

Item No. 16.	Classification: Open	Date: 16 September 2014	Meeting Name: Cabinet
Report title:		To re-approve the making of an application to the Secretary of State for a compulsory purchase order (CPO) to acquire the remaining leasehold properties within the Elmington Estate Phase 3 (known as sites C, D, E and G) SE5.	
Ward(s) or groups affected:		Camberwell Green	
Cabinet member:		Councillor, Mark Williams, Regeneration, Planning and Transport.	

FOREWORD BY COUNCILLOR MARK WILLIAMS, CABINET MEMBER FOR REGENERATION, PLANNING AND TRANSPORT

The regeneration of Camberwell is now well underway. The leisure centre has been refurbished, the new library is being built and will open next year, the first of several pocket parks is now going through detailed design with local residents and many of the area's housing estates have received Warm, Dry, Safe works. We are also working closely with TfL on the improvements to the Camberwell Green junction and street layout, and the green itself will undergo significant improvements as well. To the north of the Elmington Estate there will also be work to greatly improve the southern entrance into Burgess Park from Camberwell.

The regeneration of the Elmington Estate is a key part of these wider improvements and is now proceeding apace with construction of Phase Two (sites A & B) well under way. This report requests that Cabinet re-confirms its previous decision to make the necessary Compulsory Purchase Orders to enable the remaining sites of the estate to be regenerated. These blocks are: Harris Street Neighbourhood Housing Office; 1-27 Benhill Road, 29-59 Benhill Road; 1-20 Houseman Way; 21-29 Houseman Way; 30-51 Houseman Way; 90-106 Benhill Road; 30-72 Lomond Grove; 1-20 Broome Way and 1-12 Flecker House.

RECOMMENDATIONS

1. That the cabinet agrees to re-approve that the council makes four or fewer Compulsory Purchase Orders ("Order[s]") under section 226 (1) of the Town & Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 or in the alternative under section 17 of the Housing Act 1985 for the acquisition of the land and new rights within the areas edged on the Ordnance Survey plans at Appendix One for the purpose of securing the regeneration of the Elmington Estate in accordance with decisions to implement a new regeneration strategy taken by cabinet on the 22 March 2011 and 23 October 2012.
2. That the Director of Regeneration be re-authorized to:
 - a) determine the powers and implement the optimum number of Order[s] to deliver the overall regeneration aspiration;

- b) take all necessary steps to secure the making, confirmation and implementation of the Order[s] including the publication and service of all notices and the presentation of the council's case at Public Inquiry should one be called;
- c) acquire all interests in land within the Order[s] areas either by agreement or compulsorily;
- d) approve agreements with land owners setting out the terms for the withdrawal of objections to the Order[s], including where appropriate seeking exclusion of from the Order[s];
- e) amend the boundaries of the areas **edged** on the Ordinance Survey plans at Appendix One; or
- f) amend the number of properties and leasehold acquisitions within the Order (s) area listed in the schedule in Appendix Two, should it be required.

BACKGROUND INFORMATION

3. On the 22 March 2011, the cabinet approved the implementation of a new regeneration strategy as a result of which a number of blocks on the Elmington Estate have already been refurbished. It also resolved to seek development partners to undertake the redevelopment of sites C, D, E and G within Phase 3 of the Elmington regeneration scheme.
4. This followed a stock condition survey by Pellings and options appraisal for refurbishment and redevelopment of the blocks on the Elmington Estate, where those blocks identified as being beyond the reasonable cost of repair and refurbishment were included within the sites to be re-developed rather than refurbished. The schedule of properties to be acquired in the Order(s) areas are identified at Appendix Two.
5. Following a marketing exercise and short-listing of three consortia, Cabinet approved the selection of Family Mosaic Housing Association and Bellway Homes on the 17 July 2012 as the preferred development partners for the redevelopment of sites C, D, E and G by way of disposal of those sites and a requirement on the developer to rebuild a scheme approved by the council.
6. There are a total of 144 flats in the blocks to be demolished of which 113 were tenanted and 31 were owned by leaseholders. The council has successfully rehoused all bar 4 of the secure tenants to alternative accommodation and it expects to re-house the remaining 4 shortly. The council has acquired 12 leasehold interests to date by agreement but on the basis of compensation pursuant to compulsory purchase legislation; however, in the event that acquisition by agreement does not successfully buy out all the remaining leasehold interests, then the council will need to compulsorily acquire those interests in order to achieve its redevelopment strategy.
7. On the 23 October 2012, Cabinet approved the making of an application to the Secretary of State for a compulsory purchase order (CPO) to purchase the remaining leasehold properties within Phase 3 of the Elmington regeneration scheme (known as sites C, D, E and G).
8. Since 23 October 2012, the council has continued to engage with leaseholders to acquire the remaining leasehold interests by agreement and, as referred to in paragraph 6 above, 12 flats have been successfully acquired.

9. In March 2014, the council exchanged conditional contracts with Family Mosaic and Bellway Homes (“the development partner”) for the disposal of sites C, D, E and G. Under the terms of the contract (which is conditional on the Development Partner obtaining planning permission for its redevelopment scheme and on the council obtaining vacant possession of the sites) the Development Partner must submit a planning application for its redevelopment scheme by September 2014. The contract also requires the council to use its reasonable endeavours to achieve vacant possession, including using compulsory purchase powers should it be necessary.

KEY ISSUES FOR CONSIDERATION

10. Elmington phase 3 contains 144 dwellings; of which 31 were leaseholders with 19 remaining. Negotiations to acquire these leasehold interests by agreement have been taking place since August 2011 and have enabled a number of agreements to be made and acquisitions to be agreed. The council’s aspiration to deliver and complete the regeneration of this Phase cannot be achieved without acquiring all the leasehold interests as well as any remaining units occupied by secure or non-secure tenants. Negotiation will continue with leaseholders on a voluntary basis but without a compulsory purchase order it is unlikely that all these interests can be acquired.
11. The making, confirmation and implementation of four or fewer compulsory purchase order(s) is therefore recommended to achieve certainty of acquiring all the leasehold interests and other property within the envisaged timescale in the conditional contract and to mitigate risk to the project.
12. On 23 October 2012, Cabinet approved making, confirmation and implementation of relevant CPO’s and it is recommended that Cabinet re-approves the steps necessary for the making, confirmation and implementation of four or fewer CPOs.

Underlying information in resolving to make these compulsory purchase orders

13. The compulsory purchase procedure is complex and has regard to a variety of factors. Details of relevant procedural and legal matters are set out at Appendix Four to this report.

Community impact statement

14. The council’s Cabinet approved the implementation of mixed regeneration scheme for Elmington Estate on 22 March 2011 that included the redevelopment of sites C, D E & G with a number of surrounding blocks being retained and refurbished. It is envisaged that investment and renewal in the Elmington Estate will have a positive long term impact on all groups residing in those blocks being retained through the delivery of Warm, Dry and Safe works regardless of age, disability, faith/ religion, gender, race and ethnicity or sexual orientation and the impact and mitigation on these groups residing in the blocks to be redeveloped are addressed in the Equality Analysis at Appendix 3.
15. The overall effect of the programme of refurbishment on the Elmington Estate is to promote equal treatment by ensuring tenants and leaseholders across all the retained blocks receive the same standard of works and ensure that some of the most disadvantaged groups living in the council’s properties have homes that are

warm, dry and safe. This will also impact on the wider community by addressing some of the imbalance in living conditions in the borough.

16. For the redevelopment of sites C, D, E and G, the effect of the compulsory purchase orders will be to dispossess some persons of their rights in land. This is a necessary process to ensure that redevelopment of the Elmington Estate Phase 3 sites C, D, E, and G can proceed. The proposed new scheme to replace the 9 blocks currently on the sites will provide modern Warm, Dry and Safe homes as well as around 81 new residential units. Accordingly, it is considered acceptable to use compulsory purchase powers where the proposals are in the public interest and where, as in this case, the advantages of regeneration substantially outweigh the disadvantages to those dispossessed. The council is achieving a quantitative and qualitative housing gain which will include new, improved affordable housing on the Estate.
17. All leaseholders that are dispossessed regardless of age, disability, faith/ religion, gender, race, and ethnicity or sexual orientation have been and will continue to be treated fairly and equally throughout negotiations, and where appropriate, offered financial and housing assistance as well as being advised of their legal rights in accordance with statutory principles and council policy.
18. The regeneration of Phase 3 of the Elmington Estate is considered to have benefits to not only the immediate community but also the borough as a whole in that it will act as a catalyst to further investment. It is therefore necessary to balance the benefits that could be provided by the proposed scheme against the possible impact to those with an interest in the affected land. In carrying out this exercise a degree of proportionality should therefore be adopted. The individual rights under the Human Rights Act and Equalities Act 2010 have accordingly been considered and commented further upon in Appendix Three and Four to this report.
19. The furtherance of the regeneration will not negate the council's Diversity and Equal Opportunities Policies. Indeed in the long term it is anticipated the diversity of the area will be widened.

Equalities Analysis

20. In November and December 2010, a survey was undertaken by Open Communities to establish the composition of residents and how they might be affected by estate regeneration and how adverse effects might be mitigated. The resident make-up was addressed in the Cabinet Report, 22 March 2011. The suggested mitigation has formed part of the modus operandi of the officers working on the Elmington Regeneration project since 2010 and indeed prior to that date. Equalities issues have been kept under review, and will continue to be kept under review throughout the life of the Elmington regeneration project.
21. In September 2012, an information gathering exercise was carried out by the council aimed at the remaining leaseholders to establish the type of 'protected characteristics' across the estate. In June 2014, Open Communities (independent residents' advisory service) carried out a door knocking exercise to deliver an equalities information collection form (EICF) to get tenants and resident leaseholders to fill it in. Blackfriar's Advisory Service carried out a door knocking exercise to deliver the EICF to get temporary residents and non-resident leaseholders to fill it in. This exercise established to what extent resident composition has changed since the last survey and to establish what, if

any, adverse effects the scheme might have on the 'protected characteristics' identified in the Equalities Analysis.

22. In the 23 October 2012 report, it was mentioned that an equalities information collection form was issued to all remaining leaseholders on the Estate. At the time the council had purchased only 1 leaseholder out of 31 leaseholders in total. The council received 11 responses out of 31 units held on a long lease.
23. The cabinet will be aware of the equality duty which the council has. The Equalities Analysis annexed to this report at Appendix 3 is to make decision makers aware of the issues which need to be considered in this particular case. The Analysis considers the potential impacts (positive and negative) on groups with 'protected characteristics', the equality information on which this analysis is based and any mitigating actions that have already been taken and will be reviewed on an ongoing basis.
24. The duration of the survey period is May to July 2014. 109 key service users (residents) affected by the decisions to regenerate the Estate were contacted. A total of 57 responded.

Schedule of leaseholder ownership/ status as at the date of the report

	Total	Owner occupation	Investors
Leaseholders	31	12	19
Completed purchases	12	3	9
Remaining leaseholders	19	9	10

Consultation

25. There has been extensive consultation with Elmington Estate residents (including tenants and leaseholders) via the Elmington Residents Steering Group (RSG), about the council's regeneration strategy. The Elmington RSG met regularly to discuss aspects of the regeneration proposal between 20 July 2010 and 23 February 2011. Open Communities worked extensively with tenants and residents via resident surgeries, face to face interviews and a postal survey to gauge resident support to the council's regeneration programme and they conducted a resident survey of the blocks affected by the regeneration proposals for Phase Three of the Elmington Estate over November and December 2010 as mentioned in paragraph 20.
26. In addition, leaseholders have been advised on redevelopment proposals and legal and procedural matters for the CPO via correspondence and face to face meetings with colleagues from Property and Housing Specialist Services since August 2011.

Financial implications

27. Leaseholders are entitled to the market value of their property, home loss and other reasonable disturbance payments for being dispossessed as a natural and direct consequence of the CPO and redevelopment. A home loss payment is 10% of the market value where the leaseholder resides at the property or 7.5% of the market value where the leaseholder is non-resident. The assessment of compensation is pursuant to, or undertaken in accordance with the

Compensation Code which is a collection of statutes and case law, the principal legislation being the Land Compensation Act 1961 (as amended).

28. These costs assume that remaining leasehold interests are acquired by negotiated agreement and do not include the costs of an application to the Lands Chambers of the Upper Tribunal in the event that an agreement cannot be reached with any of the leaseholders once the CPO has been confirmed or implemented. These costs also exclude Counsel's fees in relation to legal representation if a Public Inquiry is deemed necessary by the relevant Government Minister.
29. Non resident leaseholders have a limited claim for disturbance including the incidental costs of purchasing a replacement property. A non - resident leaseholder can claim compensation for a preferential (difference in interest rates) mortgage over the term from date of acquisition, in addition to other items where compensation can be claimed such as mortgage lenders' arrangement fee, mortgage brokers' commission, solicitors' fees and part Stamp Duty Land Tax on market value of purchase of replacement property .
30. Each item of a leaseholders' compensation schedule is validated on its relevance to the claim. The number of remaining non-resident leaseholders who may need to secure a replacement mortgage on less favourable terms is unknown due to reluctance to engage with the council on such financial matters at this stage in the process.
31. The acquisition price may vary due to market conditions but the professional fees to acquire all remaining leaseholder units is agreed in advance of an acquisition to enable a degree in certainty in the price. A change in residential market values will see a corresponding change in home loss payments attributable to the leaseholder and a change in variables or input assumptions such as market values and mortgage interest rates are a key determinant in assessment of overall compensation and to quantify incidental costs for purchasing a replacement property is very difficult without further financial information at this stage but these are kept constantly under review.
32. There is sufficient funding already budgeted and allocated to finance the acquisition of the remaining leasehold interests, associated disturbances costs and any third party interests within the council's Housing Investment Programme. The budget also includes a sum for procedural and legal matters to enable the making, confirmation and implementation of the compulsory purchase order.
33. There will be staff resource costs in taking the Order[s] to completion, relocating tenants and providing financial and housing assistance to tenants and leaseholders where appropriate as well as acquiring the leasehold interests; there is also provision for them in the overall project programme. There are sufficient uncommitted resources in the programme to meet the proposed costs.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

34. Since the cabinet decision to make a Compulsory Purchase Order(s) in respect of sites C, D, E and G of the Elmington Estate was made on 23 October 2012, Counsel's advice has been taken to ascertain whether the preferred power under which the Compulsory Purchase Order(s) should be made is s226(1)(a) of the

Town and Country Planning Act 1990 (“the 1990 Act”) or s17 of the Housing Act 1985 (“the 1985 Act”). Counsel advised using the 1990 Act although was not adverse to the 1985 Act being used should the council prefer.

35. Appendix Four sets out in more detail the requirements of each of the powers.
36. If the 1990 Act is to be used as is most likely, Cabinet should note from paragraphs 30-36 of Appendix Four to this report that consideration must be given to the well being objectives under Section 226 (1)(a) of the 1990 Act in relation to the council’s aspirations for the overall regeneration of the Elmington Estate. If it is considered that the regeneration of the area will assist the council in promoting and improving the economic, social and environmental well being of the Elmington Estate, there are adequate powers available to the council to acquire all the land and property interests in the sites either compulsorily or by agreement.
37. If in the alternative, the council decides to proceed by way of the 1985 Act it empowers the council, as a local housing authority, to acquire land, houses or other properties for the local provision of housing accommodation. This power is available even where the land is acquired for onward sale to another as long as the purchaser intends to redevelop it for housing purposes. The 1985 Act also empowers local authorities to acquire land compulsorily (subject to authorisation from the Secretary of State). Government guidance in ODPM circular 06/2004 requires a qualitative or quantitative housing gain and the council would have to demonstrate such gain when seeking Secretary of State Confirmation of any CPO.
38. Ancillary powers to create new rights are also provided under s13 of the Local Government (Miscellaneous Provisions) Act 1976. As noted at paragraph 44 of Appendix Four, the council also has power under Section 227 of the 1990 Act or Section 120(1) of the Local Government Act 1972 (“the 1972 Act”) to acquire interests on the Elmington Estate sites C, D, E and G by agreement with the owners. Further, by virtue of Section 120(2) of the 1972 Act, any properties acquired under the 1972 Act that are not required immediately for the purposes for which they have been acquired, can be used in the interim for the purpose of any of the council’s functions.
39. Part 3C of the council’s constitution reserves to cabinet decisions on the acquisition of land and property where the market value exceeds £100,000 and the acquisition of land and property which involves the use of compulsory purchase powers.

Strategic Director of Housing & Community Services - Specialist Housing Services

40. The leaseholder re-housing assistance package referred to in paragraph 17 of the report and in the appendices to the report is administered by Specialist Housing Services (SHS). To date there have been four successfully concluded re-housing assistance applications from resident home owners affected by the regeneration scheme. The breakdown is as follows:
41. One household recommended for council or housing association tenancy and has moved to new council accommodation. Three households recommended for council or housing association tenancy and are registered to bid in Band 1 on Homesearch.

42. There is one further application in progress and awaiting an outcome. This application was received in July 2014 and is progressing without delay.
43. Two households have expressed an interest in applying, but have not yet provided the relevant information SHS requires in order to make an assessment.
44. One household applied for assistance, but their application was subsequently withdrawn as they did not qualify for assistance.
45. The council is striving to seek affordable housing solutions for affected home owners. In March 2014, the cabinet agreed to a variation to the re-housing assistance package. The scheme now allows for a new form of ongoing home ownership called "Shared Equity". Under this type of ownership, home owners that qualify can purchase a minimum of a 50% share in a council property but are not required to pay a shared ownership rent – making it more affordable and a more attractive option. This has been communicated to the resident leaseholders that have just applied or who are yet to apply for assistance.
46. The Head of Specialist Housing Services recognises that the making of a compulsory purchase order is a prudent and necessary step in achieving vacant possession where negotiated surrenders cannot be achieved. Given the timescales involved, it is anticipated that those applicants that have already made an application for assistance and are registered for re-housing will have moved before an order becomes effective. Officers from Specialist Housing Services regularly encourage engagement and are regularly on-site. Bidding support is provided by the Resident Services Officer in Housing Operations.

Strategic Director of Finance & Corporate Services (FC14/022)

47. This report is requesting cabinet to re-approve the making of an application to the Secretary of State for a compulsory purchase order (CPO) to acquire the remaining leasehold properties within the Elmington Estate Phase 3 (known as sites C, D, E and G) SE5. Background and details are contained within the main body of the report.
48. The financial implications section within the closed report provides details of the expected costs of the compulsory purchase costs and it is noted that the costs can be contained within the budgets allocated within the Housing Investment Programme.
49. Staffing and any other costs connected with this recommendation to be contained within existing departmental revenue budgets.

BACKGROUND PAPERS

Background Papers	Held At	Contact
Mid Elmington Regeneration Programme – 22 March 2011	Chief Executive's Department, 5 th Floor, hub 1, 160 Tooley Street, London SE1 2QH	Marcus Mayne 0207 525 5651
Disposal of the Council's freehold interest in Elmington estate sites C, D, E and G, Camberwell, SE5 – 17 July 2012		
To approve an application to the Secretary of State for a compulsory purchase order (CPO) to purchase the remaining leasehold properties within the Elmington Estate Phase 3 sites C, D, E and G – 23 October 2012		
Links:		
22 March 2011 (Item 18) http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MId=3339&Ver=4		
17 July 2012 (Item 18) http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MId=4245&Ver=4		
23 October 2012 (Item 13) http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MId=4247&Ver=4		

APPENDICES

No.	Title
Appendix 1	Location plans showing redevelopment sites C, D, E and G within Elmington Estate Phase Three.
Appendix 2	Property schedule of blocks to be included in the redevelopment of Elmington Estate Phase Three
Appendix 3	Equalities Analysis
Appendix 4	Procedural and legal matters

AUDIT TRAIL

Lead Officer	Eleanor Kelly, Chief Executive	
Report Author	Marcus Mayne, Principal Surveyor	
Version	Final	
Dated	4 September 2014	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Legal Services	Yes	Yes
Director of Finance & Corporate Services	Yes	Yes
Director of Housing & Community Services	Yes	Yes
Cabinet Member	Yes	Yes
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