

St Olav's Square Public Convenience Purchase Order Procedural and Legal matters

Legal Matters

1. The Council can only purchase the freehold interest of the public convenience at St Olav's square in the following circumstances:
 - Where there is agreement with the freeholder or
 - following a confirmed Compulsory Purchase Order
2. Given that the property is held for commercial purposes, the statutory compensation code under Compulsory Purchase legislation provides that a leaseholder or freeholder is entitled to the following compensation following a compulsory acquisition:
 - a. The market value of the interest acquired
 - b. Payment for loss of profits arising from relocation or extinguishment of business [as appropriate].
 - c. A disturbance payment to cover the freeholder's reasonable costs as a direct and natural result of the compulsory acquisition, this might include legal fees, surveyors fees, removal costs.
3. Where acquisition takes place by agreement ahead of the compulsory purchase order, the freeholder's entitlement will be treated in the same way and with the same entitlement as would be the case if there was a Compulsory Purchase Order.

Procedural Matters

Outline of Compulsory Purchase Procedure

Resolution

4. The Executive passes a resolution to make an Order. This is the purpose of this report.

Referencing

5. The Council assembles information that provides details of all owners, tenants and occupiers. This is to both identify what interests need to be acquired and who is entitled to receive a notice of the publication of the Order. This stage will enable the precise details of the Order area to be determined.

Resolving planning and finance

6. In considering the Order the Minister needs to be confident that the proposals behind it are likely to come to fruition. In this connection, s/he will need to be satisfied that there are no significant Town Planning or financial obstacles that will frustrate the proposals. The intended redevelopment of the site will be in accordance with the detailed planning guidance for the area, which in this case is contained in the Canada Water AAP.
7. Officers in the Property department will submit a planning application for the site and initial advice from planning officers indicates that the proposed scheme is deliverable and that it would be supported through the planning process.

Making the Order

8. The Council makes the Order, to a defined format. A schedule goes with the Order identifying ownership details of all land within it. A Statement of Reasons must also be prepared to accompany the Order. This is a critical document that may be challenged by objectors and therefore needs to be prepared accurately and with great precision.

Publication of the Order

9. The Council serves notice of making of the Order on all leaseholders, tenants and occupiers affected by it. A notice of the making of the Order has to be published for two successive weeks in a local newspaper.
10. The notices will advise that any objections to the Order can be made to the relevant government minister and specify an address for this purpose. The Order is then passed to the Department for Communities and Local Government.

Confirmation of the Order

11. The Order does not become effective unless and until it is confirmed by the minister. Where there are objections to the Order they must be considered before confirmation. This is usually done by way of a public inquiry but can sometimes be dealt with by written representations.
12. After considering the objections [if there has been a public inquiry there will be an Inspector's Report] the Minister may confirm, modify or reject the Order. If it is rejected that is the end of the process and the Council will need to revisit its plans.
13. Following confirmation or if applicable, modification, a notice advising that the Order has been confirmed must be published in the local newspaper and served on all leaseholders, tenants and occupiers affected by the Order. A confirmed Order should be implemented within three years to retain its validity.

Taking Possession

14. This can be achieved by either Notice to Treat/Notice of Entry or by using General Vesting Declaration procedure. The latter is considered the most appropriate for this Site as it transfers both the right to possession and title of the land to the Council.

Indicative Timescale

15. The following is an indicative time table from resolution to confirmation of the order to publication.
 - Resolution to make the Order
 - Referencing/Finance/Planning 8 weeks
 - Making the Order to Publication 6 weeks
 - Publication to Confirmation 40 weeks
 - Confirmation to taking Possession 18 weeks
16. Therefore we are looking at around a year and a half between making this resolution and obtaining possession but if there are complications it could be longer. It is assumed that there will be objections to the Order and that these may require protracted negotiations and/or a public inquiry to resolve.

Power to make a Compulsory Purchase Order

17. Section 226 of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004) is the recommended enabling provision for the purpose of compulsorily acquiring the interests required to progress the implementation of the redevelopment of St Olav's Square.

Policy Implications

Corporate/Planning

18. The Canada Water Area Action Plan (AAP) provides the vision for regeneration in the Rotherhithe peninsula. This is the area around Canada Water and surrounding environs. The AAP sets out a vision for how the area will change over the period leading up to 2026.
19. The focus of new development within the AAP is a core area around Canada Water, which will build on some of its key strengths, particularly its attraction for families, leisure opportunities, great parks, docks and green links.
20. Albion Street forms part of this core area and is identified under Policy 30 of the AAP where regeneration will be promoted through:
 - Improving pedestrian and cycle links between Albion Street and the town centre, St Mary's conservation area and Rotherhithe station
 - Reinforcing the viability of the shopping parade by making sure that no more than two units are used as hot-food takeaways
 - Working with leaseholders to improve the appearance of shop fronts
 - Continuing to investigate the potential for a market on Albion Street through the Markets Strategy
 - Seeking funding to provide public realm improvements
 - Using the library site as an opportunity to help improve the street
 - Working with governors and staff to explore the potential to provide mixed use development on a part of Albion Primary school.

Property Acquisition

21. The Council over the last 2 years has been endeavoring to acquire by agreement the freehold interest of the St Olav's public convenience site to move the proposed scheme forward. The passing of this resolution should encourage the freeholders to enter into meaningful negotiations with the Council.

Financial Implications

22. There is provision in the Regeneration and Development Reserves for the expenditure that would be incurred in acquiring the freehold interest in the Site. These costs include the market value of the Site, compensation and loss payments, and the costs to the council of making the Compulsory Purchase Order.

Legal Implications

23. Section 226(1)(a) of the Town and Country Planning Act 1990 (the Act) (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) is the appropriate power in this instance to secure the compulsory acquisition of the public convenience site. Section 226(1)(a) enables authorities to acquire compulsorily any land in their area if the authority think that the acquisition will: "facilitate the carrying out of development, redevelopment, or improvement on, or in relation to, the land".
24. The Council, in exercising its power under this Section must have regard to section 226(1A) which states: "But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects- (a) The promotion or improvement of the economic well being of their area;(b) The promotion or improvement of the social well being of their area; (c) The promotion or improvement of the environmental

well-being of their area."

25. It is considered that the use of this section is therefore most appropriate having regard to the Council's aspirations for the regeneration of St Olav's square. The interest to be acquired by the compulsory purchase order is required in order to permit the redevelopment and regeneration to take place.
26. The proposal also satisfies the "well being" element of the Act in that the regeneration of St Olav's square is clearly in order to provide an improved public realm which will assist in attracting investment and growth opportunities to the area. Therefore the proposals will inevitably assist in promoting and improving the social economic and environmental well being of the area.
27. The scope and application of Section 226 is set out in Circular ODPM 06/2004 Appendix A ("Compulsory Purchase and the Crichel Down Rules"). The Circular sets out the circumstances in which this power may be relied on by a local authority for the purposes of compulsorily acquiring land. It recognizes that compulsory purchase powers under the Act provide a "positive tool" to local authorities in assisting them to acquire and assemble land where it is necessary to implement the proposals set out in the community strategies, such as the AAP.
29. Paragraph 15 of the Circular ODPM 06/2004 also recognizes that *"it may not always be feasible or sensible to wait until the full details of the scheme have been worked up and planning permission obtained, before proceeding with the Order."*
30. The Circular advocates progressing and justifying a compulsory purchase order against a clear strategic framework and that the acquiring authority is able to confirm there are no planning hurdles or other impediments to the implementation of the scheme.
31. For the purposes of confirming a compulsory purchase order, the Circular identifies considerations which will be taken into account by the Secretary of State in making such a decision, namely:
 - a) *Whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area or where no such up to date framework exists, with the core strategy and any relevant Area Action Plans in the process of preparation in full consultation with the community;*
 - b) *The extent to which the proposed purchase will contribute to the achievement of the promotion or improvement of the economic social or environmental well being of the area.*
 - c) *The potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions and any commitments from third parties will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme however the more compelling the other grounds for undertaking the Compulsory Purchase will need to be and*
 - d) *Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land or any other persons for its re-use.*
32. It is considered that there are no hurdles to frustrate the aspirations of

the Compulsory Purchase Order.

33. In the event that the compulsory purchase order is confirmed, the next stage will be to vest all necessary title in the Council. In these circumstances as has already been mentioned the best means of doing so will be way of the General vesting Declaration Procedure. This is something that can be carried out by the Council's legal advisors as and when this stage is achieved.

Human Rights Considerations

34. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("the Convention").
35. In proposing these Orders the Council has duly considered the rights of property owners under the convention, notably under the following Articles: *Article 1 of the First Protocol*. This protects the right of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international law.
36. In relation to these convention rights the Council has been conscious of the need to ~~strike~~ a balance between the rights of the individual and the interest of the public. In light of the significant public benefit that would arise from the regeneration of St Olav's square it will be appropriate to make the Order, if the relevant freehold interest cannot be acquired by agreement.
37. Objections can be made against the Order that will then have to be considered by the Secretary of State before s/he decides whether or not to confirm the Order.