

Item No. 13	Classification: Open	Date: January 30 2007	Meeting Name: Executive
Report title:		Business Continuity at the Elephant and Castle	
Ward(s) or groups affected:		East Walworth	
From:		Strategic Director of Regeneration	

RECOMMENDATIONS

1. Executive is recommended:

- to note that substantial efforts have been made to deal with the concerns raised by Traders in discussions with officers and through the Scrutiny process and to note the actions proposed in this report in response to the recommendations of scrutiny sub-committee.
- to reaffirm its commitment to the importance of securing a long term diverse trading base within the Elephant area and of facilitating the transfer of existing businesses to new trading locations
- to affirm the Council's willingness to negotiate with other parties to develop a "business continuity charter" as a statement of the principles by which the Council and partners will seek to ensure continuity of trade throughout the development of the shopping centre and until new provision has been developed, and to use this charter as a basis for development of proposals to be agreed between the Council, the traders, the shopping centre landlord and the development partner (if different to the latter), with support from the London Development Agency.
- to note the advice relating to the proposed "compensation mechanism" developed by Business Extra on behalf of the Shopping Centre Liaison Group.
- to note that all proposals for assistance will continue to need to take into account the statutory and contractual compensation available to businesses deriving from their existing tenancy or lease agreements.

BACKGROUND INFORMATION

2. Throughout the preparations for the potential redevelopment of the Elephant and Castle, the Council has emphasised its plans to maintain a diverse trading base in the long term. As part of this approach, the Council has sought to work with the existing traders to ensure that they are able to trade as effectively as possible during the development and to find opportunities for continuing their trade in the redeveloped area and there have been discussions to further this with the traders (through their representative bodies), the landlord, the Chamber of Commerce and Business Extra. For the most part these working arrangements are conducted through the Shopping Centre Liaison Group that was established in 2004, and through meetings between the Council, the traders' representatives and Business Extra. These meetings are chaired independently. Officers have also met with the London Development Agency in order to develop proposals for supporting continuity of trading.

3. The Regeneration and Resources Sub Committee reviewed the matter extensively in 2005 and reconsidered some aspects in 2006; this report provides information in response to those resolutions.

KEY ISSUES FOR CONSIDERATION

4. The council as a planning authority has policies in place to encourage a comprehensive approach to change perceptions of the Elephant and Castle as a failing town centre surrounded by low quality public housing. In order to assist progress it has begun actively to open up surrounding land as the basis of the new development.
5. The shopping centre currently attracts approximately 4% of Southwark retail spend. This low rate arises from the continuous decline in environmental quality and continuous improvements at competitor retail destinations. The Council wishes to help existing local and independent businesses in the shopping centre to trade through the programme of change and to respond to local needs and demands. These local businesses are more likely to reflect to social and demographic make-up of the locality, and create individuality and distinctiveness. The existing businesses may also provide the basis for a potentially expanded local sector in the much bigger new town centre environment; maintaining them through the transition is thus a necessary part of the development programme side by side with attracting a stronger representation of national multiples in order to meet demand.
6. For these reasons, the Council wishes to assist these identified businesses to continue to trade through to the point of relocation in the new Elephant & Castle and to encourage local customers to continue to shop at the centre up to the latest possible point. The business continuity charter is proposed as the means of identifying supporting measures and roles, in part as a response to the draft "compensation mechanism" commissioned on behalf of the traders as a statement of their requirements, and also as a means of securing agreement from partners prior to developing detailed processes to deliver support for continued trading.
7. The Council now needs to reach agreement on the approach to these objectives and to take a decision on what form of charter is offered as a basis for further negotiations with all parties and as a statement of principles to be used to develop a detailed package of measures. The draft charter proposed at annex A states the current position of the potential partners at this point. The role of the development partner once selected will be subject to further negotiation.
8. The discussions have identified three main phases that will need to be addressed by the charter:
 - Trading during the period until the shopping centre is closed
 - Making the transition to new locations
 - Longer term options for trading.

9. In considering these, the charter has concentrated on the position of the small and independent traders, although similar issues will arise for all the traders. It also has taken account of the separate legal relationships that the traders have with their landlord: the Council has limited information about this and cannot intervene directly. In addition, any decisions on the charter have to consider how policies and programmes applied at the Elephant and Castle could be taken as precedents and applied to other council and private schemes elsewhere. The key principles followed and actions taken so far are set out below.

Advice and support

10. Independent traders find it difficult to deal with some of the complex and novel issues that arise in these circumstances. Following joint negotiations between the Council, the London Development Agency (LDA) and Business Extra, the LDA has agreed to fund a package of independent legal advice related to lease and tenancy matters for those businesses which fall within the eligibility criteria of the Business Extra “compensation study” (see below). The proposed charter also envisages further support with business planning and advice for individual traders.

Charter Proposals

- 11.1 Taking as an example the charter developed by the London Development Agency for Business in the Olympic development zone, the Council has proposed development of a charter designed to outline the roles of each partner in the development. The purpose of setting out these roles is to provide the principles for offering practical support to traders in order to ensure business continuity. The detailed process for application of these measures will be developed subsequently and following further advice on the extent and limits of the Council’s powers. The contents of the charter have been the subject of consultation between the Council and the traders through the shopping centre liaison group and the traders’ action group and at closed meetings of the traders’ action group. The traders issued a response to the Council’s charter proposals in the form of a set of requirements for support; this was received on 2 January 2007.
- 11.2. At the time of this report, the proposed actions in the draft charter are still subject to further development and have been discussed in principle only. No commitment to details or to a level of resources has yet been made by the respective partners at the time of this report with the exception of the legal support package funded by the LDA. It is proposed that, if the charter is adopted as a set of principles, details of the process and implementation can be added with the agreement of the parties concerned.
- 11.3 The charter is designed as a way of clarifying expectations of each of the interested parties in the development of the shopping centre and continuity of business throughout the development, and to provide a framework for the Council in accordance with its powers and the limits to those powers.
- 11.4 Annex A and B show the Council’s charter proposals (as amended following consultation with traders’ representatives on 24 January 2007) and the traders’ requirements as submitted in response to an earlier version of the charter.

11.5 The traders made the following additional observations on the proposed charter:

- they wish to record their disappointment that the request for implementation of the compensation mechanism study package has been removed from the version proposed to the Council in Annex A, and substituted by a less defined set of measures (at 18.) under the heading business continuity;
- they also wish to remind the Council that greater certainty over the timetable and greater precision of the support measures on offer should be given as a matter of urgency in order to allow business planning for the transitional period.

11.6 At the same meeting, the traders placed on record their dissatisfaction that the paper was to be presented to the Council's Executive without the firm agreement of detailed proposals between the partners. However, adoption of the charter in this form marks a starting point for further negotiations with partners and its contents will evolve as a consequence

12. Compensation

12.1 The general view of the tenants is that they are less secure as a result of the published plans and that the value and trading viability of their individual businesses has been damaged. Many face an uncertain future with little or no entitlement to compensation.

12.2 The Council has at no point accepted that its statutory planning processes (preparation of the Southwark Plan, adoption of the Supplementary Planning Guidance, grant of specific planning consents) can give rise to compensation liabilities to businesses affected by the actions of private landlords, but it has repeatedly stated its wish to secure whatever assistance might be made available to directly affected businesses. Previous efforts by the Council, the traders, the LDA, the landlord or any of the advisers were unable able to identify any basis upon which cash payments could be made to individuals or businesses who claim to have incurred trading reductions or losses subsequent to the adoption of the Elephant and Castle plans.

12.3 Business Extra was commissioned in 2006 by the traders' representative forums to produce a "compensation study", the objective of which was to determine a fair and reasonable model for compensation of the small business retailers located at the shopping centre for any adverse impacts of the regeneration on their businesses in the period between adoption of the Supplementary Planning Guidance (February 2004) and closure of the shopping centre, and to enable those businesses (wherever possible) to continue to trade successfully at the Shopping Centre until a notional pre-demolition decanting date in 2009.

- 12.4 This independent study has been prepared independently of the Council on the basis of a brief agreed with the traders' representatives and funded by the Council. The draft paper ("Compensation Mechanism" - Elephant & Castle Shopping Centre Compensation Package Study) was produced on 8 January 2007. This paper proposes a two-part compensation model for traders that qualify under a set of criteria related to their size and length of trading. The two parts as proposed (capital and revenue compensation) seek to devise a formula for compensation to reflect revenue loss in trade due to worsening trading conditions, and loss of the capital value of businesses due to demolition of the shopping centre. The draft study is currently incomplete due to ongoing difficulties in collecting information on individual businesses' accounts, and the overall value of the proposed models has not been established. Business Extra advises that the estimated completion deadline for this study is 20 February 2007.
- 12.5 External advice on the study taken by officers suggests that it is possible to devise a scheme that could be applied under the Council's "Wellbeing Powers" under the Local Government Act 2000, but that limitations on the use of these powers must be considered. The advice suggests that the Council should not be influenced by consideration of compensation of businesses affected by its strategic planning decisions, but that it may be possible to develop measures to support continuity of trading throughout the regeneration programme as a means of securing community benefit in support of Southwark's community strategy.
- 12.6 The Council must now decide whether it wishes to follow this advice in the development of measures to support business continuity.
- 12.7 The Council will also require a justification of why, in these particular circumstances, other compensation (eg statutory) payable to these traders is not sufficient to ensure continuity of trading. If the objective of a compensation scheme is to promote continuity of trading by local businesses, then it must be promoted on that basis, rather than as a general compensation for trading losses. Such a scheme would need to contain critical tests for continuity criteria, such as a formal commitment to take up new premises and to continue trading for an agreed qualifying period
- 12.8 Section 18 of the draft charter in annex A sets out the principles of an approach under this guidance to offering support to ensure business continuity.

Progress with the Development and Other Support to Date

- 13.1 At Annex C is a summary of all the actions taken to follow up the 2005 Scrutiny report. An update is provided below on the recommendations made by the scrutiny sub-committee in 2006.
- 13.2 The Elephant and Castle regeneration project has been continuously progressed over the last twelve months in all major programme elements. The re-housing of tenants from the Heygate Estate has continued and new homes in the Elephant and Castle have been made available through early residential developments. As previously, units so vacated are generally being occupied by licensees nominated by the Temporary Housing Unit.

- 13.3 The remaining 15 Council-sponsored early housing sites have secured residential designations through the UDP inquiry process and architectural appointments are currently being made by the Council, tenants and the selected housing associations prior to the submission of planning applications.
- 13.4 A number of significant planning applications have been submitted and approved since the last Scrutiny meeting. In particular, 1,000 new residential units are in construction or completed, and 1,600 are in the pre-planning approval stage, including consent for 400 residential units plus commercial units at Castle House, 200 residential units plus hotel, supermarket, 5 screen cinema, shops, offices, market square and sub-ground servicing facilities at the Volvo site on New Kent Road, and approximately 200 residential, live work and business units at Crampton Street.
- 13.5 The Council's procurement processes are also moving ahead. The creation of an infrastructure company (the MUSCo) is underway and the commercial partner selection process is currently in its third and final stage; a selection decision is expected in February 2007.
- 13.6 All of these are indicators of strong market confidence and real project momentum on all of the main project fronts. Generally, coverage of the programme including press and journals has been positive, in marked contrast to the reputation of the area and the scheme when the current development approach commenced in 2002.

13.7 *Promotion of the Existing Centre*

- The Council is financing a fortnightly promotional feature in the local press highlighting businesses and services within the Centre.
- The Council continues to provide support through the Community Wardens Scheme to address the previously identified concerns about crime and safety within the vicinity of the shopping Centre
- the landlord is undertaking a refurbishment of Hannibal House (the office block above the shopping Centre) and has had some success in re-letting space within it. This is an attempt to recover income and footfall from the loss of approximately 400 Department of Health civil servants who left the building approximately 2 years ago.
- the landlord reports that occupation levels have remained high and that all of the currently vacant units are in contract with new businesses due to take up occupation shortly.
- An audit of the shopping Centre was undertaken earlier this year with the landlord, tenants' representatives, environment department officers, wardens etc to identify repair, maintenance and management issues and to allocate responsibility for taking necessary actions. Subsequently the landlord was able to resolve the long running dispute in relation to advertising hoardings which seriously damaged the exterior appearance of the shopping Centre.
- Urban Space Management, the company that manages the market areas, has introduced new external trading units which have increased the amount of activity around the base of the Centre.

- Officers have also referred the tenants to the Council's Property Division lettings site www.southwark.gov.uk/property/propertyAll.aspx?marketType=RENT as a possible means of finding new premises.

13.8 *Assisting relocation*

- The principal aid to relocation so far achieved has been the s.106 arrangements [appended to this report]. The advantage of this approach is that all suitable space in a new development can be secured for the benefit of existing businesses and it does tend to favour co-location of long established traders, which may help to protect goodwill. The disadvantage is that the timing and delivery of the new schemes is largely outside of the Council's direct control. But the Volvo scheme should, if it follows its developers published programme, become available during 2008/09 i.e. well in advance of the earliest possible date for closure of the shopping Centre.
- The details of this approach have been discussed with both the landlord and the London Development Agency, and their assistance has been requested in three respects;
 - (a) To combine with the Council to provide assistance to relocating businesses moving to s.106 spaces. This might include fitting out costs, provision of a shop front, double overheads, stationery, stock, publicity etc. It is acknowledged that there may have to be some element of means testing to ensure that this operates equitably
 - (b) To secure relocation premises on the open market. Potentially the landlord and/or development partner have the most to gain from obtaining vacant possession because this unlocks its development potential. Businesses that may be entitled to compulsory purchase compensation are under a general obligation to mitigate their losses and this is normally achieved by relocation rather than business extinguishment. It is possible that a commercial developer's covenant strength could enable it to acquire freehold or leasehold premises for the specific purpose of relocating its own tenants.
 - (c) Building new premises: in the currently anticipated programme there is inadequate time between the demolition of the Heygate Estate and the closure of the shopping Centre to allow new business premises to be constructed in time for businesses to make a single move. The need to construct infrastructure i.e. services, roads etc. across the two ownerships makes it practically impossible to achieve a different phasing approach. If new premises could be delivered within a greater radius from the existing Centre this may provide viable opportunities for the independent traders. The LDA has given a very strong indication that it may have funds available to support this and work is being undertaken to find potentially suitable sites.

- Access to London Borough of Southwark's own stock: it may be possible to offer rights of first refusal (subject to terms) on LBS-owned retail units in the borough. Support for relocation could be provided as in (a) and (c) above.

13.9 *Long Term Business Viability*

13.9.1 The Council's plan for the Elephant and Castle as set out in the supplementary guidance emphasises the need for street based retailing containing a relatively large number of small to medium sized units able to accommodate a mixture of local and multiple occupiers. This insistence upon a form of retail development that supports local retailing is the single most important means by which long-term viability for independent traders can be secured. Left to its own devices town centre, commercial let retail development tends to place a value only upon the covenant strength of major anchors and national multiples.

13.9.2 As noted above the Council's Economic Development Team have been meeting with the Stage 3 bidders to discuss how best to ensure that the long-term management of the Centre can achieve the Council's objectives. The approach set out in the Council's published documentation proposes that the freehold ownership of the entire area should be, as far as possible, consolidated within a single holding from which an overall interest can be given to an area wide management entity. In practice this might be similar to a Business Improvement District (BID).

13.9.3 While the prospect of demolition clearly poses a threat to current shopping centre businesses, there are opportunities to develop and capture new markets. Immediately surrounding areas surrounding areas (for example Walworth Road) continue to support retail business and offer a base for active relocation from the shopping centre in the move towards vacant possession. New markets and opportunities will be provided by the growing population generated by new residential developments.

13.9.4 Population growth will provide an expanding customer base for trade and an opportunity for expansion. In addition both London South Bank University (LSBU) and the University of the Arts are increasing their student numbers, and both are expanding their facilities (LSBU is opening new faculties and the University of the Arts is consolidating on the E&C site – again, an expanding customer base and potential new markets).

14. **Remaining Issues**

14.1. From the recent review undertaken by Scrutiny and direct discussions with the traders it is evident that there must be progress with location, terms and numbers of new retail units in schemes coming forward for planning.

14.2.1 There was some criticism and misunderstanding of the small number of units likely to be made available within the "Volvo" site on the New Kent Road. These were discussed with the traders at the Scrutiny meeting. In summary:

- The units were not intended to be the only ones to which access might be negotiated under planning agreements. This was the first scheme to come forward.

- The locations of some of the units are not ideal but the design of the scheme was influenced at a late stage by the requirements of Transport for London. There are, however, continuing discussions with the developer with a view to improving the range and quality of retail space within this development.
- The arrangements for stepping up to the market rent for the new units never lead to a rent in excess of the open market rent for the unit.

14.2.2 For clarity the s. 106 provisions for the “Volvo” site are restated in Annex [D].

14.3 Adequate numbers of alternative locations: as it becomes clear what preferences traders have for the timing and location of any move we will be able to assess what additional premises may be required and when. As indicated above the Council, together with its partners and the current landlord, will identify:

- The availability of units within its existing portfolio
- The availability of units owned by others
- Options for the building of new units

These will be offered to traders wishing to relocate [on similar terms to the units being identified under planning agreements]. The charter will eventually set out the means by which this information is communicated, and how this process is managed.

15. Policy implications

15.1 Business continuity proposals have been developed in pursuance of the stated aim of the Council’s planning policies, specifically, in accordance with the Elephant and Castle Supplementary Guidance adopted in February 2004. Adoption of this policy has also been taken as the landmark date for identifying eligible businesses for support through the “compensation mechanism study” prepared for the traders.

15.2 If detailed support mechanisms for business continuity are developed through application of the Council’s wellbeing power, the Council will be required to have regard to the aims of its community strategy.

16. Community Impact Statement

16.1 Currently, Southwark retail is weak; retail analyses have shown that the shopping centre captures a very low proportion of local expenditure, and that almost 90% of comparison retail expenditure takes place outside Southwark. The shopping centre does not support a healthy independent retail sector, and change is required in order to develop and support the sector. Simultaneously, the shopping centre is not offering an effective service to surrounding communities; those communities least able to travel are most disadvantaged by the inadequacy of provision, as they are less able to benefit from opportunities elsewhere. Not only is there strong public support for redevelopment – it has become an expectation.

16.2 The Elephant Links Partnership Elephant & Castle Shopping Centre Survey (July 2005) found that 70% of businesses are eager to remain trading in E& C.

- 16.3 Development of support measures for business continuity will need to account for the particular needs of Elephant & Castle traders, and devise support which matches the profile of those businesses which need it in order to continue trading. These factors will include some distinctions in the forms of business support provided to match the type of business delivery, and the diversity between BME groups and to re-evaluate the question of whether or not it is useful and/or appropriate to treat BME businesses as a single category from a finance and business support standpoint.
- 16.4 The charter proposes measures where the Council uses its position as a local planning authority to require all new commercial, mixed-use developments to offer a proportion of their units to existing businesses at affordable rent, providing for “stepped” rents to provide time for businesses to adjust to their new market circumstance and trading environment. Location choices for ethnic minority businesses may be more restricted where they need direct access to a co-ethnic market. In general, however, the needs of ethnic minority businesses for premises are similar to those of all businesses: affordable rent, location with good footfall, favourable lease terms, right size and affordable capital cost as well as good access, transport and road systems that are fully operational at the time of the relocation.
- 16.5 The programme for the demolition of the shopping centre will remove the local retail base currently found in the shopping centre, albeit to replace it with something better over time. The business charter proposals should be designed to mitigate the difficult transitional period for those businesses that wish to continue to trade.
- 16.6 The ongoing Equalities Impact Assessment will make recommendations as part of an ongoing process; these will be used to inform the detail and the design of support measures for business continuity proposed in the charter.

17. Resource implications

- 17.1 Adoption of the business continuity charter for further development has no significant resource implications at this stage; further advice and on the Council's powers will lead to the development of a detailed implementation process and an assessment of the cost of any measures to be taken in support of business continuity against precise criteria. At that point it will be possible to establish the cost implications of further decisions, both in terms of funding for direct support for measures such as rent reductions on Council property, business advice, a contribution towards promotional costs. The charter will seek where possible to attract funding from other sources, for example through partnership with the London Development Agency to provide business advice by extending existing business support provision.
- 17.2 The charter will seek where possible to attract funding from other sources, for example through partnership with the London Development Agency to provide business advice by extending existing business support provision.

18. Consultation

The Council has held the following meetings with traders to discuss business continuity and towards development of the draft charter:

21.06.06	Traders Action Group
11.09.06	Traders Action Group
12.09.06	Business Continuity (with Paul Evans and traders)
15.09.06	Business Extra Compensation study
25.09.06	Traders Action Group
24.10.06	Traders Action Group
23.11.06	Traders Action Group with Executive Member for Regeneration, Chief Executive & Strategic Director of Regeneration (to seek input on charter contents)
05.12.06	Traders Action Group (to seek input on charter contents)
24.01.07	Presentation of revised charter proposals to Traders Action Group

The shopping centre landlord has been consulted on the charter proposals separately. Officers have also met with the London Development Agency (LDA) in a steering group that includes Greater London Authority Planners, Transport for London and Business Extra to develop proposals for support that involves LDA assistance. Further negotiation on the level and nature of business continuity support would be required with all of the above partners prior to the establishment of a formal charter.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

19. Borough Solicitor

- 19.1 Section 2 of the Local Government Act 2000 gives the council a power to do anything that it calculates is likely to promote or improve the economic, social or environmental well-being of its area. Section 2(4) specifies that this power includes giving financial assistance to any person.
- 19.2 When exercising the well-being power the Council is required under section 2(3) of the Local Government Act 2000 to have regard to its community strategy. Members therefore need to be satisfied that the proposals will genuinely contribute to the well being of the area.
- 19.3 The Southwark community strategy (Southwark 2016) sets a number of objectives and priorities which the Council aims to achieve in the next 10 years. These include, among other things, the achievement of economic prosperity, a thriving economy and a safer and greener environment. The Council hopes to achieve these priorities by supporting an enterprise culture and encouraging entrepreneurs with business expertise, promoting Southwark as a top location for retail, tourism and creative industries and tackling anti-social behaviour.
- 19.4 The funding of support that enables businesses to remain trading falls within the Southwark 2016 plan as it would create employment, reduce crime and vandalism, boost the economy by encouraging people and visitors to spend in the area and make the centre a social venue for residents. It would also have environmental benefits, as residents would be able to access goods locally and reduce their travelling time.

- 19.5 Members would also need to satisfy that the power is exercised properly by taking into account relevant matters only and ignoring those that are not relevant. For example, the feelings (aggrieved or otherwise) of the traders on the issue of compensation would not be a relevant consideration. Members should also ensure that the Council's decision-making procedures are followed and that the interests of those who are likely to benefit from the decisions are weighed against Council tax payers before the decision is made.
- 19.6 The Acting Borough Solicitor confirms the power conferred by 2 sections of the Local Government Act 2000 would allow the funding of support in the manner proposed. However, in deciding to offer support under this power, it would be advisable for Members to place conditions on any financial assistance offered. Examples of such conditions would be to set a limit on the funding of support as well as the period for which it should be payable. A further condition may be to require the repayment of the financial assistances in certain circumstances i.e. if the business does not continue trading for say, two years following the intended move from the Elephant and Castle. This view concurs with the advice from external experts.
- 19.7 The details of any such support scheme and how it would operate need to be carefully considered to ensure that the Council exercises this power properly and reasonably in all the circumstances.

20. Finance Director

- 20.1 While there are no financial implications arising directly from this report, any detailed proposals emerging will need to be fully costed and considered with any external funding available such as the LDA. Once confirmed, these proposals will need to be considered as part of the Council's business planning process for both revenue and capital alongside other Council priorities.

REASON FOR LATENESS

21. This report has been circulated to members and made available for public inspection with less than five days clear notice in order to permit further consultation take place with traders representatives. Initial charter proposals were shared with traders in December 2006, as outlined in the report. However, submission of a statement of the traders' requirements followed by the presentation to the council of the interim version of the "draft compensation mechanism study" in January 2007 required further advice on the Council's powers. Members had given a commitment in December 2006 that a report on charter proposals and compensation requirements would be made to Executive on 30 January 2007, and that a further meeting would be held with the traders' representatives prior to that meeting to consult on the Council's response. The lateness of this latter meeting (24 January 2007) is a consequence of the short timescale available for the purpose of obtaining information from external parties in order to fulfill the obligation to report in accordance with this timetable and to seek the views of the traders prior to reporting.

REASONS FOR URGENCY

22. The urgency of reporting to the deadlines above stems from the considerable unease and uncertainty which these discussions have inevitably generated among the traders, and the Council's wish to avoid prolonging uncertainty over its proposals to use its powers to support businesses. Failure to meet the previously declared (to traders) deadline of 30 January would exacerbate the uncertainty faced by the traders unnecessarily, would undermine their requests for clearer options and support proposals as a matter of urgency to assist their business planning, and would damage relationships between the parties to which the charter aspires. Traders also expressed a view that they wished to agree as much as possible of the charter principles before the Council's decision to select the development partner for Elephant & Castle (due in February 2007). Adherence to the agreed timetable helps to set Council policy on this matter and to permit timely progress with further negotiations with partners and development of detailed proposals.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Section 106 agreement, 50 New Kent Road	Elephant & Castle Development Team Coburg House	Chris Horn chris.horn@southwark.gov.uk
Supplementary Planning Guidance 2004	Elephant & Castle Development Team Coburg House	Chris Horn chris.horn@southwark.gov.uk
Draft "Compensation Mechanism" Study (Business Extra, January 2007)	Economic Development Team, Chiltern House	Graham Sutton graham.sutton2@southwark.gov.uk

ANNEX A – DRAFT BUSINESS CONTINUITY CHARTER

(As amended following discussion with traders' representatives on 24 January 2007)

Elephant & Castle Regeneration

Business Continuity

CHARTER

**LONDON BOROUGH OF SOUTHWARK AND THE LANDLORD OF
THE ELEPHANT & CASTLE SHOPPING CENTRE (& E&C
DEVELOPMENT PARTNER IF DIFFERENT)**

This document has been created to provide an explanation of the principles by which the London Borough of Southwark (LBS), the shopping centre landlord (the landlord), the selected Development Partner (if different), and the tenants and traders at the Elephant & Castle Shopping Centre will work together, with the support of the London Development Agency (LDA) to enable businesses to continue to trade during the period of planning and redevelopment and to relocate successfully.

LBS has published special planning guidance outlining the intended redevelopment of the Elephant & Castle. If it is required to develop the Shopping Centre, businesses currently operating within the centre will have to be relocated. This charter is intended to ensure that LBS and the landlord, and the Development Partner (if different) agree to a set of principles for supporting continuity of trading.

PRINCIPLES & AIMS

LB Southwark places a high value on retaining a strong representation of local independent businesses in the borough generally and at the Elephant & Castle in particular. LBS therefore wishes to see local business represented alongside incoming high street businesses that the area currently lacks. LBS believes that an area where diversity of business flourishes in a town centre location better represents the interests of the population and adds variety and vitality to the location. LBS recognises that small businesses are often vulnerable, particularly during periods of rapid change. LBS, the landlord, the traders and the incoming development partner (if this proves to be a fourth party) all wish to apply these principles to the comprehensive redevelopment of the Elephant & Castle.

LBS is therefore seeking to offer a clear route for individual businesses that will allow them to make choices with as much certainty as possible (although the timetable for the programme is not yet fixed). The purpose of this charter is set out the main principles for achieving this aim, and to set out the agreed roles of each party.

Every trader has the right to refuse any specific offers of support or alternative premises, and in doing so does not jeopardise their right to statutory or any other compensation.

DEFINITIONS

The following definitions are used throughout this document:

- **Trader – those traders defined as eligible under the terms of the Business Extra compensation study (i.e. that**
 - were already in business on 19 February 2004 at the Shopping Centre;
 - have occupied fixed premises at the Shopping Centre with a direct agreement with the Shopping Centre landlord;
 - have no more than ten full-time staff or full-time equivalent staff or twenty full-time or full-time equivalent staff in the case of restaurant businesses;
 - operate no more than three retail branch operations;
 - are still in business at the Shopping Centre.
- **Tenant – a tenant or licensee of the shopping centre**
- **Development Partner – the developer selected by the Council to lead redevelopment of Elephant & Castle.**

- **The definitions of tenant and trader apply to those businesses within the shopping centre or immediately adjacent that will be directly affected by the demolition.**

PART ONE – GENERAL SUPPORT FOR TRADERS

CONTINUITY OF TRADING PRIOR TO THE CLOSURE OF THE SHOPPING CENTRE

1. . The Charter will be based upon a fixed and planned time frame related to demolition and decanting of the shopping centre. The partners acknowledge the uncertainty and difficulty caused to businesses by the uncertain timetable for demolition of the shopping centre. LBS will work with its selected development partner to agree the decant and demolition dates by the end of 2007. The preferred timetable for LBS and the traders is:

• Agreements reached with all traders that wish to be relocated	By 31 st December 2007
• All offers for statutory extinguishment under Landlord and Tenants Act to be made and agreed	By 31 st December 2007
• All agreements for relocation, compensation and/or extinguishment completed for all traders	By 31 st December 2008
• Decant of all traders and compensation and/or extinguishment of all traders completed	By 30 th June 2009
• Closure of the Shopping Centre	By 30 th June 2009
• Demolition of Shopping Centre	January 2010

2. LBS, the landlord and tenants will jointly audit the external environment of the shopping centre and agree an action plan to identify measures needed to keep the external environment of the Shopping Centre safe, well signed and in good condition. This action plan will be shared with the tenants, and regular updates given on implementation.

3. The landlord, with the support of the tenants, will maintain the interior of the shopping centre to a level that provides an attractive environment for customers in accordance with its duties as landlord, including shop fronts and shop units, and ensure that it is welcoming, clean, attractive, well lit and safe.

4. The landlord will share information on current and past footfall in the centre and will share a regular review of this data with traders and LBS.

5. The landlord and the traders will actively pursue imaginative arrangements to ensure that occupancy is maximised up to closure of the centre through marketing and promotions to maximise footfall (to be devised with traders). The landlord will also maintain diversity of occupancy and run the centre in accordance with the principles of good estate management. The landlord will also provide a 6-weekly estate management update to tenants.

6. LBS, the landlord and tenants will agree upon a programme of promotion of use of the Shopping Centre, funded by money in addition to that raised for this purpose by the service charge, and will build on the advertising and promotion already undertaken by LBS (e.g. the bi-monthly “advertorial” in the local press).

TRANSITIONAL RELIEF

7. The landlord will consider proposals to ensure that service charges are maintained at the lowest possible level consistent with achieving the maintenance and promotional activities referred to elsewhere.

8. The landlord and the tenants will consider proposals to cap and/or freeze rent to reflect the trading environment and to counterbalance decline within (period to be agreed) of signing this charter.

BUSINESS ADVICE AND SUPPORT

9. The LDA will fund a programme of legal advice for individual businesses on their lease status, to be delivered through Business Extra.

10. The landlord will offer traders and their advisers access to individual and collective direct and confidential negotiations on lease and tenancy matters.

11. LBS is committed to continuing discussions with the LDA in order to provide as many options as possible for provision of specific and appropriate business advice so that each business is aware of their options and can make the most informed decision given their individual personal and business circumstances. The objective is to identify all relevant sources of assistance that meet identified business needs so that businesses can prepare an action plan based on their individual circumstances and aspirations.

SUPPORTING BUSINESS CONTINUITY

12. The first option for traders is to consider relocation of their business prior to decanting and demolition in order to secure continuity. LBS will

offer traders first refusal for all available commercial premises within Southwark Council's own retail property portfolio in the Elephant & Castle area and, where possible, at other locations in the Borough, prior to commencement of open marketing of these properties. This offer shall remain open for exclusive consideration by qualifying interested traders for a period of thirty days.

13. A space or premises within easy access will be identified for Business Extra or other business support provision to meet with traders and where details of commercial property available for rental or purchase can be displayed. The partners will also make available details of private commercial property as publicised by the Southwark business desk, and details of commercial property agents and business search agencies will be made available and kept up to date.

14. LBS will offer first refusal over new retail units secured by s.106 agreements in third party developments in the defined Elephant & Castle regeneration area and, where possible, at other available locations in the borough.

15. LBS will offer proposals for tapered rent subsidies related to the size of the property and allowing rent to increase up to market value over a fixed period for all qualifying businesses that move into any LBS commercial property through this relocation process. These terms will be no less favourable than those offered in the s. 106 agreement for the "Volvo" site at 50, New Kent Road (see Annex D of this report).

16. LBS will offer to all businesses which take advantage of opportunities to relocate during demolition and redevelopment the opportunity to relocate in new accommodation the same rent subsidy as above.

17. The partners will set out proposals for allowing individual businesses early release from tenancies in order to take up relocation opportunities or extinguishment. This will include arrangements as appropriate for early payment of Landlord and Tenant Act of Compulsory Purchase Compensation, where such entitlement exists.

18. The Council and the traders will seek to agree a mechanism for the Council to provide financial support for businesses that wish to continue trading at Elephant & Castle throughout the decanting and demolition period. In order for the Council to provide for this in the Elephant & Castle development agreement, traders will provide all relevant information and agree with the Council by (set date) upon the terms of this assistance. The assistance offered by the Council will be designed to support business continuity, will be capped at a fixed amount and will apply to an agreed qualifying period (to be determined).

19. The assistance outlined in 18. above should include such items as reasonable costs associated with relocation including legal fees, fitting out and removal, to be assessed and met through a grant programme.

This will also allow for any traders who make a temporary move before returning to the new main Elephant and Castle Shopping Centre.

(The Council will seek further advice in order to clarify the scope and limits of its powers to determine any such offer of assistance).

PART TWO – IMPACT UPON INDIVIDUAL BUSINESSES

COMPENSATION

20. **Compulsory Purchase Compensation:** where a business has an interest that would (subject to the eventually agreed date for demolition of the Shopping Centre – see the timetable in 1.) bring it within the provisions of the Compulsory Purchase code, then the Council and/or the landlord, upon production of appropriate documentation, will endeavour in good faith to make a fair assessment with the tenant and his/her advisers of compensation likely to be payable.

21. Partners will ensure that businesses are informed and advised of their individual rights through the provision of legal advice on leases and business advice as detailed elsewhere in this charter. Partners will also ensure that traders receive all relevant advice related to their statutory compensation entitlements.

PART THREE - COMMUNICATIONS

22. The partners will report openly at the quarterly meetings of the Liaison Group on its proposals for management and operation of the Centre.

23. The partners will attend regular meetings with the group(s) representing occupants of the shopping centre collectively detailing progress with the acquisition, or development, of alternative premises.

24. The partners and the selected development partner will carry out transparent and full consultation in respect of development proposals and provide regular updates to traders.

PART FOUR

DEALINGS WITH THE PARTIES TO THIS AGREEMENT

25. *(This section will set terms for response times/correspondence, response times for offers of support following agreement of charter contents and allocation of responsibilities)*

The Council's own standards:

In order for the Council to demonstrate its commitment to its customers, prompt, courteous and efficient response to correspondence is essential. In general, correspondence should be acknowledged within three working days of receipt and a full reply sent within two weeks.

26. Complaints about any party to this charter will be dealt with through the respective party's own complaints procedure. For LBS, this will be the Council's published statutory complaints process.

**ANNEX B - STATEMENT OF THE TRADERS' REQUIREMENTS FOR A
BUSINESS CONTINUITY CHARTER
(as submitted to the Council on 2 January 2007)**

Elephant & Castle Regeneration

**TRADERS REQUIREMENTS FOR
BUSINESS CONTINUITY AND
EXTINGUISHMENT**

(to be included into a Charter)

This document has been created by the traders at the Elephant and Castle Shopping Centre that are being affected by its redevelopment.

This document is intended to set out clearly for the London Borough of Southwark, The London Development Agency, St Modwen plc, and any new development company (if not St. Modwen's), to be known collectively as "The Development Partners" what support and assistance will be required by the traders at the Shopping Centre to enable them to remain viable during the period of planning and redevelopment, and to be able to exercise real choice regarding the relocation, continuity or extinguishment of their businesses in the long term.

If trading conditions become untenable over the next thirty months, there must be an option for early extinguishment for all traders of all circumstances.

Every trader has the right to refuse any specific offers of support or alternative premises, and in doing so does not jeopardise their right for statutory or any other compensation.

December 2006

PROPOSALS FOR CHARTER

The Development Partners will guarantee to offer a clear route for individual businesses, which will allow those businesses to make choices with as much certainty as possible. The Charter will set out how this aim can be achieved.

In the event that St. Modwen's are not the main Development Partner, then the Charter will also ensure that the commitments can be implemented by any new Development company without hindrance.

The Charter will not change or undermine any of the rights available to traders through the Landlord and Tenants Act.

PART ONE – GENERAL SUPPORT FOR TRADERS

CONTINUITY OF TRADING PRIOR TO THE CLOSURE OF THE SHOPPING CENTRE

1. The Charter will be based upon a fixed and planned time frame which must remove all the current difficulties associated with the uncertainty over the development period. The time frame will be as follows:

• Agreements reached with all traders that wish to be relocated	By 31 st December 2007
• All offers for statutory extinguishment under Landlord and Tenants Act to be made and agreed	By 31 st December 2007
• All agreements for relocation, compensation and/or extinguishment completed for all traders	By 31 st December 2008
• Decant of all traders and compensation and/or extinguishment of all traders completed	By 30 th June 2009
• Closure of the Shopping Centre	By 30 th June 2009
• Demolition of Shopping Centre	January 2010

- 2. The Development Partners will ensure full continuity of trading up to the agreed closure date of the Shopping Centre through the fulfilment of their legal roles and responsibilities.

BUSINESS ADVICE AND SUPPORT

3. The Development Partners will provide every business with access to specific and appropriate business advice so that each business is aware of their options and can make the most informed decision given their very individual personal and business circumstances. The objective is to identify all relevant sources of assistance that meet identified business needs so that business can prepare an action plan to ensure successful relocation and business continuity, or extinguishment.
4. All eligible businesses will also be provided with access to specific business support measures as outlined in sections below. Eligible businesses will be as defined by the terms of the Business Extra compensation study, i.e. those that;
 - were already in business on 19 February 2004 at the Shopping Centre;
 - have occupied fixed premises at the Shopping Centre with a direct agreement with the Shopping Centre landlord;
 - have no more than ten full time staff or full-time equivalent staff or twenty full-time or full-time equivalent staff in the case of restaurant businesses;
 - operate no more than three retail branch operations;
 - are still in business at the Shopping Centre.
5. This support will include an independent information help line so that each and every occupier can use this single point of contact for securing information about the options available to them. This support will be available immediately and for a minimum period of 6 months after the closure of the Shopping Centre. This advice will include the following optional measures:
 - assistance with business planning
 - assistance with preparation of up to date accounts
 - accessing finance
 - reviewing marketing
 - supply chain development
 - internal policies and procedures
 - training and development
 - staff relocation and recruitment
6. The London Development Agency have agreed to fund a programme of legal advice for individual businesses on their lease status to be delivered through Business Extra.
7. St. Modwen's will provide a suitable vacant unit for Business Extra to meet with traders and where details of commercial property available for rental or purchase can be displayed. The Development Partners will also make available details of commercial property available privately as publicised by the Southwark business desk, and details of commercial property agents and business search agencies will made available and kept up to date.

TRANSITIONAL RELIEF

8. Service Charges: St. Modwen will maintain the same level of services currently available and will publish a proposal to reduce service charges for shopping centre tenants over the remaining life of the Centre at the rate of 50% of the current baseline figures for the year from 1st April 2007 and 25% of the current baseline figures from 1st April 2008 and thereafter.

9. Rent Levels: St. Modwen will publish a detailed proposal to initially cap and then to reduce rents over the remaining life of the Centre at the rate of 50% of the current baseline figures for the year from 1st April 2007 and 25% of the current baseline figures from 1st April 2008 and thereafter to reflect the trading environment and to counterbalance decline.

THE RELOCATION OR EXTINGUISHMENT PROCESS

10. The Development Partners will offer first refusal for all available commercial premises within Southwark Council's own retail property portfolio to eligible traders prior to commencement of open marketing of these properties.

Any offer under this scheme shall remain open for exclusive consideration by qualifying interested traders for a period of twenty working days.

11. The Development Partners will offer first refusal over new retail units secured by Section 106 agreements in all third party developments in the defined Elephant & Castle regeneration area AND at other locations in the borough.
12. The Development Partners will offer other new retail units at locations outside the borough if and when available.
13. The Development Partners will offer proposals for tapered rent subsidies (related to the size of the property and allowing rent to increase up to market value over a fixed period) for all qualifying businesses that move into any of The Development Partners commercial property through this relocation process, and will do the same with new accommodation secured for this purpose in the newly developed Elephant and Castle shopping centre.
14. The Development Partners will offer to all businesses which take advantage of opportunities to relocate during demolition and redevelopment the opportunity to relocate into new accommodation within the new Shopping Centre, subject to the same offer of rent subsidy as above.
15. The Development Partners will work with the selected developer to ensure that physical development and management arrangements are set out in the plans and implemented throughout the life of the project to ensure that the principles above are put into effect.
16. The Development Partners will set out proposals for allowing individual businesses early release from tenancies in order to take up relocation opportunities or extinguishment. This will include arrangements as appropriate for early payment of Landlord and Tenant Act of Compulsory Purchase Compensation, where such entitlement exists.
17. Agreements for relocation and/or statutory extinguishment to be reached and in place by 31st December 2007.
18. Traders have the right to refuse any offers of relocation, and any such refusal will not jeopardise their right for statutory or any other compensation.
19. Reasonable costs associated with relocation including legal fees, fitting out and removal will be assessed and met through a grant programme. This will also allow for any traders who make a temporary move before returning to the new

main Elephant and Castle Shopping Centre.

PART TWO – IMPACT UPON INDIVIDUAL BUSINESSES

COMPENSATION

17. Compulsory Purchase Compensation: where a business has an interest that would bring it within the provisions of the Compulsory Purchase code, then The Development Partners, will provide an assessment to the claimant and his/her advisers of compensation to be agreed by 31st December 2007. All agreements for compulsory purchase compensation and/or statutory extinguishment completed for all traders by 31st December 2008.
18. Additional compensation entitlements: the Development Partners will ensure the fulfilment of the proposals arising from the study undertaken by Business Extra.

PART THREE

COMMUNICATION

19. The Development Partners will report openly at the quarterly meetings of the Liaison Group on its proposals for management and operation of the Centre and for the planning of the redevelopment.
20. The Development Partners will attend regular meetings with the group(s) representing occupants of the shopping centre collectively detailing progress with the acquisition, or development, of alternative premises.
21. The Development Partners and the selected development partner will carry out transparent and full consultation in respect of development proposals and provide regular updates to traders.

DEALINGS WITH THE PARTIES TO THIS AGREEMENT

22. *(Set terms in relation to all parties for:
 - response times/correspondence,
 - response times for offers of support, deadlines for offers of relocation proposals)*

COMPLAINTS PROCEDURE

23. *(Insert staged process to be agreed following allocation of responsibilities above
 - if matters not resolved, must have option for swift external independent arbitration which will be legally binding for all parties)*

ANNEX C:

Summary of progress on Scrutiny Committee Resolutions August 2005

1. The Sub-Committee notes with broad approval the proposals set out in the Director of Regeneration's report and generally recommends that they be developed in more detail without delay. Throughout the process, sensitivity to the real situations facing the businesses, and consultation with them, are considered to be essential.

1. The Sub-Committee requested officers to continue work on the three identified areas where it was considered the Council had a potentially positive role to play i.e. promoting and maintaining trade in the current Centre, assisting business relocations as opportunities arise and, maintaining circumstances conducive to independent business over the longer term. Through continued joint working with the tenants, landlord and other bodies progress has been made in each of these areas and the details are set out below.
2. Overall, officers have attempted to strike a balance between maintaining a sensitive and consultative working relationship with the businesses whilst avoiding the possibility of raising false expectations that the Council could or might exceed its public powers.

2. That Officers or the Executive are invited to consider the recently reported aggressive action by the landlord, possibly towards obtaining vacant possession.

3. Immediately following the last Scrutiny Sub-Committee the council initiated a series of meetings with the landlord. As well as project team officers, the Executive member and the Chief Executive have met with the landlord, Key Property Investments (KPI) to press the matters referred to in this report. On the specific issues of "aggressive action by the landlord" the landlord asserts that it takes direct action such as distress, repossession or forfeiture proceedings only where tenants have persistently defaulted and in the case of non-payment of rent only where a tenant which, already in arrears, has defaulted on an agreed repayment arrangement.
4. There is a clear difference of interpretation between the tenants and the landlord on this point. Members need to bear in mind that the Council is not a party to the tenancy agreements that exist between the landlord and the tenants, has no access to confidential or financial information relating to the relationship between the two parties and has no formal or informal arbitration role in private contractual matters. Having said that, the landlord has a clear understanding that Southwark's desire to retain a strong representation of local businesses within a new town centre environment and its concern that this objective would be set back by overly aggressive action by a landlord of such businesses.

3. The Sub-Committee noted with concern the reported failure of KPI to produce footfall information in the past and asked that Officers continue their efforts to seek from the landlord information in respect of changes in footfall at the centre, and other relevant factors, to help develop a communication/promotion strategy.

5. There has been no reintroduction by the landlord of independent footfall

measurement. It has issued a statement that it keeps open the possibility of using this or any other methodology that might assist it to assess the need for or success of any set of promotional initiatives. Unfortunately the absence of any counting over recent years means that even if it were commenced at this point it would probably be some years before a reliable picture of use of the Centre began to emerge. The landlord has commented that turnover figures from tenants might be a more reliable indicator of business performance but notes that businesses have been unwilling to share such information with the landlord. Officers can report however that in the last month KPI has appointed a public relations consultancy to manage the promotion and marketing of the Centre and that that consultancy has held initial briefing meetings with business tenants and Council officers.

4. In respect of the proposal (paragraph 24 A) that a sum of money be agreed with KPI and the business tenants and built into the working arrangements with the eventual commercial partner, in order to support active measures to maintain the maximum shopping centre viability, that Officers are requested to develop clarity on the Council's contribution and arrangements for tri-partite working as a matter of urgency.

6. KPI, the landlord, has been presented with the Sub-Committee's proposal that a fund should be established but has not been willing to contribute to this. However we understand that in the separate management meetings that KPI holds with its tenants that it has discussed the extent to which it might be prepared to spend sums on promotion on the advice of its newly appointed consultants *and* has discussed the extent to which it is prepared to spend monies that would not be recoverable from tenants under the service charge arrangements i.e at the landlord's own expense. The Council has nonetheless proceeded with promotional measures at its own expense and these are summarized later in the report.

5. The Sub-Committee noted that traders expressed the view that flexibility, in respect of funds made available as proposed in paragraph A, would be desirable.

7. The promotional measures that have been proposed and those that have been implemented have all been discussed with traders, initially at a series of meetings that took place during February 2006. It follows from the response to point 4 that the landlord's unwillingness to establish a specific fund has prevented the creation of a three-way spending plan that the Sub-Committee favoured.

6. In respect of the above proposal in 24 A and the proposals in 24 B, that consideration be given to building an element of funding into the partnership agreement.

8. The Stage 3 bid material as issued to the final short listed commercial partners has stressed the need for maintenance of small business viability and requires the partnership that will be created with the Council to undertake active measures to support them. The bidders have been able to review all of the material that has been produced over the course of the Elephant and castle development programme and have also taken up briefings with the Economic Development Team in order to assist them in developing a response to this requirement. In effect the support package

for traders has been made a specific item of competition and the bidders have been alerted to the importance the Council places upon this matter in its evaluation approach.

7. That Officers be asked to progress with rapidity in-house work to develop Section 106 proposals.

9. There has been very substantial in-house progress with the s.106 proposals. This is an area that is within the control of the Council and has therefore been a more straightforward matter to define requirements. The Volvo scheme on the New Kent Road was used as an opportunity to establish a standard form of agreement under which new retail units are allocated on a 'first refusal' basis to existing shopping Centre businesses with a proportion of those units being available on protected rent terms. In the case of the Volvo Site 15 units of various sizes and types have been secured with 6 of these on protected terms. Members will appreciate that the protection has a cost implication and therefore had to be considered by Planning Committee alongside competing demands for affordable housing, environmental improvements, traffic works, infrastructure investment etc. The Council has been informed that the Greater London Authority has adopted the Volvo agreement as a model clause for use in other, similar, circumstances.

8. That consideration is given as to whether the £15,000 allocation to Business Extra to fund advice to shopping center businesses is adequate for follow-up on Section 106 proposals.

10. Business Extra was able to secure a detailed report and presentation to the business tenants within the £15,000 budget that was allocated by the Council. GL Hearne carried out this work. The general report back was that the traders found the explanation of landlord and tenant and compulsory purchase law and practice helpful. Unfortunately from the point of view of the businesses it confirmed the advice that had previously been given by officers and was unable to identify any additional statutory or common law provisions under which additional compensation might be legitimately demanded by the businesses.
11. However, the G L Hearn report made a number of recommendations that the Council fully accepts. These include the following;
 - a) The Council embraces the LDA Charter (as reported to the August 2005 Scrutiny Sub-Committee) prepared for businesses affected by the Olympic Development Programme, as a minimum set of undertakings. In practice Southwark already offers 'up front' fee underwriting in a CPO situation or in circumstances prior to a CPO process being initiated. (GL Hearne 6.3)
 - b) The circulation of available property details. This is a function that the council carries out through its Business Desk function (Tel 0207 525 5353 E-mail: businessdesk@southwark.gov.uk). This is not yet web-based but the council's Economic Development Team is negotiating an upgraded service from the present supplier. As referred to later there is also a web link directly to the council's own property list. (GL Hearn 6.10.2)

- c) The recommendation that the council explores the possibility of securing premises through the planning process targeted upon the needs of disabled occupiers (as it does for residential occupation) is considered a novel and valuable idea and will be pursued through the next phase of planning. (GL Hearn 6.10.4)
- d) The current Town Centre manager function is, in effect, achieved through the collection of initiatives referred to in this report and is planned into the future management arrangements. The existing shopping centre is private property and is therefore under the control and primary responsibility of the landlord. This is a limitation that the plan objective of creating a genuinely open and fully accessible public town centre aims to address. (GL Hearn 6.10.5)

9. That consideration is given as to whether the criteria for benefiting from any Section 106 scheme should be aligned on broad black and minority ethnic (BME)/small and medium sized enterprises (SME) criteria.

- 12. Business Extra and the Chamber of Commerce worked with the tenants in relation to these matters. Their consensus was that assistance should be made available to small, independent businesses defined by number of employees. The survey of businesses commissioned by the Council did ask businesses to define themselves according to some indicative criteria on the basis of ethnicity but it was not proposed to the tenants that this should be used as a basis for allocation of assistance.

10. That the Executive be asked to consider a framework for the use of well-being powers in these circumstances (Part 1 of the Local Government Act 2000).

- 13. The use of well being powers is being investigated by external consultants appointed through Business Extra on the basis of a fee provided by the Council. Internally officers have been unable so far to identify a statutory provision that would be of specific applicability to these circumstances and, as noted above, the previous consultants appointed to advise the tenants were also unable to find an appropriate power. The latest report will be brought back to Members if and when it produces a basis for fresh recommendations.

11. That where decisions of the Executive are required in respect of the above, these should be obtained by 30 November 2005.

- 14. The matters that Scrutiny Committee directed should be investigated were already within the ambit of decisions made by the Executive in relation to the conduct of the regeneration programme as a whole.

12. That Officers are invited to provide further information to the Sub-Committee on the expected use and timetable for obtaining compulsory purchase order (CPO) powers.

- 15. The Executive's decisions in relation to Compulsory Purchase state that any and all land within the core regeneration area that is not within the unfettered ownership of the Council and which is not proceeding in compliance with the overall scheme (i.e. a compliant planning consent in place and being implemented) should be brought within the scope of a CPO

underwritten by the eventually appointed partner. The next decision in the process will therefore be a resolution by the Executive to seek compulsory purchase powers from the Secretary of State. The earliest likely date for this would be autumn 2007.

**ANNEX D:
EXTRACT FROM s. 106 AGREEMENT FOR THE “VOLVO” SITE (50 New Kent Road)**

6. AFFORDABLE BUSINESS SPACE

6.1 The Developer shall provide the Affordable Business Units in shell form without shop fronts but with service heads provided at a discount to open market rental value for an initial period of five years.

6.2 The Developer shall have the right to substitute alternative units for the identified units provided that the alternative units are in a similar location and of a similar size.

6.3 The Affordable Business Units referred to in paragraph 6.1 above shall be offered for rent not later than 15 months prior to the estimated date of practical completion to shell form to persons who at the date of this Deed operate a business from premises within the Elephant & Castle Shopping Centre and who will be displaced by the development of those premises (not being a business which operates more than 3 retail outlets or employs more than 10 full-time staff). Such persons shall be identified by means of a process to be set out by the Developer acting reasonably and in consultation with the Council and proposed by the Council to the Developer who shall then comment on the choice and determine if the tenant is suitable having regard to the overall tenant mix and financial credibility of the proposed tenants and in accordance with paragraph 6.8.

6.4 In the event that suitable persons are identified following the selection process the tenants of the Affordable Business Units shall be agreed between the Developer and the Council not later than 6 months prior to the Affordable Business Units being available for occupation in shell form and if the Developer and the Council cannot agree on the identity of the final tenant or tenants of any or all of the Affordable Business Units then the matter may be referred to an Expert in accordance with the provisions of clause 19 who shall have regard to the provisions of paragraph 6.8 and , inter alia, tenant mix and financial credibility. If at the later of 6 months prior to the Affordable Business Units being available for occupation in shell form or the expert's determination following for referral in accordance with this clause 6.4, a suitable tenant or tenants cannot be found by the Council or the Developer for any or all of the units the Developer shall be released from the obligations of this paragraph 6 for the purposes of that unit or units. A tenant who is identified as suitable for the Affordable Business Unit shall accept the terms offered within 3 months of an offer being made by reference to paragraph 6.5 below.

6.5 If the persons identified through the processes set out in paragraphs 6.3 and 6.4 of this

schedule agree to take up:

6.5.1 one of the allotted retail units, the rent applicable to that unit will be provided on the following basis.

Year 1	Rent free
Year 2	£15psf x NIA of Unit
Year 3	(Market Rental Value - £15psf) x 25% + £15psf x NIA
Year 4	(Market Rental Value - £15psf) x 50% + £15psf x NIA
Year 5	(Market Rental Value - £15psf) x 75% + £15psf x NIA
Years 6-10	Review to Market Rental Value

6.5.2 the allotted restaurant unit, the rent applicable to that unit will be provided on the following basis:

Year 1	Rent free
Year 2	£17.50 psf x NIA of unit
Year 3	(Market Rental Value - £17.5psf) x 25% + £17.50psf x NIA
Year 4	(Market Rental Value - £17.5psf) x 50% + £17.50psf x NIA
Year 5	(Market Rental Value - £17.5psf) x 75% + £17.50psf x NIA
Years 6-10	Review to Market Rent Value

(in each case, where "Market Rental Value" in respect of Years 3, 4 and 5 is defined as the Market Rental Value as at the commencement of year 1 of the term, "Market Rental Value" in respect of years 6-10 is defined as the Market Rental Value at Rent Review which takes place at year 5 and "NIA" represents the total floor area within the walls of the created commercial unit completed to shell finish).

6.5.3 The other main terms of the leases shall be as follows:

Term - 10 years

Rent Review - review to Market Rental Value at the end of the 5th year of the term

Break Clause - Tenant's option to break upon not less than 6 months prior notice at the end of the 5th year of the term.

Alienation - The lease shall be fully assignable. The rent to be reviewed to Market Rental Value at the time of assignment (i.e. the new tenant would pay the open market rent). Subletting of whole or part to be prohibited.

Repairs - Tenant to be responsible for all internal non-structural repairs and of dilapidations at the expiration of the lease or on the occasion of a lease break or upon vacating the unit.

Service Charges - to be fair and reasonable.

6.6 If one or more of the persons fail to take up their allotted unit(s) having regards to the

timescales set out in paragraphs 6.3 and 6.4 of this schedule the unit shall be available to let in the open market on open market rental terms as the Developer shall decide.

- 6.7 The retail (A1) units and the restaurant (A3/A4) unit referred to in paragraph 6.1 above shall be as shown on Plan B unless the Council otherwise agrees acting reasonably and shall be identified as:

Ground Floor Kiosk – Retail Unit 0.5 (160 sq ft or 14.8m²)

Ground Floor Kiosk – Retail Unit 0.6 (160 sq ft or 14.8m²)

Ground Floor Kiosk – Retail Unit 0.7 (160 sq ft or 14.8m²)

First Floor Retail Unit – Retail Unit 1.2 (475 sq ft or 44.1m²)

First Floor Retail Unit – Retail Unit 1.3 (685 sq ft or 63.6m²)

and the restaurant (A3) unit referred to in paragraph 6.1 above shall be situated at ground and first floor gallery level and comprising 2,300 sq.ft. or 213.6m²

- 6.8 The Developer shall not be required to let any unit to any person who following inquiry of previous landlords and bank references appears in the Developer's reasonable opinion (which opinion is to be notified to the Council) to be:

6.8.1 a person who has been made bankrupt in the preceding five years;

6.8.2 a person who in their current commercial accommodation at the Elephant and Castle Shopping Centre has been found to be persistently late in the payment of rent and service charges over the preceding five years;

6.8.3 a business or person who commenced trading in the Elephant and Castle Shopping Centre after 19th February 2004

- 6.9 If any of the circumstances set out in paragraph 6.8 apply to any person proposed by the Council and that person is deemed unacceptable in accordance with that paragraph the unit shall be nominated to another qualifying Elephant and Castle Shopping Centre Business and so on as necessary until let or, in the absence of a suitable nominee within the timescales set out in 6.3 and 6.4 of this schedule, the unit shall be made available to let on the open market on open market terms as the Developer shall decide.

- 6.10 In addition to the foregoing the Developer shall no later than 15 months before the anticipated practical completion of the retail units to shell finish offer the retail units within the development which are not defined as Affordable Business Space on market terms on a first refusal basis to businesses operating in the Elephant and Castle Shopping Centre. The businesses shall have 3 months to exchange unconditional contracts in respect of those units from the date of the offer made by the Developer and if any such business does not exchange an unconditional contract within 3 months of offer the units shall be available to let in the open market on open market rental terms as the Developer shall decide. The Developer shall at all times act reasonably in respect of the selection of tenants.

