

<b>Item No.</b> 6	<b>Classification:</b> Open	<b>Date:</b> 25 September 2007	<b>MEETING NAME</b> Major Projects Board
<b>Report title:</b>		Site G Bermondsey Spa: - Disposal Approach and Resolution to Make a Compulsory Purchase for Site Assembly Purposes.	
<b>Ward affected:</b>		Grange Ward	
<b>From:</b>		Project Director - Canada Water & Bermondsey Spa Regeneration Areas	

## RECOMMENDATIONS

1. The Board approves the approach that the site be offered in the first instance for purchase to Hyde Housing Association.
2. In the event that it is not possible to agree satisfactory sale terms with Hyde Housing Association the site be offered for sale on the open market.
3. When principal sale terms are agreed they be reported for an executive decision by Major Projects Board.
4. The Major Projects Board approves the acquisition of the leasehold interest in the property known as 112 Spa Road and the freehold interest in the property known as 90 Spa Road through negotiation
5. The Major Projects Board resolves to make a compulsory purchase order for the acquisition of the leasehold and freehold interests (and other interests as may arise) in the site edged red on the plan at Appendix A to this Report; and that it delegates to the Head of Property the overall progression and conclusion of the Compulsory Purchase Order which shall include the preparation of all necessary documentation, Order Plan, service of requisitions for information and vesting of title in the Council (as appropriate).
6. The Major Projects Board delegates the negotiation and agreement of compensation terms for the acquisition of relevant interests to the Head of Property.
7. The Major Projects Board approves the appropriation of the site for planning purposes.

## BACKGROUND INFORMATION

8. A plan is provided at Appendix A to this Report. The site comprises two parades of shops with residential accommodation above on either side of Vauban Street and is shown edged red on the plan. This site was identified for regeneration in the Bermondsey Spa Masterplan that was adopted by Executive in 2000.
9. This site is currently very unappealing in visual terms and is subject to anti-social behaviour particularly in the common parts serving the residential areas. Appendix C contains photographs of the properties included in the Site. Its regeneration is an opportunity to enhance the street scene and the quality of both retail and residential accommodation. This will benefit actual occupiers and nearby residents [the Neckinger Estate is directly opposite].
10. The Borough holds the freehold interest in the site except the parcel shown shaded pink on the plan. The Borough's interest is subject to a long lease of a maisonette: 112 Spa Road

and leases of four shops. The Council is able under the terms of the shop lettings to terminate those leases without recourse to compulsory purchase. A commitment has been given to reprovide for these businesses as part of the regeneration.

11. In the light of the commitment given to the businesses the regeneration will need to take place in two phases in order to maintain continuity of trading. Phase 1 as shown on the plan contains only one shop that is trading [the others are all vacant]. Agreement has been reached for that business to relocate in an empty shop at 4 Neckinger.
12. The regeneration of Phase 1 will provide replacement retail accommodation to which businesses in Phase 2 can relocate. This will maintain trading continuity, fulfilling the earlier mentioned commitment.

## **KEY ISSUES FOR CONSIDERATION**

### **Obtaining vacant possession**

13. In order for regeneration to proceed it is necessary to obtain possession of all properties within both phases. In Phase 1 there is one leaseholder at 112 Spa Road whose lease needs to be purchased. Constructive discussions are actively taking place and it is hoped the lease can be acquired without resort to compulsory purchase.
14. As mentioned above, in Phase 2 there are a number of shop leases and possession of these can be achieved within the terms of the leases and the provisions of the Landlord & Tenant Act 1954. Within Phase 2 there is a convenience store with residential above and initial discussions with the freeholder indicate a willingness to sell dependent upon replacement accommodation being offered to him in Phase 1. Since approved plans for the regenerated site are not yet available further progress has not been possible.
15. Although constructive negotiations are taking place with the freeholder of 90 Spa Road and the leaseholder of 112 Spa Road it is considered prudent that the Council resolves to exercise compulsory purchase powers in respect of these properties. A resolution to this effect will concentrate the minds of the parties and protect the Council's ability to achieve possession in a timely manner that enables the regeneration to be progressed.
16. The statutory compensation code provides the following compensation is payable to a freeholder or leaseholder following a compulsory acquisition:
  - 16.1 the market value of the interest acquired
  - 16.2 for residential properties a home loss payment; this is 10% of the market value where the owner lives at the property or 7½% of the market value where the owner lives elsewhere
  - 16.3 a disturbance payment to cover the owner's costs arising as a direct and natural result of the compulsory acquisition, this might include removal costs, legal fees, surveyors fees and adaptation expenses.
17. Where an acquisition takes place by agreement ahead of the exercise of compulsory purchase powers the owner is treated in the same way and with the same entitlement as would be the case if there was a Compulsory Purchase Order.

## **Resolution to make a Compulsory Purchase Order**

18. Section 226 of the Town and Country Planning Act 1990 is the relevant power in this instance for the purpose of compulsorily acquiring the interests required to progress the regeneration of the Bermondsey Spa Site G. Generally speaking, where an acquisition by agreement is not practical or cannot be reached on acceptable terms or where there are other valid reasons an acquiring authority may use its power of compulsory acquisition, subject to ministerial confirmation (if objections are received).
19. Once an order has been made it will be lodged with the Secretary of State for confirmation. Notices will be sent to each interested party informing them of the making of the order and notice of the Order will be made in the local newspaper for two consecutive weeks. Any objection to the order can be made to the Secretary of State within 21 days from the date of notification of the CPO. In the event that objections are made, unless such objections can be negotiated away, the Secretary of State shall hold a public inquiry so that the objections and CPO can be considered. If the Secretary of State is satisfied that the CPO is in the public interest and is justified then the order can be confirmed either as previously drafted or with the Secretary of States modifications.

## **Appropriation of land for planning purposes**

20. If planning permission is obtained for the development of the site it is possible, though unlikely, that the proposed development may infringe upon third party rights that are yet to be identified on the overall site. If third party rights are infringed then such parties may be able to obtain an injunction preventing the development from proceeding. It is therefore necessary that the Council take steps to reduce the risks of any injunction being obtained.
21. The Borough owned land within the Masterplan site is currently held for housing purposes and it is recommended that the Borough's land within the site be appropriated for planning purposes. Section 122 of the Local Government Act 1972 enables local authorities to appropriate land held by them from one statutory purpose to other statutory purposes, including planning purposes. Once such land has been appropriated for planning purposes it benefits from the provisions of section 237 of the Town and Country Planning Act 1990. This enables third party rights to be overridden in respect of development carried out in accordance with planning permission subject to the payment of compensation. This effectively commutes the risk of litigation and possible injunction to the payment of damages. Whilst there is currently no threat to the development, it is considered wise to take whatever precautions are available to the council under the statutory powers it has been given to ensure delivery.
22. The liability to pay compensation for any infringement of third party rights will fall upon the Borough's chosen development partner but there is a residual liability on the Borough should the developer become insolvent. It is possible for the Borough to enter into an agreement with a third party to secure an indemnity against this liability. However, it is currently considered in this instance that these rights will have a negligible value.

## **Legal considerations in relation to resolving to make a Compulsory Purchase Order**

23. These are set out in Appendix B

## **Making progress with the regeneration**

24. On account of the relocating and phasing issues outlined above this is not likely to be an attractive proposition for many developers. In addition in order to deliver community expectations risk will be minimised if the Borough maintains close control. For these reasons, Hyde Housing Association has been informally asked to partner the Borough a request they agreed to.
25. Hyde is very active in the Bermondsey Spa Regeneration area and has recently completed the Artesian Dwelling in Grange Road. It is also partner for other sites and a good working relationship is established. Hyde have demonstrated in their work in the area that they work with and are sympathetic to the local community and they deliver upon commitments.
26. To move things on local architects were invited to compete for the design brief for the regeneration as described in paragraph 12. Following a two stage competition judged by Hyde and the Borough the Weston Williamson Partnership has been instructed. Design meetings have taken place with Weston Williamson and it is anticipated initial consultations may be able to start within the next six weeks. So far, all architectural costs have been met by Hyde.
27. In the light of the resources expended already Hyde are understandably seeking a more formal commitment than has been made so far. Such a commitment will give them confidence to expend more money to move things forward.

## **Achieving best consideration**

28. When disposing of land section 123 of the Local Government Act 1972 obliges the Council to obtain the best consideration reasonably obtainable.
29. A sale by auction or tender to the highest bidder following proper marketing will generally be seen to discharge this obligation. There are however occasions such as where there is a special purchaser when this duty can be achieved by direct negotiation with a single buyer but in these circumstances it is prudent to obtain a report from an independent valuer to confirm the agreed price represents best consideration.
30. At present it is not possible to enter into detailed discussions relating to sale terms and particularly price for the following reasons:
  - 30.1 Until detailed design proposals are prepared and consulted upon it is not possible to confidently predict the extent of the new development that the site can accommodate.
  - 30.2 The extent of the site is not finalised. There is an adopted highway Marshalls Place that could [subject to consultations] be stopped up and included within the site area. In addition, there is a strip of land between Marshalls Place and the Queens Arms that is registered in the Council's ownership but part of which has a single storey extension to the Public House erected upon it. Investigations are currently taking place to determine the status of that land. If Marshalls Place and the land between that and the Queens Arms is included it will make for a strong continuous frontage along this section of Spa Road.

## Consultation

31. There has been general consultation on the principle of the regeneration following the site's inclusion within the Masterplan and the consequences of this. Tenants and leaseholders [both retail and residential] in 82-118 Spa Road have been subject to explicit consultation on the implications to them.
32. When initial design plans are produced it is planned to hold a local exhibition and to seek views from the community. Following this and having regard to views expressed, a planning application will be prepared and submitted. Thereafter, statutory consultation will take place in the usual way.

## Disposal Strategy

33. In the light of the background, Hyde be given the opportunity to make an offer for the site. If following evaluation, the offer can be recommended, an independent valuer's report be obtained to confirm best consideration is being obtained and a disposal report be made to the Major Projects Board.
34. Should Hyde's offer be considered unsatisfactory the sites be marketed and competitive tenders sort [Hyde would be able to tender so won't be precluded]. A report will then be made to Major Projects Board with recommended sale terms.

## Policy implications

35. The Regeneration of the Bermondsey Spa area is a long standing Borough policy. An overall Masterplan was prepared by Llewelyn-Davies and adopted in 2000. This envisaged the Regeneration being dealt with as a series of defined land sites. The making of the proposed Compulsory Purchase Order and appropriation of land for planning purposes underpins this.
36. The Regeneration of both the Bermondsey Spa area and the subject site are included within Chapter 2 [Place] of the latest Corporate Plan.
37. The completion of the Bermondsey Spa Regeneration is a key action set out in Section 2 "*Delivering Change*" of the Sustainable Community Strategy "*Southwark 2016*".

## Human Rights Considerations

38. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("the Convention").
39. In proposing this Order the Borough 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.
40. The Borough has also considered the rights contained within Article 8 of the convention, which protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interest of national security, public safety or the economic well being of the country.
41. In relation to these convention rights the Borough 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 Bermondsey Spa it will be

appropriate to make the Order, if the relevant leaseholder interests cannot be acquired by agreement. Objections can be made against the Order that will then have to be considered by the Secretary of State before he decides whether or not to confirm the Order.

### **Community Impact Statement**

42. The effect of the negotiated acquisition or compulsory purchase order will be to dispossess persons of their rights in land. This is a necessary process to ensure the redevelopment and regeneration of the site can proceed. This is considered acceptable 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
43. The regeneration of Bermondsey Spa is considered to have benefits to not only 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 Human Rights of these individuals have accordingly been considered and commented upon later in this Report.
44. 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.

### **Resource implications**

45. There are no direct staffing implications arising from the proposed Compulsory Purchase Order.
46. The project management and compensation costs will be met from the Housing Investment Programme.

### **Financial considerations**

47. The estimated cost of acquiring interests in 90 Spa Road and 112 Spa Road is based on current market values, and an estimate of the level of compensation to be paid for disturbance to owners. Property prices (Market Value), in the locality are subject to regular fluctuations so there is likely to be variance between estimated and actual purchase cost. Since Home Loss payments are based on market value they will change in line. In addition, disturbance payments are based on the reasonable costs incurred by each owner as a direct and reasonable consequence of relocation and hence cannot be accurately calculated until detailed discussions with the persons concerned have been completed. It is therefore recommended that the Head of Property be delegated to enter into and conclude negotiations with each owner on an individual basis to agree each compensation figure and settle each claim in line with the Borough's statutory responsibility under the compensation code.
48. Should compulsory purchase powers be required to acquire leasehold interests the Borough will face increased costs in legal fees and surveyors fees in using the statutory powers.
49. In the case of the shop leases that are protected under the Landlord & Tenant Act 1954 the Council has an obligation under section 37 of that Act to pay compensation when it refuses to renew such leases. The amount of compensation is the rateable value of the property where the tenant has been in occupation for less than fourteen years and twice the rateable if occupation has been longer than fourteen years.

## Identified risks and how they will be managed.

50. The identified risks are:

- Delays in the acquisition of non Council owned interests.
- Unidentified/unregistered third party rights on the site
- Failure to follow procedural guidelines in seeking an Order or failure of the Secretary of State to confirm the Order

51. The risks will be managed via the Council's existing risk management process. The design and sequencing of the development will be flexible so that no part of the development is dependent solely on the release of a specific part of the site as far as this is possible.

52. The Borough can protect the regeneration scheme against any unidentified third party rights by the appropriation of the land for planning purposes. While this process will not extinguish these rights they will be commuted to compensational rather than injunctable interests.

53. Procedural risks with regard to the confirmation of a compulsory purchase order will be minimised by the appointment of experienced and competent legal advisers to act on behalf of the Borough and advise its appropriate officers of their legal and statutory duties with regard to compulsory purchase and associated matters.

## SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

### Concurrent report of the Finance Director

54. This is contained in the closed report contained later on the Board's agenda.

### Concurrent report of the Director of Legal & Democratic Services

55. The legal implications have been set out and are addressed within the body of the report. In the event that a public inquiry is held in order for the Secretary of State to decide whether to confirm the CPO, the UDP 2007 has significant weight in planning terms at present. Following its adoption on 28 July 2007 has primacy as the planning document to be applied in considering planning applications. The policies in the UDP support the redevelopment and regeneration of this site. It would also be of assistance to support the CPO to seek to secure outline planning permission for the principles of development comprised within the site. Therefore, the Executive may approve the recommendations set out in paragraphs 1-7 of this report.

## BACKGROUND PAPERS

Background Papers	Held At	Contact
Project files	Bermondsey Spa Regeneration Area Team 63-67 Newington Causeway London, SE1 6BDS	Patrick McGreal 020 7525 5626

## APPENDICES

No.	Title
Appendix A	Plan depicting the extent of Site G Bermondsey Spa
Appendix B	Site G Bermondsey Spa - Legal considerations
Appendix C	Photographs of Site G Bermondsey Spa

## AUDIT TRAIL

<b>Lead Officer</b>	Tim Thompson – Project Director - Canada Water & Bermondsey Spa Regeneration Areas		
<b>Report Author</b>	Patrick McGreal Principal Surveyor		
<b>Version</b>	Final		
<b>Dated</b>	23 August 2007		
<b>Key Decision?</b>	Yes	<b>If yes, date appeared on forward plan</b>	25 September 2007
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>			
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>	
Chief Finance Officer	Yes	Yes	
Director Regeneration [Neighbourhoods]	Yes	Yes	
Head of Property	Yes	Yes	
Director of Legal & Democratic Services	Yes	Yes	
Executive Members	Yes	Yes	
Bermondsey Spa Project Board	Yes	Yes	
Housing	Yes	Yes	
Date final report sent to Constitutional Support Services			17 September 2007



## APPENDIX B

### SITE G BERMONDSEY SPA LEGAL CONSIDERATIONS

1. Paragraphs 2- 14 have been adapted from recent external legal advice given in similar circumstances.
2. 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 properties within Site G of the Bermondsey Spa Regeneration. Section 226(1)(a) enable authorities to exercise their CPO powers if they think that the land in question will:

*“Facilitate the carrying out of development, redevelopment, or improvement on, or in relation to, the land being acquired and it is not certain that they will be able to acquire it by agreement.”*

3. The Borough, in exercising its power under this Section must have regard to section 226(1A) which states:

*“(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, re-development 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*

4. It is considered that the use of this section is therefore most appropriate having regard to the Borough’s aspirations for Site G Bermondsey Spa. The interests to be acquired by CPO are required in order to permit the redevelopment and regeneration of the area to take place. The proposal also satisfies the “well being” element of the Act in that the regeneration of Site G Bermondsey Spa is clearly in order to provide a better standard of accommodation for residents compared to its current state and to create a sustainable and diverse community, the provision of improved facilities which are able to meet the needs of the area, together with improved retail facilities which will assist in attracting investment and growth opportunities to the area. Thus the proposals will inevitably assist in promoting the social economic and environmental well being of the area.
5. Appendix A of Circular 06/2004 (“Compulsory Purchase and the Criche Down Rules”) sets out the circumstances in which this power may be relied on by a local authority for the purposes of compulsorily acquiring land. It recognises that CPO 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. It is now no longer the case that a planning permission need have been granted in order to justify the making of a CPO under this section. Indeed paragraph 15 of the Circular states:

*“It is also recognised 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.”*

6. Instead the circular advocates progressing and justifying a CPO 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.
7. For the purposes of confirming a CPO, the guidance identifies consideration which will be taken into account by the Secretary of State in making such a decision, namely:
  - (a) *The purpose for the land being acquired fits in with the adopted planning framework for the area or where not such up to date framework exists, with the core strategy and any relevant Area Action Plan in the process of preparation in full consultation with the community;*
  - (b) *The extent to which the proposed plan 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 commitments from third parties should suffice*
  - (d) *The purpose for which the acquiring authority is proposing to acquire the land could be achieved by other means*
8. Site G of the Bermondsey Spa Regeneration Initiative is subject to area guidance set out in the adopted Southwark Plan (Unitary Development Plan) in section 9.7 and policy 7.5. In addition, Site G is afforded planning protection in the Plan under policy in appendix 3 as site 21P. The uses required are C3, and A1. The estimated residential capacity is 32 – 75 units.
9. Having regard to the guidance, the primary aims of the Borough in progressing the CPO (and ensuring its success if it is considered by the Secretary of State) should include the following:
  - (i) Procure and secure an appropriate delivery partner
  - (ii) Obtain any other order which may be required as part of the development proposals. It may be that various stopping up orders will be required and the Borough should seek to progress these so far as it is possible
10. As is already set out in the report, officers will continue to seek to negotiate the acquisition of interests by agreement rather than relying solely on the compulsory acquisition powers available. Section 120 of the Local Government Act 1972 contains wide powers for local authorities to acquire land by agreement for any of their statutory functions or for *‘the benefit, improvement or development of their area’*. Section 227 of the Town and Country Planning Act 1990 also enables a council to acquire land by agreement for facilitating the carrying out of development, redevelopment of improvement and for the social economic and environmental well being of the area. It is considered therefore that there are adequate powers available to the Borough to secure outstanding interest in the land by Agreement.
11. Other rights may also be required in order to progress the Masterplan. For this reason it is recommended that the Borough also acquire/create new rights for the purposes of craneage oversailing. Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 is applicable in this regard and will enable the Borough to acquire/create such new rights as may be necessary to facilitate the development taking place.
12. It is understood that demolition notices have been served on relevant Council owned dwellings within the Site. This will ensure that no further tenants are able to exercise their

right to buy which will minimise the Borough's exposure in terms of new interests being created in the site whilst the CPO is being prepared and progressed.

13. The initial stage of a CPO will be to ensure that the Borough correctly identifies all necessary interests in the Order land that need to be incorporated within the schedule of the Order. As the Borough is the freeholder of the vast majority of the Site much of this information should be readily available. Nonetheless it is advised that formal requisitions for information should be served on all known owners the occupiers of each property to be subject to the CPO pursuant to Section 5A of the Acquisition of Land Act 1980. It is important that the Borough takes all reasonable steps to ensure that all interests are properly captured in the Order and are properly notified, the requisition for information is a means of ensuring the Borough fulfils this.
14. In the event that the CPO is eventually confirmed, the next stage will be to vest all necessary title in the Borough. In these circumstances it is likely that the best means of doing so will be way of the General vesting Declaration Procedure. This is something that can easily be carried out by the Borough's legal advisors as and when this stage is achieved.

## APPENDIX C

### PHOTOGRAPHS OF SITE G BERMONDSEY SPA

