which weigh in favour of the proposal in terms of implementing Policy CMC1 and the relevant strategic policies in the London Plan. In particular, she takes the view that the arena, in combination with the other uses proposed for the site, would help to re-brand and change perceptions of the CMC as a modern centre. She considers that an arena would be a marketing symbol for the town, bringing with it scope for media attention and sponsorships, and that it would diversify the night time economy of Croydon, increasing the numbers of people drawn into the centre for reasons other than frequenting bars and public houses. She further considers that the arena, along with the new residential, retail and community facilities, would engender a greater sense of security and assist with overcoming negative perceptions of Croydon's night time environment.
21. However, for the reasons given by the Inspector at IR15.4.23 - 15.4.26, she accepts that some other benefits claimed for the proposal may be overstated. The Secretary of State has also had regard to the Inspector's assessment of scheme viability at IR15.4.27 - 15.4.29, and the Inspector's conclusion at IR15.13 that, with doubts about its financial soundness, she is not reasonably assured that the arena would be delivered and, without that component of the scheme, its transforming potential would not be achieved. As any concerns about delivery of the scheme as a whole would affect the weight that could be attached to its regenerative effects, the Secretary of State considers that viability is a material planning consideration in this particular case. She agrees with the Inspector that she cannot be certain about the viability of the scheme currently before her and this undermines the weight that can be given to the regeneration benefits of the proposed scheme.
22. The Secretary of State agrees with the Inspector's overall conclusion at IR15.4.30 that, whilst the claims about the power of an arena alone may be overestimated, the likelihood is that the mix and variety of uses proposed would have the capacity to regenerate the CMC. She agrees with the Inspector that, in combination with other key sites in the centre, the long term benefits of the proposed development could be substantial, helping to renew and create a more attractive, diverse and vibrant centre. Overall, however, the Secretary of State concludes that whilst the proposal has the potential to regenerate, re-brand and positively change perceptions of the CMC, in view of the conclusion above on the viability of the scheme and the consequent doubts about its delivery, she considers these benefits are not sufficient to overcome the conflict with the development plan and the other planning objections she has identified below.

Transport and highway matters

23. The Secretary of State agrees with the Inspector's view at IR15.5.7 that the application site is precisely the location to which high density, mixed use, high travel demand developments should be directed, and that in many ways the proposal builds on its locational advantages, properly searching for solutions to encourage public and other sustainable modes of transport. However, for the reasons given by the Inspector regarding different modes of transport (IR15.5.8 - 15.5.36), traffic generation (IR15.5.37 - 15.5.44) and provision for truck servicing (IR15.5.45 - 15.5.52), the Secretary of State agrees with the Inspector that a number of significant disadvantages or unresolved

issues, including arrangements for coaches, service area designs and the adequacy of measures to overcome concerns about congestion on the local highway network, militate against the scheme, when considered in the context of policies that seek to promote safe, reliable and convenient transport and highway conditions (IR15.5.54 and IR15.13). She gives this conclusion significant weight and considers that the scheme would not accord with Development Plan policies CMC1(v), CMC13, UD6, UD13 and SP14.

24. The Secretary of State also agrees with the Inspector that the many changes to transport assessments, new information and the piecemeal manner in which the design and layout of the scheme evolved during the Inquiry is further evidence that the impact of the scheme on the transport infrastructure and on the highway network has not been fully considered (IR15.13). Like the Inspector, she does not consider that there is adequate evidence to be assured that Network Rail are confident that the station would have the capacity to accommodate the latest estimated increases in predicted passenger numbers (IR15.5.13).

Town centre considerations

25. The application site is an edge of centre site falling outside the CMC's primary shopping area. Retail use would not normally be permitted under the terms of town centre policies and the Croydon Plan does not identify a requirement for additional retail floorspace in the CMC. Nor does Policy CMC1 refer to the possibility of retail development on the application site (IR15.6.3 - 15.6.4). The Secretary of State therefore agrees with the Inspector's view at IR15.6.4 that the local policy background provides no apparent support for the scale of retail offer proposed in the scheme, nor indeed in relation to any retail development on the Gateway site.
26. The proposal must also be considered against national planning policy in PPS6. The Inspector suggests at IR15.6.5 that growth in retail expenditure is not a measure of retail capacity which can inform a demonstration of quantitative need. In fact, as paragraph 2.34 of PPS6 makes clear, forecast future expenditure is one of the factors to be taken into account in quantifying retail need, and forecasts may indicate growth in expenditure over time.
27. For the reasons given by the Inspector regarding quantitative and qualitative need for the retail elements of the proposal (IR15.6.3 - 15.6.8), the need for the leisure elements of the scheme (IR15.6.9 - 15.6.11), sequential approach to site selection (IR15.6.12 - 15.6.17), scale, impact and other considerations including the need for cross-subsidy (IR15.6.18 - 15.6.22), the Secretary of State agrees with the Inspector's conclusions on town centre matters at IR15.6.23 and 15.13. The retail element of the proposed scheme does not comply with local and national planning policy in terms of demonstrating a quantitative need for additional convenience goods floorspace (IR15.6.3 and 15.6.5), although there is some qualitative need for a new foodstore and the comparison floorspace proposed. However, the Secretary of State concludes that any policy conflict is outweighed by the contribution that the retail element would make to the financial viability, and therefore delivery, of the arena and its associated regeneration benefits. She is also satisfied that the arena and other leisure facilities would be appropriately located in the CMC, and there is no evidence of other sequentially preferable locations for the development proposed.

Housing and quality of residential environment

28. The Secretary of State agrees with the Inspector that the proposal would make good and effective use of previously developed land in a highly accessible location and well-connected to public transport, to community facilities, shopping and work opportunities. She accepts that the scheme would create an unconventional place to live that may not suit some people, but agrees with the Inspector that it would provide a vibrant environment for those wishing to take advantage of town centre living and variety in the facilities on offer locally (IR15.7.5).
29. For the reasons given at IR15.7.7, the Secretary of State agrees that the design and positioning of the ETFE layers require more thought, but that the matter is resolvable and it could be covered by a condition.
30. The Secretary of State has had regard to the Inspector's assessment of open space provision at IR15.7.9 – 15.7.14 and considers that the proposal does not accord with the Development Plan in this respect. The Secretary of State considers that, despite the other merits of the proposal as a place to live for those wishing to take advantage of town centre living, the lack of pleasant green space is a shortcoming of the scheme. However, she places particular importance on child play space and considers that, if she had been minded to grant permission for this scheme, she would have needed to impose conditions to secure at least the level of provision indicated in the modified plans (IR7.5.17) in order to meet the deficiencies in this respect as set out by the Inspector at IR15.7.13. The Secretary of State therefore agrees with the Inspector that the scheme falls short when assessed against the extent to which the development would provide or enable good access to green and open amenity and recreational space (IR15.7.24). She further agrees with the Inspector that the absence of good quality open space on site, or anywhere locally, is a factor that causes it to be in conflict with RUDP Policy RO12 (IR15.7.24).
31. The mix of units and provision of affordable homes would not comply with the stated Development Plan policy (IR15.7.2 - 15.7.3), and the Secretary of State has had regard to the Inspector's assessment of these matters at IR15.7.15 - 15.7.22. When balanced against other scheme requirements and planning objectives, in particular the arena, the Secretary of State agrees with the Inspector that the deficiency in affordable housing supply would comply with the latitude offered by relevant Development Plan policies (IR15.7.23).

Sustainability, including design quality

32. For the reasons given at IR15.8.3 to 15.8.18, the Secretary of State largely agrees with the Inspector's conclusions in IR15.8.19. In particular, she agrees that there is much to commend in the disposition, scale and form of the individual buildings and the spaces they create. However, due to the other advantages that she considers the scheme would offer to potential residents in a central urban location, the Secretary of State does not agree that the shortcomings of the scheme on their own in terms of green space are sufficiently serious to merit refusing permission. Furthermore, whilst the Secretary of State agrees that, for the other detailed reasons given by the Inspector, the design of

the scheme is seriously deficient in a number of respects, she does not consider that those deficiencies necessarily stem from an over-development of the site.

Warehouse Theatre and Fairfield Halls

33. The Secretary of State agrees with the Inspector that, for the reasons at IR15.10.2 – 15.10.3, Croydon need not be deprived of the Warehouse Theatre, should the proposed development proceed (IR15.10.4). Likewise, she agrees that the Fairfield Halls are likely to continue to provide for Croydon's cultural market (IR15.10.5).

Impact on residential amenities in the locality of the site

34. The Secretary of State agrees with the Inspector's assessment at IR15.10.6 of the most likely serious consequences of the proposed development on nearby residential amenity, and that, whilst these matters are resolvable, they would require further consideration through further conditions or s106 obligations, as appropriate, if permission were to be granted. (IR15.10.7 and IR15.13). The Secretary of State considers that the unresolved issues weigh against the current proposal.

Conditions and obligations

35. The Secretary of State has considered the Inspector's assessment of each of the proposed conditions that attracted controversy and drew comments at the Inquiry, at IR14.5 - 14.22, as well as national policy as set out in Circular 11/95. She considers that, with the exception of new or substantially reworded conditions 4, 17, 37, 41, 42 and 44, the conditions which the Inspector recommends at Annex 1 to the Inspector's Report (which excludes proposed conditions 3 and 19) comply with Circular 11/95. At IR14.9 the Inspector suggests that the Secretary of State may wish to refer back to the parties on the new or substantially reworded conditions in Annex 1 to her report, as they were not specifically discussed at the Inquiry. However, in view of the Secretary of State's decision in this letter to refuse planning permission for reasons other than the substance of these conditions, she does not consider that it is necessary to refer back to parties.
36. The Secretary of State has given consideration to the planning agreement as executed by the applicant and the Council to which the Inspector refers at IR 14.23. She considers that the provisions in the agreement are relevant and necessary to the proposed development and do comply with the policy tests in Circular 05/2005. However, she notes the covenants only bind the applicant's interest as the proposed purchaser of the part of the application site which is currently owned by the Council and it will be necessary for a further obligation to be executed in due course in order to bind the freehold interest. Furthermore, a significant part of the site would not be bound by the agreement. The Secretary of State agrees with the Inspector that it is not appropriate to impose suggested condition 3 which attempts to deal with this deficiency because it conflicts with the advice in Circular 11/95 (IR 14.7). She also shares the Inspector's concern that the delivery of certain off site highway improvements has not yet been secured and she agrees it is not possible to overcome this omission by imposing a Grampian condition (IR 15.5.43). For these reasons, the Secretary of State places very limited weight on the planning agreement in reaching her decision but, in view of her conclusion on the planning merits of the proposal, she did not consider it necessary to pursue this matter further.

Overall Conclusions

37. The Secretary of State concludes that, overall, the proposal is not in accordance with the Development Plan although she has taken into account the fact that it gains support from Policy CMC1 in the Croydon Plan. This expresses a strong preference for a scheme which incorporates an arena use as part of an overall mix of uses. In regard to the wider regeneration objectives for the Croydon Metropolitan Centre, she takes the view that an arena, in combination with the other uses proposed for the site, would help to re-brand and change perceptions of the CMC as a modern centre. However, in light of uncertainty about the viability of the scheme before her, she considers that this does not outweigh the conflict with the development plan.
38. The retail element of the proposal does not accord with the Development Plan and there is some conflict with PPS6. However, the conflict with PPS6 is outweighed by the contribution that the retail element would make to the financial viability, and therefore delivery, of the arena and its associated regeneration benefits. Likewise, the amount of affordable housing proposed in the scheme has to be balanced against the regeneration benefits of the scheme as a whole. The lack of pleasant on-site green space is a shortcoming but, other issues apart, is not of such importance as to conclude that the proposal would fail to achieve a high quality residential environment overall.
39. However, the proposal has substantial deficiencies in terms of its failure to meet the requirements of local policies on transport and highway matters, particularly in respect of issues such as traffic congestion and achieving the necessary improvements to East Croydon railway station and the local highway network; and in terms of a number of detailed or unresolved aspects of design. The Secretary of State considers that these are planning objections that weigh heavily against the proposal before her.
40. For the reasons given above, the Secretary of State has not taken into account the additional environmental information and has not formally considered the later amendments to the scheme. She concludes that, on the basis of the scheme as it stands, although it has a number of benefits, they are insufficient to outweigh the planning objections she has identified above and the consequent conflict with the Development Plan. As such, the Secretary of State considers that, in line with the Inspector's recommendation, the scheme should not be granted permission.
41. The Secretary of State has had regard to the amended proposals, in order to form a view as to whether they indicate that the planning objections to the current scheme might be overcome. She agrees with the Inspector (IR15.3.3) that the material latterly produced is still insufficiently advanced to allow her to be confident that a scheme of appropriately high quality will be produced. However, that would be a matter for reconsideration as part of any new scheme which may be submitted following this decision.

Formal Decision

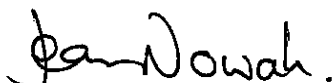
42. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby refuses your client's application for detailed planning permission for the demolition of existing buildings (including Wettern House,

Warehouse Theatre, retail premises forming Station Approach, storage and maintenance yards and Dingwall Road multi-storey car park) for the comprehensive redevelopment comprising an arena, public plaza and spaces, car rental franchise, offices, leisure and recreational facilities, retail, food retail, restaurants and bars, residential (for sale and affordable) together with improvements to surrounding highways and public transport facilities, including a new pedestrian link to East Croydon Station and provision for a potential future new platform to serve the arena, the construction of car parks, new and amended access and service roads, the partial closure of Lansdowne Road and landscaping, on land adjoining East Croydon Station, George Street, Dingwall Road and Lansdowne Road, Croydon CR0 2NF in accordance with application number 02/03668/P dated 25 November 2002.

Right to Challenge the Decision

43. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
44. A copy of this letter has been sent to Croydon Borough Council and other interested parties.

Yours faithfully



Jean Nowak

Authorised by the Secretary of State to sign in that behalf