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Elephant & Castle **Regeneration Partnership**



**Generic Professional Legal and Survey
Advice for Existing Small Businesses
Elephant & Castle Shopping Centre
London SE1**

October 2005



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Generic Professional Legal and Survey Advice for Existing Small Businesses Elephant & Castle Shopping Centre London SE1

October 2005

This report has been prepared for the benefit of the small business traders at the Elephant & Castle Shopping Centre.

The report has been commissioned by Business Extra in consultation with the traders at the Elephant & Castle Shopping Centre, as part of a package of professional independent business support that Business Extra is providing in the context of regeneration of the Elephant & Castle.

The work of Business Extra is funded by Elephant Links the regeneration partnership of the London Development Agency and Southwark Council.

The views expressed in this report are not to be taken as those of either Southwark Council, the London Development Agency or Business Extra. Any advice contained in the report is for the purposes of providing generic information only businesses must take independent individual legal and survey advice to determine on all matters relating to the regeneration process at the Elephant & Castle.

Quality Standards Control

The signatories below verify that this document has been prepared in accordance with our quality control requirements. These procedures do not affect the content and views expressed by the originator.

This document must only be treated as a draft unless it is has been signed by the Originator and approved by a Business or Associate Director.

Date	Originator	Approved
10 October 2005	Angela K Nelson	Michael J Eckett

Limitations

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To the extent that the document is based on information supplied by others, GL Hearn accepts no liability for any loss or damage suffered by the client.

EXECUTIVE SUMMARY

1. In February 2004, Southwark Council adopted the Supplementary Planning Guidance called 'A development framework for the Elephant & Castle'. This proposed a new mixed-use town centre with new homes and new leisure and shopping facilities. This involves demolishing the existing Elephant & Castle Shopping Centre and surrounding buildings such as the residential blocks on the Heygate Estate.
2. This report has been commissioned by Business Extra to provide generic advice to the traders in the Elephant & Castle Shopping Centre on their compensation entitlement and to identify measures that can be taken to assist them in lead up to the proposed demolition of the shopping centre.
3. We have been advised that the development timetable envisages the shopping centre being decanted between June 2008 and the end of June 2009, with demolition in early 2010. It is likely that the Landlord of the shopping centre will seek to gain possession of units where the lease expires before possession is required, by using Landlord & Tenant legislation.
4. For those units where leases are expiring after the date when possession is required, it is considered likely that Compulsory Purchase powers will be sought, with a Public Inquiry likely to be held in the latter part of 2007. Traders whose units are acquired using compulsory purchase powers will be entitled to compensation based on the compensation code.
5. Various discretionary measures have been identified as it is recognised that the traders in the shopping centre may require assistance above their statutory entitlement to ensure the viability of their businesses as the blight caused by the development proposal increases.

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10 October 2005

Our Ref: AKN/137494

Your Ref:

Business Extra Ltd
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For the attention of: Patrick Blunt

Dear Sir

Elephant & Castle Regeneration – Compensation Advice

In accordance with the contract dated 27th July 2005 between Business Extra Ltd and G L Hearn, we are pleased to provide a report outlining the procedures and compensation matters relating to the proposed redevelopment of the Elephant & Castle Shopping Centre. The report has been prepared with the assistance of Fladgate Fielder Solicitors.

1 INTRODUCTION

1.1 In February 2004, Southwark Council adopted the Supplementary Planning Guidance called 'A development framework for the Elephant & Castle'. The plan acknowledged that there are high levels of retail expenditure leakage from Southwark and to prevent this, the range and quality of shops in the borough need to be expanded. The Elephant & Castle has been identified at the most suitable location to accommodate a large increase in retail floor space. It is proposed to extend the retail facilities of the Walworth Road northward, leading to a new mixed-use town centre with new homes and new leisure and shopping facilities. This will involve demolishing the existing shopping centre and some surrounding buildings such as the residential blocks on the Heygate Estate. We have been provided by Business Extra with the question and answer sheet from the September 2005 Elephant & Castle general business meeting. It states that in the new scheme, it is envisaged that the major retailers will congregate in the central

area, with the more local shops and businesses being situated along Walworth Road, Newington Causeway, London Road, Heygate Street and New Kent Road.

1.2 This report has been commissioned by Business Extra to address the concerns of the traders in connection with the proposed redevelopment of the Elephant & Castle Shopping Centre (the Centre) and the impact this could have on their businesses. The terms of reference are set out in Appendix J. Their main concerns are:

- How to ensure the sustainability of businesses where traders want to continue to trade at the Centre until demolition
- Their position if they want an early exit from the Centre
- The compensation they would be entitled to on a relocation and extinguishment basis if compulsory purchase powers are used
- Their ability to return to the Centre following its redevelopment

1.3 This report will address these concerns by providing:

- advice on the compensation that traders may be entitled to under either landlord and tenant legislation or the compensation code, with illustrated examples to show how the compensation is arrived at.
- a background to the compulsory purchase process
- an outline of the steps that the traders can undertake to protect their position
- an explanation of the responsibilities that each party has
- an outline of the policies the London Borough of Southwark (LBS) and its development partner could adopt to assist the traders

1.4 The LBS is currently in the process of selecting a development partner to regenerate the Centre and the surrounding area to provide a new town centre destination with new homes and new leisure and shopping facilities. To enable this proposed regeneration, we have been advised by Business Extra, that it is proposed to decant the existing

Centre from mid-2008 to the end of 2009, with the Centre being demolished in early 2010.

- 1.5 The Centre is owned by Key Property Investments (KPI), which is a joint venture between Sahlia, who are a Kuwait based private investment vehicle and St Modwen, a publicly quoted UK based property company. KPI are one of the developers who have made a bid to become the development partner of LBS. We understand KPI have, where the opportunity has arisen, restructured leases to enable vacant possession of units to be obtained when required. For the purposes of this exercise we have assumed that KPI are either selected as the development partner or they dispose of the freehold interest by agreement to the company who is selected as the development partner. We have assumed this disposal would be prior to the making of any Compulsory Purchase Order (CPO). The strategy and advice provided in this report could differ if the current landlord's freehold interest is acquired pursuant to the CPO.
- 1.6 We have assumed that where leases end between mid-2008 and 2009, the landlord will not renew them and for those tenants on leases expiring after this date, possession will likewise be sought between these dates. Alterations to these dates by which a traders interest is acquired, could alter the basis or amount of compensation to which they are entitled, but the general principles contained in this report still apply.
- 1.7 The shopping centre accommodates approximately eighty businesses, which comprise a mix of national retailers and small businesses on a variety of tenancies. A number of the tenancies in the Centre will expire prior to the proposed demolition date and it is envisaged that KPI will seek to acquire vacant possession of these units either by effluxion of time or by using landlord and tenant legislation. For those units where the leases expire post the planned date for redevelopment, it is considered likely that the developer will work in partnership with the LBS to promote a CPO.
- 1.8 It is common for a local authority whose powers of CPO will be used and the developer to enter into a Development Agreement. This document will record the relationship between the parties and the rights and obligations of each party. In short, the developer will undertake to carry out the development in return for the local authority using its powers of compulsory purchase thus enabling all the necessary interests in the land to be acquired. It is usual for the local authority to require an indemnity from the developer that he will meet all the compensation due from the utilisation of the local authorities CPO powers.

- 1.9 The Development Agreement in respect of the Centre may influence the strategy adopted by the developer when acquiring the interests of the traders, whether by agreement or by CPO. The local authority could include obligations within the Development Agreement on how the developer is to treat with parties wishing to relocate, particularly in cases where traders wish to return to the Centre when the development is complete.
- 1.10 This report is intended to provide advice to the small traders in the Centre and not the national retailers, who it is considered will have their own professional advisers. However, the basis of compensation will not alter significantly to that described herein. This report is in respect of commercial enterprises and does not cover any residential occupiers who may be affected by the proposed scheme.
- 1.11 A summary in a question and answer format is set out in Appendix G.

2 THE COMPULSORY PURCHASE PROCESS

- 2.1 In town centre regeneration projects such as this, CPO's have traditionally been promoted by local authorities where authorised to do so by the Secretary of State, to acquire compulsorily any land in their area which :
- (i) is suitable for and required to secure the carrying out of a development, redevelopment or improvement, or
 - (ii) is required for a purpose which is necessary for the proper planning of the area
- 2.2 In considering whether the land is suitable for redevelopment or improvement the local authority and the Secretary of State had to have regard to the development plan, any planning permissions in force and any other considerations which would be material for planning purposes.
- 2.3 This detail is set out in section 226 of the Town and Country Planning Act 1990.
- 2.4 The recent changes brought about by the Planning and Compulsory Purchase Act 2004 removes the objective test in paragraph 2.1 (i) above and replaces it by:

- (a) if the authority thinks the acquisition will facilitate the carrying out of the development, redevelopment or improvement on or in relation to the land, which will contribute to the improvement of the economic, social or environmental well being of their area.
- 2.5 The requirement to have regard to the planning documents set out in paragraph 2.2 above has also been removed.
- 2.6 At first glance, this would appear to represent a significant easing of the requirements of proof on local authorities promoting CPO. However, it is important to appreciate that this relaxation only really amounts to a widening of the circumstances, which a local authority has to prove to make a CPO. There is then a separate question which arises, namely, whether it is appropriate for the authority to exercise that power. Unless no objections were made to the Order, the Order will not take effect until it has been confirmed by the Secretary of State. The Secretary of State has issued policy guidance which sets out the matters to which he will have regard to in deciding whether it was appropriate for the authority to make an Order and whether it should therefore be confirmed. In summary, he will need to be justified that there is a compelling case in the public interest for the Order which justifies the interference with the human rights of those with an interest in the land affected. The specific points upon which he will wish to be satisfied in practice are set out in paragraph 2.13.
- 2.7 The insistence by local authorities of having an open ended indemnity to cover the total compensation bill for a particular CPO has made developers cautious and rather than have the uncertainty as to what the total compensation liability might be, they prefer to handle the negotiations themselves or through trusted advisors and will seek to acquire properties by agreement where possible.
- 2.8 The procedure for making a CPO, making objections and the procedure at the Public Inquiry (the Inquiry) are detailed in Appendix A.
- 2.9 If a local authority receives one or more objections from either affected parties or interested groups it is incumbent upon them to hold an Inquiry. This will be presided over by an Inspector appointed by the First Secretary of State of the Office of the Deputy Prime Minister.

- 2.10 Making an objection can put the claimant in a stronger negotiating position and it is almost always recommended practice that a claimant should submit an objection. On notification of the Order, which will be sent to all affected parties, a time limit will be specified as to the date when objections should be made by, the format and the address which they should be sent to.
- 2.11 The developer will usually seek to agree compensation with objectors and have as many as possible withdrawn before the Inquiry. The greater number of objections outstanding at the Inquiry, the greater the cost and the greater the uncertainty as to whether the Order will be confirmed. It is for this reason that in the lead up to the Inquiry, the developer may be more generous with offers of compensation to achieve the withdrawal of objections. This must represent the optimum time for a claimant to achieve a settlement.
- 2.12 We would anticipate that if the developer is wishing to start decanting the Centre by mid-2008, it will be necessary to hold an Inquiry in the latter part of 2007. The developer will at this time be prepared to consider a variety of agreements that address claimant's concerns. Negotiating in this period not only represents an opportunity for those wishing to settle on a full and final basis but also for those wishing to vacate early.
- 2.13 Assuming that there is more than one objection outstanding before the Inquiry, an Inquiry will be held. Each case is decided by the Secretary of State on its own merits but in practice it will usually be necessary for the developer and the local authority to demonstrate the following
- That the scheme is in the public interest
 - That the scheme could not be provided on an alternative site not requiring the use of CPO
 - That the public benefit the scheme will provide could not be obtained by a smaller scheme not requiring the use of CPO powers
 - That the present scheme cannot be delivered without compulsory purchase powers

- There is a reasonable prospect that the present scheme will be delivered within a reasonable timescale if the CPO is confirmed.

2.14 The inspector will only hear objections relating to the issues set out in paragraph 2.13 above and not on the level of compensation offered.

2.15 The inspector can either refuse the use of compulsory purchase powers in which case the scheme is likely to be aborted, he can confirm it or he can modify it in some way to take account of objectors' representations.

2.16 The cost of mounting an objection will follow the success at the Inquiry. Therefore objectors should carefully consider that where an objection is made as to whether it is pursued through the Inquiry as an unsuccessful objection can lead to the objector being responsible for his costs and a proportion of the local authorities.

2.17 Once the initial objection is made we recommend that the strategy is considered on an individual case basis with a skilled compulsory purchase practitioner.

3 BASIS OF COMPENSATION DEPENDING ON THE TENANCY HELD

3.1 Assuming the CPO is confirmed, the entitlement to compensation is based on the interest held in the property and the various types are considered below together with the basis on which the compensation is assessed.

3.2 We understand there are a variety of tenancies in the Centre comprising;

- Licences
- Tenancies at will
- Protected Tenancies
- Excluded leases

The differences are discussed below:

Tenancies at will

Under this type of tenancy, the tenant occupies the premises with the consent of the landlord and either party can determine the tenancy at any time. There is no right of renewal under this type of tenancy.

Licences

A licence is an agreement to occupy where the tenant does not have exclusive possession. An example of this would be a market stall where it is not stated in the lease that the stallholder has the right to occupy a specific pitch.

Protected tenancies

The Landlord & Tenant Act 1954 (the 1954 Act) provides the tenant with the right to a new lease (security of tenure) when their current lease expires. The landlord can refuse the granting of a new lease on certain grounds, details of which are set out in Appendix B. Unless a lease specifically excludes this Act it will have protection under it. Tenants who have protection may also be entitled to compensation under the 1954 Act, if the lease is not renewed.

Excluded Leases

This is a lease where it is stated that s.22-28 of the 1954 Act is excluded and the consent of the court has been obtained for it to be an excluded lease or, more recently, a specific notice has been given that the lease will not be protected prior to the lease being entered into. Under this type of lease there is no security of tenure and the tenant does not have the right to a new lease.

3.2.1 It is important for businesses to be aware of the type of tenancy they have in order to establish what compensation if any they are entitled to. They need to establish whether the lease is likely to expire prior to when possession is required or if the lease contains any break clauses, which will enable the landlord to gain early possession of the unit. A surveyor or solicitor can advise on this.

3.3 The following paragraphs provide a summary of the compensation that tenants are entitled to depending on the type of tenancy they have and when it expires.

3.4 **Tenancies where possession can be gained by the freeholder/developer prior to end of 2009**

3.4.1 These fall into two categories depending on what security of tenure is afforded by the lease.

Tenancies with no security of tenure (no right of renewal under the 1954 Act)

3.4.2 If a tenancy falls into one of the categories below and expires prior to June 2009, the tenant is not entitled to any statutory compensation.

- Licences
- Tenancies at Will
- Excluded leases

3.4.3 For businesses where the lease is expiring in the near future, the tenant needs to consider whether it is better to relocate the business early or to renew the lease. Traders need to be aware that if they agree a new lease they will be contractually bound to pay the rent and service charge until the end of the lease. If they decide to renew the lease it may be advisable to try and negotiate a lease that incorporates break clauses which will enable them to vacate at a time which suits their business.

3.4.4 It may be that some occupiers will be in occupation on short leases, licences, excluded leases and tenancies at will from another party other than the developer. This situation can arise where a leaseholder sublets their property to another occupier. The party letting out their interest is known as the head tenant or head leaseholder and the party taking the lease as the sub tenant. If the developer does not control the head lease and serves a compulsory purchase notice on the occupier, then parties with these interests will be entitled to compensation. If the duration of the tenancy or period left to run is less than twelve months compensation is assessed under Section 20, which is covered in more detail in paragraph 4.22. Those with interests longer than twelve months will be entitled to relocation compensation or disturbance compensation as discussed later in the report.

3.4.5 We are aware of situations, however, where the head leaseholder has terminated agreements with their sub tenants to maximise their own compensation for providing the

developer with vacant possession. Tenants in this position can be vulnerable and they may wish to approach their immediate landlord to explore the potential to devise a strategy to prevent this arising.

3.4.6 Commentary on the market stallholders position is set out in Appendix E.

Protected Tenancies

3.4.7 Where leases are expiring before the end of 2009 and they have security of tenure, it is likely that the Landlord will try and gain possession of these units by using landlord and tenant legislation.

3.4.8 If a lease is expiring in the near future, the landlord may be willing to grant a new lease. However, they are likely to only be prepared to grant a new lease which either expires prior to the end of 2009 or contains landlords break clauses enabling vacant possession to be gained prior to this date. Our experience of this situation in similar schemes, is that the developer may wish to grant new leases, that are outside the 1954 Act, with a payment of compensation in line with that the tenant would be entitled to on the non-renewal of a protected tenancy. As this would be giving certainty to the Landlord as to when they can gain possession, the tenant should be in a position where they may be able to negotiate favourable lease terms such as a reduced rent. As stated in 5.2.2 traders need to be aware of the contractual commitments of accepting a new lease.

3.4.9 If the landlord agrees to the granting of a new lease and it has protection under the 1954 Act, then the tenant will be entitled to compensation under that Act when the lease expires if the landlord is not prepared to grant another new lease, provided the tenant remained in occupation of the premises up to the end of the lease.

3.4.10 Where the landlord refuses the granting of a new lease on the grounds of redevelopment (ground g as stated in Appendix B.). The tenant will be entitled to compensation based upon their rateable value as follows:

- One times the rateable value if they have been in occupation for less than 14 years

- Two times the rateable value if they have been in occupation for 14 years or more or they have continued a business that has been run from the unit for 14 years or more.

3.4.11 If the tenant has not complied with the terms of their lease or have persistently delayed in paying the rent and the landlord is able to refuse the granting of a new lease on grounds a, b, c, d as described in Appendix B, then the tenant will not be entitled to any compensation.

3.4.12 If the tenant is entitled to compensation for the non-renewal of their lease and the landlord serves a s.25 notice or the tenant serves a s.26 notice between now and the 31st March 2010, then compensation will be based on the rateable value in the 2005 Rating List. In this respect tenants will need to consider whether they wish to appeal their rating assessment, as a successful appeal that reduces the assessment could result in lower compensation.

3.4.13 At the end of a tenancy, a tenant may be able to make a claim for improvements that have been made to the property. The compensation due is the lesser of the following;

- (i) the value that the improvements make to the property
- (ii) the cost of carrying out the improvements

In practice however, where the property is to be demolished, the improvements will add little value. In our experience, it is unlikely that the traders in the Centre will receive compensation on this basis.

3.4.14 If a tenant is occupying under a lease that is expiring shortly or they are holding over as described in Appendix B and they wish to renew the lease, then we recommend seeking professional advice as to the strategy for serving notices as the implications are outside of the scope of this report.

3.5 **Tenancies where possession cannot be gained prior to end of 2009**

3.5.1 This includes both tenancies which have security of tenure under the 1954 Act and tenancies which are excluded, where the lease expires after June 2009.

3.5.2 In these circumstances, the landlord is only able to gain possession by agreement or using CPO powers if statutory notices are served pursuant to the CPO and possession is to be taken compulsorily.

3.5.3 A tenant who wishes to relocate before statutory notices have been served can only do so by agreement.

4 **COMPENSATION**

4.1 When property interests are acquired by compulsory purchase, the acquiring authority are required to pay compensation in accordance with the "Compensation Code", which is essentially a combination of statutory legislation (most particularly the Land Compensation Act 1961 and 1973 and the Compulsory Purchase Act 1965) and case law precedent.

4.2 An occupier of property may be entitled to two limbs of claim for compensation; property value and disturbance. The property value is essentially the capitalisation of the profit rent (the difference between the rent the unit would let for and the rent being paid), if any, that is enjoyed by traders. In the event that the lease terms enable the landlord to instigate regular rent reviews, it may be that no profit rent is enjoyed and no claim can successfully be made under this item.

4.3 The disturbance compensation reflects other costs (i.e. those not based on the value of the land) reasonably incurred as a result of the compulsory acquisition of property. In practice this will be based on either the relocation of the occupier to suitable alternative premises, or the extinguishment of the business.

4.4 The main principle of disturbance compensation is that it should, so far as money can, put the claimant (displaced occupier) in the same position as if the compulsory acquisition had not taken place. There are four basic rules in the assessing loss, which were confirmed in the case of *Director of Buildings and Lands v Shun Fung Ironworks* as follows;

- There must be a causal connection between the acquisition and the loss in question.
- The loss must not be too remote.
- Losses or expenditure must be reasonably incurred.

- Expense for which **value for money** is enjoyed cannot be compensated.

4.5 Value for money is the term used to describe expenditure which puts the claimant in a better position than they originally were. Examples of this include;

- If a trader has old carpets in their existing premises and when relocating they buy new, they are likely to receive only a contribution towards the cost as they are deemed to have the benefit of value for money.
- If a trader makes alterations to relocation premises which increases their value, the cost of these improvements is unlikely to be compensated. This is because the premises could be vacated and the enhanced value realised.
- If a trader relocates to alternative premises where the rent payable is higher than at the Elephant & Castle Shopping Centre (the Centre), they will be deemed to be getting value for money (i.e. the premises are either in a better location, larger, or of a higher specification) and it unlikely that any of this increased rent will fall to be compensated.

Relocation

4.6 In circumstances where suitable alternative premises are available, it is usual for compensation to be based on the cost of relocating. Although there is no prescribed list of items which should be compensated, and each case will be assessed on its merits, typical items of compensation for relocation include:

- Removal expenses
- Notification of new address to customers and suppliers
- New stationary
- Special adaptations of the new premises
- Temporary loss of profits during the period of the move
- Any long term loss of profits as a result of the loss of goodwill following the move
- Legal fees for the disposal of the existing property and the acquisition of the new premises
- Stamp duty
- Surveyors fees

- 4.7 In town centre redevelopment schemes such as at the Elephant & Castle Shopping Centre, claimants may wish to take units in the new scheme. This may involve moving to temporary accommodation whilst the development is being built, followed by a further move into the new scheme once it is complete. This may lead to increased costs which the acquiring authority may not be prepared to compensate unless it can be demonstrated that no suitable permanent properties were available outside the scheme and a double move was reasonably necessary.
- 4.8 We have been advised by Business Extra that it is being considered by Southwark Council that temporary accommodation could be provided on the site which is currently occupied by the Volvo garage. On the assumption that this can be provided, we understand a number of traders are concerned that their customers will not come to this location, especially as it will be on the edge of a large construction site. They consider their businesses will not survive and therefore this temporary relocation site may not be a viable option for a number of the traders.
- 4.9 For those traders who consider this would be a suitable temporary relocation site, then they may under the compensation code, be able to claim the costs of relocating to this site and then the costs of relocating to a new unit in the scheme. If the rent and rates are higher than is currently being paid, then as stated in paragraph 4.5, the developer may not be prepared to compensate for this as it will be regarded as value for money. We recommend that traders seek professional advice before committing to a double move to ensure they are fully aware of their obligations and what they will be compensated for.
- 4.10 Traders whose custom is localised and moving even short distances would mean that either customers would not follow them or that the new location would place them closer to competitors, may not be able to relocate and total extinguishment could be the only viable basis for compensation. From our preliminary discussions with traders, this is likely to be the case for many of them. Pressure should be put on the local authority to devise a discretionary strategy that gives traders certainty and allows them to extinguish early, before incurring the expense and time associated with tracking down relocation sites.
- 4.11 Typical claims determined on a relocation basis are attached in Appendix C.

Total loss of goodwill (Extinguishment)

- 4.12 In certain cases, a business may be unwilling or unable to relocate, and may claim losses based on the total loss of goodwill of the business. Such claims will comprise the value of the business, together with any other losses reasonably suffered as a result of its closure.
- 4.13 In certain circumstances, a person may automatically qualify for compensation based on the total loss of goodwill. If a claimant is over 60 years of age on the date that possession is given up, and his premises have a rateable value not exceeding a prescribed amount (currently £29,200), he will qualify on this basis.
- 4.14 Appendix D comprises the detail and commentary of actual claims for total loss of goodwill that has recently been agreed by GL Hearn, and should provide guidance as to how such claims are considered.

Relocation v Extinguishment

- 4.15 Unless automatically qualifying for extinguishment in accordance with paragraph 4.13 it is important that regard is given to the business decisions taken and hence on what basis compensation is claimed. There is a duty on the claimant to mitigate his losses, requiring him to act reasonably and take business decisions in the same manner as if the acquisition had not been compulsory.
- 4.16 It may be unreasonable for a trader to claim compensation on the basis of relocation if it would be more reasonable (and significantly cheaper) for his business to be extinguished. Alternatively it may be unreasonable for a trader to extinguish his business if alternative premises are available and it would be more reasonable to relocate. There are no strict rules as the circumstances of each case will be different; the real issue is whether it is prudent and reasonable for the particular trader, in his particular situation to decide to move to alternative premises rather than to extinguish his business.
- 4.17 In considering a strategy for preparing and submitting a claim for compensation, regard should be given to the following;
- Instructing a surveyor conversant with the compulsory purchase process.

- Seeking early agreement with the acquiring authority on the basis of compensation (i.e. relocation or extinguishment).
- For particular items of claim that may be contentious, seeking a commitment from the acquiring authority that they will accept such items as compensatable.
- Keeping a comprehensive record of alternative premises that may be identified and the reasons, if any, for rejecting these as unsuitable.
- Keeping copies of quotes, invoices and any other costs incurred. This could also include time sheets, photographs and notes on why particular business decisions were taken.

In the event that loss of profits is being claimed, consideration should also be given to;

- Presenting accounts to clearly show the losses suffered.
- Keeping documentary evidence demonstrating contracts or customers that have been lost as a result of having to vacate.

4.18 There are statutory rules to apply in the assessment of compensation, and case law setting precedent to the valuation approach. However, the Statute is often difficult to apply, and much of the case law is contradictory. Each claim will be different and based on the individual circumstances of the claimant and the property they occupy.

Entitlement to Disturbance Compensation

4.19 If an occupier is in possession of property at the date that it is required pursuant to a CPO, he will be entitled to receive compensation on the basis detailed above. Thus, if traders choose to remain in occupation until the development begins (and their tenancies are not determined in accordance with the Landlord and Tenant Act 1954) they will be entitled to receive disturbance compensation.

4.20 Entitlement to disturbance compensation is prescribed under Section 5 of the Land Compensation Act 1961 for all tenancies except those which are regarded as short tenancies.

4.21 The following are regarded as short tenancies

- Tenancies where the term is for less than one year
- Tenancies which are year to year
- Tenancies with less than one year unexpired – both with protection under the 1954 Act and without.
- Tenancies where the tenant is holding over under the 1954 Act as set out in Appendix B and no notices to terminate the tenancy have been served.

4.22 Where tenancies fall into one of the above categories, the basis of compensation is assessed under s.20 of the 1965 Act. The assessment of compensation is very similar to that of longer tenancies, but occupiers will not be entitled to the value of their lease and the value of goodwill on extinguishment could be reduced and calculated to the end of the period that possession is guaranteed. If the extinguishment value is low then an acquiring authority may not be willing to pay for relocation (if the costs are significantly higher) even if a relocation property was available and viable.

4.23 Tax Treatment

The transfer of a property to an acquiring authority is a disposal for capital gains tax purposes. If the property is acquired under a contract, the date of disposal is the time the contract is made or the date any conditions fall away. Otherwise, the disposal and acquisition are made at the time when the compensation is agreed or determined by the tribunal.

The compensation payment will be apportioned for tax purposes into revenue and capital receipts in the hands of the tenant and taxed in the normal way according to the tenant's individual circumstances. Any apportionment should be made on a just and reasonable basis.

In certain circumstances a tenant may be able to reinvest part or all of the capital proceeds in acquiring new land. Where this treatment is available, the capital gains tax

that would have been payable on receipt of the compensation is rolled over and deferred until the tenant disposes of the new land.

The above summary of the tax treatment of compensation payments received under a CPO is intended as a guide to the current law and H M Revenue and Custom's published practice. If in any doubt as to their individual circumstances, tenants are strongly advised to take independent professional advice.

Advance Payments

- 4.24 Under the compensation code, where possession of a property has been taken, a claimant is entitled to receive ninety percent of the compensation that is agreed between the claimant and the acquiring authority or if no agreement is reached, ninety percent of the acquiring authorities estimate. The advance payment is payable within three months of being requested (in writing) or on the date of possession, whichever is the later. There is, however, no penalty if the acquiring authority fails to make a payment within the prescribed timetable.
- 4.25 Developers may be prepared to agree to making advance payments to claimants, who will be compulsorily purchased prior to the property being acquired, especially where this enables a claimant to relocate. However, advance payments must be reduced by the amount the acquiring authority considers will be required by them to secure the release of the interest of the mortgagee if there is one in respect of the property concerned.

Changes to the Compulsory Purchase process

- 4.26 In recent years, there have been many attempts to update and simplify the compulsory purchase process and the ways in which compensation is assessed. A more detailed history of this process is contained in a recent article from *Viewpoint*, the GL Hearn magazine, a full copy of which is attached to this report as Appendix F.
- 4.27 The most recent change to this process is the Planning and Compulsory Purchase Act 2004. Part 8 of this Act deals with compulsory purchase matters and these changes became effective from 31 October 2004.

- 4.28 The most significant part of Section 8 of the 2004 Act is the introduction of a commercial loss payments scheme. Previously, in accordance with “Rule 1” of Section 5 of the Land Compensation Act 1961, “*No allowance shall be made on account of the acquisition being compulsory.*” This brings the assessment of commercial property compensation in line with that for residential property, which has attracted additional “*Home Loss Payments*” since 1973.
- 4.29 The new “*Loss Payments Scheme*” for commercial property enables the tenant or owner of a property that is compulsorily acquired to a “*basic loss payment*”. This amount is 7.5% of the property value, subject a maximum of £75,000. In addition, the “*occupier’s loss payment*” is payable of 2.5% of the occupier’s interest, subject to a maximum of £25,000. An owner-occupier will be entitled to both loss payments, i.e. 10% (capped at £100,000). However, as these payments are linked to the value of the property interest held, leasehold occupiers of property may not qualify for any Loss Payment.

Blight Notices

- 4.30 Blight is a term that means different things to different people. In general it relates to the depressing effect on property values of public sector decisions or actions. The Blight Notice rules were designed to ameliorate the position of parties suffering from considerable uncertainty as to whether their property was required for a particular scheme or not. The system works in cases where there are say three alternative routes for a new highway or railway and it is known that only one route will be eventually chosen. The properties on all three routes could be depressed. The Blight Notice procedures here give affected parties on the routes not chosen an ability to obtain some compensation.
- 4.31 In the case of the Elephant and Castle shopping centre, the traders within the centre know that their units are to be acquired and the Blight Notice would not bring about any greater certainty for them. The only benefit we can see is that it would bring forward and crystallise the date when losses are claimable and remove the uncertainty surrounding the assessment of losses before the service of notices as discussed in paragraph 5.2.3 below. There are some disadvantages to a claimant in serving a Blight Notice and their use should be carefully considered. One disadvantage is that it will bring forward the date from which the claimant must mitigate their loss and could remove the advantage to be gained from making an objection to the CPO.

- 4.32 Serving a Blight Notice is relatively inexpensive to serve, but if it is challenged by the local authority the process could become expensive and drawn out. If a Blight Notice is accepted, there is no ability on the part of the claimant to enforce the local authority to take possession of the unit. A claimant in these circumstances, is likely to be in the same position as his neighbour waiting for the developer to take over his interest to end the uncertainty of when it will be acquired.
- 4.33 A Blight Notice can only be served by certain people and those on leases will need to have an unexpired term of greater than three years. There is also a rateable value cap, which is currently set at £29,200. If a Blight Notice is served before the CPO is confirmed, it will also be necessary for a claimant to have made reasonable endeavours to sell that interest, but has been unable to do so except at a much reduced price because the land has been included within the CPO.
- 4.34 There is no definition as what constitutes reasonable endeavours to sell, but actual attempts will need to be made. It is not necessary to instruct an estate agent to market the property, but this is a good example of the efforts being made to sell. An agent may make a charge and this will need to be judged against the advantages to be gained from the process.
- 4.35 The local authority can confirm that the property is not required for the scheme, accept the notice, in which case it is regarded as a deemed Notice to Treat, or reject the notice. Any refusal by the council to accept the notice can be referred to the Lands Tribunal. As stated above, if the local authority accepts the notice there is no obligation on them to take entry and it rarely removes the uncertainty claimants find so frustrating and in our experience the process is often not worthwhile.

5 SCENARIOS FOR TRADERS

- 5.1 We have been asked to provide advice in respect of four specific scenarios which may be relevant for existing traders at the Elephant & Castle Shopping Centre (the Centre).
- 5.2 Ensuring sustainability of businesses where traders want to continue to trade at the Centre until possession required.
- 5.2.1 There is no specific requirement for traders to relocate in advance of the compulsory purchase. However, the right for traders to remain in occupation will depend on the

terms of their lease and, as discussed in Section 2, there may be an opportunity for the landlord to bring leases to an end in advance of the proposed demolition of the Centre.

5.2.2 As discussed in paragraph 3.4.8, it is likely that the landlord will be prepared to renew any leases expiring in the near future, albeit on terms which will enable them to obtain vacant possession prior to the end of 2009. In such cases traders should give careful consideration to their strategy in lease renewal negotiations. For example, traders may wish to seek tenants break clauses on short notice in order to retain flexibility in the event that the Centre continues to decline and an early relocation becomes their favoured option. Traders should be aware that if their lease are renewed then they are contractually bound to pay the rent until the lease either comes to an end or can be determined.

5.2.3 If businesses choose to remain in occupation up until the time of demolition, there is no guarantee that their business will be sustained, and there is no statutory right to compensation in the event that the Centre runs into further decline. Whilst it has been established, through recent case law, that disturbance losses incurred prior to a Notice to Treat being served, may be compensated if the requisites detailed in paragraph 4.4 are met, some acquiring authorities are reluctant to consider it. Other authorities may seek to differentiate between the losses incurred before the service of notices and those incurred afterwards, treating those incurred beforehand more stringently. One way to protect against this is by serving a blight notice, which was discussed in section 4 above. In any event, to claim for losses as a result of the potential decline of the Centre whether pre or post notice, it will need to be demonstrated as being a direct consequence of the CPO – lost profits attributable to the indiscriminate effects of blight (the effect that the decision by the LBS to seek redevelopment of the area has on property values and business) will not be compensated.

5.2.4 To assist in demonstrating pre-notice losses, traders should ensure they maintain good business records. Collating this evidence collectively should assist in strengthening the case for pre-notice losses and may assist in demonstrating the need for the discretionary measures as outlined in paragraph....

- Consideration should be given to presenting accounts to show the maximum profit.
- If contracts are lost due to the threat of not being able to fulfil them due to having to vacate, the trader should endeavour to obtain paperwork supporting this.

- The company may need to be considering restructuring if they are part of a large company in order that accounts relating solely to the property at the centre can be provided.
- In order to demonstrate that businesses have suffered a loss of profit due to the effects of the redevelopment, those traders with units in other centres should maintain good turnover records. This enables comparisons to be made to show if the Elephant & Castle Shopping Centre has suffered a loss greater than that which has been experienced elsewhere.

5.2.5 Business Extra, have provided a schedule of events, which have been identified as having an adverse effect on the viability of the Centre. Examples of these events are set out below.

- The failure of the earlier redevelopment proposals prior to 2003
- The downsizing of a number of the multiples in the centre such a WH Smiths and Tesco and the loss of established shops with long-standing customer bases. As the date for redevelopment comes closer, the loss of established shops is likely to increase. Although these units may be let on short-term leases, it will take these new occupiers time to build up their goodwill. They are also likely to put limited investment into the units due to the short term nature of their occupancy. This will add further to the general appearance of the Centre as being one in decline.
- The phasing of the development proposals in respect of the decanting and demolition of the Heygate Estate, prior to the demolition of the shopping centre, is resulting in the loss of local residential customers.
- The vacation of a number of offices in the surrounding area, for example the vacation of Hannibal House by the NHS. This has deprived the traders of valuable lunchtime trade.
- The proposed redevelopment of the Aylesbury Estate may have an impact on the existing centre if residents are decanted prior to the end of 2009.

5.2.6 The above factors contribute to the general blight that the Centre has suffered but under the compensation code, the effect of this blight is not compensatable. Therefore the

discretionary measures as outlined below may need to be implemented in order to enable traders to survive.

5.2.7 As the number of the shops become vacant between now and the end of 2009, or there are other factors which reduce the trading viability of the Centre, it may be possible to obtain reductions in the Rateable Value of premises by making an appeal to the Valuation Office Agency (www.voa.gov.uk). If this appeal is successful it is likely to reduce the business rates payable by traders. However, this action may disadvantage those traders who have their leases determined and are entitled to receive compensation based on the Rateable Value of their premises (see paragraph nos 3.3.6 -3.3.8). In these cases careful consideration needs to be given to whether the potential rate savings will be greater than the compensation they may receive. Traders should be aware that if appeals are made by some of the occupiers in the Centre and the Valuation Office Agency subsequently reduces the Rateable Value, they may subsequently reduce all the assessments in the Centre.

5.2.8 Traders who have a protected tenancy that expires prior to the end of 2009 should be particularly careful to ensure they pay rent and service charges on time, and do not breach their lease terms. Failure to do so could provide the landlord with the opportunity to refuse the grant of a new lease on these grounds, which would result in the tenant not being eligible for any compensation.

5.2.9 Those traders wishing to remain in the Centre, should consider approaching the Landlord as a collective body to see if a strategy can be identified that enables the landlord/developer to achieve his commercial aims and the traders to continue trading. For those traders who have leases expiring after the date when possession is required, options to purchase their interest in the future could be agreed. This would enable the trader to be certain of the compensation they would receive, whilst enabling them to continue trading and the landlord certainty as to when he can obtain possession.

5.3 Traders who want an early exit from the Centre.

5.3.1 An early exit from the Centre could be achieved in two ways. Firstly, the property interest held by traders could be determined in accordance with the lease terms, either by termination or assignment. If this action is triggered by the trader it is unlikely to result in any compensation being payable.

5.3.2 Secondly, the landlord may be willing to enter into discussions for the early acquisition of property by agreement. However, as this will be at the discretion of LBS and the landlord, there is no certainty of the basis on which this may be achieved. This will only be known after initial dialogue has been entered into.

5.4 Relocation and extinguishment on compulsory purchase.

5.4.1 The entitlement to disturbance compensation for displaced occupiers is considered in Section 4 above.

5.5 The ability of the traders to return to the Centre following its redevelopment

5.5.1 Unless favourable terms are agreed with the developer, displaced traders will have to compete with the market, and pay a market rent, to secure premises in the new development. The rental levels in the new development could be higher than those currently paid, but as this would be classed as "Value for Money" any difference in rent paid would not fall to be compensated.

5.5.2 If existing traders want a new unit in the scheme, it is unlikely that continuity of trade would be achieved - i.e. during the works it will not be possible to trade. In this event either a double move will be necessary (a temporary move into other premises and then a permanent move back into the new development once works are complete) or a period of time will pass when the business is unable to trade. The full costs of these losses may not fall to be compensated, however, as in mitigation of loss it could be more reasonable to, upon displacement, immediately and permanently move into other premises and thus avoid the requirement to incur any greater expense. However, each case will be different and the action that it may be reasonable for one trader to take will not necessarily be deemed as reasonable for another trader.

6 **DISCRETIONARY MEASURES FOR ASSISTING THE TRADERS**

6.1 In the preceding paragraph of this report, we have seen how the compensation process works and the compensation payable to claimants. In our experience, claimants perceive that the process is unfair and the introduction of loss payments is new and it will take time to see whether this goes anyway to shifting their perceptions.

- 6.2 Some acquiring authorities, particularly those funded by central government such as Cross Rail and LDA, have policies on how they will interpret or apply the compensation code. These are considered briefly below:

Olympic and Paralympic Games Business Relocation Charter dated May 2005 and prepared by the London Development Agency (LDA).

- 6.3 We have been provided with a copy of the above charter by Business Extra which sets out the principles by which the LDA will assemble the land required for the Olympics and comment as follows:

- (i) We note they will provide a written undertaking that they will be responsible for professional fees when businesses seek legal and surveying advice regarding the business relocation process.

The acquiring authority is only responsible for professional fees once a notice to treat (this is the notice served by the acquiring authority stating their intention to acquire the premises) has been served. However, in order to encourage businesses to reach an agreement without the need for compulsory purchase, the developer will often agree to reimburse reasonable fees in order to encourage businesses to enter into negotiations. Often the reimbursement of fees for professional advice is paid as a part of the settlement of the claim. If it is considered that the developer of the Elephant & Castle scheme should make a similar undertaking, it should be recognised that many of the businesses in the Centre are not in a position to bear the cost of professional fees until the settlement of their claim. It may be that the developer agrees to pay fees when the claimant is billed or when pre-determined milestones are reached. Prior to instructing advisors, the traders should ensure they have a written undertaking from the developer that they will pay reasonable professional fees incurred and the basis on which they will be paid. This is especially important for those traders who have leases expiring prior to mid-2009 as they will have no statutory entitlement to any reimbursement for professional fees.

- (ii) The charter states that the LDA will put in place an advice line which will be operated by the Royal Institution of Chartered Surveyors (RICS) to enable businesses to obtain free advice. When a suitable relocation site has been identified by a business, the LDA will provide business support during the

relocation and afterwards. They will also identify all relevant business support which is available, for example any government grants and ensure this information is provided to affected businesses.

The LBS and its development partner may wish to provide a similar service to the traders in the Centre as this may assist in finding suitable relocation premises enabling the developer to achieve vacant possession by agreement without having to use compulsory purchase powers.

- (iii) The LDA have also stated that they will treat every business with a compensatable interest as if their property had been compulsorily acquired and compensation will be made in accordance with the compensation code.

Our understanding of this is where the LDA acquire the freehold of a property with tenants and vacant possession could be obtained by using Landlord & Tenant legislation, they will not pursue this course but will pay compensation in accordance with the compensation code.

If our interpretation of this policy is correct, it is to be applauded and the traders at the Elephant & Castle should seek a similar undertaking from the developer and the acquiring authority. This is likely to increase the compensation available for a number of the traders.

The Land Acquisition Policy of Crossrail

- 6.4 This states that where land is to be compulsorily acquired, that compensation will be paid in accordance with the compensation code.
- 6.5 For properties where there is no compulsory acquisition but it is considered that properties may be affected by the proposals, a hardship policy has been put in place. This is subject to certain conditions, for example the enjoyment of the property must be seriously affected by Crossrail and there must be a compelling reason to sell. In these cases, compensation will be paid for the loss of value to the property. For a business tenant there must be three years unexpired term and the rateable value must not exceed £24,600.

The latter policy extends the scope of the Blight Notice procedure and allows claimants in exceptional cases, such as illness to achieve certainty as to the outcome of the CPO process at an earlier date. Similar policies should be sought from the LBS.

Potential measures that could be adopted

- 6.6 In the present case the LBS have an opportunity to work with the developer to put in place similar measures to those adopted by the LDA and Crossrail or go further still.
- 6.7 Any measures extending the provisions of the code would need to be agreed and could be incorporated into the development agreement. We understand it has been proposed that some of the additional assistance which it is considered should be offered to the traders, could be provided from funds obtained from the section 106 agreement. The provisions of a section 106 agreement must relate to the planning application that has been made and under current legislation money from the agreement could not be used to compensate the traders. Individual traders could not be provided with funds to compensate them for their loss of their business or towards relocating to other premises.
- 6.8 The LBS will no doubt wish to see their voters and ratepayers treated fairly, but will not wish to agree onerous conditions which could threaten the viability of the scheme. The developer will consider concessions to win support of the local authority and may consider granting assistance to occupiers especially if he wants to see them return to the scheme.
- 6.9 In practice however the extent to which a developer and local authorities are willing to extend boundaries of the code or offer assistance is limited. Ultimately this comes down to the fact that the Government has recently carried out a review of the compulsory purchase process and having made some changes consider the process to be fair and reasonable. Developers and local authorities are in our experience reluctant to change the rules fundamentally out of concern that changes they make will leave them exposed to criticism, that any changes will increase their risk, uncertainty and exposure. They will also be reluctant to create a precedent for other authorities or schemes.
- 6.10 Notwithstanding this, we think that the existing dialogue with the LBS should be maintained and pressure applied to secure some or all of the following:

1. A policy to give financial assistance through the rating system. This will need to be done through rate collection rather than through a reduction in the assessments, which would prejudice parties whose compensation is a multiplier of the rateable value.
2. The local authority could provide a relocation service to include listing and circulating on a monthly basis suitable available properties within their borough and in neighbouring boroughs.
3. The local authority could publish a hardship policy similar to that used by Crossrail.
4. The local authority could specify that suitable units for displaced occupiers are provided within the new scheme. These would need to be of the right size and specification to suit displaced occupiers.
5. The local authority could seek funding for a town centre manager to promote businesses remaining in the Centre until demolition to lessen the effects of 'blight'. The town centre manager could improve signage, appearance of the Centre and advertise those businesses that remain to give them the maximum exposure possible. He could also be made responsible to liaise with the Centre owner to limit the service charge, control security, rubbish collection, dust pollution etc to minimise the disruption faced by occupiers staying until the last moment.
6. The Local Authority could negotiate appropriate provisions to achieve points 3 and 4 with the developer in the development agreement.
7. This report is intended as a guide to assist the traders in assessing the basis of compensation they may be entitled to and to provide advice as to the steps they should take to protect their positions. However, the circumstances of each trader is different and we recommend that funding is put in place to provide individual advice. This could be provided by holding regular surgeries with a surveyor and a solicitor present.

7 LEGAL CHALLENGE

- 7.1 The process of objecting to the making of a CPO has been summarised above. In addition, however, there is the option for any trader who will be affected by the making of the Order to challenge any executive decisions made during the course of promoting the Order and the underlying development proposal by way of an action in the High Court.
- 7.2 Typically, the two decisions which are challenged in this way are the decision of the local planning authority to grant planning permission for a development and the decision of the Secretary of State to confirm the CPO which has been made by an acquiring authority. It is however possible to seek to challenge intermediate steps, such as any resolution of the Council to grant a planning permission (perhaps subject to the completion of a section 106 agreement) and to make the CPO in the first place.
- 7.3 The grounds upon which High court actions may be brought are limited. It is not possible to challenge the merits of a decision but an action may be brought on the basis that the decision in question is unlawful. Generally, this will be on one of three grounds:
- (1) that the authority did not have the power to make the decision concerned (for example the purpose for which the CPO is being made falls outside the legal provision relied upon)
 - (2) that the authority has taken into account irrelevant considerations in making its decision or failed to take into account all relevant decisions; OR
 - (3) that the decision is so unreasonable that no reasonable authority could have made the decision.
- 7.4 Traders are urged to seek legal advice if contemplating any High Court action. Different time limits apply depending upon the exact nature of the proposed claim and what you are seeking to challenge but in many cases there is a strict six week time limit. If the action is unsuccessful, it is usual for the trader to pay not only its own legal costs but also the legal costs incurred by the authority in defending the challenge. The legal bill is likely to be in excess of £10,000, possibly considerably so. In addition, if the action is successful, the consequence is that the matter in question is remitted back to the authority for further consideration. It is perfectly possible that the authority could then lawfully make the same decision, having regard to the findings of the high court. However, if the High Court does for example quash the CPO it is likely at the very least

to delay the scheme for a considerable period of time and may result in it being abandoned.

8 CONCLUSION

8.1 The basic principle of compulsory purchase, as stated above, is that the displaced occupier should be put back into the same position so far as money can. They should also be no better off or worse off as a result of the compulsory acquisition. This must be judged in the backdrop of the legislation, which has been built on foundations from 1845, which assumes that individuals' rights can be extinguished compulsorily for the benefit of the public at large. This invariably leads to conflicts and as the process is complex, there will be a perception that some will be winners and some will be losers.

8.2 The 'winners' if they can be called that may be occupiers with a compensatable interest that wish to extinguish. They will be able to receive compensation for the loss of goodwill and redundancy payments without having to sell their business in the open market, which they would have had to do in the absence of the scheme. They will also receive their reasonable costs. However, they will not be able to control the timetable and may not be able to agree the compensation for many years after they have closed down. Others that could benefit from the CPO are businesses that have outgrown their units and wanted to move anyway, but could not due to onerous lease obligations. If the timing suits, these businesses could receive financial assistance to move, which otherwise they would have had to fund themselves.

8.3 In our experience, there are few occupiers who will class themselves as 'winners' in the CPO process and it is not a situation that can be engineered. By good fortune and coincidence in timing some business may be able to receive financial assistance to achieve aspirations they had in the no scheme world.

8.4 For most occupiers, the process will be about ensuring they receive what they are entitled to and minimising the disruption and effects as far as they can. To do this, it is important that they obtain professional advice at an early stage from a practitioner experienced in compulsory purchase. As discussed earlier, occupiers should keep good records, collate information and act reasonably to ensure they present a robust case to claim any losses suffered.

8.5 Businesses that may perceive they have lost out are those that have traded successfully in the centre for many years, but may have a short term before their lease expires, be holding over on an expired tenancy or have limited tenure. Unless the LBS are

persuaded to agree measures with the developer (through their development agreement or other means) to protect such occupiers, these businesses could receive little or no compensation.

- 8.6 The next steps must be for the dialogue established with the LBS to be maintained and for as many discretionary measures detailed above to be incorporated into their discussions with the developer.

9 **THIRD PARTIES AND PUBLICATIONS**

- 9.1 In accordance with our standard practice this Report and Valuation is intended solely for the use of the instructing client, to whom it is addressed, and except as stated in 9.3 below no responsibility is accepted to any third party for whole or any part of its content.

- 9.2 Neither the whole nor any part of this Report and Valuation or any reference thereto may be included in any published document, circular or statement, nor published, reproduced or referred to in any way without our written approval of the form and context in which it may appear.

- 9.3 We confirm that this Report and Valuation may be released to and relied upon by the London Borough of Southwark, Business Extra Ltd and the traders in the Elephant& Castle shopping centre for the purposes set out above.

APPENDIX A

**THE COMPULSORY PURCHASE
PROCESS**

A **THE COMPULSORY PURCHASE PROCESS**

A1 The preparation and making of a Compulsory Purchase Order

1 In order to acquire the various interests in the Centre, The LBS has to make and have confirmed a CPO. Prior to making the Order, a notice must be published for two successive weeks in one or more local newspapers and a notice must be served on every owner, lessee and occupier of the land covered by the Order. Once this has been complied with, the Order is then made and served upon all the identified parties and objections to the proposed Order are invited. It is also submitted to the Secretary of State for his consideration and it is to him that all objections are sent.

A2 Procedure for making an objection

1 The objections that the Secretary of State receives are categorised as follows

(i) Statutory Objections – these are objections made by parties with an interest in the land to be acquired. It is likely that the majority of objections made by the traders in the Centre will fall into this category.

(iii) Non-statutory Objections – Parties who do not have a interest in land such as the chamber of commerce or anyone who wishes to object.

2 The details of the address to which the objections should be sent and the time period for doing so are set out in the notice. It must be in writing and can be written by the affected party themselves or a professional advisor.

3 Prior to the confirming of the CPO, in order to encourage the traders to undertake negotiations, the developer may agree to reimburse the reasonable costs incurred in instructing advisors (see paragraph 2.7 (I)). However, this is unlikely to include the cost of objecting to the scheme. The traders need to be aware, that if they instruct advisors who make objections on their behalf and undertake any work connected with the objection, they are likely to be liable for these costs. These costs will only be reimbursed if the Secretary of State rejects the Order or modifies it so that the claimants' interest is not required.

4 If the LBS, as the acquiring authority, is unable to secure the withdrawal of all the objections through negotiations, then the Secretary of State will appoint an Inspector to consider the objections and advise him whether or not the Order should be confirmed, modified or refused. Historically these objections have always been considered at an

Inquiry. At the Inquiry the LBS will present its case and they along with statutory objectors, are entitled to call evidence and to cross examine those giving evidence. After the close of the Inquiry, the Inspector makes a report which includes his recommendation. Please note that as a result of changes brought about by the Planning and Compulsory Purchase Act 2004, as an alternative to an Inquiry, objections may now be considered by written representations submitted to the Inspector. If all objectors consent to proceed in this way it is probable that an Inquiry will not be held in this case. In any event the report of the Inspector is then considered by the Secretary of State, who will then confirm, modify or refuse the Order. On reaching his decision, he is required to notify the LBS, the statutory objectors (the traders) and anyone else that appeared and asked to be notified. The LBS must also publicise the fact in one or more local newspapers.

- 5 On confirmation of the order, the LBS has three years in which to exercise its compulsory purchase powers. In order to do this the LBS can follow either one of two routes, that is to either serve Notices to Treat or make a General Vesting Declaration

A3 Notice to Treat

- 1 The LBS will serve a notice to treat on the owners of the interest to be acquired. This will ask the claimant to submit a claim in respect of their interest and will also offer to negotiate to purchase the interest and pay appropriate compensation. If after 21 days, the claimant has not submitted a claim, the LBS can refer the matter to the Lands Tribunal (this is the Court that deals with disputed claims for compensation arising from compulsory purchase). The LBS will then have 3 years from the notice to enter the property and take possession. However, the LBS will only gain legal title by agreement or following a determination by the Lands Tribunal.

A4 General Vesting Declaration

- 1 A notice is served which gives notice of intention to vest which can be no less than 2 months away. The General Vesting Declaration may be made at the end of the period specified and it gives notice that at the expiry of not less than 28 days, the land will be vested in the authority (this is the 'vesting date'). Essentially this means that the legal title passes to the LBS.

No.	Key Stages of the Process	Estimated <u>Minimum</u> Time Limits
1	The Acquiring Authority will first attempt to acquire the land by agreement. It is usually if they are unable to do this that they will then follow the CPO route.	Various time depending on whether agreement can be reached.
2	The Acquiring Authority (the LBS) carries out feasibility studies to define the boundaries of the CPO Scheme to decide what land is required.	3-4 months
3	Once the CPO boundary is established, the Acquiring Authority can pass a formal resolution to use compulsory purchase powers.	3 weeks
4	“Referencing” stage – where the Acquiring Authority collects and records information on land/title ownership and occupation, to identify everyone who has a legal interest in, or right to occupy, the land they propose to acquire. The Authority may serve a “requisition for information” form for completion by all persons who might own or occupy the property.	2-3 months
5	Acquiring Authority then drafts and makes the actual Order itself. The CPO will contain a schedule showing the ownership of land within the CPO and the extent, description and situation of the land as well as the names and addresses of reputed owners, leaseholders and occupiers.	6 weeks
6	The Acquiring Authority usually prepares a “Statement of Reasons” which is a document setting out the reasons for seeking to acquire the land.	1 month
7	Press Notices – the Acquiring Authority must publish for two successive weeks various legal notices in one or more local newspapers announcing that a CPO has been made and will be submitted to a Government Minister for confirmation. The notice will also set out the objection period.	4 weeks
8	Service of individual notices – the Acquiring Authority must serve legal notices on every owner, leaseholder and occupier stating the effect of the CPO. Where ownership details are missing, the Authority will post notices on the land. The notices will state that the CPO is about to be submitted to a Government Minister for confirmation. It will specify the time within which objection to the CPO can be made (usually 21 days).	4 weeks
9	Objections must be received by the Government Minister within the time period specified in the legal notices. If no objections are made and the Secretary of State is satisfied the proper procedure has been observed, he will consider the case and can confirm, modify or reject the CPO without any sort of hearing.	Usually 21 days
10	If a “statutory objector” (i.e., an owner, lessee or occupier of land within the CPO) makes an objection, the Government Minister will be obliged to hold a formal Public Inquiry into the CPO. If the objections are not withdrawn, the Public Inquiry will proceed.	<ul style="list-style-type: none"> • 21 days to object • Can take months to negotiate

No.	Key Stages of the Process	Estimated <u>Minimum</u> Time Limits
		withdrawal of objections
11	Negotiations with the Acquiring Authority – the Authority will seek to negotiate with objectors and if the objection relates to a specific matter which the Authority can accommodate, without prejudicing the scheme, they may amend their scheme to enable the objection to be withdrawn.	2-4 months
	IF PUBLIC INQUIRY PROCEEDS	
12	<p>The Public Local Inquiry – if an inquiry is to proceed, the Government Minister will inform all parties by letter, that an inquiry is to be held (“the relevant date”).</p> <ul style="list-style-type: none"> • six weeks after the relevant date and 28 days before the inquiry, the Authority must serve a “Statement of Case”, together with all documents referred to therein. • anyone who wishes to inspect the Statement and documents must be allowed to take copies. • statutory objectors and anyone else appearing at the inquiry may be asked to provide their own full Statement of Case. 	2 months
13	<p>Date of Inquiry – Inquiry will normally be held within 22 weeks of the “relevant date”. 14 days before the inquiry, site notices must be posted by the Authority, advertising the details. A press notice may also be required.</p> <ul style="list-style-type: none"> • a pre-inquiry meeting may be held if there are a large number of objectors. An Inspector will give directions at this meeting regarding the procedure for the inquiry. 	3-6 weeks
14	<p>Inquiry Procedure – At the inquiry, each side must be given a fair opportunity to be heard and to hear and question the case against them. The procedure is subject to the rules of natural justice. Usually, the Inquiring Authority will present their case first – done by way of an Opening Statement and then the calling of various witnesses to give evidence. The witnesses may be questioned by objectors (cross-examination) and by the Inspector. Each objector then calls this own evidence/witnesses. The Inspector will also disclose the contents of written representations made to the Inquiry. The Inquiry may also make any costs award.</p>	3-10 weeks
15	Site Visit – the Inspector will visit the site before, during and after the close of the Inquiry. Objectors can attend as well.	1-3 days
16	Post-Inquiry Procedure – after close of the Inquiry, the Inspector will produce a report for the Government Minister setting out his	3-7 months

No.	Key Stages of the Process	Estimated <u>Minimum</u> Time Limits
	or her conclusions.	
17	<p>Inquiry Decision – After considering the Inspector’s report, the Government Minister will decide whether to confirm, modify or reject the CPO. The Minister’s decision will set out the reasons for it and the decision letter will be sent to the Acquiring Authority, the Statutory Objectors and any other person who appeared at the Inquiry.</p>	2-5 months
18	<p>Confirmation of the CPO – if the Government Minister decides to confirm the CPO.</p> <ul style="list-style-type: none"> • the Acquiring Authority must publicise this in local newspapers • copies of the legal notices and the confirmed CPO must be served on all owners, lessees and occupiers (except tenants for one month or less) 	5 weeks
19	<p>Legal Challenge to confirmation of CPO – there is a very limited period after publication of the legal notice of confirmation when the CPO can be challenged in the High Court. Generally, the challenge can only be on one or more of three grounds:</p> <ul style="list-style-type: none"> • that the powers granted go beyond that permitted by legislation • the procedural rules were not followed • the Minister/Inspector did not act properly in reaching a decision e.g. irrelevant considerations were taken into account 	6 weeks – 3 months
20	<p>Taking Possession – after confirmation of the CPO, the Acquiring Authority can purchase the land through a number of methods:</p> <ul style="list-style-type: none"> • by agreement • by a Notice to Treat/Notice of Entry Procedure • by a General Vesting Declaration Procedure • procedures for acquiring short tenancies • Blight Notice 	Various, depending on which procedure followed
	<u>IF</u> NOTICE TO TREAT PROCEDURE FOLLOWED:	

No.	Key Stages of the Process	Estimated <u>Minimum</u> Time Limits
21	Notice to Treat – is served within <u>3 years</u> of confirmation of the CPO. This states that the Authority is willing to negotiate for possession of the land. It will request particulars of the claimant's interests and rights in the land and ask for the claim for the land within a time period, usually 21 days.	4 weeks
22	<p>Action following receipt of Notice to Treat – the claimant must respond to the questions in the Notice and submit a Notice of Claim for compensation to the Acquiring Authority. The claimant can complete a “claim form” and may be required to produce evidence of their interest in the land, e.g. title deeds. The Notice of Claim must be made within the time limit and the claim can be revised.</p> <ul style="list-style-type: none"> • if the Notice of Claim is not submitted, the Authority can refer the issue of compensation to the Lands Tribunal or withdraw the Notice to Treat and abandon the proposal to purchase. 	1 month
23	Notice of Entry – after service of Notice to Treat, the Acquiring Authority can take possession of the land by serving a Notice of Entry – this will specify a date when the Authority proposes to enter and take possession of the land (at least 14 days) and the Authority can take possession some time after this date. The Acquiring Authority must take possession within 3 years of the date of the service of the Notice to Treat.	1-6 months
24	A Transfer/Conveyance will need to be drafted and completed to actually pass the title of the land from the claimant to the Acquiring Authority. This will occur once compensation has been settled.	1 month
	<u>IF</u> GENERAL VESTING DECLARATION PROCEDURE FOLLOWED:	
25	GVD – This method gives the Acquiring Authority the right to enter and take possession of the land and it also transfers the title of the land to the Acquiring Authority at the same time.	3-7 months
26	The Acquiring Authority serves a “form of Statement of Effect of a General Vesting Declaration”. Notices are also published in local newspapers.	1 month
27	Not less than 2 months after this Notice, the Acquiring Authority can execute the GVD. They will then serve a second Notice stating this has been executed and specifying a date (at least 28 days away) when the land will vest in the Acquiring Authority – this is the vesting date. When this happens, the Acquiring Authority can enter and take possession of the land.	3-4 months
28	Short Tenancies – may be acquired under usual Landlord and Tenant Act powers, if the Acquiring Authority acquires the freehold or superior interest. Compensation is therefore under the Landlord & Tenant Act legislation, not CPO legislation.	Various
29	Blight Notice – there is complex law in relation to the Blight Notice procedure – if this is pursued, you will need to seek	Various

No.	Key Stages of the Process	Estimated <u>Minimum</u> Time Limits
	advice from a professional advisor.	
30	Compensation – there is generally a right to compensation following the taking of possession of the land. Time scales will depend on whether agreement is reached, or whether a dispute has to be referred to the Lands Tribunal. The law is highly complex and the claimant will need to seek advice from a professional advisor.	Various

APPENDIX B

**THE LANDLORD AND TENANT
ACT 1954**

B1 The Landlord and Tenant Act 1954

- 1 The Landlord and Tenant Act 1954 is a tenant's act that entitles a commercial tenant to a renewal of its lease (a statutory right to a new lease) upon expiry unless one of the grounds in s30 of the Act can be proven by the Landlord.
- 2 The grounds of objection to a lease renewal are:-
 - (a) tenants failure to repair / maintain the property
 - (b) tenant has persistently delayed in paying rent
 - (c) the tenant has committed other substantial breaches of its lease
 - (d) the landlord has offered suitable alternative accommodation
 - (e) the landlord now wants to let the property as a whole as it is more profitable and the tenant occupies part
 - (f) redevelopment / demolition is intended by the landlord
 - (g) the landlord wants to occupy the property itself
- 3 All commercial leases are protected by the Act unless the lease states that s.22 to 28 of the Act are specifically excluded.
- 4 A lease that is protected under this Act can only be brought to an end by the landlord serving a s.25 notice terminating the tenancy or the tenant serving a s.26 notice requesting a new tenancy. The notice will state the date that the tenancy ends, which must be between 6 and 12 months from the date of the notice and can be no earlier than the date of a break clause or the expiry of the lease.
- 5 If the landlord refuses to grant a new lease, the tenant can apply to have the matter referred to the county court.
- 6 If no notices are served then under s.24 of the Act, the lease continues even if the contractual term has expired until it is brought to an end by the serving of a s.25 or s.26 notice or the Tenant gives 3 months until under s.27.
- 7 If a tenant should decide to serve a s.26 notice on the landlord, We recommend that tenants take advice from a solicitor to ensure it is correctly served. We also recommend taking advice from a solicitor if the landlord refuses to grant a new lease and the tenant wishes to make an application to the court.

APPENDIX C

**EXAMPLE OF A RELOCATION
CLAIM**

Example of disturbance claim based on business relocation

Background

Premises comprised a ground floor retail shop in a secondary area of Dartford, Kent, comprising a floor area of 34.6sq m (372 sq ft). The occupier held a lease for a term of 20 years from 1 September 2003, paying a rent of £12,000pa subject to upwards only rent reviews every five years.

The occupier was an independent retailer of leather shoes and clothes and chose to relocate his shop to Reading, Berkshire, where he had other business interests. The new premises comprise a ground floor retail unit of 87.6sq m (943sq ft) and first floor stores of 67.2sq m (723sq ft) on a lease paying £27,000pa for a term of 15 years, subject to five yearly upwards only rent reviews.

The date of possession was 1 February 2005. The initial claim made, based on the cost items detailed in Column 1, is shown in Column 2. The agreed level of compensation is shown in Column 3.

Agreed Disturbance Claim

Item of Claim (1)	Claim received (2)	Agreed Compensation (3)	Notes (4)
1. Professional Fees incurred in move			
1.1 Surveyors Fees	£3,600	£1,500	Contribution paid as claimant chose to move into substantially larger premises and fee based on new rent payable.
1.2 Solicitors Fees	£5,170.93	£5,170.93	Fixed fee based on time spent.
2. Specialist Adaptations to new premises			
2.1 Shopfront shutter	£4,800	£4,320	Claimant had recently fitted roller shutter at Dartford, and this was not capable of being moved. 90% paid to reflect VFM.
2.2 Fit out works	£22,750	£20,475	Claimant fitted out Dartford at commencement of lease in 2003, so agreed small discount only for age and obsolescence. Paid 90%.
2.3 New carpets	£249	£224	As above, 90% paid. If the carpets and other fit out at Dartford had been in place for a longer period, there would have been more VFM in buying new, and the contribution paid would be less.
2.4 New shopfront sign	£3,000	£2,700	As above.

2.5 Intruder alarm/ CCTV	£3,500	£1,500	Claimant chose to buy a new CCTV/ alarm system, but compensation reflects the costs of moving the systems at Dartford to Reading.
3. Other Costs			
3.1 Redcare (security) re-installation	£175	£175	Agreed to pay cost in full.
3.2 Police Redcare monitoring fee	£35	£35	As above.
3.3 Replacement phone lines	£300	£300	As above.
3.4 Mail re-direction	£63.50	£63.50	As above.
4. Dartford Direct Losses			
4.1 Carrier bags	£2,175	£2,175	Price paid for plastic bags with Dartford address that had to be discarded.
4.2 Stationary	£500	£250	Purchase of new would provide VFM.
4.3 Receipt books	£750	£375	Purchase of new would provide VFM.
4.4 Physical move to Reading	£900	£900	Hire costs of man and a van.
4.5 Cancellation of phone agreement	£404	£404	Agreed to pay cost in full.
4.6 Redcare rental for un-expired term	£150	£150	Agreed to pay cost in full.
4.7 Police monitoring charge for un-expired term	£17.50	£17.50	Agreed to pay cost in full.
4.8 Loss on forced sale of fixtures and fittings from Dartford	£1,000	£500	Not specifically agreed by receipts etc. demonstrated but robust agreement reached at £500
4.9 Loss on profit	£5,000	£0	No loss of profits demonstrated and nil agreed.
5. Double Overheads			
5.1 Rent at Reading	£3,300	£3,300	Rent payable at Reading until capable of trading (lease assignment of Dartford premises agreed at the same date that Reading premises opened).
5.2 Insurance	£300	£300	As above.
Total	£58,139.93	£44,834.93, say £45,000	

Notes

- VFM = Value For Money
- All figures exclude VAT, as the claimant was registered for VAT and thus claimed it back in the usual manner.
- Surveyors and legal fees for negotiating the claim and conveying Title were paid in addition.

This agreement was reached in advance of the CPO and the acquiring authority approach can be considered generous to secure the withdrawal of an objection.

Example of disturbance claim based on business relocation

Background

Premises comprised a two-storey retail shop with A2 planning consent (financial and professional services) in a secondary area of Dartford, Kent, comprising a total floor area of 101.26 sq m (1,090 sq ft). The occupier held a lease for a term of 15 years from 10th October 1993, paying a rent of £10,000 pa subject to upwards only rent reviews every five years.

The occupier was an independent employment agent and was able to relocate to another part of Dartford. The new premises comprise a two storey building, again with A2 planning consent, with a total floor area of 125.6sq m (1,352 sq ft) on a lease paying £25,000pa for a term of 15 years, subject to five yearly upwards only rent reviews.

The property was acquired by agreement with compensation based on the compensation code on a full and final basis. Possession was taken on 1 February 2005. The initial claim made, based on the cost items detailed in Column 1, is shown in Column 2. The agreed level of compensation is shown in Column 3.

Agreed Disturbance Claim

Item of Claim (1)	Claim received (2)	Agreed Compensation (3)	Notes (4)
1. Professional Fees incurred in move			
1.1 Surveyors Fees	£2,500	£2,500	Fees based on acquisition of larger property as potential relocation premises with A2 consent very limited.
1.2 Solicitors Fees	£1,500	£1,500	Fixed fee based on time spent.
2. Specialist Adaptations to new premises			
2.1 Signage	£2,500	£2,500	Agreed to pay claim in full as signage was unique to company and existing signage could not be relocated.
2.2 Fitting out works	£6,000	£3,500	It was considered that some of the fitting out works represented value for money

3. Other Costs			
3.1 Moving IT Equipment	£5,250	£4,000	Initial claim considered excessive
3.2 Moving phone system	£4,000	£4,000	Agreed to pay claim in full.
3.3 Advertising change of address	£5,000	£2,000	Initial claim considered excessive
3.4 Stationery	£3,000	£3,000	Agreed to pay claim in full
3.5 Notifying existing clients	£1,500	£1,500	Agreed to pay claim in full
3.6 Staff time, other costs	£5,000	£2,500	Initial claim considered excessive
5. Moving / reinstatement costs			
5.1 Office move	£4,000	£2,500	Initial claim considered excessive
5.2 Crate hire	£500	£500	Agreed to pay claim in full.
5.3 Post redirection	£250	£250	Agreed to pay claim in full.
5.4 Move Insurance	£1,000	£1,000	Agreed to pay claim in full.
4. Direct Losses			
4.1 Increase rent	£30,000	£12,000*	Initial claim was for two years of the extra rent burden of £15,000 pa. The agreed figure was based on the rent payable for the extra space for 1.5 years on the basis that it would take that period to expand the business to utilise the extra space. This was in recognition of the lack of available suitable relocation premises
4.9 Loss on profit	£5,000	£0	No loss of profits demonstrated and nil agreed. If claim was settled following the move and was therefore based on actual costs, the increase rent burden, if it had reduced the profitability of the business may have been able to be claimed as loss of profits.
5. Double Overheads			
5.1 Rent and rates on new property	£6,000	£2,500	Rent payable on new premises until capable of trading (lease assignment of original premises agreed at the same date that new premises opened).
Total	£83,000	£45,750, say £45,000	

Notes

- All figures exclude VAT, as the claimant was registered for VAT and thus claimed it back in the usual manner.
- Surveyors and legal fees for negotiating the claim and conveying Title were paid in addition.

*This agreement was reached in advance of the CPO and the Acquiring Authorities appraisal can be considered to be more generous to secure the withdrawal of an objector.

APPENDIX D

**EXAMPLE OF A TOTAL
EXTINGUISHMENT CLAIM**

Example of disturbance claim based on business extinguishment

Background

The property comprises a ground floor cobbler's shop, and self contained one bedroom first floor flat, in a secondary area of Dartford, Kent. The occupier of the ground floor owned the freehold of the property, and he was unable to find suitable relocation premises it was agreed that the appropriate basis of compensation was business extinguishment.

In addition to the disturbance compensation detailed herein, the owner received compensation for the value of his property interest, which totalled £195,000.

The property was acquired by agreement with compensation based on the compensation code on a full and final basis. Possession was 1 March 2005. The initial claim made, based on the cost items detailed in Column 1, is shown in Column 2. The agreed level of compensation is shown in Column 3.

Agreed Disturbance Claim

Item of Claim (1)	Claim received (2)	Agreed Compensation (3)	Notes (4)
1. Value of the Business			
Average net profit	£24,889	£24,889	Based on the average net profit (as published in the company accounts) for the last three years.
Less Notional rent	-£7,000	-£7,000	The rental value of the premises should be deducted. If property is occupied under a lease, at a market rent, no adjustment is necessary
Less interest on capital employed in the business	-£500	-£500	Includes plant & machinery, stock, fixtures, cash in hand etc. Traditionally taken at 5% of net profit, but less in this case given the nominal assets of the company
Adjusted net Profit	£17,389	£17,389	
Multiplier	X 5	X 3.5	A multiplier in the range of 2 – 5 times is traditionally applied to the adjusted net profit for a sole proprietor or small business. The position in this range would depend factors such as the nature and duration of tenancy, type of business, historical trading performance and

			sustainability of the business. For larger businesses, this approach is not really appropriate and accountants will usually be involved. Regard may be given to the price/earnings ratio of application of an EBITDA (Earnings Before Interest Tax Depreciation and Amortisation) multiplier).
1.1 Total value of the Business (Adjusted net Profit x Multiplier)	£86,945	£60,862	
2. Other Costs			
2.1 Loss on forced sale of stock	£1,000	£500	Forced sale of handbags and other ancillary products.
2.2 Value to owner of Plant and Machinery, less proceeds from sale	£2,500	£2,000	Full value not achieved on sale of cobblers equipment and machinery
2.3 Redundancy costs	£1,784	£1,784	Agreed to pay in full.
2.4 Advising clients of closure and other incidental expenditure	£2,500	£1,500	Contribution agreed.
Total	£94,729	£66,646 say £67,000	

Notes

- All figures exclude VAT, as the claimant was registered for VAT and thus claimed it back in the usual manner.
- Surveyors and legal fees for negotiating the claim and conveying Title were paid in addition.

Example of disturbance claim based on business extinguishment

Background

The property comprises a ground floor shop unit situated on the periphery of the prime area of Bristol Town Centre. The premises were to be acquired as part of the expansion of the Broadmead Shopping Centre. The occupier held the premises on a protected tenancy with a term of 17 years remaining and traded as a newsagent. He was unable to find suitable relocation premises and it was agreed that the appropriate basis of compensation was business extinguishment.

It was agreed that as the market rent was the same as the passing rent, there was no value in the leasehold interest.

The property was acquired by agreement in accordance with the compensation code and possession was taken on 16 June 2004. The initial claim made, based on the cost items detailed in Column 1, is shown in Column 2. The agreed level of compensation is shown in Column 3.

Agreed Disturbance Claim

Item of Claim (1)	Claim received (2)	Agreed Compensation (3)	Notes (4)
1. Value of the Business			
Average net profit	£33,808	£29,691	Based on the average net profit (as published in the company accounts) for the last three years. Initial claim based on last two years as produced higher average.
Market rent	£15,000	£15,000	The rental value of the premises should be deducted. If property is occupied under a lease, and a market rent, no adjustment is necessary
Less Passing rent	-£15,000	-£15,000	
Less interest on capital employed in the business	-£2,300	-£1,500	Includes plant & machinery, stock, fixtures, cash in hand etc. Traditionally taken at 5% of net profit, but less in this case given the nominal assets of the company
Plus Directors Remuneration	£15,000	£15,000	This is the sum that the owner of the business took as salary as the business was valued on a sole proprietor basis.
Less Notional value of employing a manager	-£9,000	-£11,000	

Adjusted net Profit	£37,508	£32,191	
Multiplier	5	3	In this case, the lease had a number of years left and the profit was increasing and it was therefore agreed that a multiplier of 3 would be appropriate. If it had been a shorter lease and the profit not increasing then the multiplier may have been less.
1.1 Total value of the Business (Adjusted net Profit x Multiplier)	£187,540	£96,573	
2. Other Costs			
2.1 Loss on forced sale of stock	£1,000	£500	Forced sale of books and other ancillary products.
2.2 Redundancy costs	£1,784	£1,784	Agreed to pay in full.
2.3 Advising clients of closure and other incidental expenditure	£2,500	£1,500	Contribution agreed.
Total	£192,824 say £193,000	£100,357 say £100,000	

Notes

- All figures exclude VAT, as the claimant was registered for VAT and thus claimed it back in the usual manner.
- Surveyors and legal fees for negotiating the claim and conveying Title were paid in addition.

APPENDIX E

THE MARKET STALL HOLDERS

E1 THE MARKET STALLHOLDERS

- 1 We have been advised that Urban Space Management have a lease which enables them to run the market outside the Centre, although they were not willing to confirm the details of their tenancy, they confirmed they let spaces to the stallholders. The majority of these are on daily licences, with some kiosks on weekly licences. They confirmed that in their opinion, these licences did not provide protection for the tenants under the 1954 Act. It is likely the developer will try to acquire the interest of Urban Space Management in order to terminate the licences of the stall holders. If these are proper licences then no compensation will be due.
- 2 If it is considered that the licenses are protected tenancies then the stall holders would be entitled to compensation under the 1954 Act.
- 3 If the developer is unable to acquire this interest and the stall holders remain in occupation, the compensation they would be entitled to under the compensation code is likely to be limited due to the short term nature of their tenancies.
- 4 For other traders where the freeholder is not their immediate landlord and they are on insecure tenancies, they may wish to undertake negotiations with their landlord in order to strengthen their position with regard to a compensation claim.

APPENDIX F

**Article on changes to the
Compulsory Purchase process**

F1 **Compulsory Purchase and Compensation – the slow road to a new Code**

- 1 Compulsory purchase is the process by which private interests in property are acquired, by a body authorised by Parliament, in exchange for a payment of money. This process can be broken down into three parts; powers, procedures and compensation, and this article reviews the evolution of the rules that govern this process.
- 2 The legislation relating to compulsory purchase originated with the Lands Clauses Consolidation Act 1845. Although there has been subsequent legislation, mainly contained within three Acts (the Land Compensation Act 1961, the Compulsory Purchase Act 1965 and the Land Compensation Act 1973), these all hinge, to some degree, on the original 1845 Act. The 1845 Act has never been fully repealed and all subsequent legislation hides the antiquities of its' underlying provisions. Because of the piecemeal way in which the law has developed this legislation is often criticised for being archaic, complicated to decipher and elusive to apply.
- 3 The most recent attempt to bring the compulsory purchase process into the 21st Century is the Planning and Compulsory Purchase Act 2004. Getting this Act through the parliamentary process was an achievement itself, as it took over 18 months from the Bill being introduced to the House of Commons in December 2002 to Royal Assent being granted on 13 May 2004. Part 8 of the 2004 Act deals with compulsory purchase matters and these changes became effective from 31 October 2004.
- 4 Part 8 includes provisions intended to help acquiring authorities assemble land more quickly for regeneration, new major infrastructure projects and other schemes. It also removes the uncertainty that exists regarding the valuation date in certain cases, and makes provision for advance payments of compensation to be made direct to mortgagees, thus reducing the financial hardship that landowners with large mortgages have previously had to bear whilst negotiating their final compensation settlement.
- 5 Perhaps most significantly, the 2004 Act also introduces a commercial loss payments scheme. Previously, in accordance with "Rule 1" of Section 5 of the Land Compensation Act 1961, "*No allowance shall be made on account of the acquisition being compulsory.*" More recently, the Government has been alerted to the idea that compulsory purchase might be easier and quicker if owners were entitled to compensation exceeding the value of their land. Since the Land Compensation Act 1973, residential occupiers have been entitled to home loss payments and, courtesy of

a clause in the 2004 Act that introduces a new scheme into the 1973 Act, a similar scheme now applies for commercial property.

- 6 An owner of property that is compulsorily acquired is now entitled to a “basic loss payment” of 7.5% of the value of that person’s interest, subject to a cap of £75,000. In addition a property occupier is entitled to an “occupier’s loss payment” of 2.5% of the value of this interest, subject to a cap of £25,000. The total loss payment for an owner-occupier is therefore 10%, capped at £100,000. Different rules, based on a formula approach, apply to agricultural land.
- 7 Despite being a step in the right direction, the 2004 Act has received criticism for not going far enough, and doing nothing to reduce the fundamental faults with the compulsory purchase process.
- 8 As a separate exercise to the 2004 legislation, in July 2000 the Compulsory Purchase Policy Review Advisory Group (CPPRAG), which was established by the DETR, reported that the law was “*an unwieldy and lumbering creature*”. CPPRAG requested that the Law Commission review the law relating to compulsory purchase and make proposals for its simplification, consolidation and codification. The culmination of this review was published in November 2003 in their Report “*Towards a Compulsory Purchase Code*”.
- 9 This Report recommended wide ranging and fundamental changes to the compulsory purchase process, including the utilisation of powers, the procedures to adopt and the assessment of compensation. If it became law, this would create a new “Code” that should be quicker, fairer and simpler for both acquiring authorities and affected parties. However, a Bill has not yet been prepared to Parliament, and bearing in mind the time taken for the relatively minor changes within the 2004 Act to be legislated, any fundamental changes to the provisions established in 1845 are likely to be many years away.

APPENDIX G

**Summary in Question and
Answer Format**

SUMMARY

This is a summary of the report in a question and answer format. For simplicity we have assumed that the landlord is the same as the developer and has the ability to compulsorily acquire properties where required. The summary should be read in conjunction with the main report.

1. Q When is my unit likely to be acquired?

A On the current development timetable, it is proposed to decant the existing Centre from mid-2008 to the end of 2009, with the Centre being demolished in early 2010.

2. Q I have an excluded tenancy that expires before the end of 2009. What am I entitled to?

A On the expiry of the lease you are not entitled to a new one. The landlord can refuse to grant a new lease and not pay you any compensation. (see paragraph 3.2)

3. Q I have a protected tenancy that expires before the end of 2009. What am I entitled to?

A You are entitled to a new lease when the old one expires, however, the Landlord can refuse the granting of a new lease on certain grounds. (see Appendix B). If the landlord refuses to grant a new lease then you are entitled to compensation based on the rateable value of the premises. If you have been in occupation for less than 14 years it is one times the rateable value. If you been in occupation for 14 years or more or continued a business that has been run for 14 years or more then you are entitled to two times the rateable value. (see paragraph 3.4.10)

4. Q I have an excluded lease that expires after the end of 2009. What am I entitled to?

A The landlord can only obtain possession of your shop by you agreeing to vacate or by using compulsory purchase powers. (paragraph 3.5)

5. Q I have a protected lease that expires after the end of 2009. What am I entitled to?

- A The landlord can only obtain possession of your premises by you agreeing to vacate or by using compulsory purchase powers. (paragraph 3.5)
6. Q How does the Landlord obtain compulsory purchase powers.
- A If a Landlord wishes to carry out a development where they may not be able to acquire all the necessary land by agreement and the scheme is considered to have benefit to the public at large, then the Local Authority, in this case Southwark, can obtain compulsory purchase powers to enable them to acquire the land compulsorily. (see paragraph 2)
7. Q What happens if a compulsory purchase order is made?
- A The local authority makes an Compulsory Purchase Order (CPO), which if there are objections to it, a Public Inquiry will be held and if the Order is confirmed, then Notices will be served stating that possession of the property is required. (see Appendix A)
8. Q If a compulsory purchase order is made can I object to it.
- A Yes – it is generally recommended that potential claimants do make an objection. (see paragraph 2.10).
9. Q What happens if I make an objection
- A You have the right to appear at the Public Inquiry. However, careful consideration should be given to this as it may involve you being liable for costs. Professional advice should be sought prior to making an appearance. An objection can strengthen your negotiating position with the acquiring authority, especially in the run up to the Public Inquiry, when the landlord will be trying to achieve the withdrawal of as many objections as possible. (see paragraph 2.16).
10. Q What am I entitled to if the landlord uses CPO powers?
- A You may be entitled to compensation in accordance with the compensation code. This is the value of your property, which in the case of a lease, is based on the difference between what the property would let for today and the rent you are paying. You may also be entitled to disturbance, which is either assistance in the costs of relocating or the value of your business if it is extinguished. (see paragraph 4.2 to 4.5)
11. Q Can I choose whether to relocate or extinguish my business?

A A claimant is under a duty to act reasonably and take business decisions in the same manner as if the acquisition had not been compulsory. Unless you are automatically entitled to extinguishment (see paragraph 4.13) then the disturbance cost will be based on either relocation or extinguishment, whichever is reasonable. However, there are no strict rules as the circumstances and each case will be different. (see paragraph 4.15)

12. Q If my property is to be compulsorily purchased, what should I do?

A You should continue to run your business to the best of your ability in the circumstances as you are under a duty to mitigate your loss. You should also keep good business records to assist with your claim. If you are going to incur any expenditure which you will want to claim back in the future, then you should confirm with the acquiring authority that they will include this as part of your claim. (see paragraph 4.17)

13. Q What should I do if I want leave before my lease expires

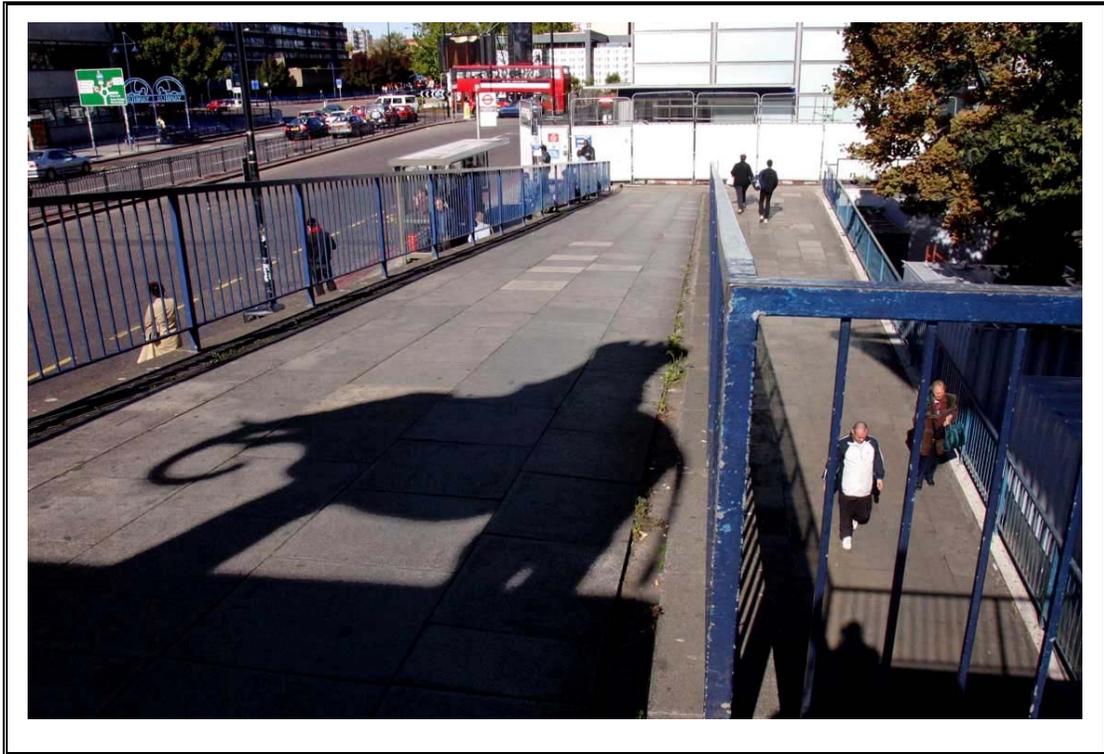
A You should approach the landlord to see if you can reach an agreement to surrender your lease. (see paragraph 5)

14. Q What should I do if I want a new unit in the scheme.

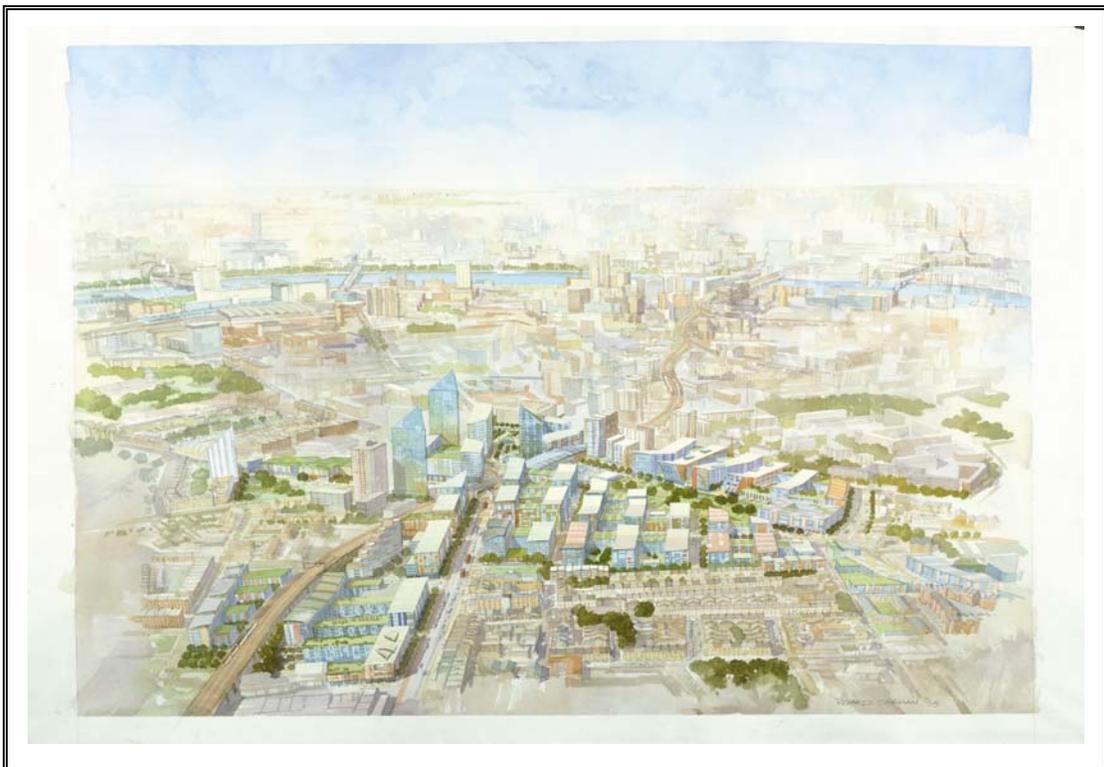
A You should approach the landlord to see if you can reach an agreement for this, especially as this might involve a double move and therefore greater costs. (see paragraph 5.5.2.)

APPENDIX H

Photographs



The Elephant & Castle



Vision of the Elephant & Castle (pictures supplied by Kura Perkins of Elephant & Castle Regeneration Team)

APPENDIX J

Terms of Reference



Professional Legal & Survey Advice for Existing Small Businesses
at the Elephant & Castle Shopping Centre
London SE1

1. Introduction

Business Extra is to be funded by the London Borough of Southwark (the Council) through its Elephant and Castle Development Team to secure independent professional advice on matters relating to the potential acquisition, relocation and disturbance of businesses located in the Elephant and Castle shopping centre. The advice is for the benefit of businesses generally and is intended to provide guidance as a prelude to individual businesses taking individual professional advice.

In this capacity Business Extra attends the regular Shopping Centre Liaison Group meetings at which the representatives of Shopping Centre businesses meet with the Council and the landlord. At the SCLG meeting on 9th May 2005 it was agreed that Business Extra would co-ordinate specialist additional assistance for the small businesses in the Elephant & Castle Shopping Centre (ECSC) so as to help the businesses to better understand the generic framework relating to compensation law and practices and legal and surveying issues relating to compulsory purchase in the context of the proposed demolition of the ECSC in 2009/2010. This would enable individual businesses to be able to make better-informed decisions relative to their future plans.

This project proposal relates to the financing of professional advice that is necessary to support these objectives.

2. Background

The businesses concerned are a mix of retail and other commercial operations based within the E & C Shopping Centre (ECSC). The adopted planning framework for the Elephant and Castle (Supplementary Planning Guidance {SPG} February 19th 2004) anticipates the demolition of the centre in 2010. The centre landlord, St Modwen, is structuring lease arrangements in order to facilitate obtaining vacant possession by this date. The council has indicated its intention in due course of seeking compulsory purchase powers to support the achievement of the scheme described in the SPG.

Traders in the ECSC have discussed at the TCLG issues relating to blighting of their businesses by the proposed redevelopment and compensation for relocation and extinguishment of their businesses.

Specific reference has been made to:

- Landlord and Tenant Act 1954
- Compulsory Purchase – Various statutes plus case law.

Because of the complexity of the blight and compensation related issues it is considered necessary to draw upon the services of specifically qualified and experienced professionals to provide up to date information that is relevant to the overall situation of the traders in the ECSC.

It is hoped that the generic professional information and advice provided will assist all parties concerned in the redevelopment to minimise the risk of misinformation and consequent misunderstandings and thereby narrow the issues likely to cause dispute.

3. Proposal

Business Extra will commission professional advice on behalf of the businesses group. Business Extra expects that this commission will require the services of two independent professional firms which are likely to be a solicitors/legal practice and a surveying practice respectively. In each case the firms will be expected to provide evidence of experience in the relevant fields including experience of having acted for acquiring authorities and for claimants, and each should be able to demonstrate a familiarity with the most recent statutory provisions.

The professional advice will include:

1. A general description of the operation of compulsory purchase and landlord and tenant law in relation to the planning and implementation of urban redevelopment and regeneration schemes. In particular this should relate to the implications for businesses of the types represented at the Elephant & Castle. The material should consider the obligations of all parties involved (developers/local authority, claimants etc) and should review practical as well as statutory and common law measures that have been used in such schemes. Examples drawn from circumstances involving the refurbishment of redevelopment of shopping centres similar to that at the Elephant & Castle are likely to be of particular interest to traders.
2. Illustrated examples of the methods of calculation, negotiation and settlement of trade disturbance claims are to be prepared reflecting different trader positions vis a vis lease terms, trading circumstances, owner preferences etc. A schedule of categorisations is set out as a flow-chart in the attached appendix and is intended to form a starting point for defining hypothetical cases that will be used for the purposes of this exercise.
3. The advice should outline measures that traders might take under each of above scenarios to best protect their positions before, during and after the implementation of a scheme of acquisition. Advice should also explore potential pathways and steps that could be taken to achieve a fair and equitable solution for traders in the following specific circumstances:
 - (i) ensuring sustainability of businesses where traders want to continue to trade at the ECSC until demolition;
 - (ii) traders who want an early exit from the ECSC;
 - (iii) relocation and extinguishment on compulsory purchase;
 - (iv) continued trading at the Elephant and Castle in the new development.

4. The overall purpose of the above activities is to assist traders to better understand their current positions, to assist them to plan in the most effective manner to protect their current and future interests, to assist them to frame instructions for individual advice from other professional advisors and to assist the achievement of the council's objectives of protecting local and small business enterprise in the Elephant and Castle area.
5. The advice is required to be provided in writing in the first instance to Business Extra and then to be developed into a form that can be presented in printed and verbal form at open forum meetings with the businesses. The professional team is to make itself available to answer questions directly from businesses at working sessions with businesses, the details of which are to be determined during the commissioning process.
6. For the avoidance of doubt, all of the advice will be generic in character and will be provided expressly as general advice intended to raise the collective awareness of businesses in the face of planned redevelopment at the Elephant and Castle. It is not intended to constitute, nor should it be regarded as, individual or personal advice to any specific business or individual.

4. Timetable

8th July 2005: Work specification sent to potential professional firms
14th July 2005. Bids received from professional firms
15th July 2005 Contracts signed with professional firms
15th July 2005 Professional firms start work
29th July 2005 Interim written report from professional firms
15th August 2005 Final written report from professional firms
August 2005 Professional firms hold question & answer session with traders
(exact date to be determined)

5. Budget

It is envisaged that the advice provided should be contained within an indicative total budget of £15,000 exclusive of VAT but inclusive of all expenses. The split between advisors is to be agreed based upon the intended allocation of responsibilities by the joint bidders.

The total budget is subject to Council approval of this budget, but will be based upon the actual prices obtained to carry out the brief through competitive bidding by suitably qualified professional firms. The arrangement for carrying out the work is based on either bid from solicitors and surveyors will bid as joint advisors for the work described, or individual bids from solicitors and surveyors who will work together as advisors.