

**THE HOUSING ACT 1985**  
**AND THE ACQUISITION OF LAND ACT 1981**  
**BRENTWOOD BOROUGH COUNCIL (33 AND 33A BRITANNIA ROAD**  
**WARLEY) COMPULSORY PURCHASE ORDER 2007**

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**STATEMENT OF CASE**  
**OF THE ACQUIRING AUTHORITY**

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PURSUANT TO RULE 7 OF THE COMPULSORY PURCHASE BY NON-  
MINISTERIAL ACQUIRING AUTHORITIES (INQUIRIES PROCEDURES)  
RULES 1990

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## **1. INTRODUCTION**

1. This Statement of Case (“the Statement”) has been prepared on behalf of Brentwood Borough Council (“the Council”) in its capacity as acquiring authority pursuant to Rule 7 of the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedures) Rules 1990.
2. On 10 July 2007 the Council made the Brentwood Borough Council (33 and 33a Britannia Road Warley) Compulsory Purchase Order 2007 (“the Order”). The Order was made pursuant to the Council’s resolution of 7 June 2006.
3. The Order was submitted to the Secretary of State for Communities and Local Government (“the Secretary of State”) for confirmation on 5 September 2007. One objection to the Order was received. The Secretary of State by way of a letter dated 10 October 2007 has given notice of her intention to hold an inquiry into the objection.
4. This Statement sets out the particulars of the Council’s case for the making of the Order as will be put forward at the inquiry. It seeks to supplement but not duplicate the Council’s statement of reasons, which should be read along with this Statement.

## **2. BACKGROUND**

5. The Council is seeking to assemble land for housing development. The land to be developed comprises first its own land, namely five houses numbered 23, 25, 27, 29, and 31 Britannia Road, 23 garages to the rear of the houses and a small piece of land adjacent to 19 Tyrell Rise adjacent to the garages, and secondly the land and associated rights and interests included in the Order (“the Order Land”).
6. The Order Land is more fully described in Section 3 of this Statement. The interests and rights comprising the Order Land are identified in the schedule to the Order, which refers to the maps accompanying the Order.
7. The Order Land is required to secure the comprehensive redevelopment of the terrace of houses on the southern side of Britannia Road in Warley which are suffering from progressive movement due to their foundations having been constructed upon significant depths of the weak sub soil strata of an infilled gravel pit. The redevelopment proposals arise from the need to deal with the structural problems encountered by the houses at 23 to 33 Britannia Road.

8. As a result of severe cracking to the Council-owned property at 23 Britannia Road, the Council commissioned a structural survey report in 1996 and engaged Walker Associates Consulting Limited ("Walker Associates") as consulting structural engineers to investigate the settlement and superstructure cracking. At that time Walker Associates considered the most likely reason for the severe cracking to be soft subsoil conditions apparently arising from leaking drainage. The property was partially underpinned in 1997 and the leaking drains repaired in accordance with the recommendations of Walker Associates.
9. However, the underpinning and repaired drainage only alleviated the problem briefly and by 2003 the condition of No 23 had deteriorated to such a degree that the Council once again consulted Walker Associates for further advice. Walker Associates revisited No 23 and advised that the previous intervention had not resolved the problem and that a more in-depth investigation of the area would be required.
10. This recommendation was accepted by the Council and a number of wider ranging investigations were agreed to be undertaken, which included the procurement of historical maps, the appointment of geotechnical and civil engineers Mike Rowell Associates to undertake and advise on soil investigations by means of boreholes and dynamic probing to produce a profile of the ground conditions, and the appointment of distortion specialists Gryphon Surveys Land Surveyors to undertake both horizontal and vertical level surveys to produce drawings to show the movement occurring.
11. The background to the work carried out by Walker Associates is explained in the Structural Report dated August 2005 which formed Appendix 2 to the Council's statement of reasons.
12. The Structural Report refers to distortion specialists, Gryphon Surveys, verticality and level surveys of May 2004 and May 2005. A more recent investigation was undertaken on 21<sup>st</sup> November 2007 and the drawing is attached at Appendix 1. The survey shows new readings to the front of Number 33 confirming a severe lean inwards, as adjacent properties and an increase in the reading at the front of Number 31 indicating progressive movement.
13. An Envirocheck search of the historical maps (exhibited at Appendix B to Walker Associates Structural Report dated August 2005) revealed that most of the land upon which the affected properties were constructed lies within the site of a former gravel pit. The site investigations revealed that the properties are constructed on "significant depths of weak soils, generally soft or very soft clays in excess of 4.0 mbgl in the case of the 15-

33 terrace” (Walker Associates Structural Report dated August 2005, section 5 and dynamic probe test data in Appendix C).

14. Walker Associates found that “all the section of the terrace from 21 to 33 was suffering from settlement to varying degrees” (section 2) due to being constructed on weak materials resulting from the backfilling of a former gravel pit. These weak materials cause settlement to occur, with 23-33 Britannia Road being the most severely affected. Walker Associates concluded that the terraces are moving, and without intervention will continue to do so for the foreseeable future.
15. The brickwork walls were found to be severely out of plumb and were being retained only by the restraining effects of the roof and floor carcasses, return corners and internal walls. In order to remedy the defects it would be necessary to remove the roofs of the houses together with the ground and first floor carcasses and reduce the external walls to a height of about 6 feet. The remedial steps would amount to a virtual demolition and rebuilding of the houses.
16. Walker Associates concluded that it would be more beneficial and safer to demolish and rebuild the worst affected properties rather than to preserve any part of their existing structure. They recommended demolition and redevelopment as the appropriate solution, including to make the best use of the land available.
17. Walker Associates commented at paragraph 7 of their report that No 33 “would appear to be in a similar, possibly worse condition than the other properties in the terrace.” In March 2006 the Council asked Walker Associates specifically to consider 33 Britannia Road, as the previous report had concentrated on properties within the Council’s ownership.
18. At paragraph 3 of the addendum report of March 2006 (Appendix 3 to the Council’s statement of reasons), Walker Associates stated that “Number 33 appeared to be located over the central and possibly the deepest section of the original gravel works”.
19. Given the degree of distortion suffered by No 33 it was considered to be in a volatile and dangerous condition, being 99mm out of plumb to its flank wall leaning over a public footpath which would necessitate temporary shoring, 40mm out of horizontal level across the 1.2m length of the front bay alone, and 77mm leaning out towards the rear at the Nos 31/33 party wall line. Given its condition and its location adjacent to a public footpath, Walker Associates concluded that No 33 was a dangerous structure and could collapse in strong winds without shoring. On 11 May 2006 the Council wrote to the freeholder’s agent, Mr Freeman, advising that the Council would apply to the Magistrates Court for an Order to execute

works under Section 77 of the Building Act 1984 unless the flank wall was shored up due to its dangerous condition. The property was subsequently shored up by the freeholders.

20. This background explains why the redevelopment of the land at Britannia Road is being considered. Redevelopment is necessitated by the very poor structural condition of the Council's properties. Given that redevelopment of those properties is necessary, the Council wishes to acquire the property at No 33 Britannia Road in order to enable a comprehensive redevelopment of the terrace and adjacent land in order to secure both a quantitative and qualitative housing gain.

### **3. DESCRIPTION OF THE ORDER LAND**

21. 33 Britannia Road is a two storey Victorian brick built house occupying the corner plot in a terrace of ten houses. No 33 has been converted into two flats each of which is held on a 99 year lease. The Council acquired the leasehold to the first floor flat, No 33a, on 23 March 2007. The ground floor flat, No 33, is occupied by a leaseholder, Ms Trampleasure.

### **4. THE PURPOSE OF THE ORDER**

22. Part II of the Housing Act 1985 is concerned with the provision of housing accommodation. Under s8 a local housing authority is obliged to consider, among other things, the needs of its district with respect to the provision of further housing accommodation. Under s9 a local housing authority may provide housing accommodation by erecting or acquiring houses, or may allow another person to provide housing on its land.
23. Under s17(1) a local housing authority may acquire land as a site for the erection of houses and may acquire houses together with land occupied with the houses. "Land" includes buildings and other structures.
24. Section 17(2) includes power to acquire land for the purpose of disposing of houses provided, or to be provided, on the land, or of disposing of the land to a person who intends to provide housing accommodation on it. Section 17(3) specifically empowers a local housing authority to be authorised by the Secretary of State to acquire land compulsorily for the purposes of Part II.
25. Section 18 imposes restrictions on the use of land or houses acquired under s17, in that the acquiring authority must, as soon as practicable after the acquisition, secure that the house or building is used as housing accommodation.

26. The ambit of s17 (and its predecessors) has been considered by the courts on a number of occasions. It has been established that there is no requirement that the land or houses acquired must be vacant, nor is there a prohibition on acquisition if there is an owner occupier or owner in residence (see Tsao v SSE and Kensington and Chelsea RBC [1996] 28 HLR 259, 262). It is also permissible to acquire housing accommodation so as to improve its state of repair (see Andreseir v Minister of Housing and Local Government [1965] LGR 483, 488; R v SSE, ex p Kensington and Chelsea RBC (1987) 19 HLR 161, 168, 170; Joyce v Secretary of State [2002] EWHC 2213 (Admin)).
27. Appendix E to Circular 06/2004 advises that: “Section 17 of the Housing Act 1985 (‘the 1985 Act’) empowers local housing authorities to compulsorily acquire land, houses or other properties for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.”
28. The purpose of the Order in this case is to acquire land for housing development, in particular a comprehensive redevelopment of the terrace, its gardens, the garages and the intervening strip of land. The Order itself explains that its purpose is “facilitating the redevelopment” of the terrace from 23-33 Britannia Road together with adjacent land. Section 3 of the Council’s statement of reasons explains that the purpose of acquisition is to “enable the redevelopment of the site” at the junction of Britannia Road and Wellington Road. This is squarely within the s17 power, as explained in Appendix E to Circular 06/04 at paragraph 4: to assemble land for housing development.
29. The Government has recently confirmed that compulsory purchase powers are important tools to assemble land to bring about social and economic change, and to contribute towards regeneration and the revitalisation of communities (Circular 06/04, para 1). Again, the proposals here meet these objectives.
30. The benefits cited in the Order are both to secure a quantitative housing gain and a qualitative gain in replacing the existing defective properties with new homes. The comprehensive redevelopment would provide the opportunity to create a different arrangement of new modern dwellings, with a greater number of units of accommodation, which would represent a quantitative and qualitative housing gain. The benefits arising from the use of compulsory purchase powers in this case are explained further below.

## 5. THE SCHEME

31. The Council will present evidence to the inquiry describing the proposals for the development of the land including the Order Land (“the Scheme”).
32. The Scheme is a comprehensive redevelopment of a 0.202 hectare site. The demolition of the existing structures on the site will be necessary, including No 33. No 33 comprises one building divided into two flats. The Scheme includes the redevelopment of five further dwellings, namely 23, 25, 27, 29, and 31 Britannia Road. These properties, as well as the other land required, are within the Council’s ownership.
33. South Anglia Housing Association, the Council’s preferred development partner, has prepared designs for the Scheme and submitted a planning application. The application documents and drawings describe the Scheme in detail.
34. The Scheme comprises amongst other elements 14 new homes on the site, replacing the existing six houses (and seven dwellings, given that No 33 is split into two flats). The mix of units is as follows:
  - 5 x 3 bedroom houses
  - 1 x 2 bedroom house
  - 1 x 1 bedroom flats
  - 7 x 2 bedroom flats
35. The Scheme will therefore provide 32 bedrooms in place of the existing 17 bedrooms. It will also provide 58 habitable rooms in total in place of the existing 31 habitable rooms in the five houses and two flats. On any measure, therefore, there will be a very substantial quantitative housing gain.
36. In addition, parking will be provided, both for these homes and generally to serve the locality. The opportunity will also be taken to improve the visual amenity of the unsightly garage area, via a mix of new parking provision and sensitive landscaping.
37. The Scheme will be designed and built to Housing Corporation development standards, and so as to conform with the Lifetime Homes standard and Secure by Design guidance. The new homes will also be built to high eco-home standards as required by the Housing Corporation. The Scheme will contribute to the number of ‘decent homes’ in the Borough. By comparison with the quality presented by the existing dwellings on the land, there will be a very substantial qualitative housing gain.

## **6. JUSTIFICATION FOR THE USE OF COMPULSORY PURCHASE POWERS**

38. Section 2 above explains why redevelopment of the terrace generally is necessary. The Scheme is proposed to use the opportunity presented by the need to redevelop the terrace in order to meet the Borough's housing needs.
39. There is strong policy support at all levels for the construction of more housing and in particular more affordable housing. There is clearly a pressing need for housing in this part of the East of England. Section II of the Government's Housing Green Paper refers to the need for new homes to meet the growing demand, and in particular the need to address the more effective use of public sector land. Both the regional and London commuter-belt sub-regional strategies, and the Council's own Housing Strategy, translate that demand and need into the local setting.
40. There is a very substantial need for affordable housing in the Borough, as evidenced by the independent housing needs survey (HNS) carried out in 2004 (Appendix 4 to the statement of reasons). The level of need in the Borough was above average. The HNS showed that there would be a large shortfall of affordable housing in the Borough. This is compounded by a lack of new supply, arising in part from the lack of suitable land available in the Borough. This survey is set out in full at Appendix 2.
41. There are over 1,000 applicants for affordable housing on the Council's Housing Register, and just under 400 existing social housing tenants on the transfer list waiting to move to more suitable accommodation. There are 88 households in temporary accommodation, having presented as homeless.
42. The Scheme will meet a pressing need for more affordable housing in the Borough, including social rented housing, and smaller units of housing. Ten of the new homes are to be affordable rented accommodation and four are to be affordable shared ownership accommodation.
43. The Scheme would represent a quantitative housing gain in the housing units thereby created and a qualitative housing gain in that the new development would be structurally stable and built by reference to modern housing standards. The Scheme will allow the creation of a different arrangement of dwellings which provides a much more efficient use of the land, with a greater number of dwellings accommodated on the land.
44. The position of No 33 is critical as regards the ability to redevelop the site as proposed. With No 33 remaining it would only realistically be possible to rebuild houses to replace Nos 23, 25, 27, 29 and 31 like for like. The ability to use the land at the corner and opposite Nos 12 to 20 Britannia

Road would be lost. The ability to use effectively the land released by demolishing the garages would also be severely compromised.

45. The Order Land is required in order to secure the carrying out of the Scheme. It is plain commonsense that the unstable terrace, including No 33, should be comprehensively redeveloped as part of a single scheme, which seeks to make the best use of the land in this location. It is also commonsense that No 33 should be demolished at the same time as the rest of the terrace, and not separately rebuilt, to allow redevelopment of the terrace as a whole, because of concerns for the structural integrity of the buildings and the drastic measures that are required to arrest the movement of the terrace. There is a compelling case in the public interest for the acquisition.
46. There are two freestanding reasons why the compulsory acquisition of the Order Land is necessary. Either would justify the purchase on its own. The first is that no satisfactory redevelopment of the terrace could be achieved without the inclusion of the Order Land. The second is that safety considerations require that, if the rest of the terrace is to be redeveloped, as it is, No 33 should not be left standing isolated next to the site. For either or both reasons, it is necessary to acquire the Order Land in order to achieve the objective of the Order and the Scheme.
47. It would be entirely impractical to demolish the houses at Nos 23-31 and redevelop the site with No 33 in situ, standing isolated at the end of Britannia Road. Redevelopment of the terrace cannot be satisfactorily achieved without the inclusion of No 33 in the Scheme. There is no viable development of the site which excludes the Order Land.
48. In particular, if No 33 were left in place it would have a very significant limiting effect on the design and layout of any housing scheme for the remainder of the terrace and the other adjoining land. It would also reduce the land available for redevelopment, and would reduce the quantitative housing gain possible as part of a redevelopment. A substantial housing gain could not be achieved whilst leaving No 33 in place.
49. It is also the case that, given that the remainder of the terrace is to be redeveloped, safety considerations require that No 33 should not be left standing isolated next to the site. At the moment, No 33 is in an unsafe and dangerous condition, requires underpinning and is currently shored up as a temporary measure. It will continue to move without drastic intervention, probably more so once the lateral restraint offered by the remainder of the terrace is removed. Removing No 31 onwards and leaving No 33 in place will remove lateral restraint and will require temporary shoring to the flank, rear and adjoining wall.

50. Moreover, because of the soft sub strata it is essential not to create a 'hard spot' and it therefore makes sense to redevelop the terrace as a whole by demolishing all the buildings at the same time and providing new piled foundations for the new dwellings.
51. If redevelopment was undertaken leaving No 33 in place, No 33 would require substantial remedial works amounting to the almost entire rebuilding of the house merely to ensure that it was safe. The necessary remedial works would be very extensive and uneconomic. No detailed proposals have been advanced by the freeholders for the repair or redevelopment of No 33. In all the circumstances, there is no likelihood that the works would be carried out, particularly in an acceptable form and within the required timescale.
52. In the absence of detailed proposals and a firm and binding commitment from the freeholders of No 33, the retention of No 33 presents a safety risk which justifies the inclusion of the Order Land within the Scheme, as part of a comprehensive redevelopment of the terrace and adjoining land.
53. On the other side of the balance, there are very limited private disbenefits arising from the Order. The freeholders (and only objectors) do not occupy the house and would be compensated for their loss, which is purely financial. The one resident leaseholder would also be compensated to enable her to move. The Council is prepared to offer her open market value, calculated on the assumption that there is no defect with the property for this purpose, to enable her to purchase an alternative property on the open market. This is in excess of the statutory compensation due. She has not objected to the Order. In the circumstances, the Order will not have an excessive or disproportionate effect on the individuals affected by it. The effect will be relatively minor, certainly by comparison to most such proposals.
54. The private disbenefits of the Order are therefore very limited. Any infringements of the freeholders' and leaseholder's rights are outweighed by the need for the Scheme to provide more residential accommodation of modern standards. The purposes of making the Order, and the benefits arising therefrom, more than justify the interference with the private rights of the two parties affected.
55. In this case, the considerable public benefits outweigh the very limited private losses, which will be compensated in any event. The inclusion of the Order Land in the redevelopment proposals presents an overall public benefit which justifies the private loss of the land.

56. The Council formally instructed the District Valuer to negotiate with the freeholders and leaseholders on 11 May 2006. As a result of these negotiations, the Council bought the leasehold interest of 33a. Negotiations with the freeholder and one remaining leaseholder have stalled. Compulsory acquisition is therefore necessary as a last resort.
57. Prior to the availability of compulsory purchase powers, the Council will attempt to continue discussions with owners of relevant interests who are willing to sell their interest by agreement. This approach of making the Order and, in parallel, conducting negotiations to acquire land by agreement is in accordance with the guidance given in paragraph 24 of Circular 06/04.
58. The Order is necessary and in the public interest. The Order Land is suitable and required in order to meet the pressing need for the Scheme. The Council is sure that the purposes for which it is making this compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected.

## **7. THE PLANNING POSITION**

59. On 1 November 2007 South Anglia Housing Association, the Council's preferred development partner, applied for planning permission for the Scheme, including the demolition of existing buildings and structures and the redevelopment of the area for six houses and eight flats and associated parking and landscaping. The planning application is attached at Appendix 3 together with drawings numbered PL01C, PL03F, PL04D and PL05D.
60. The Scheme deposited by South Anglia Housing Association is very close in design terms to the original redevelopment brief (Appendix 5 to the Council's statement of reasons), which was produced jointly by the Council's Housing and Planning departments. It meets the site specific planning considerations.
61. A preparatory s105 Housing Act 1985 consultation has been carried out, to enable the secure tenants who are likely to be substantially affected to be informed of the Council's proposals, and to make their views known formally to the Council. The design has taken into account the results of consultation as appropriate, through some changes to the parking layout near 15-19 Tyrell Rise and the detachment of the new build from the existing dwellings at 19 Tyrell Rise and 21 Britannia Road.

62. The redevelopment brief contained in Appendix 5 to the Council's statement of reasons summarised the planning policy position, although it should be noted that PPS3 has superseded PPG3 on housing.
63. Given the pre-application consultations and the provisions of the redevelopment brief and the statutory development plan and national planning policy, and given that the existing use is residential, it is likely that planning permission will be granted. Certainly there is no obvious reason why planning permission should be withheld. The planning application is currently expected to be considered at the Planning Development Control Committee on 16 January 2008.

## **8. SECURING IMPLEMENTATION**

64. The properties at 23-31 Britannia Road were rented out to secure tenants. The tenants at Nos 23 and 25 have already been re-housed and the properties are vacant. The tenants at Nos 27 and 31 have agreed to properties which are currently vacant and being prepared for their occupation.
65. If any of these houses remain occupied at the time of redevelopment, the Council will seek an order for possession pursuant to the Housing Act 1985, s84(2)(b) and Schedule 2, Part II, Ground 10, where the court can order possession for demolition, where it is satisfied that suitable alternative accommodation will be made available. The Council is able to provide suitable alternative accommodation from its existing stock. The Council is seeking a suitable property to offer the tenants of No 29.
66. The 23 garages to the rear of the terrace are let but require one week's written notice to terminate. Only a minority of the garages are understood to be used for car storage. It is clear from the condition of the hardstandings immediately adjacent to the garage doors that only about six are being used for active car storage. This is supported by comments from local residents during the consultation process.
67. As in other social housing schemes on its own land, the Council will be making the land available to South Anglia Housing Association at nil value, to optimise the provision of affordable rented homes. South Anglia Housing Association has made a bid to the Housing Corporation in the current bid round for funding to assist. The scheme satisfies Housing Corporation development standards, and a successful outcome is anticipated.
68. The land transfer document will include an obligation on South Anglia Housing Association to build the Scheme. It is fully aware of the ground

conditions on the site and will be ensuring appropriate piled foundations are used.

69. There are no impediments to the redevelopment proposed. There is therefore no reason to doubt that the Scheme will go ahead as proposed.

## 9. OBJECTIONS

70. One objection has been received in respect of the Order. That objection is made on behalf of the non-resident freehold owners of No 33, Mr and Mrs Poynter, by Mr Freeman acting as agent, and was contained in two letters dated 23 and 24 August 2007. The Council has considered the two letters of objection and remains satisfied as to the justification for the Order and the extent of the Order Land. A response to the two letters was sent to Mr Freeman by the Council on 3 September 2007. Eight grounds of objection were set out in those letters. They are dealt with briefly below.

**1. In the statement of reasons and the Report attached from Walker Associates dated 6<sup>th</sup> March 2006 at point 4 paragraph 2 it is stated, “ignoring for the moment the instability problems brought about as a consequence of the poor indigenous ground conditions we do not believe that the removal of adjoining properties would have any effect on the continuing stability of No. 33. Ordinarily, the plan form of No 33 is quite robust and if it were to be built as a detached house in its current design and we would have no argument against its robustness.”**

71. It is not understood how this statement amounts to an objection to the Order. It appears to be implied that No 33 is structurally stable and should be allowed to remain as it is.
72. Mr Freeman quotes half of a paragraph from Walker Associates’ report of March 2006. The second half of the paragraph is ignored, in which Walker Associates state that some restraint is being provided by the adjacent terrace. Walker Associates conclude that if the adjacent properties are removed, leaving No 33 standing alone, shoring would be required.
73. The objection also makes no mention that the quote used is prefixed: “Ignoring for a moment the instability problems brought about as a consequence of the poor indigenous ground conditions”. This is a very significant proviso, and means that the quoted passage cannot be read on its own for any practical purposes. Walker Associates’ opinion was that:

“We are satisfied that based on our previous, and more recent, investigations that No 33 Britannia Road is located directly over the site of old gravel workings; that as a consequence, the foundations of the property are bearing on soils of a nature that is unsatisfactory for its continuing structural stability; that as a direct result of the unsuitability of the substrata to support the property, movement, both vertical in the form of settlement, and, laterally in the form of out of plumb, will continue to worsen and if the recent measured trend continues such movement, particularly related to the gable wall, could be volatile and unpredictable as a consequence.”

**2. It is the view of the freeholder that 33/33a Britannia Road is economically capable of being repaired or re-developed and the freeholder will have funds made available for this purpose.**

74. It is not understood how this statement amounts to an objection to the Order. The Council seeks to acquire the property at No 33 Britannia Road in order to enable a comprehensive redevelopment of the terrace and adjacent land in order to secure both a quantitative and qualitative housing gain. Neither objective could be achieved by simply repairing or redeveloping the site of this one dwelling.
75. The problems with the subsidence have been experienced for some time. Investigation into settlement issues at 23 Britannia Road commenced in 1996. Walkers Associates’ report of August 2005 concluded at paragraph 2 that “it was apparent from our 12th November inspection viewing the rear of the properties from the garden of No. 23 that from the very evident cracking in the render of the rear walls, as illustrated on the preceding Photo Plates Brit 12 & 14, that all the section of the terrace from No. 21 to 33 was suffering from settlement to varying degrees”.
76. In May 2004, May 2005 and February 2006 Gryphon Surveys’ work revealed Nos 23-33 to be rotating toward the rear and the flank wall bowing and leaning out over a public footpath by 99mm. Movement needed to be arrested with the building being so unstable that the Council required the property to be shored up as a temporary measure in May 2006 as a dangerous structure under Building Act 1984. No action had previously been taken by the freeholders of No 33, until the Council intervened.
77. According to paragraph 4 of Walker Associates’ report of March 2006, in order to repair the building to bring it to a satisfactory condition, the flank wall would need to be reduced, in the greater part, to 1m above ground level and rebuilt. In the absence of verticality checks to the front and rear

of the properties, Walker Associates have projected their findings related to No 31 on to No 33, which results in the expectation that the reduction of the front would be required down to first floor level and the reduction of the rear walls would be required down to about 1.5m above ground level, before rebuilding could take place. Also, in any scheme of repair the underpinning required would mean that the building would have to be vacated in any event whilst the repairs were undertaken.

78. There is no evidence to suggest that the freeholders have the funds or the intention to carry out such works. Walker Associates have estimated that the cost of repair would be almost £92,000. Subsidence has been an issue for some years and yet the freeholder has not attempted to repair the building. But, again, this would not result in any quantitative housing gain and would result in a reduced qualitative housing gain by comparison to the Scheme.

**3. The freeholder has instructed an independent structural surveyor and engineer to comment specifically on the reports of Walker Associates and to consider the future of the structure at 33/33a Britannia Road**

79. This is not a ground of objection as such. The Council has not been provided with a copy of any independent structural surveyor and engineer's report and cannot comment further at this stage. The Council reserves the right to deal with the point as and when any such report is produced.

**4. The freeholder's investment and reversionary interest in the property would be severely affected by the Order**

80. By a letter from the Government Office for the East of England dated 7 November 2007, the freeholders' agent was informed that the Secretary of State had decided to disregard this point as one relating to the amount of compensation. The objection falls within the ambit of s13(4) of the Acquisition of Land Act 1981 and should be disregarded as an objection because the point (if relevant at all) should be dealt with by the Lands Tribunal by whom the compensation is to be assessed if compensation cannot be agreed.

**5. The freeholder does not consider that sufficient weight or consideration has been given to the provisions of Articles 1 and 8 of the First Protocol to the European Convention on Human Rights. I have obtained a preliminary opinion from Counsel who has asked me to confirm that there is a sufficient argument to suggest that my client's position regarding his objections to the Compulsory**

## **Purchase process are enshrined in Articles 6 and 8 of the European Convention on Human Rights**

81. The weight to be given to the various considerations arising in connection with this Order is a matter for the Secretary of State on confirmation, and will be considered by the Inspector at the inquiry. The Council has set out above the justification for the Order, and will not repeat it here. The Council's decision-making has been undertaken with due regard to the provisions of the Human Rights Act 1998 and the European Convention on Human Rights (ECHR). Particular regard has been given to the provisions of Article 1 of the First Protocol to the ECHR and, in the case of a dwelling, Article 8 of the ECHR.
82. It should be noted that Mr Freeman has not identified any particular respects in which insufficient consideration has been given to ECHR rights. The Council has not had sight of the Counsel's opinion referred to in the objection. The ground of objection is made in the most general of terms. Nor is any allegation made that the making of the Order would infringe any ECHR rights as such. It is merely said that certain rights are engaged and that insufficient weight has been given to them.
83. Dealing with the three articles in order, Article 6 arises for consideration first. Article 6 gives an entitlement to a fair and public hearing in the determination of a person's civil rights. This includes property rights. The relevant part of Article 6 is set out below:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”
84. The freeholders' rights to be heard at the inquiry and to challenge the Order in the courts are sufficient to secure compliance with Article 6.
85. As to Article 8, this provides rights to respect for private and family life and home. Such rights may be restricted if the infringement is legitimate and fair and proportionate in the public interest. The full text of Article 8 is set out below:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

86. No 33 does not provide a home for the freeholders, and is not therefore engaged in this objection.

87. Mr Freeman fails to give the reasons why he thinks the Council has breached the freeholders’ human rights in relation to Article 1. It is assumed that the objection relates to the peaceful enjoyment of possessions contained in Article 1 of the First Protocol to the ECHR. Article 1 of the First Protocol includes the right to peaceful enjoyment of property but is subject to the State’s right to interfere in the public interest. The full text of Article 1 of the First Protocol is as follows:

“1. 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.

2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

88. The key test is whether the acquisition is in the public interest. A fair balance has to be struck between the competing interests of the individual and of the community as a whole. Any interference with a Convention right must be necessary and proportionate. A measure may be proportionate even if it is not the least intrusive means possible (see Pascoe v First Secretary of State [2006] EWHC 2356 (Admin); R (Clays Lane Housing) v Housing Corporation [2005] 1 WLR 229).

89. This Statement explains why the Council believes that interfering with Mr and Mrs Poynter’s rights as freeholders is justified in the public interest. In particular, it is noted that the freeholders are not resident and will be

compensated for the acquisition. The Council is satisfied that the use of compulsory purchase powers is justified and in the public interest, in particular to secure the quantitative and qualitative housing gain by redeveloping the terrace and adjacent land.

90. The Council has considered fully the effect of the Human Rights Act 1998 and the ECHR in relation to the Order and it is satisfied that any infringement that may occur is justified in the public interest.

**6. The freeholder believes that the actions of Brentwood Council should be closely examined and that their actions in the lead up the making of the Order on the 10<sup>th</sup> July 2007 have been unfairly an unreasonably weighted against the freeholder in the quest to have a clear site for development.**

91. No particulars are given by Mr Freeman as to about what actions complaint is made. In the absence of such particulars, the Council is not able to respond in detail at this stage, and it reserves the right to deal fully with such points as may ultimately emerge in due course.

92. However, the following general points can be made. The Council has acted with propriety throughout the process. The reason for making the Order is, on one view, to secure “a clear site for development”. The Council has been clear that it seeks to acquire the property at No 33 Britannia Road in order to enable a comprehensive redevelopment of the terrace and adjacent land in order to secure both a quantitative and qualitative housing gain. The justification for the Order is set out above.

**7. The freeholder is aware that the First Floor Flat at 33a Britannia Road had been purchased by Brentwood Borough Council but this purchase for the time being has not been acknowledged**

93. The Council purchased 33a Britannia Road on 23 March 2007 and registered its interest with the Land Registry on 5 April 2007. A copy of the notification is attached at Appendix 4. The Council also served a Notice of Transfer on the freeholders, paying the requisite fee in accordance with Clause 3(16) of the Lease, on 22 May 2007, a copy of which is attached at Appendix 5.

94. The lease dated 19<sup>th</sup> August 1987 at Clause 3(15) only requires the landlord’s written consent if the premises are disposed during the last seven years of the term. This is clearly not applicable in this case. Therefore the Freeholder’s “acknowledgement” of the purchase is not required. An extract of the Lease is attached at Appendix 6.

- 8. The freeholder believes that there has not been any active negotiation in relation to the sale of the freehold (paragraph 7 of page 3 of the Statement of Reasons). A derisory offer for the freehold was made via the District Valuer's office and that the "Council .... Continues to try and negotiate a purchase with the freeholder" is incorrect.**
95. By a letter from the Government Office for the East of England dated 7 November 2007, the freeholders' agent was informed that the Secretary of State had decided to disregard this point as one relating to the amount of compensation. The objection falls within the ambit of s13(4) of the Acquisition of Land Act 1981 and should be disregarded as an objection because the point (if relevant at all) should be dealt with by the Lands Tribunal by whom the compensation is to be assessed if compensation cannot be agreed.
96. The Council had been seeking to negotiate with the freeholders, but has been informed by Mr Freeman in a letter dated 26 March 2007 that he would not commence negotiations until the Order was confirmed. As to the amount of the compensation, the District Valuer has described the amount sought by Mr Freeman as "a totally ridiculous figure", being over eight times his valuation of the interest in the Land.

## **10. LIST OF DOCUMENTS, MAPS OR PLANS FOR THE INQUIRY**

97. In addition to the documents mentioned in this statement, the Council intends to refer to or put in evidence the following documents at the inquiry:
- (a) Housing Act 1985 together with subordinate legislation
  - (b) Acquisition of Land Act 1981 (as amended) together with subordinate legislation
  - (c) Relevant Circulars, including Circular 06/04
  - (d) Report to the Community Panel and resolution authorising the making of the Order dated 7 June 2006
  - (e) Order dated 10 July 2007
  - (f) Statement of Reasons with appendices
  - (g) Copy notice served on owners and occupiers of the Order Land
  - (h) Copy notice displayed on site in case of unknown owners/occupiers
  - (i) Copy newspaper advertisements as published in the Brentwood Gazette on 25 July 2007 and 1 August 2007
  - (j) Detailed planning application documents dated 1 November 2007
98. Such documents will be made available for inspection during normal office hours at the Council's offices at Town Hall Ingrave Road Brentwood Essex

CM15 8AY and shall remain available for inspection until the close of the inquiry.

99. The letters of objection submitted in relation to the Order will be referred to at the inquiry but for reasons of confidentiality they shall not be made available for inspection by the public until such time as they are released for such purposes by the Secretary of State or the respective objector.
100. The Council reserves the right to introduce such additional documents as may be relevant to the inquiry in respect of the Order.