



The Planning Inspectorate

## Compulsory Purchase Order Decision

Inquiry Commenced on 4 February 2019

Site visit on 8 March 2019

**by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 May 2019**

**File Ref: PCU/CPOP/M2270/3211220**

**Calverley Square, Tunbridge Wells**

- The Compulsory Purchase Order was made under section 226(1)(a) of the Town and Country Planning Act 1990 and the Acquisition of Land Act 1981 by Tunbridge Wells Borough Council on 20 August 2018.
- The purposes of the Order are: providing for the comprehensive development, redevelopment or improvement on or in relation to the land comprising the redevelopment of the Mount Pleasant and Great Hall car parks, part of Calverley Grounds including the dental surgery known as The Lodge to provide a new theatre, a new civic centre for the Council, new Grade A offices, improved car park provision, a new public square and improvements to the public realm at the junction of Mount Pleasant Road and Mount Pleasant Avenue for the likely achievement of significant social, economic and environmental benefits for the acquiring authority's area; and b: executing works to facilitate the development or use of the land.
- The grounds of objection include: There is no compelling case for the Scheme, Scheme's impact on the surroundings; no evidence that cultural objectives of the project are capable of being realised; concerns over economic, social and environmental benefits to the town, inadequate consideration of alternatives, cost and viability of the scheme; effect on, and inadequate consideration of, the existing Civic Centre and theatre; inadequate consultation with the public, concern over the theatre design and vehicular access; disruption during construction period; impact from development in use; flooding; traffic congestion; concern about the impact on Hoopers' car park and the knock on effect on the department store and inadequate consideration of alternative access arrangements; Inadequate consideration of alternatives that would allow iSmile to remain in place and lack of consideration of Human Rights and Public Sector Equalities Duty. Property specific issues.
- When the inquiry opened there were 16 statutory objectors and 301 non-statutory objections remaining. No objections were withdrawn. Statutory objectors are Brian Gregory, Pamela Bigwood, John Bigwood, Trustees of the Metro Property Unit Trust, Hoopers Ltd, Sunniva Carpeting, Una and Reg Bandy, Melanie Norris, Residents of Grove Hill House, Dr R Chris, Dr S Azimi, Sainsbury's, BBC, Ingrid Pope, Kathy Cooper and Nicholas de Maid.

**Summary of Decision: The Order is confirmed**

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### Procedural Matters

1. Tunbridge Wells Borough Council is the Acquiring Authority. For the purposes of this decision I have referred to the Acquiring Authority as 'the Council'.

## Decision

2. The Tunbridge Wells Borough Council (Calverley Square) Compulsory Purchase Order 2018 is confirmed. The attention of the Acquiring Authority is drawn to Section 15 of the *Acquisition of Land Act 1981*, as amended, about publication and service of notices now that the Order has been confirmed. Please inform the Planning Inspectorate and Secretary of State of the date on which notice of confirmation of the Order is first published in the press.

## Purposes

3. The purpose for which the land is being acquired is to undertake the redevelopment scheme which was granted planning permission under reference 18/00076 and in order to achieve the purposes of the order noted above. Planning permission was resolved to be granted at the planning committee in May 2018, subject to conditions, with the decision notice being issued on 15 June 2018. An application for judicial review of the decision to grant planning permission was lodged on 26 June 2018 and was rejected by the High Court on 6 August 2019 as the basis of the application was found to "totally lack merit".

## Need, Process and Alternatives

4. Tunbridge Wells is an attractive location for business and residential. The economy is characterised by a large number of small or medium sized enterprises, with a number of key employers that contribute to the economic health of the borough.
5. The Council notes that the past few years have been challenging, with the government grant being cut, growing demand on services and high housing demand with significant planning constraints. The Town Centre is facing challenges, including the loss of over 200,000 ft<sup>2</sup> of offices to residential development through permitted development, and changes to shopping habits and the growth of online retail. There is also significant competition between towns for employment, retail and visitors.
6. The Council's vision is to retain its reputation as a great place to live, work and visit and be a place where businesses base themselves and where residents and visitors can enjoy a range of cultural, leisure and retail amenities. The aim is to avoid becoming a dormitory town. The role of the Council has been characterised as 'place-shaping'. Alongside the Local Plan, the Council set eight priority projects in its 'Five Year Plan' to shape the future of the Borough, and the Calverley Square development helps to deliver four of these.
7. The Town Hall is too big for the Council's needs. It currently occupies about 40,000 ft<sup>2</sup>, but only needs about 12,000 ft<sup>2</sup>. It is an old building, expensive to run and maintain, and not well suited to modern, flexible ways of working, with many of the offices being small, cellular types. The theatre presents even more significant challenges; in essence the Council notes that the current Assembly Hall does not meet the expectations of audiences and

producers in terms of its capacity, stage area, back and front of house facilities and fly tower.

8. These shortcomings manifest themselves in cut-down sets, compromised shows and poor feedback from audiences and producers. The cost of bringing the theatre up to modern standards would be around £31m, whilst still leaving considerable shortcomings. It would also require the closure of the theatre which would impact on community users and the local economy, although I note that other theatres have coped with temporary facilities. However, I acknowledge that this would not provide the same quality of service as a permanent building and would be difficult for staff. While I take that into account, the new theatre would be very different from the old, including quality of productions. The anticipation for audience growth and potential break-even is around 5 years, so keeping the old theatre going in terms of future productions may not be directly relevant. Overall, I think that a temporary theatre could have been a solution if the Assembly Theatre was suitable for refurbishment, but given other aspects against its reuse for the Council's purposes, this matter carries little weight.
9. In addition, the population of the Borough is projected to grow by nearly a quarter. The Council's aim is to ensure this is matched by a commensurate growth in employment opportunities, quality office space and improved cultural and leisure facilities to ensure Tunbridge Wells remains a vibrant and attractive place to live, work and visit.
10. Objectors appear to suggest that the decision to provide a new theatre was somehow taken in the absence of democratic decision making, with a lack of information and was not in accordance with policy. The way theatre accommodation was to be provided in the town was shown in the evidence to have been instigated as early as 2010 when Bonnar Keenlyside Ltd, specialists in theatres, were asked to provide a report. The report considered the potential for, and implications of, replacing the Assembly Hall theatre with a new venue. The scale was for upwards of a 900 seat theatre, although smaller scale venues were also considered. It was noted that venues of over 1,500 seats tended to have no subsidy. However, it also advised that any new theatre is likely to need a subsidy in the first 5 years.
11. It was also indicated that since its 2006 business plan, the Assembly Hall theatre has met many of its financial targets, but fallen behind in terms of output and attendance targets. Average attendances had fallen, ticket income was reduced and financial targets were maintained only by making cuts elsewhere. Various options were considered in the report.
12. This was followed up in 2013 with a report by Stephen Browning Associates. They were asked to carry out a high-level strategic review of the current state of the Assembly Hall theatre and to make recommendations concerning the front of house, including the auditorium, bars and catering, the stage and the backstage facilities. They were also asked to look at the technical facilities in the theatre to identify the specific requirements and outline costs concerning potential capital improvements to the building and its operation.

13. The brief included looking at immediate improvements required to update, and to enhance, the current facilities for performers, audiences and theatre staff, to ensure that the theatre can continue for the next 10-15 years. It also considered the capital investment required to develop and extend the Assembly Hall's facilities, so that it could present shows that are currently touring to large scale theatres, to an increased capacity audience of around 1,200 people. This investment would allow the theatre to widen its artistic programme to include more musicals and popular comedy, and to increase its income from the box office and from food and drink outlets.
14. The report noted that, despite the hard work of staff, it was necessary to improve the facilities, otherwise there was a danger that the audience would drift away. However, while it was not indicated to be unfeasible, it was noted that to transform the building and increase audience capacity there would need to be radical change to the building, which would require a detailed study to see if the fabric could sustain such radical change. Following that up, Faithful and Gould were instructed to do a non-invasive survey of the fabric of the Town Hall and Assembly Hall to help inform decisions.
15. The Council agreed a Five Year Plan on 16 April 2014 (Five Year Plan 2014 – 2019). A mission statement was "an enabler of change – encouraging economic growth and investment into the borough whilst ensuring appropriate infrastructure is in place to support growth and enhance the quality of life". Highlighted in the Plan are the delivery of new office space on Mount Pleasant Avenue. In this plan the Council committed to enhance the Assembly Hall theatre, which was noted as making a significant contribution to the borough's cultural offer and to the night time economy. The commitment was to deliver a theatre that meets modern standards and customer expectations. To my mind at this time the expectation was to upgrade the Assembly Hall theatre.
16. The Council also produced a Cultural Strategy 2014-24 and in this it was noted that the Assembly Hall theatre, the only large-scale venue in the borough, would benefit from enhancement. It also identified that facilities would need to be improved if it was to continue to meet the demands of its audiences as well as meeting the technical demands of the larger touring shows. Clearly the intention to be able to accommodate large touring shows was under consideration at this time. An aim identified was to grow the role as the cultural centre of the Kent and Sussex High Weald, so that by 2024 the Borough of Tunbridge Wells is nationally recognised for its vibrant cultural provision. This to me is a reasonable ambition for a Council.
17. Minutes of a Cabinet Meeting in October 2014 show that in accordance with the 2014 Five Year Plan, it was the intention to continue exploring upgrading the Assembly Hall theatre. Authority was sought to appoint a consultant to investigate all options for the financial viability of delivering a new theatre on the civic complex site. However, amendments were suggested to include looking at a new theatre on or adjacent to the civic complex and another to delivering a new theatre on any Council owned land in the town. Both were adopted, while at the same time authorising essential work to improve the Assembly Hall theatre.

18. The reasons for the decision were to allow the Assembly Hall theatre to continue and to be able to realistically assess options and to establish the potential to deliver a new theatre. This seems to me to be an entirely logical sequence, starting with the Bonnar Keenlyside report. The Council has considered and acted upon information and amended its approach, while not at this stage removing the refurbishment of the Assembly Hall theatre from the options. Clearly the alternative option of reusing the Assembly Hall theatre has been a major consideration in the process.
19. The suggestion by objectors is that the change at this meeting sent the project off in a radically different direction. However, the decisions were made at a high level in the Finance and Governance cabinet advisory board, which made the request to also consider the possibility of a new theatre and it is its role to review and guide the process.
20. Minutes of the Council meeting of December 2015 report on the Civic Complex – Assembly Hall theatre mandate next steps, with a report attached by Bilfinger GVA and Allies and Morrison who were commissioned to prepare an options study for the project. The full report was identified as being commercially sensitive and was withheld, which is not unreasonable. The report was made available to Council members and was also reviewed by both CIPFA (Chartered Institute of Public Finance & Accountancy) and Grant Thornton. The options that were considered and the evaluation criteria are set out in the publicly available report. The report outlined the objectives of feasibility work undertaken, the main issues (including the shortlisted options) and identified the potential delivery options to enable progression to the next stage. It indicated that a wide consultation had already taken place with the Town Forum, Civic Society and other interested parties. At this meeting it was agreed in principle to relocate the council offices to Mount Pleasant Avenue and to deliver a new theatre to replace the Assembly Hall theatre.
21. The report identified 13 options of which 5 were shortlisted on the basis that they represented the best potential against the evaluation criteria, and estimated build costs were provided. The basis of these options was for the provision of the offices and theatre either with one or the other or both retained at the civic centre or elsewhere. It identifies the location of Great Hall car park as a potential site for the theatre. It is quite clear that a number of alternatives were considered in detail for re-use of the civic centre.
22. At the Council meeting of July 2016 the project was debated and it was resolved that the preferred site for the new theatre was the Great Hall car park and it was noted that the project had moved to RIBA stage 2 design.
23. The Five Year Plan (2017-2022), adopted by the Full Council on 27 September 2017 identified 8 major projects, including to explore the delivery of a new theatre to replace the Assembly Hall theatre, as well as confirming the Council's desire to attract more business to the borough.
24. It is apparent that, as identified by many parties, the decision to proceed with the various RIBA stages for the design of the new theatre occurred in

the period when the 2014 Five Year Plan was in place and before the 2017 Five Year Plan was adopted. This in itself did not accord with the 2014 Five Year Plan, although it did accord with the principle of providing a new theatre that meets modern standards and customer expectations for the 21st century including seating, ventilation and catering facilities.

25. The evidence is clear that the Council has been thoroughly informed by professional advice from 2010 and initially looked hard at achieving the new theatre in the Assembly Hall theatre. However, there is clear evidence from advisors of the difficulty of this and it is common sense to not simply pursue a goal if investigations indicate otherwise, and to amend any forthcoming Five Year Plan to accord with emerging information. That does not indicate that the identified aims have been ignored. The evidence shows detailed consideration of proposals at many stages by the Council's various committees. At the time the order was made the development accorded with the adopted Five Year Plan, which had the benefit of being informed by the detailed studies provided in relation to the theatre project.
26. Tunbridge Wells Operatic and Dramatic Society (TWODS) has highlighted: "Losing access to a large theatre for even a year would probably sound the death knell for TWODS. There are no other facilities in the area able to cope with the size of cast we use. We rely on the continuity of our audience - over half our audience are regulars and have been coming for years. Putting on a production after several years away, with the costs we incur, whilst trying to rebuild our audience, would not be sustainable". The new development would help address this concern.

#### *Alternatives and Consultation*

27. A substantial number of the objectors still consider that the Council offices and theatre should be provided in a refurbishment of the current Civic Complex. The existing town hall is used by a relatively small number of employees and is significantly larger than required for efficient working. In addition, the current offices are cellular in layout, and are not easily accessible or flexible. The complex is listed grade II, with exterior and internal elements being important, including original light fittings and staircase.
28. However, the fabric of the building requires extensive maintenance and repair as set out in a non-intrusive report produced by Faithful & Gould. This provided a condition report for each block/site and a spreadsheet highlighting maintenance recommendations and budget costings for a ten year period. A staying put option would still require a significant financial outlay; Faithful & Gould estimated the costs to modernise the Town Hall in 2014 as over £10 million.
29. By 2017, the Council assessed that it would require around £13 million to improve its energy, IT and environmental performance. However, with the constraints of its listed status and structure, upgrading would be difficult and would still not result in a building that provides efficient offices. The Council could be left with a Town Hall worth less than they had invested.

30. The existing theatre has been successful and is very popular with a substantial number of objectors, but its limitations, current capacity and lack of modern facilities are significant weaknesses for the public attending and those working backstage. Additional height of about 4.5m would be needed to add a flytower to provide an appropriate height for scenery flying, there is no opportunity to provide adequate wing-space needed for larger productions to accommodate storage for scene changes or to allow for run-on for dance performers and there is currently no service yard, making production vehicle access and unloading difficult.
31. Various reports from Bonnar Keenlyside, Stephen Browning Associates and a condition survey by Faithful and Gould support this conclusion. Stephen Browning Associates considered if there would be adequate space in the civic centre for an enlarged theatre. It was later indicated that there would not be as it would be necessary to break through the current footprint of the building, which amongst other things may prove difficult in a listed building. The studies demonstrate that the existing theatre and its site cannot sensibly be redeveloped to give the required technical capability, or the increased auditorium scale required.
32. Contact with production companies indicates that currently most would not be able to bring their productions to the Assembly Hall theatre. The size of the theatre is important to the programme achievable. The lack of seats means incoming productions cannot make an effective financial return.
33. The new theatre is specifically designed to meet the targeted productions, but it is noted that it can be adapted to meet various types of arrangement, including theatre in the round etc, although this would be a compromise. However, a Council witness acknowledged that the arrangement is not the best for some performances, whereas the smaller Assembly Hall theatre will perform better for some performance types, because of its size and scale. There clearly is a downside to the new theatre in comparison with the Assembly Hall theatre in respect of some types of productions, but the target performances and ambition for popular shows is a matter for the Council and clearly the evidence shows there is a need for it.
34. With a new theatre, potential disruption of service provision can be properly planned and long term audience development planning undertaken to ensure audiences are not lost.
35. The Council's preference was to use a site that was already owned by it, but other sites were also considered. There are not many town centre sites capable of delivering the development proposed and it is inevitably difficult to find sites in the middle of a historic town to allow for a large public building. There are few alternatives in the ownership of the Council. It was a priority of the Council to try and use land in its ownership and within the town centre, which is reasonable. This connects it with public transport links, and creates a knock-on effect on restaurants, bars and shops to generate significant economic benefit and is prudent in budgeting terms.
36. Sites within the Tunbridge Wells town centre boundary that had been allocated for development in the Site Allocations Local Plan (2016) were

considered and a table sets out why they were not progressed as reasonable alternatives. Although the Council's assessment criteria mean it is preferable to progress only the options that relocate both the theatre and office, each site had been considered for its potential to accommodate either the office or the theatre alone.

37. Of these allocated sites the cinema site, in third party ownership, is noted by objectors as a site that could have been purchased. The Council did make a bid for the cinema site when it was placed on the market. The successful purchaser at the time bought the site for twice the value that the local authority could justify through a red-book appraisal for a commercial development in line with the planning designations (about £12 million). This was even without considering the wider costs that might be associated if adjacent properties to the cinema site were required to deliver a viable scheme. In addition, it was noted that the railway tunnel underneath the site may have caused technical difficulties for a theatre in that location, particularly in relation to noise and vibration.
38. The Council also investigated the costs of a compulsory purchase order on the site. The decision was taken at Cabinet in July 2011. Initial preparatory work was undertaken to inform whether or not to progress a compulsory purchase order. A massing scheme was produced for various potential development options on the site to identify the boundary line for a CPO should the Council decide to proceed down this route. Further viability work was also necessary in respect of those schemes to evaluate the development options on the site.
39. The development of Crescent Road car park was considered as part of the overall feasibility, but dismissed as an option early on in the process. The Crescent Road car park provides a significant income to the Council and if redeveloped the Council would be required to re-provide for it in another town centre location. This would be costly in terms of construction and in purchasing an appropriate site before the cost of delivering a new theatre was considered.
40. The Council has undertaken considerable consultation with evidence of contacts from around July 2015. The development has been subject to substantial discussion, engagement and information. The project has been discussed at 25 formal Council meetings and over 35 briefings. Externally, there have been in excess of a hundred meetings with individuals, businesses and stakeholders.
41. Early meetings identified were with Historic England, media briefings, workshops with stakeholders, presentations to the Friends of Calverley Grounds, local business stakeholders, residents of Grove Hill House, the Town Hall Forum and Pantile Traders. There were awareness events in the café in Calverley Grounds and various public exhibition events. Although there is a general feeling that responses were ignored, the Council has responded to some concerns, including addressing issues with the proposed development, seeking to reduce the bulk of the office building, height of fly-tower and covering the service yard to reduce noise and taking account of Historic England's comments.



42. The Civic Development Planning Framework Supplementary Planning Document [SPD] adopted in 2017 was the subject of consultation between October and December 2017. There is a schedule of consultation comments/questions and the Council's response to them. Some comments were noted while others prompted suggested changes to the draft SPD and where appropriate were forwarded to the Civic Centre project.
43. Criticisms of the site selection process have been made throughout the process, but there have been reviews, including by CIPFA who were "very impressed with ... the quality of the design work prior to tender in terms of both approach and thoroughness in the context of the project aims and site preferred". Grant Thornton's conclusions included that no significant weaknesses in the Council's decision making arrangements in respect of the new theatre had been identified and that there was no indication that the decisions taken by the Council (including the choice of site and the decision to prioritise continuity of service) were unreasonable in the Wednesbury sense.
44. In conclusion, I consider that there has been good public consultation, starting with the conception of improving cultural provision in the Assembly Hall theatre and need for improved Council offices, to the process of feasibility, where many consultants have provided professional advice on the proposals, through to the planning application when normal procedures for consultation occurred. Following that process, further consultation has occurred in relation to the CPO, which I consider further below in relation to some of the statutory objectors. I have noted the strong opposition to the proposal, expressed in letters, petitions and representations at the inquiry, but just because consultation has not led to the scheme being changed in line with objections, does not negate the consultation or mean that comments were ignored, just that the Councillors, who are the elected representatives and appropriate decision makers, disagreed.
45. I have considered the various alternatives put forward in relation to the general concept and location, through to proposed relocations/adjustment of position on the site (these proposed adjustments are considered in relation to Hoopers' evidence below). The concept of wanting to provide for larger shows to improve the cultural output and provide for the possibility of at least breaking even, is a decision for the Council and not unreasonable, and I acknowledge a consequence of this is that a minimum of a 1,200 seat theatre is necessary to fulfil that brief.
46. The constraints of the existing Assembly Hall theatre, in terms of its size, height, and servicing arrangements and the fact that it is a listed building make it very difficult for refurbishment and adaptation for a 1,200 seat theatre. I accept that other theatres have been successfully refurbished, but given the constraints here, I consider the better option is to provide a purpose-built theatre.
47. In relation to the offices, it is plain that the current offices do not provide for a flexible way of working, having many small, cellular type offices. In addition, the Council notes that the building is in any case too large for it and maintenance of the building is costly. I therefore conclude that

relocation to purpose-built offices is the best solution, together with making best use of space to provide further office accommodation to improve provision in the town, particularly as much has been lost through permitted development procedures. The site is an appropriate location for this, being allocated for office use in the development plan.

48. The Council's priority for relocation was to find land in its ownership, which is a sensible proposal, and clearly helps to keep costs down. However, other options were considered. The Council tried to purchase the old cinema site, but its sale price was in excess of what the Council could justify, and there may have been additional costs in terms of adjacent properties. A CPO was also considered for the cinema site, but given the other constraints this was not followed through. In addition, I consider that it is sensible to leave the cinema site for the developer to develop as that in itself could have significant benefits to the town, on top of the provision for the new theatre.
49. Many other sites were looked at to see if they would be suitable, with 13 different options being identified and presented to the Council. To my mind, it is necessary that the theatre should be in the town centre and the location close to transport links is a significant advantage. Out of town offices for the Council could be considered, but again I acknowledge that there is a distinct advantage to the Council offices being in the town centre, accessible to the people when visiting the town.
50. The current car parks used for the scheme are utilitarian and, apart from providing parking, add little to the environmental well-being of the town. Using these sites, which are well located for the town centre, station, buses and parking is a sensible and good choice for the development. The added advantage is that the access and approach to the Calverley Grounds can be considerably enhanced. Having considered other alternative sites that might be suitable, I conclude that this is the best alternative.

### **Development Plan Policy**

51. The relevant adopted Development Plan comprises the Tunbridge Wells Borough Core Strategy 2010, the Site Allocations Local Plan 2016, and the 'Saved' policies of the Tunbridge Wells Borough Local Plan 2006. The policies within the Local Plan which were relevant to the redevelopment scheme and its planning application were up-to-date and largely in accordance with the relevant National Planning Policy Framework.
52. The only part of the land that is the subject of an allocation for a specific purpose in the adopted development plan is the Mount Pleasant Avenue Car Park, which is allocated for office development by Site Allocations Local Plan Policy AL/RTW21. Also relevant is the Site Allocation Local Plan Policy AL/RTW2A: Civic Complex/Crescent Road Area of Change. This requires that any development proposals for the existing civic complex that would involve the loss of cultural, leisure, public or ceremonial civic functions would not be acceptable unless suitable alternative provision had been secured elsewhere in the town centre.
53. The Core Strategy sets out the planning principles for the development needs of the Borough. Strategic Objective 2 seeks to "focus development at

Royal Tunbridge Wells to stimulate and sustain the economic growth and competitiveness of Royal Tunbridge Wells as a Regional Hub in a way that also provides business opportunities for local people". Core Strategy Policy CP9 relates to Tunbridge Wells. It seeks the sensitive regeneration of Royal Tunbridge Wells to provide and maintain a hub of strategic importance that will be achieved by development or redevelopment for a mix of uses including, amongst other things, employment, leisure and culture.

54. The Core Strategy and Local Plan have specific policies relating to identified issues, such as the conservation area, transport etc. The Civic Development Planning Framework SPD provides guidance, rather than policy, about the overall framework for development on the land and the existing civic sites. This is to assist with the implementation of Site Allocation Local Plan Policy AL/RTW2A: Civic Complex/Crescent Road Area of Change.
55. The Park Keeper's lodge is not listed but it makes a positive contribution to the character or appearance of the Conservation Area. The loss of this building will result in a low level of harm, as defined by the National Planning Policy Framework 'less than substantial' harm. Policy EN4 states that the demolition of such a building can be acceptable "if redevelopment will produce substantial planning benefits for the community, including economic regeneration or environmental enhancement". Taking account of the relatively low heritage significance of this building in the context of the benefits and enhancements resulting from the quality of the proposed buildings and improvements to the public realm, its loss would accord with Local Plan Policy EN4.
56. Local Plan Policy EN11 requires that proposals should only be permitted where no significant harm would be caused to the character, amenities or setting of a registered park and garden [RPG]. Core Strategy Policy CP4 requires that the Borough's locally distinctive sense of place and character will be conserved and enhanced. Listed buildings, conservation areas, scheduled parks and gardens, archaeological sites and historic parks and gardens are to be conserved and enhanced and regard is to be had to their settings. Core Strategy policy CP9 requires that "development must conserve and enhance the landscape and heritage and biodiversity assets of Royal Tunbridge Wells".
57. While some harm is identified, there are also clearly considerable benefits and improvements associated with the development. The relationship of the park to the town would be substantially improved, with the partly pedestrianised area and 'square' by the theatre, with the provision of well designed, attractive modern architecture adjacent to the park, and modern facilities available to users of the park. While there is some loss of trees, a landscaping scheme is required by condition that will help to mitigate the harm caused by the loss of trees.
58. There will be a low level of harm to the setting of the Calverley Hotel (Hotel du Vin) as the redevelopment scheme would come within views to the south west of this building and its grounds, which presently include a number of trees. Some harm to the RPG has been identified, including as a result of tree loss and visual intrusion and change to the character of the north

western part of the RPG with the new office block. In accordance with the National Planning Policy Framework as identified above, the level of harm would be "less than substantial harm". Therefore, it is necessary for this harm to be weighed against the public benefits of the proposal. The public benefits of the redevelopment scheme comprise economic, social and environmental benefits as set out below. I consider that these benefits clearly outweigh the harm identified to heritage assets. As such, the redevelopment scheme will fit in with National Planning Policy Framework heritage policy in relation to the impact on heritage assets.

59. The development has been carefully considered against the development plan policy and this includes the effect on heritage assets. I have considered these matters and my conclusion agrees with the planning application process where planning permission was granted. While there is some effect on heritage assets, the public benefits of the scheme clearly outweigh those effects.

### **Finance and Management**

60. There are a considerable number of statutory and non-statutory objections relating to the ability of the Council to manage and finance the development and then subsequently run the theatre without having considerable impact on other parts of the Council's finances and services. Even if the Council can fund it initially the risk is considered unacceptable.
61. It was recognised from an early stage that the project was to deliver the Council's place-shaping and civic leadership responsibilities for enhancing the attractiveness and cultural vitality of the borough. The benefits from the project were identified not to accrue to the Council as the funder, but to those who live, work in and visit the Borough.
62. The Council is required to set a balanced budget each year and the Council came in under budget in the last financial year by £1 million. The Council has reduced central government funding and now receives no revenue support grant and has a healthy balance sheet with, at 31 March 2018, long-term assets of about £139 million. It helps that the Council is not responsible for local services which carry significant cost pressures such as social care, highways, education and social housing.
63. In the annual audit for 2017/18, the auditor noted, "The quality of the draft statements presented for audit on 4 June 2018 was good and free of errors" and that, "The Council delivered another strong financial performance during 2017/18 achieving an underspend of £1 million against the cost of services budget of £18.1 million." The auditor was satisfied that in all significant respects the Council put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ending 31 March 2018. The Council has nine consecutive clean annual audit letters.
64. The Council has funded the pre-construction work from its own resources, but the delivery of the scheme will require a significant capital investment of about £77 million. The intention is to fund the scheme from low cost borrowing. The Council is financially secure, with usable reserves of £22 million. The Council holds a number of investment properties such as the

freehold to Royal Victoria Place that could be sold, but these are delivering healthy returns in excess of the low cost of borrowing available to the Council.

65. It is not the intention to use the reserves and other investments for the Calverley Square scheme, which is to be funded separately from the Council's existing budget requirements. All decisions needed to deliver the funding strategy have now received the required formal consents. The reporting process with members of the Council and stakeholders is a continuous process and ensures that everyone understands the funding strategy.
66. A prudent approach to the funding has been taken, including omitting (from the revenue budget) the increase in car park income that is forecast to result from the new underground car park; not making any assumption as regards efficiency savings resulting from the Council's move to new offices; not assuming any capital receipts other than £9.1 million from the sale of the existing civic complex site and not assuming any external funding or external fundraising.
67. There were specific concerns raised that the compensation budget was inadequate, particularly as there has already been about £510,000 payment for the purchase of the building occupied by iSmile Dental. However, the Council has received specialist advice on the likely payments for compensation from GVA and the calculation of this is based on their experience, and clearly the exact way that the budget may be anticipated to be used should reasonably remain confidential. Matters such as millions of pounds compensation to the BBC, Hoopers and iSmile Dental were mentioned. However, I can see no reasonable evidence that such sums are likely to be required, given the impact anticipated on those affected, but this ultimately would be a matter for Lands Tribunal. I do not consider that the current evidence leads to this concern and a conclusion that the project is under-funded.
68. However, if the scheme was found to be underfunded in terms of the compensation payable or that it simply runs over budget, which objectors note is not unusual with construction projects, the completion of the development would still not be at risk. The Council is building up the Calverley Square reserve to strengthen the financial resilience of the scheme: that already contains £1 million. In order to control and monitor the situation, the development has been placed on the risk register as a separate strategic risk.
69. It was also explained that there is no limit on the amount of money that the Council can borrow from the Public Works Loan Board [PWLB] and Mr Colyer's evidence was that if the compensation budget proved insufficient for whatever reason or there were other reasons for costs to rise above that anticipated, the details and options would be reported back to the project management team for decisions to be made by members; it would not lead to the project being suspended and it is clear that the Council is determined to deliver the scheme. However, while in principle there is no limit on the borrowing, the detail of what it is for and how the money is repaid will be

relevant, but plainly these matters and appropriate actions have been considered in detail.

70. The Council has properly considered the risks, and this is supported by the Grant Thornton independent review requested by an interested party, which had all information available for consideration, including confidential reports. This independent assessment indicates that the Council has not relied on optimistic assumptions, but adopted a prudent approach, which is also acknowledged in the Chartered Institute of Public Finance and Accountancy [CIPFA] report. Grant Thornton also noted the "decision making reports to members have made clear the legal powers the authority is relying on; have set out the risks for consideration and presented options for members to consider."
71. The Council has adopted an approach of investigating the options and the delivery of the scheme using the RIBA stage approach. At RIBA Stage 0, for each of the civic development project workstreams, the consultants identified the Council's business case and strategic brief and other core project requirements. The potential project team was considered, and a project programme established. At the Cabinet and Full Council checkpoint in December 2015, the project passed from RIBA stage 0 to RIBA Stage 1 and under Stage 1, the consultants developed the project objectives for each of the workstreams and have further considered the quality objectives and project outcomes, sustainability aspirations and project budget, constraints and parameters to inform the project brief.
72. They identified the specialist team required to deliver the project, reviewed the initial project programme produced in RIBA stage 0 and developed it through to provide a greater level of detail of what was required to be completed within the project programme. At each point during the process full council took a decision aware that the expenditure on the investigation work was at risk if the scheme did not proceed. At the end of RIBA Stage 1 an indication of the costs for RIBA Stages 2 and 3 was given to the full council.
73. Overall, it is clear that the Council has put in place an expert team to develop the project, has carried out detailed control of the project and is endeavouring to anticipate potential problems and is managing risks. I conclude that the project is being well financed and managed and this is not a reason to consider that the project might fail or not proceed.
74. As noted above, there was an objection made to audit of accounts for 2016/17, that resulted in a very detailed analysis by Grant Thornton of the decision making process. This report took into account the objection and the complainant's report in support of that objection, which made many detailed points.
75. Grant Thornton considered their findings and the points made in the objection about why a public interest report should be made. They decided in the exercise of the discretion open to them, not to issue a report in the public interest on this matter because they did not identify any significant weaknesses in the Council's decision making arrangements in respect of the

new theatre. They found that the 'golden thread' between policy and strategy to implementation of a new theatre exists and that the importance of a theatre offering to the achievement of the Council's Cultural Strategy is implied in the strategy and from the work of experts commissioned by the Council. There was no indication that the decisions taken by the Council at various stages in the development of the project, including the choice of site and the decision to prioritise continuity of service, were unreasonable in the terms of the Wednesbury case, and therefore unlawful.

76. It noted that decision making reports to members have made clear the legal powers the authority is relying on; have set out the risks for consideration and presented options for members to consider. A lot of material in respect of the civic complex and new theatre development is in the public domain and the Council's governance arrangements over the project management of the civic complex development and the new theatre and the financial assumptions of these projects have been independently assessed and reported to members and the public.
77. There is also concern that the existing civic site and its reuse has not been properly considered. However, the Council has commissioned a report on the use of these buildings after vacation. This report covers the existing civic complex and the proposed strategy and mechanisms for managing its disposal to ensure proper consideration having regard to the historic integrity of the buildings and their locational and social significance in the town.
78. A brief has been developed by Allies & Morrison which sets out the site's planning potential, providing more detailed guidance for the options to re-use the existing buildings. The potential for alternative uses other than residential use has been investigated by GVA. These include identifying potential demand for offices and a hotel as a predominant use with potential secondary uses for restaurants and leisure uses. More specific uses such as healthcare and educational purposes are considered plausible, but dependent on specific demand at the time of marketing. Overall, the report considers that the civic complex site is expected to be desirable amongst developers and occupiers and has a low risk of being vacant for an extended period of time. To my mind, the use and disposal of the existing civic complex has been fully considered.
79. Guidance on compulsory purchase notes that there should be a general indication of funding intentions, and of any commitment from third parties, which will usually suffice to reassure the Secretary of State (or as in this case, the inspector) that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be. In this case I conclude that the indications on funding are very strong and provide substantial reassurance that the scheme will proceed if the order is confirmed.

## **Economic, Social or Environmental Well Being**

80. The objectives of the scheme are to provide a new theatre that is of a sufficient size and quality to accommodate touring shows that will boost the town's evening economy and cultural offer and improve the overall vitality of the town centre as a whole. It is also intended to provide new council offices that facilitate modern ways of working, reduces the Council's overheads and contributes to sustainable economic growth. In addition, these also provide new grade A office accommodation for others that will promote economic growth and job creation. It aims to provide modern town centre car parking. The complex will create an attractive civic environment that will enhance the main entrance and the western edge of Calverley Grounds, including a new public square and a new pedestrian priority route from Mount Pleasant Road.

### *Social Well Being*

81. It is important that population growth in Tunbridge Wells and the wider borough is supported by a commensurate growth in cultural and recreational facilities. The place-making aspect of the development would also make an important contribution to social well-being. The Scheme would provide a new civic and cultural focus to the town. The proposed theatre and office, which are high quality architecture, the improved layout of the entrance to the park and connection with the town would enhance the public realm and the adjacent Calverley Grounds, contributing to the social well-being of the area.

82. The new theatre would provide modern facilities to allow high quality touring productions to perform in Royal Tunbridge Wells, enhancing the attractiveness of the theatre to residents and visitors and providing a valuable widening of the range of cultural activities within Tunbridge Wells. The new theatre would also provide for a wide range of local community and voluntary groups within the area.

83. The Arts Council notes that it is good practice to maintain a continued service of culture and arts provision. Under their 10 year Great Art and Culture Framework it indicates they want arts and culture to thrive and to be excellent, and to make sure the right conditions are created for that. It is noted that it is important that children and young people are exposed to culture and can gain from it either as audiences or as people with a talent to pursue. The Arts Council believe good quality local provision is crucial to sustaining the public value of arts and culture to the individual, to society and to the national economy.

84. In terms of social wellbeing, The Arts Council sets out the health benefits of culture, indicating that engagement with arts and culture is generally associated with a higher level of subjective wellbeing. Their review also lists studies that have reported a positive impact of culture on specific health conditions including dementia, depression and Parkinson's disease. Educationally, they conclude that engagement in arts and culture improves the cognitive abilities of children and young people and improves attainment in literacy and early language acquisition.

85. The All-Party Parliamentary Group on Arts, Health and Wellbeing has also explored this issue as part of a detailed inquiry to explore the benefits of arts



and culture on health and wellbeing. It concluded that culture and the arts (including watching and participating in theatre) can help keep us well, aid recovery and support longer lives, better lived, help meet major challenges facing health and social care, ageing and long-term conditions, loneliness and mental health. It can help to save money in the health service and social care.

86. Some objectors question the contribution to social wellbeing, criticising the proposed theatre, much related to the loss of the Assembly Hall theatre. In terms of the size and arrangement of the theatre, various options were considered, including a range of 500 to 1,500 seats. A survey of existing Assembly Hall theatre audience members indicated that when those people attended other venues it was for "large scale" productions (including opera and dance as well as theatre).
87. The conclusion reached was that the best model for a new theatre was a lyric theatre of 1,200 seats, which would accommodate large scale work (musicals, opera, dance including ballet). Several objectors contended that the new theatre would be insufficiently flexible. A proscenium arch is necessary if lyric work at scale (i.e. musicals, opera and dance) is to be accommodated, as that work fits into a proscenium theatre. It will, however, be possible to configure the new theatre "in the round" or as a thrust stage. It was also explained that the majority of the venues on circuit have a proscenium arch format, as a result of which most productions tour in that format, even if originally configured differently.
88. It was noted that whilst the theatre had not been designed specifically to accommodate other work (such as symphonic orchestral concerts) that was not to say that it could not do so. The town's musical and dramatic societies had been consulted. Mr Riddell of Theatre Projects Consultants Ltd, on behalf of the Council, explained that for some forms of music and performance, the current Assembly Hall theatre would have better acoustics, but the new theatre would still be well able to accommodate them.
89. There was concern expressed that the new theatre would be too close to London and people would go there rather than to Tunbridge Wells and that the town was not large enough to support such a theatre. However, the theatre would be well located, being between Southampton and Canterbury, where the nearest similar theatres (out of London) are located and about an hour from London. Other theatres that are about this far out remain popular, such as Oxford. Other towns with lesser populations are also able to support a 1200 seat theatre, such as Canterbury and Woking. Tunbridge Wells also has a good surrounding catchment area for an audience.
90. I conclude that the theatre will serve a significant social function and benefit the cultural provision for the town and will provide substantial benefits to the social wellbeing of the area.

## *Environmental Well-Being*

### *Calverley Grounds*

91. A baseline heritage assessment was prepared by the Built Heritage Consultancy on behalf of GVA to identify the likely heritage, townscape and visual sensitivities which should be considered in the redevelopment of the car parks at Mount Pleasant Avenue.
92. The development would require demolition of the existing buildings on the site, removal of existing boundary landscaping and excavation of the site and part of the surroundings.
93. The northern part of the site is located within the Calverley Park Special Identity Area of the Royal Tunbridge Wells Conservation Area whilst the southern part is principally located within the Mount Pleasant Road Special Identity Area.
94. The existing site comprises two council-owned car parks at the western boundary of Calverley Grounds, which is a registered park and garden. The north car park has an open area of hardstanding, laid out in 1982 that was mainly outside of the grounds. Within the park is a treed area immediately to the south of the car park and an adjacent municipal lodge building and adjoining public toilets constructed around 1920. The Great Hall car park replaced a surface car park to the rear of the Great Hall Arcade and which was outside the Calverley Grounds.
95. Other than the hard surfacing, the northern car park has few built features. The space is enclosed by trees and other vegetation. This, particularly in summer months provides effective screening from Mount Pleasant Avenue and Calverley Grounds. The RPG boundary is at the edge of the car park at its east and south sides, so that a small part of the development site is within the RPG. The topography of the site results in the western boundary of the car park being constructed on ground raised several metres above Mount Pleasant Avenue at its southern end.
96. The Lodge, a single storey cottage constructed around 1920, is located near the north car park and adjacent to the entrance to the park in Calverley Grounds and is now used as a dental surgery. This building is rectangular in plan form with a slightly projecting central entrance vestibule on its southern elevation. The building is constructed with fine jointed stone masonry plinth, with timber framing and pebbledash infill under a clay tile roof with wide eaves and splayed bargeboards. There are two moulded chimney stacks with clay pots. The building is surrounded by an iron hoop fence and hedge.
97. Calverley Park and Grounds, a Grade II registered park and garden, was originally designed by Decimus Burton around 1830 on Calverley Estate lands. Historically, the Park consisted of an avenue of detached villas surrounded by parkland stretching down towards Mount Pleasant Road. In the 20th century, the western half of the parkland was acquired by Tunbridge Wells Borough Council, renamed Calverley Grounds and transformed into a public park.

98. Royal Tunbridge Wells Conservation Area was first designated in 1969 and enlarged in 1974, 1983 and 1992. It covers the majority of the town centre and is divided into eleven character areas, including Calverley Park. Calverley Hotel is a grade II listed building, now the Hôtel du Vin, a substantial 18th century house rebuilt by Decimus Burton in 1839 as a hotel for visitors to the town and is on the northern edge of the park.
99. The form of the park reflects its history. Before the eighteenth century it was open country. By 1738 a mansion called Great Mount Pleasant House had been built, taking advantage of views over the town centre and surrounding countryside. The area immediately to its south was enclosed to form a landscaped park, exploiting the varied terrain, including a stream running across the site, which was dammed to form an ornamental lake. By the 1820s Mount Pleasant House had, following a major rebuilding, come to be known as Calverley House.
100. Decimus Burton's plans of 1828 for the Calverley Estate owed much to what Nash had planned at Regent's Park which was the placing of large villas surrounded by spacious grounds in a formally planned landscape.
101. However, the originally designed landscape has subsequently changed, starting around the time of the construction of the station, and by the time of the second Ordnance Survey map, the setting of Calverley Grounds had altered markedly, with a near continuous frontage provided along the east side of Mount Pleasant Road, between Grove Hill Road and Crescent Road. This began around the late 1860s with Mount Pleasant Terrace, which had shops on the ground floor and residential accommodation above, designed in an Italianate style and finished in painted stucco. Mount Pleasant Avenue was laid out along the rear.
102. The next major change came when the Council's aim was to transform the grounds from parkland into a municipal park with formal gardens, sports facilities and facilities for public entertainments; much of what was completed remains today.
103. Calverley Park/Calverley Grounds are nationally important for the surviving landscape from the early 19th century which illustrates an important strand of how residential planning developed within the UK, which is considered a precursor to the garden suburb movement. However, what survives has undergone substantial change, including along its western edge where the development is proposed.
104. The Calverley Park and Calverley Grounds registered park and garden covers the original Calverley Park landscape and suburban villas laid out in the 1820s and 1830s by Decimus Burton. It now has two distinct parts, the remaining 19th century area called Calverley Park that includes the Decimus Burton villas along Calverley Park Road and their private communal landscape and the area of Calverley Grounds remodelled in the 20th century as a public park, which broadly forms the western half of the designation and is more closely linked to the wider town centre.
105. The early changes did not take much account of the historic park, and the change continued with various extensive alterations to Calverley Grounds,

which reduced its aesthetic value in relation to the original design by Decimus Burton. However, while the original design concept and arrangement has changed, the combination of built and landscape forms still has considerable aesthetic, social and historical value and to my mind this is why the connection and relationship of the park and town remains important.

106. The municipal park buildings, including the dental surgery, have some historic and communal value, albeit to a somewhat modest degree. They draw upon the traditions of Arts and Crafts architecture of the preceding half century, although they are not of the highest architectural quality. The buildings have some group value as part of the 'new' public park of the 1920s, but little value in terms of the original park and concept of the Decimus Burton design.
107. The north car park, because it is generally well screened by trees and vegetation, makes a neutral contribution to the significance of the RPG, although the screening effect will be lessened during the winter months. To the south of the car park is a wooded bank and retaining walls, the 1920s park keeper's lodge and public conveniences, late 20th century brick-built gate piers and boundary features and flower beds. The adjacent public conveniences visually detract from the significance of this part of the park. The gate piers, boundary walls and flower beds are not of special interest and make a neutral contribution to the significance of the RPG.
108. The Great Hall car park constructed during the 1980s is not well located in relation to the edge of the park, particularly as the visibility of cars parked on its upper level detract from views from within the grounds, including important local views from adjacent to the Calverley Hotel. Its significance can be considered at best neutral but to my mind the cars, particularly on the top level, have a negative impact.
109. The impact of the proposed development on the RPG, Conservation Area and nearby listed buildings has been considered in detail in the recent planning application. Heritage matters were independently considered by Historic England. I acknowledge that there is some harm as identified during the planning process, particularly related to the loss of trees at the western edge and the removal of the park lodge.
110. The project offers an opportunity to provide an improved interface between the town and Calverley Grounds. Place-making is at the heart of the project, with a civic square acting as the focal point, as well as the gateway between Calverley Grounds and the town. The new square would be defined by the office and theatre buildings, framing the gateway to Calverley Grounds, providing a new civic and cultural focus to the town that substantially improves the relationship and interface between the landscaped grounds and the town centre. Inherent to the project's objectives is the importance of Calverley Square being a pedestrian plaza, a welcoming public place that provides social and environmental benefits as a destination, and as a space for pedestrians that links the theatre, office and Calverley Grounds and it is important in achieving this vision that vehicles are limited in this area.

111. An objection is that the relationship and views through to the park from the town will not be an improvement and not as shown on the illustrations. Having looked at the access and proposed position of buildings at the site visit, I consider that there will be a very good relationship between the park and town centre, which would not be 'narrowed' in the way illustrated by one objector.
112. The foyers and front of house of the theatre face onto the square and to Calverley Grounds to the east. These are intended for all-day use, welcoming not only theatre goers but also users of Calverley Grounds, underpinning the vision of the theatre as a public as well as cultural asset, an open and accessible feature in Tunbridge Wells' public life, helping sustain economic and social wellbeing.
113. The design of the buildings has been arranged so that the public square will be flanked by modern interpretations of classical colonnades to the council office and the theatre. These colonnades turn the corner to face east across the park, together forming the centrepiece of the architectural composition and containing the principal public spaces of the scheme. It is necessary to the success of the project's urban place-making objectives that the Lodge is demolished, so that a properly formed public square flanked by high quality public buildings, and a gateway to Calverley Grounds, can be formed. The smaller colonnaded 'pavilion' frontages facing Calverley Square and Grounds, articulated to reflect their public function, have an appropriate sense of civic presence and quality. The colonnades are relatively low so are viewed as two storeys from across the park, and this is part of a careful approach to architectural composition that minimises impact on the registered park and gardens, and neighbouring properties.
114. The office building rises to five storeys overall. However the steeply rising ground to the north means its apparent size is about two storeys high in relation to the landscape at the northern end, with a further attic storey set back from the park elevation. The composition of building volumes integrates well with neighbouring properties, placing new building elevations that correspond to the existing roads and seeking to minimise impact from encroachment into the registered park and garden.
115. The architecture of the buildings has considered composition and volumes, responding to the scale of the surrounding buildings and landscape context and also to the topography of the site, with the car park beneath the much higher ground to the north, where it makes the most of the existing contours. The buildings then reflect the natural valley form stepping down to the lower volumes flanking the square, rising again to the theatre to the south.
116. Materials for the buildings are relatively simple, with well considered detailing. Brick predominates, a material that responds appropriately to the townscape. Elements of reconstituted stone are also proposed as a contrast to the brickwork and together frame the aluminium panels, glazed windows and curtain walling. The new scheme is well thought out and an elegant solution for the provision of offices and theatre in the town. I acknowledge that there are many others who do not like the scheme, but new architecture

will always have supporters and detractors. The development has been carefully considered in the planning process and should deliver an elegant architectural solution to providing offices and a theatre in this location.

117. While I have noted there will be some harm to the heritage assets and changes to views from the park, Hotel du Vin and elsewhere in the conservation area, that harm will be mitigated to some extent by new landscaping, and the overall public benefit of the development clearly outweighs the harm and there will be substantial environmental benefits from the development.

#### *Economic Well-Being*

118. The Council has undertaken work to test the proposals, in particular analysis has been prepared by various specialists to explain the business case and business plan for the new theatre, including work by Bonnar Keenlyside, theatre specialists. This includes an assessment of the potential economic impacts it could have, drawing on the "Shellard formula" approach. The Shellard formula was developed for the Arts Council's use in 2004 and has become a standard tool for a simple approach to economic impact assessment. While some objectors suggested that this is now out of date, it was confirmed that is not the case and is a standard and accepted tool for understanding potential economic impacts arising from theatres in the UK.
119. The Council's witness accepted that there are other methods, but when the overall results are compared between the various tools the outcome using the Shellard formula is very similar. While it does not routinely capture finer points such as leakage, displacement and deadweight, some adjustment has been made such as to leakage related to visiting artists and performance fees which if not discounted by 75% would mean the economic impact predicted would be significantly higher. If the ticket sales were based on 375,000 rather than 400,000 then there would be a reduction of about £1 million.
120. A wider economic benefits assessment (WEBA) of the scheme was produced by GVA. This work was informed by the analysis previously undertaken for the Local Planning Authority and information from Bonnar Keenlyside, to provide inputs into the Wider Economic Benefit Assessment, where appropriate, adopting their outputs and assumptions as a basis for understanding additional benefits which may be experienced within Tunbridge Wells as a result of the new theatre development.
121. The GVA report provides a useful explanation of the relationship between the Shellard Formula and GVA approach to Economic Impact Assessment of the theatre. The Shellard approach provides the starting point for understanding such impacts, with the Wider Economic Benefits Analysis providing further analysis to understand them in more detail within the local context. The economic assessment commissioned considered the whole scheme as the economic benefits are derived from both the office and the theatre.
122. The Local Planning Authority then commissioned Nathaniel Lichfield and Partners (Lichfields) to undertake an independent economic review of the

planning application proposals in response to representations from local businesses. Their report provided a critique of the wider economic benefits of the development as set out by GVA. The assessments demonstrate the significant economic benefits of the Calverley Square scheme.

123. The likely economic benefits include a theatre that is more viable than the current Assembly Hall theatre and would provide some increased theatre income to the Council from greater theatre ticket sales, restaurant and bar takings, and increased spend in local bars, restaurants and shops, supporting the day and evening economy, an increase in day visitors by broadening the town centre / cultural offer, boosting the short stay role of Tunbridge Wells as a tourist destination, attracting a range of businesses linked to the theatre / cultural offer, provision of new Grade A tenanted office floorspace with potential to support a considerable number of jobs, securing a future income stream for the Council, including revenue and business rates income and helping to mitigate the potential loss of office space through the use of permitted development rights. It would create some new jobs at the new theatre, which would enable the Council to operate more efficiently, with lower running costs and create short-term construction jobs. There would also be the potential for the vacated Civic Complex buildings to be refurbished / redeveloped, which in turn is likely to result in further economic benefits.
124. The report was criticised because it did not follow the guidance as set out in the 'Green Book' and many of the comments and criticisms made are based on this. The objection includes claims that, amongst other things, matters such as leakage, displacement, deadweight and substitution had not been considered. I have also taken account that the report was not an 'independent' assessment, in the same way that Lichfields' was.
125. The Green Book is produced by the Treasury as guidance for central government of appraisal and evaluation for major infrastructure projects with individual departments of Central Government providing guidance on how those departments use the Green Book. So the Green Book is not a requirement for use by Local Government, as an objector recognised, and the fact that it is not followed carries little weight.
126. However it is made clear in the Wider Economic Benefits Assessment that the report not only draws on the author's experience and tailors it to the specific mix and nature of the Calverley Square scheme in Tunbridge Wells context, but also that: "It draws on and aligns with best practice guidance provided by Central Government (via the Green Book) and the Homes and Communities Agency Additionality Guide [HCA]".
127. It is argued that the focus for the CPO should only be the benefit to the borough and the objection is that the assessment of the wider economic benefits of the Scheme as assessed does not accord with Section 226(1).
128. A local authority must not exercise the power under S226(1)(a) unless they think that the development, re-development or improvement is likely to contribute to the achievement of promotion and improvement of one or more of economic, social or environmental well-being in their area. However,

it does not prescribe that economic benefits that would arise beyond a council's area must be ignored when considering a CPO. The Government's essential policy test that a CPO should not be confirmed unless there is a compelling case in the public interest is relevant. Clearly it would not be reasonable to ignore the wider regional benefits that a scheme would bring as the objector acknowledged that he had done in cross examination. However, even only taking into consideration the benefits to the area, these are still considerable.

129. The report does identify local and regional benefits. The assumed leakage rate is 50% for employment for jobs in the new offices and in the theatre. It is also considered within multipliers used to calculate indirect benefits with conservative figures used (between 15% and 20%) only assumed to the local area. There is no specific allowance made for displacement or substitution in relation to office, but given the reduction in current space, particularly through permitted development and with a growing economy, these seem reasonable. Deadweight, i.e. what would occur even if the project does not proceed, has been considered. No allowance has been made in relation to the Council offices, as these are currently in the town centre and net additional theatre jobs were identified.
130. While Dr Chris notes comments and suggestions identified by CIPFA, the overall assessment was positive, indicating that the core financial assumptions and financial governance arrangements appear reasonable and sound and from a financial planning perspective an extremely prudent approach has been taken, indicating a high level of contingency.
131. I also note that the project was considered by the South East Local Enterprise Partnership (SELEP) in relation to an application for funding. Again it made some comments on the information provided, indicating that while the evaluation has utilised an independent economic impact assessment, confidence in this is reduced by the lack of sensitivity testing and the lack of evidence concerning the assumed level of additionality: 50% of jobs are assumed to be additional but there is no rationale provided for this assumption. However, this does not say the information provided is not correct just that the rationale for assumptions is not provided. In any case, the Council note the report referred to by Dr Chris is a draft and SELEP are undertaking further work on all submitted bids.
132. It is suggested that all benefits should be monetarised so that they can be assessed. However, the Scheme will have a wide range of benefits, including social, cultural and environmental benefits, where there is no need to attach a monetary value to all of them – they can be assessed without financial criteria or quantitative assessment.
133. However, even if the benefits were a little over £8 million as suggested by the objector, that is still a substantial sum to take into the balancing exercise.

#### *Theatre*

134. There are specific criticisms of the benefits expected from the theatre. It is argued that the projection of 400,000 ticket sales per year is overly
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optimistic. It was put that if the increase in receipts was calculated from more recent years and was based on numbers of tickets, not just income, it would show a different picture. When you look at the number of ticket sales from 2013 for other theatres there is some rise and fall in sales from year to year, but the trajectory is upwards and ticket sales for 1,200 seat theatres is between about 370,000 to nearly 400,000. I do not consider that projections are unrealistic and while ambitious, the assumptions are that the 400,000 sales are not forecast to be achieved until about year 8. Important also is that the projected break-even point is 350,000 ticket sales, which is the 5 year target and realistically should be achievable. Theatres at Norwich, Newcastle and Canterbury have exceeded 400,000 sales and average sales over six years from 2012 have been above 350,000.

135. Contrary to criticism by various objectors, the Shellard Formula remains the most widely used methodology in the industry to calculate the potential economic benefit of theatres. It was not abandoned by the Arts Council in 2012 as suggested. This methodology was adopted here because it allowed comparisons with other presenting lyric theatres that take the same approach, including The Hippodrome in Birmingham, The Lowry Centre in Salford, the Theatre Royal in Norwich, the Grand Theatre in Blackpool and the new Marlowe Theatre in Canterbury. All of these reported higher economic impacts than that estimated for the new theatre in Tunbridge Wells.
136. The Arts Council report does note that a major criticism of the Shellard method of economic impact assessment, which has been used by a number of theatres, is that it ignores some additionality effects. The report has reviewed four popular methods of converting the benefits of arts and cultural organisations into monetary values and does not recommend any one as being better than the others, but has instead provided a decision tree to help consider which option would work best in various circumstances. The use of the Shellard Formula was not unreasonable.
137. There was also a suggestion that theatre productions were closing fast in London, it being reported that 48 shows will close in the West End by the end of 2019. However, it was explained that there is a natural turnover of shows and that most of those closing are doing so because they will have reached the end of their runs. Some of the musicals closing are doing so to tour nationwide. There is evidence that there is a continuing demand for touring work.
138. It is put that the proscenium arch type arrangement is not flexible, and the theatre would be unsuitable for many types of shows, with specific criticism of size of some of the accommodation.
139. The stage depth of the theatre would be 12m and is 1m deeper than the Marlowe in Canterbury, the same size as the New Victoria theatre in Woking and slightly deeper than the Waterside in Aylesbury, three recent venues. The Royal Shakespeare Company commented on stage depth. However, the RSC still tours to venues that have less stage depth and have described the depth as acceptable. It is acknowledged that some venues do have an additional crossover corridor behind the back wall of the stage, but others

have the crossover below the stage via the basement, as would be the case here and a crossover can be achieved within the confines of the stage behind scenery or curtains.

140. The design includes a followspot room designed for three followspots with three glazed window sections. Two additional spots can be accommodated on the open technical gallery to left and right if needed. There are runway beams above the forestage grid and orchestra pit to provide multiple locations for the flying of equipment. There would be similar beams above the stalls seating. The areas set aside for food have been developed with a catering consultant and the architectural design team using advice for Theatre Buildings: A Design Guide.1.
141. Overall, taking into consideration the many criticisms of detail, I consider that there is no reason to believe that the theatre would not perform satisfactorily, as predicted by the designers, and considerable weight can be given to its contribution to the economic wellbeing of the area.
142. There has been considerable detailed criticism of the report by GVA and the assessment by Lichfields. In relation to Lichfields, the suggestion is that it did not thoroughly assess the GVA report and came up with no figures of its own, just relying on those of GVA. The Lichfields report was not to assess the proposal as if from scratch, so it would not be expected to find its own data and come up with its own figures. Its purpose was to look at the GVAG report (GVA Grimley) and assess whether that was reasonable.
143. The report was commissioned by the Council's planning department to undertake an independent economic review of the proposal providing a critique of the wider economic benefits of the development and which incorporated elements of the Bonnar Keenlyside assessment. The report was commissioned because representations had been received from local businesses raising concerns in relation to the impact of the proposed development.
144. The Lichfields report summarised the GVAG's planning application submission in relation to claimed economic benefits. These included creating new 'Grade A' office floorspace that is expected to create additional jobs in the town centre (not including the relocated Council jobs) and securing a future income stream for the Council including revenue and business rates income to the Council, but the future income stream has not been quantified. The new office space will also help to mitigate the potential loss of office space through the use of permitted development rights. A new theatre will replace the existing Assembly Hall theatre, which is more viable and capable of accommodating modern touring shows. This will address the shortfall in seating capacity and other deficiencies at the Assembly Hall. The improved theatre is expected to substantially boost the town centre's evening economy and cultural offer, and improve the vitality of the town centre as a whole. The new civic centre will enable the Council to operate more efficiently and provide more flexibility to shrink or grow, taking advantage of technology and promoting flexible and collaborative ways of working and improved accessibility to Council services. The existing Council offices are no longer considered fit-for-purpose, and reference is made to

reducing the running costs of the building, but the cost savings have not been quantified. The proposal will maintain the Council's presence in Tunbridge Wells town centre and relocating the Civic Centre will enable the vacated site to be refurbished/redeveloped, which in turn will create economic benefits. The proposals will replace car parking, necessary to support the new theatre, civic centre and office space. The report noted that not all of the economic benefits have been quantified by GVAG, but that the assessment focused on the additional and safeguarded employment generated by the commercial offices, new theatre and relocated Council offices, and the spinoff benefits this will bring.

145. I reject the suggestion that the Lichfields report was not thorough or critical of the GVAG report. The analysis of GVAG's assumptions and approach was noted to have raised a number of issues that would reduce the quantified wider economic benefits. These included the adoption of a higher net internal area for the commercial office space than that suggested, adoption of the best case employment density and the suggestion that one employee per 13 sq.m should be tested as an alternative. Comment was also made about the way average earnings had been considered in relation to full and part time employees in the offices.
146. The report noted that indirect benefits of the office and theatre elements in terms of indirect jobs and earnings had been double counted for the local area and indirect benefits of the retained Council employment, in terms of indirect earnings, had been double counted for the local area. It suggested that the increase in theatre ticket sales (170,000 p.a.) may have been overstated and a lower figure of 132,000 p.a. should be tested. It considered that the increase in the proportion of diners from 25% to 40% appears to be high, and the estimates of earnings, town centre expenditure and Gross Value Added (GVA) should not be added together because there would be some double counting.
147. However, it also noted that GVAG had been more cautious than Bonnar Keenlyside in some respects. It also identified that the economic benefits that will be created by redevelopment of the old civic building have not been quantified. In assessing some of the changes it concluded that differences would be marginal. It is clear to me that a very thorough assessment was made by Lichfields, which identified many aspects of concern, but even taking those into account their conclusion was that their sensitivity analysis suggests the benefits resulting from the new theatre and relocated Council are only marginally lower than GVAG's estimates. The relocated Council offices are not new benefits and should be afforded less weight than the net benefits for the new theatre and commercial offices. Lichfields noted the commercial office benefit would be reduced from that of GVAG report, but again even taking these observations into consideration noted the potential for employment and benefit it brings remains significant, particularly in the light of the shortage of office accommodation and development sites in the town centre and the effect of changes to permitted development.
148. Lichfields also noted that not all economic benefits had been quantified by GVAG as the report had concentrated on the relocated council offices, new offices and theatre, but had not taken account of the old civic centre site.

This was identified as a relevant material consideration and the report advised that therefore the economic benefits identified in the Lichfields conclusion should be considered as a minimum, excluding the reuse of the civic centre.

149. Advice on considering compulsory purchase indicates that factors which the Secretary of State is expected to consider include the potential financial viability of the scheme for which the land is being acquired. I consider that the potential viability has been demonstrated, the Council clearly think the development will promote and improve the economic well-being of the area and I conclude that the evidence supports that conclusion.

150. I conclude that the economic benefits of the scheme are significant and weigh in favour of the conclusion as to whether or not there is a compelling case in favour of the compulsory purchase order.

151.

## **iSmile Dentist**

### *Consultation*

152. It is contended that there has been inadequate consultation about the plans and the opportunity to object was not given. When emails and letters were sent these were ignored or replied to grossly late. The lack of communication has caused huge disruption to the business and meant that the practice could not be expanded as planned.

153. I have considered the general consultation in relation to the planning application above. In relation to the CPO and contact with iSmile, the Council has kept a detailed record of contacts. This shows that the first contact was made in a meeting in June 2016, to explain the scheme and Council's plans. This recorded that Dr Azimi had also attended some of the Council's consultation events and appointed a solicitor who had explained the CPO process. This was followed up with emails, letters and phone calls. A further meeting was held in August 2016. There were many follow up emails and another meeting in June 2017. At this meeting the Council was trying to understand the requirements of Dr Azimi for a replacement premises and wanting to work with him to find a replacement. The Council agreed to pay relevant fees.

154. The Council had difficulty in getting a response from the advisor on the requirements for a replacement surgery. Email and other contacts continued and there was a further meeting in August 2018. The Council has also endeavoured to find alternative accommodation, appointing consultants to consider how adaptations might be undertaken, but Dr Azimi has not found these alternatives to be suitable.

155. It is plain that the Council has tried to understand the needs of Dr Azimi. Some of those needs raised at the inquiry such as natural light had not been previously mentioned by him to the Council. While he may not have thought it was necessary, clearly it was not mentioned and therefore difficult for the Council to take it into consideration when trying to find alternatives. While

having some natural light in a surgery would be beneficial it would be possible to work with artificial lighting. This is not indicative of unreasonable behaviour by the Council or lack of it trying to understand Dr Azimi's requirements.

156. There has been considerable consultation about the CPO and its effect. I accept that the Council has not agreed with Dr Azimi in terms of his preference for the surgery to be allowed to remain, but that does not mean there has not been proper and adequate consultation. I also acknowledge that the current building is in an attractive setting located near to transport and services and is on one floor with rooms with relatively large windows and attractive outlook. Quite clearly it is highly unlikely that these circumstances can be repeated nearby or in the town generally and a degree of compromise is going to be necessary.
157. However, the Council has found a number of other buildings that might be made suitable for a dentist, although I accept that these would not be able to replicate the current arrangement. However, objections such as distance from the current surgery and station carry little weight as some of those found were not a considerable distance from the existing surgery. The buildings that were looked at are not now available, but in my view it should, with a little cooperation and compromise, be possible to find a building suitable for a dental practice, reasonably close to the current practice. While accepting that there will be some impact in terms of not being exactly the same as the current location, that is a matter that can be considered for compensation.
158. The Council purchased the building and then instigated a rent review, which resulted in the rent rising. The objector considered this was a deliberate act intended to effectively persuade him to leave. However, I do not accept that is the case. The rent had not been reviewed for some time and it is reasonable for a new purchaser, particularly a Council, to ensure the correct rent is being paid on what is a Council investment.
159. I consider that the evidence clearly indicates that there were meaningful negotiations and consultation with Dr Azimi.

#### *Funding of Scheme*

160. I have considered funding above. Dr. Azimi has given evidence that he fears that his business may be extinguished as the result of an inability to find suitable alternative premises for relocation. Dr. Azimi estimated the potential costs of relocating his business would be "...over £1 million and up to £1.5 million." He has taken potentially increased rent into that amount. In my view, it is likely that a reasonable alternative can be found. I accept that some compensation would be likely to be payable, but the evidence does not lead me to conclude that what the Council has budgeted is unreasonable. Ultimately the amount of compensation is for the Lands Tribunal, and the Council explained the procedure if unforeseen costs arise. In my view this is not a matter that suggests the project would not proceed.

### *Alternatives*

161. I have covered alternatives generally above. Dr Azimi considers that there has been a lack of evidence as to what was considered in respect of seeking to accommodate the Lodge into the Council's scheme, rather than seeking to acquire Dr Azimi's tenancy by way of a compulsory purchase order and demolish the lodge. It is accepted by the Council that the loss of the lodge would cause some harm to Calverley Gardens, albeit low level. However, it seems to the objector that there has been no consideration since planning permission was granted as to whether the lodge could or should be accommodated into a revised scheme to prevent harm to the gardens by virtue of its removal.
162. I consider the environmental implications of the proposal above. I accept that there is some harm through the loss of the lodge to the Calverley Gardens, but given the age and design of the building it is not historically important and I agree that relatively little weight should be given to its preservation given the public benefits. While Dr Azimi does not agree with the aims of the scheme and need to remove this building, it is clear to me that with the vision of substantially improving the entrance to the park and making an improved link between the park and town, its removal is essential. This is particularly so as the appearance of the surgery would be completely out of keeping with the design of the buildings that would flank it on either side. Removal of the lodge is also essential to the urban place-making objectives, so that a properly formed square flanked by public buildings, and gateway to Calverley Grounds, can be established. It is clearly essential that the building is removed to achieve the aims of the development and there is no reasonable alternative to allow its retention.

### *The Public Sector Equalities Duty*

163. The Public Sector Equality Duty contained in the Equality Act 2010 [PSED] indicates that a public authority must, in the exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
164. The PSED requires that there is a need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic, take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it and to encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
165. The duty is not a positive duty to eliminate discrimination, advance opportunity or foster good relations, rather it is a duty to ensure that any decision which may have a negative/positive impact on equality is taken from a fully informed position, having given careful consideration to

alternative less-harmful ways of making the decision. It is a duty to consider, rather than a duty to achieve any particular outcome.

166. Considerable evidence has been provided in the documentation and detailed evidence has been submitted by iSmile in the course of the inquiry and detailed information provided through evidence in chief and this was subject to cross-examination and in coming to my decision I have had due regard to that evidence.
167. The Scheme is supported by a range of planning policies including the Core Strategy and the saved policies of the 2006 local plan. As part of the preparation of the Core Strategy and Allocations DPD equalities impact was considered. This found that there was no evidence that the site allocations DPD would have a differential impact on any person or group with protected characteristics. When preparing and adopting the Civic Development Planning Framework SPD, the PSED was considered. In response to feedback the Council amended the draft SPD to ensure it was clear that the SPD would require compliance with its statutory duty. When granting planning permission, the Council considered the PSED. Within these decisions, the Council found no evidence of impact on any person or group with protected characteristics. While Dr Azimi has now raised some concerns about his patients, these were not put to the Council until very recently and are now being considered here.
168. Following on from this, in June 2018, the Council carried out an Equalities Impact Assessment of the proposed compulsory purchase. The Council was satisfied that the proposed use of compulsory purchase powers would not have an adverse impact on those people or groups with the following protected characteristics related to marital or civil partnership status, pregnancy/maternity, sexual orientation, religion or belief, race, age or disability.
169. There were some concerns identified over the impact of the scheme on those with the protected characteristics of age and disability. These impacts included concern over access for those with disabilities both during construction and following completion of the scheme, the impact on disabled car parking, and the impact of the proposed changes to the area on those with age related dementia. A range of mitigation measures include ensuring the design of the new buildings provides good accessibility, ensuring level access is maintained to Calverley Grounds throughout the project and considering the design of access areas and car parking to ensure they are accessible and usable by all.
170. The Council has indicated that it will continue to monitor the impact of the scheme on those people or groups with protected characteristics both during and after construction and will consider further mitigation measures if required. I consider that neither the proposed use of compulsory purchase powers nor the scheme itself will have a disproportionate impact on those people or groups with protected characteristics that is not mitigated by the measures proposed above, and the continued monitoring of the proposals. The Council has had due regard to equalities in the process.

171. There is a detailed objection that the Council did not take into consideration people with the relevant characteristics from iSmile Dentist. It considers that the Council did not take into account a worst case scenario and what types of persons might be using the dentist that could be affected by the Equality Act.
172. Dr Azimi argues that the data used to compile the Equalities Impact Assessment [EqIA] is potentially too broad to accurately reflect the number of patients with protected characteristics that use the practice and will be affected by its closure. I acknowledge that the data used to compile the EqIA was taken from the 2011 census and in respect of pregnancy and maternity came from ONS data for the Borough from 2013 and is a reasonable approach to the assessment.
173. Information of patients has now been provided, which notes the practice has a total number of about 7,349 patients registered of which about 55% on the list are female, 32% of the total number are aged 60 or over (in the case of females) or 65 or over (in the case of males).
174. Dr. Azimi does not keep monitoring data on ethnicity, disability or pregnancy/maternity status of his patients, but he does have patients with disabilities (mobility and mental health) and he has to ascertain if female patients are pregnant before carrying out some procedures. He also knows that some of his patients are from a black, Asian and minority ethnic background, but is unable to produce a percentage figure of his total patients in respect of those groups.
175. The practice is for private patients only and when set up the aim was to provide a competitively priced service. It is argued that there has been no price comparison between amounts charged by iSmile and alternative practices. However, I do not see that difference in price would have any significant impact in relation to equalities for those with protected characteristics and those without. iSmile notes that there could be potential impact on finances of disabled persons who, with others, may be on benefits and be impacted by higher prices of alternative practices and I have due regard to that. The same argument is made for elderly people and pregnant women, which again I have regard to.
176. It is argued that alternative availability has not been taken into consideration, including in relation to NHS dentist availability. However, the Council has looked at this and found that there are two alternative private dental practices located near to iSmile Dental Practice, and within the town centre. These are close to good public transport links, and at the time of EqIA, were taking on new clients. In my view, given the patients are private patients the availability of NHS practices has less relevance.
177. It is suggested that disabled patients may have to wait long periods to be registered, but there is no substantial evidence to suggest that this might be the case.
178. I have taken into consideration the factors put forward and potential impacts of closure and this will be given due regard and considered in the balance. However, in my view, the compulsory purchase of iSmile premises



does not mean that iSmile has to close down. While I have accepted that premises matching exactly the circumstances of the existing building will not be found, with some reasonable compromise alternative premises could be found nearby. While those already found were not acceptable to the objector, and are now not available, others should become available. With Dr Azimi's obvious concerns for his patients with protected characteristics, I am sure he will carry out appropriate adaptations to ensure that patient access can be maintained in any alternative building. Clearly, the final decision to close is a matter for Dr Azimi, but to my mind that would not be an inevitable or obvious result of the compulsory purchase.

179. Having regard to the three aims of the PSED, I consider that neither the proposed development nor the compulsory purchase itself should have a disproportionate impact on those people or groups with protected characteristics that is not mitigated by the measures proposed, and the continued monitoring of the proposals. However, I accept that there is some potential harm to some people with protected characteristics that needs due attention when considering the balance if Dr Azimi does decide to close his practice.

180. In terms of the Human Rights Act 1998, Article 1 of the First Protocol notes that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The removal of Dr Azimi's premises is an interference of his human rights, but this is tempered by the compensation system that would be overseen by the Lands Tribunal.

## **BBC**

181. The BBC objections to the Order are that the development approved by the Planning Permission and facilitated by the Order has significant potential to create unacceptable levels of noise during the demolition and construction phases. In the absence of satisfactory management of these impacts the BBC says it must consider how its operations can be managed in response to the potential for these impacts.

182. The BBC does not believe that the Council has sufficient financial resources allocated to the scheme, in particular compensation that it may have to pay to claimants. If the BBC had to relocate, it may result in a claim amounting to several million pounds. The BBC is not aware that the Council has taken this into account in considering the viability of the scheme and therefore questions whether it could or would be completed.

183. The BBC does not consider that the Council has endeavoured to negotiate in the meaningful manner anticipated by the Guidance on Compulsory purchase process and The Crichel Down Rules. The BBC also considers that the Council has failed to demonstrate that there is a compelling case in the public interest to justify the potential loss of the BBC's operation in the area.

184. The matter of level of compensation and the budget for it is discussed above under financing and management where I have found that there is no

reason to consider that the budget is inadequate, but if more was required the Council has fully considered this and made appropriate arrangements.

185. In terms of noise and disturbance during construction, the BBC fairly notes in its evidence that some of its concerns were addressed in the conditions attached to the planning permission. Evidence given at the inquiry reinforced this and construction methods were generally explained and indicated that systems and methods of construction would be used that created low noise and vibration. This clearly is an appropriate matter for the planning permission and is being properly considered.
186. In terms of consultation, the evidence does not back up the assertion of lack of contact and discussion, to the effect that before the inquiry the BBC indicated that agreement was very close, and therefore late submission of proofs was agreed on that basis and it was indicated that contact continued during the inquiry.
187. There was also some concern over loss of parking rights. There is some negotiation occurring with Metro Property Unit Trust, that includes parking and this may help resolve the issue. However, I acknowledge there will be some inconvenience during construction, requiring cars to be parked further away, but there are still other car parks within a few minutes of the premises, so the overall impact should not be great, but it is still a matter to take into consideration in the balance for this decision and in determining any level of appropriate compensation.

### **Metro Property Unit Trust**

188. The Great Hall Arcade is held on behalf of the Metro Property Unit Trust by two Jersey trustee companies, BNP Paribas Depositary Services Limited and BNP Paribas Depositary Services (Jersey) Limited. Its objection relates to parcels 1, 2, 3, 4 and 20. The objection is that compulsory purchase of the land is likely to result in access disruption and a serious impact on the operations of a number of the tenants, including Sainsbury's, and the overall function of the property.
189. The matter of funding and alternatives is considered elsewhere in the decision. Metro Property Unit Trust say that the area of land acquired for construction purposes is greater than is necessary. I do not agree with that. This is a large construction project and will need a significant amount of land around the buildings in order to manage deliveries, materials, offices and construction and what is being acquired is reasonable for that purpose.
190. In terms of consultation, the evidence does not back up the assertion of lack of contact and discussion, to the effect that talks continued through the inquiry and Metro Property Unit Trusts Ltd did not attend the inquiry to present its evidence. The fact that agreement has not yet been able to be reached does not mean that there has not been adequate consultation and clearly the difficulty in reaching agreement justifies the seeking of the compulsory order.
191. In terms of need, the acquisition of the land is required to deliver the scheme. The need for inclusion in the Order is to enable vehicular access,

including ensuring that the Council has control of the service yard and can implement the required strategy. It is also required during construction. The basement is specifically required to enable access to the basement and possession if required to strengthen the access road to implement the highways and access strategy. Rights over parcel 20 are required to allow service installation.

192. The Council has committed to Metro Property Unit Trust through the unilateral undertaking that whilst the Council requires permanent access of the land, it will grant the necessary rights to use the service yard and road and that it will grant a long lease back of the basement below the service road.
193. A concern is that replacement parking will not be available 24 hours a day, 7 days a week, unlike the existing car parking and there will be no legally binding agreements offered to secure this. This is not the case, as the current rights are only for parking spaces within Great Hall Car Park, which are for 5 days a week, not 7 days a week. In addition, the Council has committed to providing replacement car parking spaces during and post construction. The Council provided a unilateral undertaking which set this out.
194. Arrangement for deliveries have been made including the provision of parking bays at the front of the Arcade which will be available to occupiers of the arcade.

### **Sunniva**

195. Sunniva is a carpet showroom located within the Great Hall shopping arcade and backs onto the Great Hall car park. Access to the showroom is either from the main street along the arcade or through the rear entrance to the arcade that faces the Great Hall car park.

### *Consultation*

196. Initially the Council made contact with Sunniva Carpeting Limited's landlord, who had indicated that they would look after the tenants' interests, which is the usual approach. Mr Phillips acknowledged that the Council had met with him directly as soon as he had requested a meeting and it is clear that contact has continued with him and has been reasonable.

### *Light*

197. In the rear wall there is one tall window with an arched light above and another arched light nearby. Some natural light also enters the showroom through the arcade and to some extent the rear entrance to the arcade and passes through the showroom window. The showroom also has extensive artificial lighting.
198. It is proposed that a hoarding be erected around the building site and this would be about 1m from the showroom wall of Sunniva and at a height of about 2.4m. The fence height would come up to about the cill height of the arched lights. There will be a significant impact on light that comes through the main tall window, and a less than significant impact on secondary light

from the rear of the arcade. There would be no impact on light from the roof of the arcade. There would be little impact on the light passing through the arched lights. Given the depth of the showroom from the rear wall, and the limited size of the rear window in relation to the overall area, I consider that the effect of the extent of daylight lost within the shop would be minimal and would have no significant impact in terms of lighting, either during construction or after completion of the work.

### *Parking and Access*

199. Sunniva identifies that many customers park to the rear in Great Hall car park and come to the showroom through the rear entrance to the arcade. I can see that parking in the Great Hall car park would be a good location for visiting. I accept that Great Hall car park will go and that during construction there will be disruption to this route and less convenient parking will need to be used such as Crescent Road car park or Torrington car park near Vale Road. However, the alternative car parks ensure that parking would remain reasonable, even if a little further away. Nevertheless, I acknowledge that there would be some impact from the development in relation to customer convenience and access which needs to go into the balance with any matter for compensation being considered by the Lands Tribunal.
200. Sunniva say that they have some rights to park in the Great Hall car park, but there is no substantial evidence for this. The lease does indicate a right to access the car park, but not to parking, which does not appear to have been passed on to Sunniva in the lease that it has with its landlord. The Council is arranging for some free parking in the Crescent Road car park during construction for the landlord of Great Hall Arcade and it is expected that Sunniva will have appropriate use of this. Four parking spaces will also be made available in the Service area to the rear of Great Hall Arcade on completion of the project and it will be for Sunniva to agree use of these with the Landlord and in accordance with the management plan that is to be approved.
201. During construction there will also be a loading bay provided at the front of the Great Hall Arcade, which is about 13m long and available for use by the occupiers of Great Hall Arcade. The proposal has been approved by the Joint Transport Board that includes Tunbridge Wells Borough Council and Kent County Council and in my view should be adequate. While loading will be a little less convenient during construction, I consider that it will be adequate and not make a major difference to the business and little weight is attached to this matter.

### *Safety and Noise*

202. Concern was raised for the safety of customers using the narrow access space between the construction hoarding and rear of the building. Given that the Great Hall car park will not be accessible I consider that it is highly unlikely that there would be anyone accessing the Great Hall through the rear entrance to the arcade. Even if they were there is no reason why this area should be unsafe given that it is separated from the construction site by the 2.4m fence.

203. Noise is a planning matter and is covered by the planning conditions and considered in more detail in relation to the BBC.

**Grove Hill House, Dr Chris, Brian Gregory, John and Pamela Bigwood, Una and Reg Bandy, Melanie Norris, Ingrid Pope, Kathy Cooper and Nicholas de Maid**

204. The land directly affected by the compulsory purchase in relation to Grove Hill House is parcels 15, 17 and 18.

205. In relation to parcel 15, the right for the acquiring authority and its lessees, licensees, successors in title, assignees and those authorised by any of these is to enter upon and use 8 square metres of access road to residential premises known as Apartments 1-24 (inclusive) Flats A-H (inclusive) and The Studio, Grove Hill House, 21-27 (odds) Grove Hill Road, Tunbridge Wells TN1 1SA to swing the jib of a crane, loaded or unloaded, through the airspace over the land and to pass and re-pass across the land at all times with or without vehicles, machinery, equipment and materials for all purposes and to grant rights for owners and occupiers of land, property and buildings adjacent to and/or neighbouring or nearby the land to pass and re-pass as above.

206. Parcel 17 is identified as being owned by John and Pamela Bigwood. The right for the acquiring authority and its lessees, licensees, successors in title, assignees and those authorised by any of these to enter upon and use 13 square metres of car parking space to swing the jib of a crane, loaded or unloaded through the airspace over the land.

207. In relation to parcel 18, the right for the acquiring authority and its lessees, licensees, successors in title, assignees and those authorised by any of these is to enter upon and use the land known as Apartments 1-24 (inclusive) Flats A-H (inclusive) and The Studio, Grove Hill House, 21-27 (odds) Grove Hill Road to swing the jib of a crane, loaded or unloaded through the airspace over the land and to pass and re-pass across the land at all times with or without vehicles, machinery, equipment and materials for all purposes and to grant rights for owners and occupiers of land, property and buildings adjacent to and/or neighbouring or nearby the land to pass and re-pass as above.

208. In addition, the order also includes loss of rights over land being acquired to the north of Grove Hill House, including loss of the right of way to the access running to the east of Grove Hill House. The consequence of this is that all vehicles coming to Grove Hill House will have to access from and egress to Grove Hill Road.

209. I do not consider that the right acquired for the crane swing would have any significant impact and it is a matter that can be satisfactorily covered by compensation as appropriate.

210. The right of way over the access to the east of Grove Hill House is sought mainly to accommodate the service vehicles exiting only from the Great Hall Arcade and currently much of this traffic may use the road in any case along with cars using the car park, which will cease with the development. There

may also be some theatre traffic and I acknowledge that a general right of use is retained, so I accept that matters could change in the future, but given the arrangements, it seems unlikely that there would be considerable change. Therefore, the overall effect of the development and order is that the number of vehicles passing to the east of Grove Hill House would be substantially reduced, so the impact on residents in terms of traffic along this section would be greatly improved.

211. There will be a need for service vehicles going to Grove Hill House to enter from Grove Hill Road, turn around and then leave along Grove Hill Road. The access road near to the junction is relatively narrow, but widens after a short distance. While it is relatively narrow, it is wide enough for cars and light vans to pass, although turning at the end of the road could be difficult because of the width and there may be a need to provide a turning space, which will need to be considered.
212. There may be some larger delivery vehicles that would not be able to pass a car at the entrance, so some standing in Grove Hill road might occur, waiting for the road to clear. However, given the relatively low level of traffic likely to be generated by Grove Hill House and serving the Great Hall Arcade, I consider this is not likely to be great, and access has been considered as part of the planning application. I also note that there was some damage caused to the corner of the building where it overhangs by a vehicle, but that would have had to have crossed over the pavement. I consider that the impact from the loss of the right to use parcel 3 should not have a substantial effect in terms of access, but clearly is an impact to be taken into consideration.
213. Mr and Mrs Bigwood have disabled parking at the end of the access road and are concerned that this might become difficult to access, particularly if members of the public gather at the stage door to meet leaving performers. However, there is a good degree of separation between the car parking and theatre and I do not consider that it is likely that there would be any disruption to the disabled parking at Grove Hill House, and even if some people were standing around, it seems very unlikely that they would not move out of the way.
214. A concern of residents is that there will be an impact from the theatre in terms of noise and disturbance, particularly related to performance change over times. They were concerned about the efficacy of mechanical ventilation. However, that is not a matter directly associated with the compulsory purchase order, but is a consequence of the planning permission. In that regard the matter was taken fully into consideration in deciding the planning application and conditions have been attached relating to noise and disturbance, with appropriate measures to mitigate any harm. These include specification of sound insulation for the loading bays, noise management plan, control of noise from theatre plant and sound insulation of the theatre.
215. A noise impact assessment has been undertaken and an addendum followed. Mechanical ventilation and potential for summer overheating was addressed and it was noted that mitigation measures included a

recommendation for using mechanical ventilation and that the mechanical ventilation system can be designed to address the issue of summer overheating. Detailed design of mitigation measures was outside the scope of the report, but this is to be covered with a suitable legal mechanism. I am satisfied that noise mitigation at Grove Hill House will be suitably addressed through the planning permission.

216. Another concern from Grove Hill House residents and some others is the impact in terms of noise and disturbance and the effect on traffic in the area during construction. Inevitably there will be additional lorry movements to the site bringing in materials, taking away waste etc., but there will be less car movement associated with the car parks. Construction has to be properly managed through the Construction, Design and Management regulations and is shown to access and egress from the construction site direct to Mount Pleasant Road, away from Grove Hill House.
217. In addition, there are conditions controlling the management of the development. A Demolition Environment Management Plan and a Construction Environment Management Plan are required, and matters covered include dust, noise and traffic management, including routing of vehicles to the trunk road network. Another condition requires that prior to the commencement of construction works, final details of the off-site highway works are to be the subject of a Section 278 Agreement, and a programme for their implementation is to be submitted to and approved in writing by the Local Planning Authority, in consultation with the Local Highway Authority.
218. Cars that would have used the two car parks will have to find alternative parking, but there are other car parks not far away, and this should not directly affect the area of the development.
219. While there will be some adverse impacts from construction, I consider that the measures in place are suitable to ensure that the impacts will be reduced to the minimum and subject to reasonable control and this matter adds little weight against the compulsory purchase order.
220. Other concerns from Grove Hill House residents are covered in other parts of the report relating to more general matters concerning the compulsory purchase order. These concerns relate to the impact of the development in terms of light and outlook, but these are planning matters considered at the time of the planning application. Overall, the compulsory purchase order will have some impact on residents, mainly in terms of the loss of the right of way to their property from the north. There is some impact from the right of way that will be formed over their side access road and need for turning caused by the loss of access to land to the north, but in terms of traffic flow the development would be beneficial. Compensation for the change is a matter for the Lands Tribunal, with some weight being given to these matters in terms of harm from the compulsory purchase order to be taken into the balance.
221. Article 1 of the First Protocol notes that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be

deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The prevention of the residents of Grove Hill House accessing their property in the way currently permitted to them is an interference of their rights and that will be considered in the balance.

## **Hoopers**

222. Hoopers is one of the town centre anchor stores and it has a significant number of loyal customers that are important to the success of the store. I acknowledge that the dedicated parking is an important part of the store's offer to those customers and acknowledge that closure of the car park, if necessary, would be likely to have serious consequences. Whilst I note some of Hoopers' parking across the road has recently been lost to redevelopment, I attach little weight to that, as it was not so well placed to serve customers and Hoopers notes it actually had little use day to day by customers, but was partly abused, being used by commuters. It was also used by staff. I also appreciate that in relation to health and safety the concern is not related to prosecution, but the safety of customers.

## *Alternatives*

223. Hoopers make a number of observations on the adequacy of the access arrangements for the theatre and then suggest alternatives that it considers will overcome these, providing, it considers, a better access and servicing, and avoiding the need to have the right of way over its land. The Council witness also acknowledged that going through a department store car park is not ideal.

224. Reliance was placed on the Freight Transport Association [FTA] recommendations in *Designing for Deliveries*. However, care needs to be taken in understanding the dimensions and arrangements suggested. It notes that when producing designs, it is tempting to fall into the 'worst case scenario trap', whereas in the 'real world' it is manifestly unreasonable that all designs should be spacious enough to cater easily for all possible vehicles and contingencies. It notes that it is not the purpose of the publication to lay down rigid design standards.

225. I have also noted that vehicles of the same length and width can require appreciably different areas to manoeuvre with such things as different axle configurations, but I consider for design purposes that the vehicles used by the authority for their designs and tracking are reasonable, being those found on the template library for Autodesk vehicle tracking software, and which are commonly used.

226. I accept, as put forward by another party, that there are now much larger vehicles that can be used, particularly in relation to music concerts. However, I do not accept that it is necessary for this building to be designed to receive these. As noted, many of the older theatres cannot take them and it will be up to the production companies to decide which theatres they want to be able to show at and use appropriate sized vehicles.



227. There was also some discussion about refuse vehicles, but it was confirmed that the Council's own refuse vehicles do not pick up commercial waste, but this would be a matter for the theatre to arrange its own contractor and hence vehicle type can vary, and again that chosen for purposes of design does not seem unreasonable.
228. It is considered that the gradient of the surface outside of the production loading bays would make it difficult to manoeuvre. The FTA guidance is identified, which is noted to indicate recommended gradients of about 1-60 and no greater than 1-45. However, the FTA guidance also indicates that, where a vehicle stops for loading, the gradient should be "less than 1 in 40" and gradients can be steeper where vehicles manoeuvre and park: "gradients of up to 1 in 20 can usually be tolerated". I do not consider that this weighs against the proposal, particularly as it notes that it is not laying down rigid standards.
229. The proposed access between the theatre and Great Hall Arcade would be about 3m wide, which is considered not to accord with the Freight Transport Association [FTA] recommendations in Designing for Deliveries. This recommends a width of about 3.7m. Hoopers points out the difficulty of making an 's' manoeuvre, as identified in the FTA, but that relates to a service road arrangement that is not the same as this situation. However, I do acknowledge that access would require great care, particularly with wing mirrors out.
230. The proposed alternative of moving the building eastwards would provide a generous width of about 6m. Clearly 3m is on the low side and care will be needed in traversing the road, but analysis shows that it is feasible, although I accept that 6m would be better. With Hoopers' proposal this would then become two way, with ingress and egress from the north. While the access would make it easier to pass between buildings, the Council's expert noted that the actual service area is generous. I consider that the advantage between the two schemes in terms of servicing is limited, with the main advantage to Hoopers being that their land does not have to be subject to the compulsory purchase order.
231. It would be possible to move the building 3m to the east, but the northward move of 3m is unlikely to be straightforward because of the location of a public sewer. However, movement of around 2.5m would appear on inspection to perhaps be feasible. Nevertheless, there are other knock-on effects to consider.
232. A significant aim of the development is to improve the connection between Mount Pleasant Road and Calverley Grounds, improve the entrance into the park and provide a public 'square' between the theatre and office building as described above. An important aspect is reducing the amount of traffic using the access road, making it more pedestrian friendly. This would be seriously compromised with two-way traffic resulting from the change and there would be a need to widen part of the access arranged for vehicles. In addition, the theatre would encroach considerably more into the space between the buildings and significantly impact on the 'square' and views towards the park. While Hoopers say that the move would still enable the

purpose of providing the theatre to be achieved, another important purpose identified is the provision of a new public square and improvements to the public realm at the junction of Mount Pleasant Road and Mount Pleasant Avenue. To my mind that would be seriously compromised by the suggested move of the theatre.

233. There would also be some impact on the park itself with an encroachment of an additional 3m for the length of the theatre. While it would be noticeable and there may be a small additional impact on some trees, I do not consider it likely planning permission would be refused for this alternative. I also consider that there could be a small benefit in terms of the increased space adjacent to Grove Hill House. The move would require planning permission, and given the degree of opposition, planning permission is likely to be strongly resisted and likely to take some time that would delay the development, although I attach limited weight to that.
234. The other change that is required to enable the production vehicles to turn around is purchase of some of the land and perhaps part of the rear ground floor outbuilding of 18 Mount Pleasant Road. This would be likely to need compulsory purchase. The space is directly outside the building and clearly useful to it, not only as space, but also for some storage bins. Removal of the outside space is likely to have a substantial impact in relation to the property. However, I do accept that the health and safety impact in terms of 18 Mount Pleasant Road would be far less compared to Hoopers' car park, but there would be an increased risk in terms of the new approach arrangement to the theatre. While there would be a lesser impact in terms of health and safety there would be a similar impact in terms of the loss of control of the land, although as the area is much smaller the overall impact is likely to be less than if the rights are acquired over Hoopers' land.
235. Hoopers acknowledge that a similar option to this was considered by Vectos, the Council's consultant, around 2016. This concluded that an access/egress arrangement that does not impact upon Hoopers' car park had been considered, with access to and from the yard from Mount Pleasant Road. While it was noted that it would impact on the service yard of the adjacent commercial properties, it would allow three large vehicles to get to the loading bays. What this demonstrates is that a very similar alternative option was considered in the process and discounted, although I acknowledge that it might be possible to gain turning at the back of 18 Mount Pleasant Road without having to demolish the building, but a considerable area of the rear space would be necessary.
236. The main contractor also noted that the retention and re-use of the existing Great Hall Car Park structure is more efficient, utilising the existing wall structures as formwork for the new reinforced concrete wall, which is technically easier and more efficient, resulting in less cost. In addition, utilising the existing basement makes the scheme more efficient, with less digging on the park side.
237. Hoopers' alternative does have the benefit of avoiding the use of Hoopers' car park and improves the width of the access, but it would have a harmful impact on 18 Mount Pleasant Road, even if less than on Hoopers in terms of

loss of control and health and safety, but the change would have a much greater impact on some of the purposes of the CPO in that it would result in 2 way traffic in the main approach to the theatre and impact on the connectivity between the town and park, through the access, narrowing the width of the 'square'. Overall, I consider that the benefits of the suggested alternatives do not outweigh the associated harm.

### *Health and Safety*

238. The store employs a health and safety advisor who has been involved at the premises since around 2017 and advice includes that related to the customer car park. A risk assessment was completed identifying hazards and appropriate control measures. This included having a traffic management plan in place. It requires, amongst other things, designated parking spaces, demarcation of delivery areas, speed limits of 5mph, regular monitoring checks to ensure that drivers follow rules and banksmen are required to manage vehicles/deliveries if required. There is no history of any significant accidents occurring in the car park involving vehicle/pedestrian impact recorded in last 5 years.
239. The customer parking has been arranged to ensure that there is also sufficient space for deliveries to the store. Deliveries are arranged by the store to ensure that the majority take place outside areas of peak customer movement in the car park. Most deliveries are also made using the northern barrier close to the goods-in door, avoiding the need to go through the car park.
240. The particular concern is that there will be collisions between customers and service vehicles or that people would be hit by objects falling from vehicles and that it would not be possible to manage and control vehicles that are going to and from premises out of Hoopers' control.
241. Up until now there has been little collaboration in terms of trying to agree an appropriate way to manage service vehicles passing through the area. While the Council has made approaches in relation to this, it is to some extent understandable that, because Hoopers has not wanted to lose control over the car parking area, its energy has been directed to that end. However, even if Hoopers were unwilling to contribute to the management process, their health and safety expert acknowledged for health and safety reasons it would be obliged to engage in the process to ensure the health and safety of users and I therefore consider that it is reasonable to expect a management plan to be agreed.
242. There was some discussion over the approach to health and safety. The Council's risk assessment, submitted during the inquiry, sets out the hierarchy of controls and clearly eliminating any risk would be the best approach, with administrative controls coming down the list. I have considered alternatives to service vehicles for the theatre passing through the car park above and concluded that there is no reasonable alternative that would enable total elimination of this need.
243. However, health and safety management does not require there to be no risk and the Council identify the approach described as 'ALARP' or as low as

reasonably practical. The concept of 'reasonably practical' lies at the heart of the health and safety system and is a key part of the general duties of the Health and Safety at Work etc. Act 1974 and many sets of health and safety regulations that the Health and Safety Executive and local authorities use for enforcement. This approach sets goals for duty-holders, rather than being prescriptive.

244. In response to Hoopers' health and safety submissions at proofs stage, the Council produced a rebuttal from a health and safety expert who also undertook a risk assessment. Clearly and understandably this was rushed and there were some mistakes. I attach limited weight to that and a more considered assessment will be required to ensure that what is agreed is 'as low as reasonably practical'. However, I consider that the assessment does show that an appropriate system is likely to be possible, particularly if the hours traffic passes through the car park can be agreed, effectively eliminating or reducing the risk for part of the day.
245. While criticism was made in relation to the feasibility of a management plan, controlling when service vehicles arrived and a 5mph speed limit (it was noted that speedometers do not go down that low), Hoopers' own expert indicated that such controls were already in place, including a 5mph speed limit. It would be up to the theatre and Hoopers to manage their own users of the car park and it was explained that each side would only be responsible for that aspect of use.
246. There was also a 'late' offer by the Council to limit the hours of use by service vehicles, with use being excluded generally between the hours of 1000 and 1600. To my mind this is feasible and quite normal say in pedestrian zones where such limits are common. While the suggestion of control of delivery hours was late in the process, I would note that the Council has endeavoured to have meetings to discuss management where such matters could have been put forward. Clearly again these matters will need careful consideration when management of the area is discussed and limits on hours agreed.
247. There was concern regarding banksmen and the reliability of this approach, but again I note the control already used by Hoopers is the provision of banksmen where required to manage vehicle/deliveries if required and I see no reason why the theatre cannot safely adopt the same approach.
248. Hoopers would like to keep final control over the theatre service route, at least for say between the hours of 1000 and 1600 when it is suggested that the route would not be used. To my mind this would be unacceptable; it would not be feasible to construct a theatre if the operator could not be sure that servicing could be managed, should matters change in the future. I consider that it is essential that the theatre has a right of access as set out in the order.
249. There was some concern that planning conditions relating to noise and traffic movement were contradictory in relation to servicing of the theatre. However, it is clear to me that a distinction has been made between theatre

change-over traffic, which may occur at night, and normal 'servicing' which is anticipated during the day, and these matters are set for control in the management plans.

#### *Loss of Control and Future for Hoopers*

250. I fully understand Hoopers' concerns over the loss of its control of the land that would occur following implementation of the order and hence the case that has been made for this inquiry. While the order is not for the purchase of the land, the effect will, to a considerable extent, be very similar as Hoopers will have to keep the central part of the land available at all times for the theatre use, and flexibility for the use of the land will to a great extent be lost to Hoopers. They will also have to liaise with the theatre over management of the access and health and safety in the future. I attach substantial weight to this loss of control and if the order proceeds this is a matter that will need appropriate compensation, the level of which will be a matter for the Lands Tribunal.
251. I have considered the alternative suggestions, but consider that what has been proposed is the best and most appropriate solution, and that if Hoopers retained control over the access to the theatre, with an effective veto over the use, it simply would not be sensible or feasible to go ahead with the theatre development as there would be no assurance that servicing could take place.
252. The theatre production lorries passing through the car park should mainly occur at night, although I accept some may pass through early in the day, but there will be arrangements for banksmen to ensure these pass safely through. The number of vehicles anticipated for general servicing is not great and with control of hours should mean that the customer car park is relatively free of service vehicles during the middle part of the day.
253. There will be a significant increase in vehicles servicing Hoopers passing through the car park, whereas most of this currently occurs from the north. All will have to pass up and down the car park. However, again it is indicated that the hours of these vehicles is controlled and this could continue to occur. To my mind, with reasonable cooperation, a safe and satisfactory system of servicing can be arranged that will ensure risk is as low as reasonably practical and acceptable.
254. While I acknowledge the importance of the car parking to viability of the store and that it is a considerable incentive to loyal customers, I do not see that the proposed order logically leads to the need to close the customer car park and therefore the viability of Hoopers should not be threatened. If Hoopers did, as indicated, consider that it would close the car park, to my mind that is a decision for it, but it would not logically flow from the compulsory purchase order. Overall, I conclude that substantial weight should be given to the impact the order will have in relation to Hoopers' loss of the ability to control the land, but only limited weight to the impact the right of way will have in terms of the provision of the car park.

#### **Theatre Vehicular Access Generally**

255. Mr Van Grutten suggested that the connection with the loading bays would not be satisfactory in terms of the angle of approach, dock levellers and spacing. Tracking diagrams show that the vehicles can be manoeuvred into the spaces at an appropriate angle with space between. It was suggested that dock-levellers are outdated, but the Council's theatre advisor notes their recent use in other theatres. The height range is about 700 to 1100 mm from the ground, which should allow for a good mix of vehicle types.
256. Mr Van Grutten states that no analysis was undertaken of the space required within the service yard for a curtain-sided articulated lorry that would be unloaded by forklift. However, it is indicated that loading into modern theatres is almost exclusively from the back doors of vehicles, with many of them having loading docks similar in nature to that of the proposed development. For this reason, few theatres have forklifts and the ones that do are principally the ones that do not have proper loading docks.
257. In relation to left hand drive vehicles, the Council's theatre expert indicates that if an international show were to visit, it would most likely arrange trailer pick up from a UK port of entry using local drivers. In some cases, shows are transported by sea container, or increasingly by air. Whilst there might be some international shows that use their own tractor unit, drivers and trailers, it is anticipated that this would be rare.
258. A number of access options were put by Robert West Consulting Ltd on behalf of Metro Property Unit Trust. Options 1 and 2 are based upon the planning permission layout for the proposed development. However, option 1 requires non-theatre traffic to use Hoopers' car park, but that is not viable because the compulsory purchase order does not allow for vehicles other than those related to the proposed theatre to use Hoopers' car park and any benefit would be small.
259. Option 2 would require the vehicle route between the Great Hall Arcade and the proposed theatre to be managed as two-way. This would require traffic light control to prevent potential conflict between inbound and outbound vehicles which would result in potential difficulty for waiting vehicles in the approach and the square. There could also be potential conflict with cars using the new car park.
260. Options 3 and 4 require the building to be rotated into the Square and Calverley Grounds, with similar consequences to the proposed moving of the building as put forward by Hoopers, with Option 4 requiring acquisition of the land behind 18 Mount Pleasant Road. Option 5 retains the permitted layout, but also needs two-way traffic in the approach and acquisition of land to the rear of 18 Mount Pleasant Road. Option 6 is very similar to that proposed by Hoopers.
261. I consider that the proposed vehicle access strategy for the theatre is the most appropriate when all relevant factors are taken into consideration.

## **Flooding**

262. Objectors say harm will be caused by the new development in relation to flooding. However, this matter has been fully considered in the planning process, when a report was prepared by Price & Myers that indicates this can be managed. Conditions 19 – 23 cover these aspects of the development. In particular, the conditions require a verification report pertaining to the surface water drainage system, carried out by a suitably qualified professional, which demonstrates the suitable operation of the drainage system such that flood risk is appropriately managed. This should ensure the proposal will not unacceptably add to any flooding in the area.

### **Archaeology**

263. Calverley Grounds was the subject of a detailed desk-based assessment carried out by Wessex Archaeology in 2017. The study was to support the planning application for the new civic centre and covers effects to below ground archaeological remains only.

264. The aim of the assessment was to determine, as far as possible from existing information, the nature, extent and significance of the historic environment within the site and its environs, and to provide an initial assessment of the potential impact of development.

265. The study identified no overriding heritage constraints which are likely to prohibit development. It noted that there is archaeological interest within the site defined as the potential for the presence of buried archaeological remains, in particular relating to the post-medieval to modern use of the site as part of Calverley Park, now known as Calverley Grounds. However, it was also noted that, because of a lack of previous archaeological investigation, the presence, location and significance of any buried heritage assets within the site cannot currently be confirmed on the basis of the available information. As such it is likely that additional archaeological investigations may be required by the archaeological advisor to Tunbridge Wells Borough Council.

266. To ensure that appropriate further investigation occurs, conditions 8 and 9 are attached to the planning permission. Condition 8 requires archaeological field work to be undertaken on site to ensure assessment of the archaeological implications of the development proposals and if necessary the subsequent mitigation of adverse impacts through preservation in situ or by record, and this is required prior to commencement. Condition 9 requires an archaeology watching brief so that the development excavation is observed and any items of interest and finds recorded. This is to ensure that features of archaeological interest are properly examined and recorded.

267. To my mind this is the appropriate approach and will ensure that any archaeology on site is discovered and recorded.

268. Interested parties believe the development, particularly the underground car park, will lead to the destruction of a nationally significant prehistoric landscape. The setting of the park is identified as an ancient river valley, now in a culvert. On the mound, that would effectively be removed as part of the development, it is considered that there are the remains of a pre-Roman ritual site, including burials and temples. Until about 1975 the mound had

standing stones (megaliths), known to locals as 'the Dolmen', that may have been the remains of a Neolithic long barrow. The objectors say that the megaliths were deliberately removed and destroyed in 1975. An interview with a park groundsman of the time explained what happened to the stones. While the objectors acknowledge that the stones have now been removed it is considered the mound should be preserved, because of what may still be in the ground.

269. However, the maps and photographs (which are not of sufficient quality to do more than identify a general outline) and the testimony of the park groundsman are not adequate to demonstrate the provenance of the stones that were removed or that the site is an important prehistoric landscape. It also seems highly surprising with the stones being in place for a considerable number of years, that if they were of archaeological interest, they were not previously identified, recorded and protected, given the importance placed on archaeology generally.

270. However, I accept that there is a prospect that some archaeology may be present as identified by the desk top study, but that the archaeology field work and monitoring required by the planning permission will be sufficient to ensure that if there is evidence of the pre Roman ritual site it should be found and appropriate action taken. The evidence provided does not add any harm in relation to the weight to be given to compulsory purchase.

## **Human Rights**

271. Acquiring authorities should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected.

272. The Council has considered the human rights of the affected parties and confirms that it took into account the Convention Rights of those who will be affected by the Order. The key Convention Rights engaged by the Order are Article 1 – peaceful enjoyment of possessions and Article 8 – respect for private and family life, home and correspondence.

273. Article 1 of the First Protocol notes that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

274. To a greater or lesser extent all parties affected by the order will have their rights under Article 1 of the First Protocol infringed. Their entitlement to peaceful enjoyment of their possessions will be prevented to some extent. However, to counter this there is the right to compensation as assessed by the Lands Tribunal.

275. Those that will be affected to a greater extent are Hoopers and Dr Azimi at iSmile Dentist Ltd. The loss of control of the car parking land, which is a relatively large area, will be a significant loss to Hoopers, even though I have noted that car parking is likely to be able to continue. The ability to use the land in other ways will be seriously affected and this is a significant



infringement. Dr Azimi will not be able to continue his practice in the lodge and he will have to find new premises. The lodge is a very individual setting and arrangement and it is not going to be possible to repeat that in the area. However, the Council is making every effort to help identify another premises, and a building suitable for a dental practice should be able to be found, but this will require considerable compromise in relation to the current set up.

276. In respect of Article 1, the Courts have recognised that regard must be had to the fair balance between competing interests of those affected and the community as a whole.

277. Similarly, interference with Article 8 rights must be in accordance with the law and must be necessary and proportionate. The homes affected are those associated with Grove Hill House and the compulsory purchase order affects access to the properties. While there clearly is an impact in terms of the loss of the use of the land affected, the overall impact of that acquisition is low and again there are procedures to ensure appropriate compensation.

278. The compulsory purchase order and its implementation are consistent with Article 6 of the Human Rights Act 1998. All those affected were informed and advised of their right to make representations to the Secretary of State. As objections and representations have been made, the public inquiry has been held to consider matters raised.

279. I have set out the benefits of the development. I consider that the public interest and wider economic social and environmental benefits realised as a result of the development outweigh the necessary interference with the private rights and interests that exist in the Order Land and that what is being acquired is a fair and proportionate balance between the interests of those whose Convention rights will be affected and the wider public interest. I conclude that there is a compelling case in the public interest for the compulsory acquisition for each and every parcel of land and other interest within the Order Schedule and that the impact on Convention Rights is justified in the public interest, authorised by law and necessary and proportionate to fulfil the Council's objectives of securing its civic development programme.

## **Equalities**

280. I have considered the Equalities Act above with particular regard to iSmile Dentist Ltd. However, there were some other matters raised in relation to the new development.

281. One objector raised concern about access for persons with disabilities to the development. This is a matter that has been considered and will need to be introduced in accordance with building regulations. In terms of public access to the seating area in the theatre, the stalls would be raked at 5° and wheelchair positions available in multiple locations, by removing seats, using a quick release mechanism. Seating has been designed to provide chairs that disabled patrons can transfer into if desired. Companions seats are provided to ensure disabled patrons can sit with those accompanying them. Large

format seats are also provided for patrons who may be mobile but require a wider seat.

282. In general, the auditorium of a theatre is staffed throughout a performance for the safety of the audience. Any evacuation during a show will be a managed and frequently rehearsed procedure which will have taken into account a range of requirements for disabled people. All backstage and dressing room areas would be accessible, including the scenery dock and service yard. Accessible WCs would be provided at all levels. In terms of toilet provision generally, 34 female toilets would be provided, and that is not counting accessible WCs, which is in excess of the requirements of the British Standard. This matter has clearly been carefully considered in the design process.

### **Balance and Conclusion**

283. A CPO should only be made where there is a compelling case in the public interest which justifies interfering with the human rights of those with an interest in the affected land.

284. I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I acknowledge that there could be some adverse effect in relation to persons with protected characteristics, particularly patients at iSmile Dental Ltd, but the Council is endeavouring to help find suitable alternative premises, which should go a significant way to limit any impact.

285. I also recognise that there would be some interference with rights under Article 1 of the First Protocol (protection of property) and article 8 (right for respect for private and family life, and home) of the European Convention on Human Rights to all those affected. This interference would be particularly marked in respect of Hoopers and to some extent Dr Azimi at iSmile Dental Ltd. However, I conclude that the purposes for which the Order land would be acquired and the benefits of the scheme justify interfering with the human rights of those with an interest in the land affected.

286. I have found that the development is in accordance with the adopted Local Plan and the National Planning Policy Framework and has planning permission. Some impact on the local environment, including historic assets have been identified and these are considered in the overall balance. There are conditions to the planning permission, but there is no reason why these should not be discharged to allow the development to proceed. There is a need for compulsory purchase, as it is clear that agreement to acquire the rights and land sought would be unlikely to have been forthcoming without it.

287. The Council has demonstrated that they have a professional team in place to manage the contract, and have full control of finances with appropriate funding in place and there is no reason that this matter should prevent the development proceeding. There has been appropriate consultation in relation

to the project as a whole, the planning application and with those affected by the compulsory purchase reasonable steps have been taken to acquire the Order land and rights by agreement. Alternative options have been considered throughout the process, but I consider that given the purposes of the compulsory purchase and the aims for the development that the current site is the most appropriate for the development.

288. Section 226 notes that while a local authority may be authorised to acquire land compulsorily, it must not exercise the power unless they think that the development/redevelopment or improvement is likely to contribute to the achievement of any one or more of the objects of promotion or improvement of the economic, or social or environmental well-being of their area. It is clear that the Council does think that there will be such promotion and improvement, and given the expert team appointed and the evidence and information provided, I concur and conclude that each one of those promotions and improvements would be achieved.

289. I have taken into consideration the adverse effects that the development will have as identified in the decision above, including in terms of human rights and equalities of the statutory objectors, but consider overall that the development will contribute significantly to the achievement of the promotion and improvement of the economic, social and environmental wellbeing of the area. Therefore, on balance there are strong planning justifications for the use of the Compulsory Purchase Order powers to implement the redevelopment scheme so that I consider that there is a compelling case in the public interest; I therefore confirm the Compulsory Purchase Order.

*Graham Dudley*

Planning Inspector

## **APPEARANCES**

### **FOR THE ACQUIRING AUTHORITY:**

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Heather Sargent	Of Counsel
He/She called	
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David Candlin	Head of Economic Development and Property, Tunbridge Wells Borough Council
Lee Colyer	Director of Finance, Policy and Development, Tunbridge Wells Borough Council
Stephen Baughen	Head of Planning, Tunbridge Wells Borough Council
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Hilary Keenlyside	Director, Bonnar Keenlyside
John Riddell	Senior Consultant, Theatre Projects Consultants Ltd
David Chambers	Operations Director, Mace Public Sector Construction Delivery Team
Fabrizio Filippi	Senior Consultant, Theatre Projects, Theatre Projects Consultants Ltd
Stephen Eyton	Director, Vectos
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Anise Saunders	Health and Safety Consultant, Avison Young

### **FOR GROVE HILL HOUSE AND DR CHRIS:**

James Neill	Of Counsel
He called	
Dr Robert Chris	PhD FCA ACIB resident of Grove Hill House
Ben Van Grutten	Producer / Production Director, BvG Group

### **FOR HOOPERS**

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David Forsdick QC	
He called	
Debra Angus	Managing Director, Hoopers
Paul Lidgeley	Professional Director, Lambert Smith Hampton
Lorna Randall-Jones	Director, ADL Traffic and Highways Engineering Ltd
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Martin Dawes

Ben Chapelard

**DOCUMENTS PROVIDED AT THE INQUIRY**

***ACQUIRING AUTHORITY DOCUMENTS***

**AA-01** David Candlin - Rebuttal

**AA-02** James Eades - Rebuttal

**AA-03** Fabrizio Filippi - Rebuttal

**AA-04** Hilary Keenlyside - Rebuttal

**AA-05** Stephen Eyton - Rebuttal

**AA-06** Anise Saunders - Rebuttal

**AA-07** Alison Squires - Rebuttal

**AA-08** Stephen Baughen - Rebuttal

**AA-08A** Stephen Baughen - Appendices to Rebuttal

**AA-09** Lee Colyer - Rebuttal

**AA-10** Opening Statement

**AA-11** Presentation given by William Benson

**AA-12** Slide presentation of Mr David Chambers

**AA-13** Slide presentation of Mr James Eades

**AA-14** Summary of Regional and Local Benefits

- AA-15** Revision R of Appendix F of Mr Stephen Eyton's Appendices
- AA-16** Ms Anise Saunders - Rebuttal Proof Appendix 1 Management of vehicle movements
- AA-17** Ms Anise Saunders - Rebuttal Proof Appendix 2 Rospa - HGVs and vulnerable road users
- AA-18** Mr Lee Colyer - Note on questions from evidence-in-chief
- AA-19** Exchange of emails between Alison Squires & Paul Lidgely of /17 November 2017 and Vectos Note
- AA-20** Emails Alison Squires of 28 November 2017 with notes of meeting held 22 November 2017
- AA-21** TWBC and Vectos Position Statement Regarding Consideration of Service Vehicle Access Routes to Theatre
- AA-22** GVA - Reasons why moving the Theatre East by 3m is undesirable
- AA-23** Two Swept Path Analysis Theatre Servicing Area drawings
- AA/24** Revised Rebuttal of Ms Anise Saunders in relation to Health & Safety
- AA/25** Article - 'McDonald's fined £200k'
- AA/26** Health & Safety Executive - 'ALARP at a glance'
- AA/27** GVA Contact Schedule of Negotiations & Discussions with Dr Robert Chris (OBJ/10)
- AA/28** GVA Contact Schedule of Negotiations & Discussions with Dr Simon Azimi Fard (OBJ/12)
- AA/29** GVA Contact Schedule of Negotiations & Discussions with Hoopers (OBJ/05)
- AA/30** Extract from Designing for Developers - Gradients
- AA/31** Further evidence ticket sales and economic impact - Bonnar Keenlyside
- AA/32** Inquiry Note - Tunbridge Wells Wider Economic Benefits Assessment - Additionality
- AA/33** Bonnar Keenlyside document - 6 year average ticket sales for theatres
- AA/34** Email from Mr Mark Davey to Mr Paul Philips dated 12 February 2019 relating to the new loading bay & replacement parking spaces in the Great Hall service yard
- AA/35** TWBC letter dated 27 February 2019 to representatives of Hoopers in relation to undertakings
- AA/36** Note on para 1.10 of the TWBC Site Allocation Local Plan & disabled access - Mr Stephen Baughen
- AA/37** Note on Noise Mitigation Package at Grove Hill House - Mr Stephen Baughen
- AA/38** Inquiry Note in response to the further evidence of Dr Robert Banks, Dr Robert Chris and Mr John Pickering
- AA/39** Inquiry Note of Mr John Riddell
- AA/40** Updated Appendix 2 of Ms Alison Squires - Summary of Contact Schedule of Negotiation as at 7 March 2019
- AA/41** Letter dated 1 March 2019 from Bryan Cave Leighton Paisner, on behalf of Hoopers, to Mr David Candlin regarding operation of its car park
- AA/42** Closing Submission on behalf of Tunbridge Wells Borough Council

### **OTHER PARTY DOCUMENTS**

- OD/01** Letter to Robert Chris (OBJ/9 & OBJ/10) dated 11 February 2019 from PW Production Limited

- OD/02** Extract from The Green Book - HM Treasury guidance on how to appraise and evaluate policies, projects and programmes
- OD/03** Extract from RIBA (Royal Institute of British Architects) Strategic Definitions
- OD/04** Proof of Evidence of Michael Coggles, Royal Tunbridge Wells & Area Access Group with Appendices
- OD/05** CIPFA (Chartered Institute of Public Finance & Accountancy) – Understanding Local Authority Financial Statements
- OD/06** National Audit Office extract – Auditors’ Work on VFM Arrangements, 10 November 2017
- OD/07** Written representation on behalf of Mr Rodney Turney, Mrs Sheila Turney and Ms Claire De Marco – letter from Batcheller Monkhouse dated 22 January 2019
- OD/08** Written representation by Yvonne Bowman dated 21 January 2019
- OD/09** Proof of Evidence of Mr Robert Egerton
- OD/10** Additional comments to letter of objection - Mary Hughes
- OD/11** Proof of Evidence of Mr Graham Ayers
- OD/12** Additional documents on behalf of Dr Simon Azimi Fard & iSmile (OBJ/12)
- OD/13** Dr Philip Whitbourn – document provided during cross-examination of Mr Stephen Baughen
- OD/14** Further documents from Dr Robert Banks (OBJ/26)
- OD/15** Further documents from Mr Stephen Bowser (OBJ/306)
- OD/16** Written representation from Ms Sally Antrim dated 20 February 2019
- OD/17** Emails between Mark Davey and Dr Robert Chris from 19 December 2018 and 29 January 2019
- OD/18** Written representation from Mr Richard Bell dated 5 February 2019
- OD/19** Proof of evidence from Mr John Fairless
- OD/20** Additional documents to letter of objection from Mr Paul Phillips on behalf of Sunniva Carpeting Limited (OBJ/06)
- OD/21** Exchange of Correspondence between Knights and DAC Beechcroft – 6, 13, 19 & 22 February 2019
- OD/22** Additional document to letter of objection from Mr Martin Dawes (OBJ/39)
- OD/23** Additional document to letter of objection from Mr Jim Kedge (OBJ/247)
- OD/24** Additional document to Proof of Evidence of Ms Patricia Micklewright (OBJ/98)
- OD/25** Additional document to Proof of Evidence of Ms Rebecca Bruneau (OBJ/227)
- OD/26** Additional document to letter of objection from Mr John Pickering (OBJ/101)
- OD/27** Additional document to Proof of Evidence from Mr Nicholas Pope (OBJ/245)
- OD/28** Response by Dr Robert Chris (OBJ/10) to TWBC Note – Summary of Regional & Local Benefits (AA/32)
- OD/29** Addendum to Proof of Evidence of Dr Robert Chris (OBJ/09)
- OD/30** Addendum to document submitted by Mr John Fairless (OD/19)
- OD/31** Further Appendices from Mr Stephen Bowser (OBJ/306)
- OD/32** Additional document to letter of objection from Mr Robert Atwood (OBJ/127)

- OD/33** Additional document to OD/25 from Ms Rebecca Bruneau (OBJ/227)
- OD/34** Additional documents – Comparison of Calendars and Email of 25 February 2019 in relation to noise implications – on behalf of Grove Hill House (OBJ/09 & OBJ/10)
- OD/35** Additional document to letter of objection from Mr Ben Chapelard (OBJ/307)
- OD/36** Further appendix document from Mr Stephen Bowser (OBJ/306)
- OD/37** Further document from Mr John Pickering (OBJ/101)
- OD/38** Response to AA/31 from Dr Robert Banks (OBJ/026)
- OD/39** Email dated 7 March 2019 from EHJDM Limited in relation to negotiations with TWBC
- OD/40** Closing Statement of Dr Robert Banks
- OD/41** Email of 8 March from Keppie Massie, on behalf of Sainsburys Supermarkets Limited, updating the status of negotiations
- OD/42** Closing Submissions of Mr Ben van Grutten
- OD/43** Closing Submissions of Dr Philip Whitbourn
- OD/44** Closing Submissions on behalf of Grove Hill House
- OD/45** Closing Submissions on behalf of Hoopers
- OD/46** Closing Submissions on behalf of iSmile