Neutral Citation Number: [2018] EWHC 915 (Admin)

Case No: CO/3929/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25 April 2018

Before :

MRS JUSTICE LANG DBE

- -

Between :

THE QUEEN on the application of DANIEL CHARLESWORTH	**Claimant**
- and -	
CROSSRAIL LIMITED	**Defendant**
BERKELEY FIFTY-FIVE LIMITED	**Interested Party**

- -
- -

Timothy Straker QC and Karishma Vora (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
Nathalie Lieven QC (instructed by **Winckworth Sherwood LLP**) for the **Defendant**
The **Interested Party** did not appear and was not represented

Hearing date: 21 March 2018

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Approved Judgment

Mrs Justice Lang:

Introduction

1. The Claimant seeks judicial review of the Defendant's decision, in a letter of 24 May 2017, to dispose of land on the open market and to treat the Interested Party (hereinafter "B55") as the holder of a Qualifying Interest. B55 is a subsidiary of Berkeley Homes Plc, a major housebuilding and development company with interests in the Woolwich area.

2. The Claimant held a 999 year lease of premises at 16 Gunnery Terrace, Cornwallis Road, Woolwich, London from which he ran his business, Citipost AMP. The freeholder was the London Development Agency ("LDA"). Pursuant to powers in the Crossrail Act 2008 ("the Act"), the properties in Gunnery Terrace were compulsorily acquired and demolished for the purposes of construction of the new railway, Crossrail. The surface of the land is no longer required for railway purposes.

3. The disposal of surplus land following actual or threatened compulsory purchase is governed by the non-statutory arrangements in the Crichel Down Rules, supplemented by the C10 Land Disposal Policy ("the C10 Policy") which was adopted specifically for the Crossrail project.

4. The Defendant, which is a subsidiary of Transport for London ("TfL"), and a nominated undertaker under the 2008 Act, acts on behalf of TfL in respect of land acquisition matters. The Defendant decided to offer a development site for sale at market value, which included the plots of land on which the Claimant's premises were previously situated, as well as other adjacent plots, to six holders of Qualifying Interests, as defined in paragraph 5 of the C10 Policy. In the view of the Defendant, the Claimant and others had a Qualifying Interest as they were formerly long leaseholders. The Defendant considered that B55 also had a Qualifying Interest, as it had purchased the freehold from the LDA, prior to acquisition of the land for the construction of Crossrail.

5. Both the Claimant and B55 expressed an interest, and so, applying paragraph 5.3 of the C10 Policy, the Defendant withdrew its offer and decided to dispose of the development site by sale on the open market.

The Claimant's challenge

6. The Claimant challenged the Defendant's decision on the ground that he had been deprived of his rights as a dispossessed property owner. B55 had been wrongly treated as the holder of a Qualifying Interest, with the consequence that there were two expressions of interest and the Claimant's opportunity to acquire the development site at market value, as sole bidder, was lost. B55 purchased the freehold from the LDA on 11 February 2011 and sold it to TfL a few days later on 15 February 2011, to protect and promote its position as the main developer in the area. Paragraph 7 of the Crichel Down Rules did not apply because TfL did not acquire the land "by or under threat of compulsion" and "the land was publicly or privately offered for sale immediately before the negotiations for acquisition".

The Crossrail Act 2008

7. The Act gave permission for the construction of the new railway and contained powers of compulsory acquisition of land that might be required for or in connection with the works authorised by the Act or otherwise for or in connection with Crossrail.

8. The Secretary of State for Transport ("the Secretary of State") was the promoter of the Crossrail Bill ("the Bill") which was a hybrid bill (part public, part private).

9. The Bill was introduced to Parliament in February 2005 and contained a description of the works to be undertaken. Initially the proposal did not include a station at Woolwich, but after objections were made, the Secretary of State issued revised proposals for the provision of a station at Woolwich, in an Amendment of Provisions Environmental Statement (AP4).

10. At the hearing before the House of Commons Crossrail Bill Committee ("the Committee") on 10 July 2007[1], counsel for the Secretary of State explained that the construction of a station box at Woolwich was dependent on the successful completion of a binding agreement between the Secretary of State and Berkeley Homes under which Berkeley Homes would fund and build the station box. It was further explained that the fitting-out of the station box was dependent on the project receiving sufficient contributions from developers and/or businesses which would stand to benefit from the station. AP4 therefore contained alternative scenarios: (i) the fit-out of the station being delayed by five years; (ii) the construction of the station box but no fit-out; (iii) the construction of the shaft at the eastern end but no station; and (iv) a surface level ticket hall rather than a subsurface ticket hall.

11. Counsel referred to the plans of the area and explained that Berkeley Homes already had a development option over land to the west of Arsenal Way, with planning permission, and under the outline agreement it had been agreed that they would be permitted to retain their rights over that land. She went on to say that the outline agreement did not include any provision for Berkeley Homes to gain rights over the land to the east of Arsenal Way (which included the Claimant's premises).

12. At the same sitting, the Committee heard the Claimant's petition against the Bill. He said that the revised proposal of a station at Woolwich was very disadvantageous to him. Counsel for the Secretary of State confirmed that the Claimant's premises would have to be demolished, but stated that, once the subterranean station and railway line was constructed, the land on the surface would be disposed of, in accordance with the Land Disposal Policy, to those with a Qualifying Interest, such as the Claimant.

The Crichel Down Rules and the C10 Policy

13. At the material time, the Crichel Down Rules were set out in Office of the Deputy Prime Minister Circular 06/2004.[2] The Crichel Down Rules provide for surplus land, acquired by or under threat of compulsion, to be offered back to its former owner, or his successors, in certain circumstances.

[1] Crossrail Bill Committee: Evidence Ev 2037 - 2041

[2] The Crichel Down Rules are now in the Ministry of Housing, Communities and Local Government 'Guidance on Compulsory Purchase Process and The Crichel Down Rules', issued in 2015 and amended in 2018.

14. The Rules provide as follows, so far as is material to this case:

> "**THE LAND TO WHICH THE RULES APPLY**
>
> 7. The Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition.
>
> …..
>
> 9. The Rules apply to all freehold disposals and to the creation and disposal of a lease of more than seven years.
>
> **THE GENERAL RULES**
>
> 10. Where a department wishes to dispose of land to which the Rules apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition…..
>
> …..
>
> **INTERESTS QUALIFYING FOR OFFER BACK**
>
> 12. Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may, at their discretion, offer the freehold to the former leaseholder if the freeholder is not interested in buying back the land.
>
> 13. In these Rules 'former owner' may, according to the circumstances, mean former freeholder or former long leaseholder, and his or her successor."

15. Rule 15 set out a number of exceptions to the obligation to offer back.

16. During the passage of the Bill, the Secretary of State adopted the C10 Policy, to supplement the Crichel Down Rules, in recognition of the fact that, at many Crossrail sites, a material change in the character of the land would have taken place, within the meaning of Rule 10, which would deprive former owners of the opportunity to re-purchase their land.

17. The main purpose of the C10 Policy is explained at paragraphs 2.2 and 2.3:

> "2.2 The main purpose of the Crossrail Land Disposal policy is to capture the situations at stations and other sites where land is materially changed in character and the requirement to offer

back an interest in land to the former owners would be excluded. The Crossrail Land Disposal Policy is supplementary to, and not in replacement of the Crichel Down rules. The exceptions from the obligation to offer back sites to former owners (apart from the specific aspect of land materially changed in character) contained in the Crichel Down Rules apply to all Crossrail land acquired under compulsion and subsequently released for disposal.

2.3 At station and working sites, there will be works involving the demolition of existing buildings and the construction of the railway works at ground level or below. Following completion of the railway works, these sites will become available for redevelopment above and around the Crossrail Works (Over Site Development – "OSD"). In such circumstances, it is unlikely that the Crichel Down Rules would require an offer back, as there will have been a material change in the character of the land."

18. Paragraph 3 provides:

"**3. The land to which this policy applies**

3.1 This Policy applies to any sites where the original land interests will have been acquired compulsorily or under the threat of the exercise of compulsory powers currently contained in the Crossrail Bill and which subsequently become available for disposal after construction of the Crossrail works.

3.2 The site boundaries of such land for disposal will be determined by the Secretary of State having regard to the former property boundaries, the works which have been carried out and the Guiding Principles referred to below.

3.3 Where larger sites have been assembled from a number of individually owned land parcels, it is expected that these sites will be disposed of as a whole, rather than in a fragmented manner, in order to meet the Guiding Principles referred to below.

3.4 The policy as set out in this document will be followed in all cases where land is available to be disposed of (except for those referred to in section 8 below).

3.5 This Policy does not apply where the Secretary of State disposes of any interest in land to a nominated undertaker for the purposes of the construction, operation or maintenance of Crossrail.

3.6 Where the Secretary of State uses his powers under the Crossrail Bill as enacted to appoint a "nominated undertaker"

or devolve the project to another public body, he will require the nominated undertaker and/or public body to adhere to this Policy. Accordingly, references in this document (including the Appendix) to the Secretary of State should be taken to refer to any such nominated undertaker or public body except where the context otherwise requires.

…"

19. Paragraph 4 provides, so far as is material:

"**4. The interest to be offered back**

4.1 Where the Secretary of State intends to dispose of an interest in a site to which this policy applies, holders of Qualifying Interests will, subject to the provisions of this Policy, be given first opportunity to acquire that interest at the market value before it is offered to the general market.

4.2 The Secretary of State will determine the nature of the interest to be offered and the terms of any transfer. In doing so, he will have regard to the following guiding principles ("the Guiding Principles").

4.2.1 the proper completion and operation in the public interest of the Crossrail works as authorised by the Bill as enacted;

4.2.2 the paramount requirement to protect the future safe and efficient operation of the railway;

4.2.3 the need to fulfil any undertaking given by the Secretary of State in respect of the Bill or comply with any legal obligations to which he is subject;

4.2.4 the need to secure in the public interest the carrying out of development or redevelopment associated with the Crossrail Works to meet the planning, environmental and heritage considerations applicable to the sites affected; and

4.2.5 the need for the land disposal to achieve the best value reasonably obtainable in so far as this is consistent with the principles outlined above."

…..

4.4 Where considered necessary, the Secretary of State may require holders of Qualifying Interests to demonstrate that they either have or can secure the necessary financial and development expertise to fulfil the terms of the transfer and to meet the Guiding Principles."

20. Paragraph 5 provides as follows:

> "**5. Interests qualifying for offer back**
>
> 5.1 The holders of the following interests ("Qualifying Interests") may qualify for the offer back of an interest under the terms of this Policy:
>
> (i) former freehold owners of the whole or part of a site; or
>
> (ii) those who, but for the acquisition of the Crossrail scheme, would have an unexpired lease of the whole site or part of the site with an unexpired term of more than 21 years at the time the property is being disposed of; or
>
> (iii) the successors of anyone who would have fallen into category (a) or (b) where, had the property not been acquired, the land interest would clearly have devolved upon those successors under a former owner's will or intestacy; or
>
> (iv) where there was fragmented ownership of the site at the date the property was acquired or occupied for railway works under the provisions of the Crossrail Bill as enacted, a consortium of former owners who have indicated a wish to purchase the land collectively.
>
> 5.2 Where only one expression of interest from a former owner or long leaseholder with a Qualifying Interest is made to acquire a site, that person will be given the opportunity to acquire the site at market value within the timescales set."
>
> 5.3 If there are competing bids for a site from former owners, it will be disposed of on the open market."

21. Paragraph 8 sets out a number of exceptions to the obligation to offer back.

History

22. In his witness statement, Mr Calum McBurney, Project Solicitor at Crossrail Limited, gave a detailed account of the history, which I accept as accurate.

23. The land that is the subject of the Claimant's claim (hereinafter "the Land in Issue") comprises plots 38a and b, 39, 39a, b, c, d, e and f in the plan exhibited to the Detailed Grounds of Defence and confirmed by Mr McBurney in his witness statement. The land which the Claimant leased prior to compulsory acquisition, namely, plots 39 and 39a (hereinafter "the Claimant Land"), only comprised part of the Land in Issue.

24. The Land in Issue was subject to permanent powers of compulsory acquisition under the powers of the 2008 Act. Part of the Land in Issue was within the Limits of Deviation for the railway and station works; the other plots were included in the deposited plans for the provision of working sites and the diversion of public utilities.

25. The eastern end of the recently completed Crossrail Woolwich station box sits below the Land in Issue and station ventilation fans and access points have been constructed at ground level above the station box within the boundary of the Land in Issue.

26. The Claimant Land formed one part of a larger plot of land (TGL134253) of which the LDA was the freehold owner.

27. On 24 October 2002, the LDA granted Industrial Development Partnership II (Nominee Company) Limited a lease for 999 years from 1 January 2000 of part of the land in TGL134253, which leasehold interest was comprised in TGL210985 ("the Headlease").

28. The Headlease was subject to a number of underleases. An underlease of Unit 16 Gunnery Terrace dated 24 June 2003, for 999 years less 10 days, registered in title number TGL223162 ("the Unit 16 Underlease") was made between Industrial Development Partnership II (Nominee Company) Limited and Industrial Development Partnership II (Trading Subsidiary) Limited.

29. On 31 July 2003 the Claimant acquired the Unit 16 Underlease. On 19 February 2004 the Claimant was entered on the proprietorship register in respect of the Unit 16 Underlease.

30. The Unit 16 Underlease premises were occupied by Citipost AMP Limited, which was the company operated by the Claimant that petitioned against the Bill.

31. Notice to Treat and Notice of Entry were served on Citipost AMP Limited on 3 September 2009.

32. On 14 January 2010 a General Vesting Declaration ("GVD") was made in relation to land at Woolwich, including the Land in Issue. The GVD land was registered in the name of the Secretary of State under title TGL330908 and subsequently transferred to TfL.

33. The GVD vested all interests in the various plots of land in the Secretary of State, save for the interests of the LDA and the persons in actual occupation. The acquisition and vesting thus included the relevant part of the Headlease and all underleases (including the Unit 16 Underlease of the Claimant Land) within the GVD land (to the extent that the under-lessees were not the parties in occupation).

34. Notice of the making of the GVD was served on the Claimant on 19 January 2010.

35. B55 acquired from the LDA the freehold of a large area of land, including the Land in Issue, known as the Former Royal Arsenal and the Warren at Woolwich ("the LDA Land") pursuant to a transfer dated 11 February 2011 ("the LDA Transfer").

36. On 15 February 2011 B55 transferred, for a consideration of £1, the freehold of part of the LDA Land to TfL.

37. All the B55 Land fell within the area of land to be acquired under the 2008 Act. The B55 Land was required for the purposes of Crossrail. The Land in Issue formed part of the B55 Land.

38. On 6 March 2017, the Defendant wrote to all those which it had determined had a Qualifying Interest in the Land in Issue, under the C10 Policy, to inform them that the Land in Issue had been identified as not being required after the completion of the Crossrail works, and that an interest in the Land in Issue was to be disposed of in accordance with the terms of the Policy.

39. Because of the demolition of the existing buildings, and the development of the station infrastructure underneath the land, the Defendant proposed to dispose of the Land in Issue under the terms of the C10 Policy as either an interest in a joint venture agreement with TfL to develop a substantial "over station development" or a long leasehold interest in the Land in Issue.

40. The proposed development on the Land in Issue, subject to the planning consent obtained by the Defendant, comprises a residential over station development comprising 394 units and $734m^2$ of non-residential floor space within five buildings surrounding a central landscaped podium, and the Crossrail station ventilation shaft and service buildings, together with associated car parking access, servicing and landscaping.

41. Letters were sent in identical terms to all those who were determined to have Qualifying Interests, namely (1) the Claimant; (2) B55; (3) Lloyd Christopher Briscoe; (4) JTA Joinery Limited; (5) Dobbyman Investments Limited; and (6) C&P Management Woolwich Limited.

42. Only B55 and the Claimant expressed an interest in acquiring an interest in the Land in Issue. The Claimant expressed his interest by letter dated 23 March 2017 from his solicitor. He was not notified of the identity of the others who were considered to have Qualifying Interests.

43. On 24 May 2017, the Defendant wrote to the Claimant's solicitor stating that since two expressions of interest had been received, the Land in Issue would be disposed of on the open market in accordance with the terms of paragraph 5.1 of the C10 Policy.

B55's interest in land

44. The Defendant decided that B55 had a Qualifying Interest because it was the former freehold owner of the whole of the Land in Issue.

45. Mr McBurney's evidence about Berkeley Homes and B55 was based upon information provided by Ms Pritchard, Group Solicitor of the Berkeley Group, and documents seen by him, referring to previous agreements (which he has not seen). This was the best evidence available to the Court and it was not challenged by the Claimant.

46. Berkeley Homes has had an interest in carrying out a major redevelopment scheme in Woolwich since the late 1990's, pre-dating the Crossrail project. Pursuant to a development agreement ("the LDA Development Agreement") between the LDA, Berkeley Homes (East Thames) Limited and Berkeley Homes dated 23 July 2003, the LDA and Berkeley Homes (East Thames) Limited contracted to secure the comprehensive and phased regeneration and development of land at Woolwich.

47. Pursuant to the LDA Development Agreement, Berkeley Homes had the right to drawdown head leases (for a term of 999 years) of development sites once a specified stage of development of such development sites was reached. Pursuant to this arrangement the LDA retained the freehold to the wider Woolwich area that was the subject of the LDA Development Agreement and retained responsibility for the management and maintenance of the roads, services and areas of the LDA Land not subject to the head leases, such as open spaces and listed buildings. The maintenance and repair costs of such areas were changed as service charge by the LDA under the head leases, in addition to the service charges accruing under the leases.

48. Berkeley Homes recognised that the Crossrail project required TfL to own the land through which the railway would run, and that the Act included powers of compulsory acquisition of land to create a protective envelope around the railway line and infrastructure. Berkeley Homes considered that the compulsory acquisition powers would sterilise its ability to maximise its development area as it would not be able to draw down a lease from the LDA that straddled the railway line and infrastructure. From Berkeley Homes' perspective, this would compromise the development potential of a significant area of land.

49. In 2009, a Woolwich Station Box Deed was entered into between the Secretary of State, TfL, the Defendant, Berkeley Homes and Berkeley Homes (East Thames) Limited with regard to the construction of a station box at Woolwich. The original agreement was executed and held in escrow pursuant to an escrow letter dated 16 March 2009 with the intention that it would be completed following the satisfaction of certain conditions. In the event, the original agreement was never completed.

50. Ms Pritchard explained that, at the point of negotiation and execution of the Original Agreement, the fitting-out of the Woolwich station box was not guaranteed to occur. The Original Agreement therefore contained provisions as to what might occur in the event that it was not fitted-out by a longstop date. The eventual fitting-out of the station box was dependent upon funding and the banking crisis which had begun in 2008 meant that there was a real prospect that the fit-out would not occur.

51. Ms Pritchard explained that the requirement for a financial contribution towards the cost of construction of the Crossrail station box at Woolwich presented an opportunity for Berkeley Homes to negotiate a series of transactions which would also enable it to preserve the development value of its site. In the course of construction of the station box, Berkeley Homes (East Thames) Limited could also construct a residential development in the airspace above the central section of the Crossrail station box and construct the foundations for these buildings immediately alongside the station box without the risk to the railway that might come from later construction activity. Such an arrangement would require Berkeley Homes to acquire a leasehold interest in the land above the relevant part of the station box.

52. Ms Pritchard recalled that it was significant from Berkeley Homes' perspective that the Original Agreement would have required Berkeley Homes (East Thames) Limited, the intended contractor, to enter into separate arrangements with the LDA to have access to its land and over the estate roads in the course of construction of the Woolwich station box. The delivery of the station box had to meet a tight time frame to avoid Berkeley Homes being in breach of contract. By acquiring the LDA Land, the risk of delay to Berkeley Homes in obtaining LDA approvals was removed.

53. Berkeley Homes concluded that it would like to acquire the freehold of the LDA Land to simplify arrangements relating to (i) the management of the LDA Land in which Berkeley Homes had long leasehold interests; (ii) the levying of service charges on residents; and (iii) construction of the Woolwich station box.

54. The LDA Agreement. Pursuant to a transfer agreement dated 11 February 2011 between (1) the LDA, (2) B55, (3) Berkeley Homes (East Thames) Limited; (4) The Berkeley Group plc; (5) Berkeley Homes (West London) Limited; and (6) Berkeley Homes ("the LDA Transfer Agreement"), B55 agreed, *inter alia*, to acquire from the LDA the freehold to the LDA Land for a purchase price of £3,000,000. The transfer of the LDA Land, by way of the LDA Transfer, was also completed on 11 February 2011. The Defendant did not have a copy of the LDA Transfer Agreement.

55. The B55 Agreements. The B55 Agreements were made up of:

    i) A transfer agreement dated 15 February 2011 between (1) the Secretary of State; (2) B55; (3) TfL; (4) Berkeley Homes (East Thames) Limited, and (5) Berkeley Homes ("the B55 Transfer Agreement");

    ii) The B55 Transfer of the B55 Land entered into pursuant to the provisions of the B55 Transfer Agreement;

    iii) A deed dated 15 February 2011 between (1) the Secretary of State; (2) Berkeley Homes (East Thames) Limited; (3) Berkeley Homes; B55; Crossrail; TfL ("the Woolwich Station Box Deed") which replaced the original agreement;

    iv) A lease dated 18 April 2013 between TfL and B55 ("the Lease") entered into pursuant to the provisions of the B55 Transfer Agreement.

56. The recitals to the B55 Transfer Agreement record that:

> "(A) [B55] owns land and interests in the London Borough of Greenwich which are affected by the Act.
>
> (B) The parties have agreed to enter into this Agreement to facilitate on the one hand the redevelopment of Woolwich Arsenal and protect [B55's] land and interests and on the other hand the implementation of the Crossrail Project."

57. The B55 Transfer Agreement provided for:

    i) Agreement on the part of the Secretary of State (with certain exceptions) not to exercise compulsory purchase powers over "the Site" (an area which included the B55 Land). The B55 Agreements were negotiated on the basis that in the absence of agreement, the powers of compulsory purchase existed and would be exercised. The B55 Transfer Agreement provided for the B55 Transfer as substitute for the exercise of those powers and rights.

    ii) Entering into the B55 Transfer. The B55 Transfer Agreement distinguished between two separate parts of the B55 Land, namely:

a) The Station Box Land (as defined in the B55 Transfer Agreement), shown edged in red on the plan at Annexure A thereto; and

b) The Demolition Land (as defined in the B55 Transfer Agreement) shown edged in blue on the plan at Annexure A thereto, which lies to the east of Arsenal Way.

iii) Entering into, upon practical completion of the station box in accordance with the Woolwich Station Box Deed, of the Lease relating to Berkeley Homes residential development above the central part of the Crossrail station box.

58. While the B55 Transfer Agreement contemplated the development by B55 of that part of the Station Box Land west of Arsenal Way, it did not grant any development rights to B55 over the Land in Issue. The reason was that the Land in Issue was, prior to its compulsory acquisition, subject to 999 years' leases held by the Claimant and others, and therefore any future development and disposal would have been subject to the terms of the Policy.

59. The B55 Transfer was completed on 15 February 2011. The consideration was only £1. There were a number of reasons for this. (1) The B55 Land was a very small part of the LDA Land that had been acquired by B55. (2) The part of the freehold title of the B55 land comprising the Land in Issue was subject to two 999 years' leases. (3) The B55 Land included an estate road of little or no value. (4) The transfer was subject to the terms of the B55 Transfer Agreement which provided for the grant of the lease for 150 years back to Berkeley Homes in respect of that part of the Station Box Land to the west of Arsenal Way upon satisfaction of the condition precedent, also for consideration of £1. The obligation to grant the lease thus stripped out a significant proportion of the value of the freehold interest in the B55 Land.

Conclusions

60. The Claimant Land, in respect of which he held a long lease, was acquired compulsorily for the purposes of constructing the Crossrail railway. As a result, he was eligible for compensation for the loss of his leasehold interest.

61. Once the railway and the station at Woolwich was constructed, the surface of the Claimant Land was no longer required for railway purposes. However, the Claimant was excluded from the scope of the Crichel Down Rules by Rule 10 thereof, because there had been a material change in the character of the land in the course of the Crossrail construction works. The buildings in Gunnery Terrace, including the Claimant's property at no. 16, had been demolished and ventilation fans and access points had been constructed to serve the station box which had been built underneath it.

62. The Defendant correctly concluded that the C10 Policy applied to the Land in Issue. Applying the discretionary powers conferred by paragraphs 3.2, 3.3 and 4.2 of the C10 Policy, the Defendant decided to dispose of the land as one large site, comprising smaller sites which had previously been leased to separate bodies. The Land in Issue was offered as either an interest in a joint venture agreement with TfL to develop a substantial "over station development" or a long leasehold interest in the Land in

Issue. The Claimant made no complaint about the Defendant's decision to dispose of the land in this manner. Indeed, he was keen to take advantage of the commercial opportunities offered by the redevelopment.

63. The Defendant determined that former leaseholders of parts of the Land in Issue held Qualifying Interests entitled them to bid. In addition to the Claimant, offer letters were sent to four other bodies. The Claimant accepted that this was a proper application of the C10 Policy. The Defendant also determined that B55, as the former freeholder of the Land in Issue, held a Qualifying Interest, entitling it to bid. The Claimant accepted that, in principle, a former freeholder would hold a Qualifying Interest entitling it to express an interest, but disputed B55's eligibility to hold a Qualifying Interest in the particular circumstances of this case.

64. Under the terms of paragraph 5.2 of the C10 Policy, where only one holder of a Qualifying Interest makes a bid, that body will be given the opportunity to acquire the site at market value (subject to the need to demonstrate, under paragraph 4.4, that it has the necessary financial and development expertise). However, by paragraph 5.3, wherever there are competing bids from holders of Qualifying Interests, the site will be disposed of on the open market. It follows that, if there had been a bid from any one of the other former leaseholders or an undisputed freeholder (such as the former freeholder, the LDA), the Claimant would have lost his opportunity to obtain the Land in Issue on preferential terms. Of course, he would still be able to make an offer in the open market sale.

65. The Claimant rightly recognised that it was not open to him to challenge these provisions of the C10 Policy, following the failure of the challenge in *R (Pritchett) v Crossrail Ltd* [2017] EWCA Civ 317.

66. The Claimant's primary attack on B55's eligibility to hold a Qualifying Interest was based upon the wording of Rule 7 of the Crichel Down Rules which provides:

> "7. The Rules apply to all land if it was acquired by or under threat of compulsion. A threat of compulsion will be assumed in the case of a voluntary sale if power to acquire the land compulsorily existed at the time unless the land was publicly or privately offered for sale immediately before the negotiations for acquisition."

67. Although the Defendant accepted that Rule 7 applied, it seems to me that, as the C10 Policy was applied in this case, the material provision is paragraph 3.1, which provides:

> "3.1 This Policy applies to any sites where the original land interests will have been acquired compulsorily or under the threat of the exercise of compulsory powers currently contained in the Crossrail Bill and which subsequently becomes available for disposal after construction of the Crossrail works."

68. In any event, both provisions have essentially the same purpose, namely, to limit the application of the policy to cases where the interest in land has been acquired compulsorily or under the threat of compulsory purchase.

69. The Claimant submitted that the Defendant did not properly apply its mind to the question whether B55's freehold interest was, in all the circumstances, acquired under threat of compulsion within the meaning of Rule 7, and that the Defendant erred in concluding that it did. The Claimant argued that Berkeley Homes and B55 had acted in concert with the Defendant so as to gain a Qualifying Interest in order to promote their own commercial interests and defeat the Claimant's rights. It was further submitted that the transaction was expressly excluded by the terms of Rule 7 because the land was "publicly or privately offered for sale immediately before the negotiations for acquisition".

70. I cannot accept the Claimant's submissions. The Land in Issue fell within the compulsory acquisition powers of the Act and was needed for the construction of the Crossrail station and railway at Woolwich. The acquiring authority under the Act, TfL, had the power to compulsorily acquire the Land in Issue and would necessarily have had to exercise those powers in order to build the station if an agreement had not been reached with the relevant landowners, including B55.

71. The B55 Transfer Agreement was negotiated on the basis that there were compulsory purchase powers in existence which would be exercised if the B55 Transfer did not take effect. The fact that land is acquired voluntarily, in the sense that an agreement is reached between the acquiring authority and the landowner, does not mean that the land is not acquired under the threat of compulsory purchase powers. Indeed paragraph 7 of the Crichel Down Rules 2004 expressly provides that, in the case of a voluntary sale where compulsory powers exist, the sale will be assumed to have taken place under a threat of compulsion.

72. I accept the Defendant's submission that the exception in Rule 7, where land was offered for sale before the negotiations for acquisition, is intended to cover the situation where the landowner has already placed his property on the market for sale before compulsory acquisition negotiations commenced, and so should not be allowed fortuitously to benefit from the Crichel Down Rules. That exception plainly does not apply here on the facts, where compulsory acquisition was imminent by 15 February 2011, when B55 sold the freehold to TfL.

73. In my view, neither Rule 7 of the Crichel Down Rules, nor paragraph 3.1 of the C10 Policy, excludes from the scope of those schemes a person who has recently purchased a freehold interest in land, which was already under threat of compulsory acquisition, with a view to selling it to the acquiring authority. Nor do I consider that such a purchase and re-sale is contrary to the underlying purpose of the two schemes.

74. On the evidence, Berkeley Homes and B55 were seeking to promote their own commercial interests as the principal developer in Woolwich. The purchase and sale of the freehold of the Land in Issue was a part of that larger project. The sale for the consideration of £1 is explained by the factors set out at paragraph 59 above. Essentially, the B55 Land was considered to be of limited value. There is no basis for asserting that these complex transactions were unlawful or made in bad faith. Nor is there any evidence that this was a device intended to deprive the Claimant of his entitlement. The Claimant's land interest was very small indeed compared with Berkeley Homes' interests in the Woolwich area, and I am satisfied that Berkeley Homes and B55 were motivated by much wider considerations.

75. The Claimant's status as a former leaseholder, and thus the holder of a Qualifying Interest, was not touched by the B55 transactions. Under both the Crichel Down Rules and the C10 Policy, a former freeholder had the opportunity to bid, in addition to any leaseholder. So if the LDA had retained the freehold, and not sold it to B55, it would have held a Qualifying Interest entitling it to bid against the Claimant, potentially triggering disposal on the open market, pursuant to paragraph 5.3 of the C10 Policy.

76. In conclusion, I consider that the Defendant lawfully applied the C10 Policy to the Land in Issue, and the Claimant's claim for judicial review is dismissed.