

The Urban Regeneration Agency

The Leasehold Reform, Housing and Urban
Development Act 1993

The Urban Regeneration Agency (Edge Lane
West, Liverpool) Compulsory Purchase Order
(No. 2) 2007

Statement of Evidence

Edge Lane West, Liverpool CPO (No 2) 2007 Public Inquiry

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1. Qualifications and Experience

My name is Olivier Sykes and I am a university lecturer in spatial planning at the University of Liverpool. I have higher education qualifications in history (BA First Class, Liverpool, 1997) and town and regional planning (Master of Civic Design with Distinction, Liverpool, 2000; PhD Town and Regional Planning, Liverpool, 2004). I have conducted academic research on a number of aspects of urban development and planning including work on '*Processes of Suburbanisation in 19th Century Chester*', '*Approaches to Integrated Land Use and Transport Planning in the UK and France*', and the '*Application of the European Spatial Development Perspective*' in EU member states. I have also worked on consultancy projects funded by Liverpool City Council, the UK Government, the European Union, Planning Officers Society and the North West Regional Assembly. These have covered a range of topics including city centre living, the influence of European spatial development policy on planning in Britain, and different models of, and approaches to, regional spatial planning. I lecture on European influences on spatial planning, the institutional and policy frameworks for spatial planning in the UK, and planning theory and history; with a particular emphasis on the relevance of the latter to the practice of spatial planning. I have been a visiting lecturer at various universities in France including Lyon and Brest. I maintain extensive contacts in the practitioner community both in the UK and in Europe and write a regular column on European issues for the journal of the Town and Country Planning Association. I am a resident of L8 and take a personal and professional interest in the ongoing development of the city of Liverpool, in particular the strategic and spatial coherence of programmed interventions and the stewardship and valorisation of the city's built fabric and heritage. Though I am not a statutory objector I am grateful to the Inspector for exercising the discretion open to him under Rule 14(13) of the 'Compulsory Purchase (Inquiries Procedure) Rules (2007) SI 2007, No. 3617 (p.6) and allowing my appearance before the Inquiry. The arguments in this statement are made in a personal capacity, and though they represent my professional opinion as a planner, they are not to be taken as being representative of the opinions of my employer.

2.0 Structure of Statement

This statement is structured according to four main sections. Section 3.0 presents a selective examination of aspects of the arguments which have been advanced in support of the Edge Lane West scheme (the Scheme) and in relation to the BEVEL scheme by the Scheme's proponents; Section 4.0 considers the evolving policy framework that provides the context for the Scheme; Section 5.0 seeks to reflect on the merits of the Scheme in a wider context and seeks to take a 'long view' of it in relation to past planning experiences; and, Section 6.0 draws together the key arguments advanced by this statement.

3.0 Selective Examination of the arguments which have been advanced by proponents of the Scheme in relation to the confirmation of the Order and the alternative scheme proposed by BEVEL

The purpose of this section is to offer some reflections on the form and content of some of the arguments that have been advanced by the Scheme proponents in arguing that that the Order be confirmed and that the BEVEL scheme does not offer a viable alternative.

A number of partners of the scheme proponents have intimated that they might reevaluate their support for the scheme if the Order is not confirmed, or only confirmed in part. This is the position, for example, which Mr Eliot Lewis-Ward of English Partnerships (EP) apparently outlined that his organisation may take when he appeared before the Inquiry. Though such a statement of position from LLDC's key partner in the scheme may appear to call into question the viability of the scheme in its present form and EPs involvement if the CPO is not confirmed, the relationship of this statement of position by EP to the Inquiry's goal of establishing the overriding public interest, or otherwise, of confirming the CPO, is rather complicated. The support, or otherwise of EP for the regeneration of the area covered by the Orderlands is clearly an important factor which will bear on the deliberations of the Inquiry regarding the confirmation or otherwise of the Order. It must be remembered however, that the exercise of the CPO powers available to EP under section 162(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) is governed by Appendix C of ODPM *Circular 06/2004: Compulsory Purchase and the Crichel Down Rules* (Appendix C). In determining whether the Agency has exercised its CPO powers in a manner justifiable under the Act the SoS will have regard to these rules, which stress the importance of relating the use of such powers to: the statutory purposes of the agency; current planning and other relevant policy frameworks; and, (perhaps most importantly) an assessment of whether the exercise of the powers can be clearly demonstrated to be in the public interest. Therefore the suggestion that EP might, so to speak, 'take its bat home' if the Order is not fully confirmed or is partly confirmed, is a decision for EP to take, but one which does not, and should not, colour the manner in which the tests which are set out in Appendix are applied to the use of its CPO powers.

Paragraph 14 (iv) of Appendix C of *Circular 06/2004* also stresses that one of the issues that the SoS will have in mind in reaching a decision about whether to confirm and order made under the 1993 Act include:

“what if, any alternative proposals have been put forward by the owners of the land or by other persons for the re-use of the land; whether such proposals are likely to be, or are capable of being, implemented (...).”

During the Inquiry, some of the Scheme's proponents have offered opinions on the alternative proposals for the regeneration of the area covered by the Orderlands put forward by the local group BEVEL. For example, Mr. Mike Burchnell, Liverpool City Council's Assistant Executive Director for regeneration services has suggested that the alternative plan submitted for the area by BEVEL, and known as Plan B, would be unlikely to gain either planning permission, secure funding, or deliver the regeneration which it is suggested the proponents' scheme would deliver. Though this may well be Mr Burchnell's bona fide professional opinion, such assertions need to be set against the context of the principles that underpin the English planning system and, as they relate to the financial viability of the alternative scheme, scrutinised for the possibility of a certain circularity in their argumentation.

In the UK's discretionary planning system and tradition decisions on planning consent are taken on their merits having regard to the policy framework provided by development plans, Government policy, and other material considerations. This means that though, the assertion that the BEVEL scheme would be unlikely to secure planning permission, may represent Mr Burchnell's bona fide professional opinion, this must be considered and weighed in light of the highly contextual nature of decision-making in the British planning system.

The argument that the BEVEL scheme would be 'unlikely to secure funding' is similarly a statement of a personal professional opinion from a representative of one of the Scheme's sponsors. There is a need to guard against a degree of circularity in this argument. LLDC, EP and the other partners involved in the current scheme are also the agencies who constitute the key funding agencies for the area covered by the Order. The fact that they would be more prone to fund their 'own' scheme rather than an alternative proposal is perhaps to be expected and this needs to be taken into account in judging the weight that is accorded to this fact in ruling on the public interest of confirming the CPO, or the weight that might be accorded to this as a material consideration in determining a future planning application for the BEVEL scheme. Furthermore, from following the evolution of the BEVEL scheme and its reception by the key partners involved in the regeneration of the area covered by the Order, it is my opinion that the alternative plan has not really received comprehensive and adequate consideration of the kind which would satisfy the requirements of Paragraph 14 of Annex 3. In reaching a decision on whether to confirm the Order according to the issues outlined in Paragraph 14 of Appendix C, the SoS will need to come to a more considered view on the merit and viability of the alternative proposals advanced by BEVEL than it appears has been adopted locally by the scheme's proponents. In following Paragraph 14 it will be important to not solely rely on the assessments of the alternative BEVEL scheme offered by the proponents of the Agency's current Scheme. The exercise of the CPO powers

available to EP under the 1993 Act must be clearly in the public interest; an interest that may be equally well or better served by alternative approaches to an area's regeneration.

4.0 The evolving policy framework and context

In the period since the merits of the Edge Lane West Scheme were first considered, there have been a number of significant evolutions in the policy and political context in which spatial planning and regeneration are practiced in the UK and Europe. The changes in the UK context are clearly the most significant in their capacity to constitute material planning considerations. The other changes, particularly those coming from the period of reflection on the future of sustainable development policy at the EU-level are, however, also important in setting a wider context. The changes in the UK policy context are discussed first.

In opening the case for the confirmation of the Order, it has been argued by the representatives of the Scheme's proponents (Mr. Christopher Lockhart-Mummery, QC), that the proponents will rely on the arguments that were advanced during the previous inquiry as these remain valid. Though this is an understandable position for the proponents to adopt, there is a need to set this against the fact that the period since 2005/2006 has seen a number of significant changes in the policy and political context within which spatial planning and regeneration is practiced. These changes will be discussed further below; however, it is apparent that they constitute an important context for the current process of deliberating on whether the Order should be confirmed. Appendix C of *ODPM Circular 06/2004: Compulsory Purchase and the Criche Down Rules* (Appendix C) makes clear that any exercise of the compulsory purchase powers available to English Partnerships under section 162(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act), must be fully backed-up by planning policy (Paras. 9, 11). In embarking on compulsory purchase procedures it is clear that EP needs to have regard to the latest planning policy frameworks and that the onus will rest on it to demonstrate that there are no planning or other barriers to a proposed scheme. Paragraph 14 of Appendix C outlines the considerations that will be taken into account by the Secretary of State in deciding whether to confirm an order made under Section 162 of the 1993 Act. Paragraph 14 states clearly that, as well as having in mind the statutory purposes of EP/URA, the SoS will also consider whether EP has established the basis for its actions and the necessity of resorting to the use of its compulsory purchase powers and whether such action is in accordance with the extant planning framework. Key national Government policy statements that it is essential to consider in coming to an opinion on the merits of the scheme and whether EP is justified in seeking to exercise its CPO powers to realise it, include the 'Supplement to PPS 1 on Climate Change' and Draft PPS4 on 'Planning for Sustainable Economic Development'.

PPS 1 'Planning and Climate Change – Supplement to Planning Policy Statement 1'
(December 2007)

The PPS 1 Supplement on climate change makes clear that 'Where there is a difference in emphasis between the policies in this PPS and others in the national series this is intentional and this PPS takes precedence' (p.1). This succinctly illustrates how, even in relation to one piece of Government policy, the context has changed since 2005/2006, and a full consideration of current policy is essential. Indeed, the Supplement explicitly states that "The Government believes that climate change is the greatest long-term challenge facing the world today" (p.8). Reference is made to the UK Climate Change Programme and the 2007 Energy White Paper.

Of clear relevance to the Edge Lane West case, PPS 1 Supplement also argues that planning has a pivotal role in helping to "*capture local enthusiasm and give local communities real opportunities to influence, and take, action on climate change*" (p. 9). This statement of the Government's views on one of this aspect of planning's role in delivering its climate change objectives is primarily relevant here for the way in which it relates to the alternative scheme 'Plan B' advanced by the group known as BEVEL. The alternative scheme that is proposed by the latter group can be seen as exactly the kind of bottom-up, locally-led and 'enthusiastic' initiative that Paragraph 7 of the supplement to PPS 1 (p.9) relates to. Indeed, a persuasive argument (in the sense of being one that presents compelling reasons) can be made that 'Plan B' has more fully had regard to extant Government policy on climate change as expressed in the Supplement to PPS 1 than the proponents scheme, which was prepared and originally assessed against a very different policy framework. Any decision on the relative merits of the two schemes needs to be taken in full cognisance of this.

The strong statements in the Supplement to PPS 1 of the Government's commitment to achieving climate change mitigation and adaptation illustrate how the policy context in relation to climate change has fundamentally shifted since the time when the merits of the proponents' scheme were originally deliberated upon. Given this, the fact that – as it appears to me, the EIAs submitted for the outline and full planning applications do not seem to me consider the wider 'non-local' environmental implications of the clearance and new-build components of the scheme is a serious omission. There also appears to have been an attempt in a supplementary environmental statement submitted in June 2005, to separate the consideration of the road scheme from the wider Edge Lane West scheme in the EIA submitted for the full planning application. This would appear to be inconsistent with the more integrated approach to considering the impacts of developments on the Government's climate change and zero carbon development ambitions that is a hallmark of the Climate Change Supplement to PPS1. In the current

climate a more integrated assessment of the overall carbon footprint of the different alternatives available for the regeneration of the orderlands (to assess impacts of both the alternative road schemes and proposals for the wider regeneration of the area) would appear to be necessary to reflect the high priority currently accorded by Government to the challenge of climate change. It is also a moot point whether, in the present policy context, the EIAs which were submitted back in 2005/2006 really satisfy the requirements of Schedule 3(2) (a-e) of the Town and Country Planning (Assessment of Environmental Effects) Regulations (SI 1998, No 1199), as replaced by DETR Circular 2/99 (Environmental Impact Assessment). These list effects on climate as one of the important issues to be consider in judging the impacts of a development on the environment but the EIAs submitted with the scheme seem to pay scant regard to this issue. Although the the EIA Directive (85/337/EEC as amended by 97/11/EC and by Article 3 of Directive 2003/35/EC) requires projects that are likely to have a significant effect on the environment to undergo an EIA before they receive ‘development consent’, this is defined in Article 1.2 of the Directive as the decision of the competent authority that entitles the developer to proceed with the project. In the present case this authority is Liverpool City Council which is also a partner of the Scheme proponents.

It is therefore argued that there is a clear need to set the scheme and its impacts in the wider context, and to have regard to the Government’s overarching goals of climate change mitigation and adaptation, in deliberating on whether the Order should be confirmed.

Consultation Draft on PPS 4 – Planning for Sustainable Economic Development

The overarching goal of Draft PPS4 is to ensure that planning contributes to providing the jobs that people need and securing greater investment in the UK economy in an environmentally sustainable way which helps create and maintain sustainable communities (p.1). In its discussion of key policy outcomes for economic development, Draft PPS4, ties the delivery of economic development to that of sustainable development and cross-references explicitly to the PPS1 supplement on Climate Change (p. 4). Six key national policy principles for securing sustainable economic development are outlined. These include the need to make ‘Efficient and Effective Use of Land’ and to secure a ‘High Quality and Sustainable Environment’. Of crucial relevance to the Edge Lane West scheme Draft PPS4 stresses that LPAs “should seek to make the most efficient and effective use of land and buildings, *especially* vacant or derelict buildings (including historical buildings)” (p. 10, NB added emphasis). LPAs are also encouraged to find new uses for vacant or derelict buildings. Again a persuasive argument can be made that the Scheme as it stands has less regard to such statements of emerging Government policy than the alternative scheme proposed by BEVEL.

European developments

In the period since the merits of the Scheme and the public interest issues involved in confirming the Order were first deliberated upon, a number of important European documents and Communications have been published. These have emerged from both the European Commission and the formal channels of the European Community policy and legislative processes, and more informal processes of inter-governmental working and the sharing of European best practice in relation to spatial development, territorial cohesion and urban development. A number of strategies are of particular significance to the Edge Lane West case, but which there is insufficient space to elaborate on in detail here, are the:

- EU Thematic Strategy on the Urban Environment
- EU Urban Transport Green Paper
- The Leipzig Charter on Sustainable European Cities

The EU Thematic Strategy on the Urban Environment¹ identifies a number of environmental problems affecting Europe's cities, including poor air quality, high levels of traffic congestion, high levels of ambient noise, poor-quality built environment, derelict land, and, greenhouse gas emissions. It stresses that in tackling such issues there is a need to avoid a situation where "Local initiatives to resolve one problem can lead to new problems elsewhere and conflict with policies and national or regional level" (p. 3). It also argues for the adoption of an integrated approach to the management of the urban environment which avoids conflicts between the range of policies and initiatives that apply in urban areas and helps achieve a long-term vision for the development of a city. The EU Green Paper on Urban Mobility² also contains relevant analysis and policy ideas for addressing urban mobility. It highlights that air and noise pollution are getting worse every year in Europe's cities and that urban traffic is responsible for 40% of CO₂ emissions and 70% of emissions of other pollutants arising from road transport. Crucially the Green Paper makes the link between the problems experienced at local level and those that are felt at "continental scale" including "climate change/global warming" and "increased health problems". The Commission document therefore makes the links between local problems and solutions and wider impacts on the environment which are undeveloped in the Scheme as it stands, but which are more fully recognised by the alternative BEVEL scheme. The 'Leipzig Charter on Sustainable European Cities' signed by European governments; including the UK government, in 2007 is a statement of common goals for the sustainable development and regeneration of European cities. It

¹ Commission of the European Communities (2006), *EU Thematic Strategy on the Urban Environment*, Brussels, 11.1.06, COM(2005) 718 Final.

² Commission of the European Communities (2007), *GREEN PAPER – Towards a new culture for urban mobility*, Brussels, 25.9.2007, COM(2007) 551 Final.

advocates integrated urban development approaches which seek to coordinate different neighbourhood, sectoral and technical plans and policies and ensure that planned investments promote a well-balanced development an urban area. Emphasis is placed on involving citizens in shaping the development of their areas and on the need to improve existing building stock in deprived neighbourhoods. In short the Charter provides a best practice guide and statement of intent on the part of EU governments to adopt an inclusive and sustainable approach to urban development (it even discusses holistic regeneration).

Finally, the viability of the scheme in its present form may be called into question by the changing European funding context. In particular, the recently released North West Operational Programme 2007-2013 (NWOP) which provides the decisional framework for guiding the allocation of European Regional Development Fund monies in the 2007-2013 period. Though the North West Development Agency (NWDA) have recently asserted that they will continue to support gateways on Merseyside and the Scheme, they have also tied themselves in the disbursement of ERDF monies to seeking to achieve a 25% net reduction in the additional CO2 emissions generated by the ERDF programme in the North West.³ The NWOP is a document and spending programme that has been agreed by regional partners and scrutinised and accepted by the European Commission. The target for cutting CO2 emissions is a commendable one that is highly consistent with the current goals of UK and EU policy. It is to be expected that any disbursement of ERDF funding for future schemes will be meticulously scrutinised by managing authorities in the UK and the European Commission. The *Fourth report on Economic and Social Cohesion* published by the European Commission in May 2007⁴ clearly identifies climate change as a new challenge facing regional development in Europe.

5.0 The scheme considered in light of past planning experience

Although the ability to demonstrate coherence with relevant policy frameworks and guidelines is an important dimension that the SoS will have in mind in deciding whether to confirm an order under the 1993 Act, the Rules in Circular 06/2004 also make clear that in exercising its CPO powers EP needs to go further than demonstrating that the land in question is being acquired in furtherance of its statutory purposes and for a purpose consistent with current planning policy, and be able to show that the proposed exercise of its CPO powers is clearly in the public interest (Para. 15).

³ North West Development Agency (2008), *Northwest ERDF Operational Programme Document*, NWDA, Warrington.

⁴ Commission of the European Communities (2007), *Growing Regions, growing Europe: Fourth Report on Economic and Social Cohesion*, OOEPEC, Luxembourg.

The issue of the public interest, whether it can be defined, and whether planning recognises and serves it, remains a central concern for all those concerned to understand and reflect upon planning and regeneration (see Campbell and Fainstein's 'Reader in Planning Theory' [2003]). In 2009 it will be one hundred years since town planning in its modern form emerged in the UK with the passing of the 1909 Housing and Town Planning Act. In the words of John Burns, the then President of the Local Government Board, the Bill aimed to "secure, the home healthy, the house beautiful, the town pleasant, the city dignified and the suburb salubrious". As a planning educator and researcher with experience of working on academic research and commissioned research for public agencies I am passionate and committed to planning and believe in its capacity to enable positive change make better places. As is well-known however the transformation of cities since the creation of modern town planning has not always lived-up to the high aims outlined by Burns. Often this has been the result of circumstances which planners were unable to fully comprehend and master, at other times planners and planning ideology, through a heady combination of good intentions and naivety have contributed to the atomisation and fragmentation of places. As Campbell and Fainstein note "*Planners need to generalize from prior experience if they are to practice their craft*" (Campbell and Fainstein 2002) and the profession does indeed need to learn from the successes and disappointments of past approaches.

Today planning is back at the heart of the Government's agenda with an identified role to help Local Government deliver the 'place shaping' function identified for it in the Local Government White Paper. For planning to do this it has to literally 'place-place' at the centre of its concerns and work in a way that integrates different concerns in a manner that is spatially coherent and builds on the distinctiveness of places and their attributes. It also needs to examine critically the claims that are made surrounding alternative courses of action for these places. For example, the proponents documents in the present case have argued that the scheme will provide an improved 'Gateway' to Liverpool, however, Edge Lane *already* provides a Gateway to Liverpool. As stressed by others before this Inquiry this corridor is an integral part of the townscape of the Victorian metropolis, and the fact that it has survived so long is something to be celebrated and valorised. Its destruction might make for some useful before and after photographs for planning academics who can use these to illustrate melancholic lectures about the plight of cities and the powerlessness of the profession to effect the changes it came into existence to deliver, but this would be small compensation to this city and its people. It is indeed hard to think of the Edge Lane case without hearing the at the back of one's mind the words of Britain's greatest post war planning academic, Peter Hall; who almost 30 years ago in the final lines of his seminal 'Great Planning Disasters' (1981) noted that:

“There may be some excuses for some planning disasters, but there are not nearly as many as we think” (p.276).

6.0 Conclusions

In summary, the Edge Lane West Scheme represents a bold and no-doubt well-intentioned attempt by the agencies involved to deliver an enhanced corridor and gateway to Liverpool and to achieve the social and physical regeneration of the area this traverses. The scheme as it stands, and in particular the extensive scope of the land that is covered by the present Order, however, ultimately represents an ill-judged and dated approach to securing the redevelopment of this part of the city. The proponents have argued that the BEVEL scheme will not deliver the holistic, comprehensive regeneration that the area so desperately needs. However, I believe that before this Inquiry they have indeed ‘argued’ this and not proven this or that the overriding public interest will be served by the confirmation of the Order. Policy contexts have moved on; the scheme and its EIA do not seem to have had sufficient regard to this; insufficient consideration has been accorded to alternative plans for the area emanating from outside the network of partner agencies; important possible alternatives have therefore been accorded less-attention than they merit.

Writing in the mid-1960s the American planning writer and practitioner Davidoff argued that “The right course of action is always a matter of choice, never of fact”. I can think of no better example of the truth of this statement than the case which is being considered by this Inquiry. Davidoff also stressed the notion of plural planning whereby different views of how a community or place should develop could be expressed in different plans and openly examined and debated. Writing in 1948 Gordon Stephenson the Lever Professor of Town and Regional Planning in this very institution noted that what was needed was not “*‘one plan once and for all’, but the conscious selection by the people of successive plans*”. The tragedy of the current situation is that a golden opportunity to make such approaches work for the benefit of the people and of this city is being lost; one might also add an opportunity to explicitly respond to PPS 1’s view that planning should “*capture local enthusiasm and give local communities real opportunities to influence, and take, action on climate change*” (p. 9). Thankfully the Secretary of State still has the chance to quash the Order and all the parties to the process still have the opportunity to work together to deliver the regeneration of the area that they all so fervently want to achieve.