

Item No. 7.	Classification: Open	Date: 24 January 2008	Meeting Name Major Projects Board
Report title:		25-29 Harper Road SE1	
Ward affected:		Chaucer Ward	
From:		Strategic Director of Major Projects	

RECOMMENDATIONS

1. That the Major Projects Board support the acquisition of premises known as 25-29 Harper Road by Family Mosaic Housing Association through negotiation.
2. That if Family Mosaic's negotiations prove unsuccessful, the Major Projects Board resolve to make a compulsory purchase order for the acquisition of the property interests in 25-29 Harper Road and that the Board delegate 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).
3. That the Major Projects Board delegates the negotiation and agreement of compensation terms for the acquisition of relevant interests to the Head of Property.
4. That should the acquisition of 25-29 Harper Road by the Council take place the Major Projects Board approve its immediate transfer to Family Mosaic for consideration that covers in full all the Council's costs incurred in acquiring the property and subsequently transferring it on.

BACKGROUND INFORMATION

5. Appendix One to this Report contains a plan showing 25-29 Harper Road edged red and the adjacent Social Services building shaded blue. Appendix Two shows a photograph of the subject property.
6. The subject property comprises a three storey former postal sorting office that fronts both Harper Road and Swan Street. It is now understood to be owned by Trinity House Estates and is used as a self-storage facility.
7. On 27 July 2005 Executive authorised the disposal of a number of sites to housing association partners to provide replacement housing for residents of the Heygate Estate that are to be displaced as a consequence of the Elephant & Castle Regeneration. The Social Services building in Harper Road is one such site and it was resolved to transfer that site to Family Mosaic Housing Association. For a reason that is not apparent it was not included in the 2005 report considered by Executive. This appears to be an oversight. It was always the intention that the subject property would form part of the overall early housing site; indeed it was explicitly included in the Stage 1 RSL Partner Selection/October 2004. It is also safeguarded for housing in the Southwark Plan (Unitary Development Plan) and has been included in public consultation with the Social Services building as a housing site.
8. In order to be able to deliver its undertaking to provide the replacement housing, the Council needs to ensure that both the Social Services and subject building are pooled to provide the housing site for displaced Heygate residents.

9. Family Mosaic advise negotiations with the owner of the subject property have been constructive and they are hopeful of being able to conclude the purchase by agreement but they require the comfort of knowing the property can be purchased should the owner decide to adopt a less co-operative approach and negotiations flounder.
10. It is estimated that the early housing site including both the Social Services building and the subject property will provide sixty units of housing accommodation. If the subject property is not included the number of units will be approximately halved.

KEY ISSUES FOR CONSIDERATION

Acquisition of 25-29 Harper Road

11. The Council is committed to the regeneration of the Elephant & Castle area. To provide for this the Heygate Housing Estate needs to be redeveloped as a key part of the overall jigsaw. To effect this, new homes have to be provided for its residents. A number of *Early Housing Sites* have been identified in this context; Harper Road [LBS] including the subject property is one such site.
12. The Council has adopted a partnership approach to providing the replacement housing sites and their partner for this site is Family Mosaic Housing Association. Prior to selection, the partner knew it would have to secure ownership of the subject property and meet the costs of doing so. Family Mosaic was advised informally that if necessary the Council would underpin this by endeavouring to acquire the property using compulsory powers and then transferring it on subject to the partner underwriting in full all the Council's costs [property cost, legal fees, surveyors fees and administrative fees]. Family Mosaic have now asked that this process be initiated by making a compulsory purchase order. At this stage they feel it is needed only as a prudent precaution.
13. The Council can only purchase third party property interests in the following circumstances:
 - 13.1 where there is agreement between the Council and persons holding those interests
 - 13.2 following a confirmed compulsory purchase order
14. The statutory compensation code provides that a third party is entitled to the following compensation following a compulsory acquisition:
 - 14.1 the market value of the interest acquired or if there is no general market for that type of property and amount that reflects the cost of providing an equivalent reinstatement of their property
 - 14.2 a disturbance payment to cover the third party's costs arising as a direct and natural result of the compulsory acquisition, this might include removal costs, legal fees, surveyors fees and loss of trade costs.
15. If it is decided not to seek a Compulsory Purchase Order in respect of the property and Family Mosaic fail to reach agreement with the property owner then a smaller replacement housing site will be provided and the deficit will have to be made up elsewhere.

Resolution to make a Compulsory Purchase Order

16. 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 implementation of the Elephant & Castle Regeneration. The detailed application and use of this power is set out in paragraphs 30- 40 below.

17. 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).
18. 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.

Policy implications

19. The Elephant & Castle Regeneration is a key project within the Council's Corporate Plan for 2006/7. The Plan states that progression of the Elephant & Castle along with other major regeneration projects is a key corporate objective.
20. The Council's Executive approved *A Fresh Start for Elephant and Castle* in July 2002. Following extensive consultation and scoping exercises, the Development Framework for the Regeneration of Elephant and Castle was adopted as Supplementary Planning Guidance in February 2004 and will be included in the Local Development Scheme as required under the transitional arrangements to the new planning framework under the Planning and Compulsory Purchase Act 2004.
21. The recently adopted Southwark Plan and the Elephant and Castle SPG [adopted Feb 2004] provide a strong planning framework which supports the redevelopment of the core Elephant and Castle site [39P] including the Heygate estate. The need to provide replacement homes for Heygate estate residents is recognised in the plan and the sites that are identified for this purpose are included on the Proposals Map. The storage centre site forms part of site 10P which is allocated for housing purposes. The SPG specifically identifies the site as being needed for development to accommodate residents from the Heygate estate.
22. The loss of the sites would reduce the Council's ability to provide a housing programme of sufficient scale and mix to meet the identified needs of Heygate residents. As the full package of schemes are still subject to planning there could be a requirement to further reduce numbers of units on some sites in order to secure consents for acceptable schemes. As a consequence it is important that the Council continue to pursue development of all the schemes within the programme as this continues to remain necessary in order to ensure it meet its Heygate rehousing commitments.

Community Impact Statement

23. 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 sites 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.
24. The regeneration of Elephant and Castle is considered to have benefits to not only for 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 Human Rights of these individuals have accordingly been considered and commented upon later in this Report.

25. The intended use of compulsory purchase powers by the Council to secure the Elephant and Castle regeneration has been well documented and advertised through briefings, newsletters and meetings with affected property owners and occupiers. It is a statutory requirement for the Council to advertise by official notice the publication of a compulsory purchase order. This notice will advise disaffected persons that they may object to the Order and how to do so.
26. The overall purpose of the Elephant and Castle project is to address the poor quality of housing, infrastructure, public facilities and local economic engagement by building upon the strengths of its population, location and accessibility. The Elephant and Castle is extremely diverse in terms of ethnicity, and socio economic profile. The Project is designed to maintain this diversity and vitality through the creation of a mixed use, mixed tenure development that retains as many as possible of the existing population. The re-provision of housing for Heygate residents is critical for this aspiration.
27. The Elephant and Castle regeneration continues to consult widely and to have regard to comments and observations arising. A full Equalities Impact Assessment [EIA] for the regeneration is being undertaken in line with corporate guidance. The scope of this includes the Supplementary Planning Guidance framework and the processes associated therewith include rehousing, communication and procurement. The EIA will also address the Project outcomes, monitoring and review arrangements.

Resource implications

28. There are no direct staffing implications arising from the proposed Compulsory Purchase Order.
29. All costs incurred by the Council in making the Order and if necessary acquiring the property will be met by Family Mosaic Housing Association as will the Council's costs in transferring the property on to the Housing Association.

Financial implications

30. As mentioned in paragraph 14 the third party owners of landed interests in the properties concerned are entitled to compensation to cover the market value of their interests. However all costs incurred by the Council will be met by Family Mosaic.

Report from the Council's appointed legal consultants - Denton Wilde Sapte

31. Paragraphs 32- 42 have been adapted from recent advice given in similar circumstances.
32. If the Council is unable to negotiate the acquisition by agreement 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 to secure the compulsory acquisition of properties for the Elephant and Castle Regeneration. Section 226(1)(a) enables 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."

33. The Council, 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."

34. It is considered that the use of this section is therefore most appropriate having regard to the Council's aspirations for Elephant and Castle. 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 Elephant & Castle 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 new facilities which are able to meet the needs of the area, together with a range of commercial uses 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.

35. 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."

36. 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.

37. 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*
38. Elephant and Castle Regeneration Initiative is subject to area guidance set out in the Southwark Plan (Unitary Development Plan). The recently adopted plan promotes the comprehensive regeneration of a large 55 acre core site [identified as site 39P] which includes the Heygate estate. The Council's requirement for the core area are set out in section 6.1 and the site schedule. In essence, the Council is seeking to establish a high density mixed use town centre [including new retail, leisure and other public facilities] with the capacity to meet London Plan targets for new homes and jobs. As noted in paragraph 21, the need to re-house Heygate residents is supported by the plan and sites for this purpose including 25-29 Harper Road are identified for this purpose in the Elephant & castle SPG.
39. Having regard to the guidance, the primary aims of the Council 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
40. 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 Council to secure outstanding interests in the sites by agreement.
41. The initial stage of a CPO will be to ensure that the Council correctly identifies all necessary interests in the Order land that need to be incorporated within the schedule of the Order. 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 Council 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 Council fulfils this.
42. In the event that the CPO is eventually confirmed, the next stage will be to vest all necessary title in the Council. 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 Council's legal advisors as and when this stage is achieved.

Human Rights Considerations

43. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("the Convention").

44. In proposing this Order the Borough has duly considered the rights of property owners under the convention, notably under *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.
45. The Council 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.
46. In considering the operation of human rights legislation the appropriate test for the exercise of compulsory purchase powers is one of proportionality. Having regard to these Convention rights, the Council has been conscious of the need to strike a balance between the rights of the individual and the wider public interest. The conclusion is that the significant public benefit arising from the Elephant and Castle regeneration justifies the making of a compulsory purchase order to secure the property interests and that cannot be acquired by agreement. Persons that consider they will be adversely affected by the Order may object to a third party; the Secretary of State for Communities and Local Government who must have regard to these objections and may call a public inquiry before deciding whether to confirm the Order.

Consultation

47. Public consultation has and continues to be a cornerstone of the Council's Elephant and Castle regeneration programme. Extensive consultations have taken place in respect of the Heygate Early Housing sites. In respect of the subject site a specific public consultation has taken place a further one is planned this month.

Identified risks and how they will be managed.

48. The identified risks are:

- Delays in the acquisition of the third party interests.
- Failure to follow procedural guidelines in seeking an Order or failure of the Secretary of State to confirm the Order
- Proposed developments do not obtain necessary planning consents

49. The risks will be managed via the Council's existing risk management process. Negotiations have and continue to take place with the affected property owner but without a compulsory purchase order there is no defined end date.

50. 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 Council and advise its appropriate officers of their legal and statutory duties with regard to compulsory purchase and associated matters.

51. The Council require high quality design and our housing association partners are aware of this and this formed one of the criterion in partner selection. Preliminary meetings between Council officers and partner representatives ahead of the making of planning applications are taking place in order that the planning applications when submitted conform to appropriate planning guidance and policy.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Legal and Democratic Services

52. If the Council is successful in negotiating the acquisition of the property by agreement, the relevant statutory powers are contained in section 120 of the Local Government Act 1972 which enables it to acquire land by agreement for the purposes of any of its statutory functions or for the benefit, improvement or development of its area; and in section 227 of the Town and Country Planning Act 1990 which enables it to acquire land by agreement if it will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land if this is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area, or if it is required for a purpose which is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

53. Part C of the Council's Constitution reserves to the Executive decisions on acquisition of land and property where the market value exceeds £100,000 and the acquisition involves the use of compulsory purchase powers. On 27 June 2007 the Council's Assembly decided that Executive Committee have the power within the role and functions delegated to them to decide all matters reserved to the Executive. The Major Projects Board therefore has the power to approve the recommendation put forward in this Report.

Finance Director

54. Should it become necessary to pursue a CPO for the subject property, then the costs will be met from existing budgets until the CPO has been completed. Upon completion of the CPO, agreed property costs, fees and administrative costs incurred will be reimbursed by Family Mosaic. Should the CPO be withdrawn then any abortive costs incurred by the property section will be met by the major projects department.

Head of Property

55. No additional comments.

BACKGROUND PAPERS

Background Papers	Held At	Contact
Site assembly & CPO files	Coburg House 63/67 Newington Causeway London, SE1 6BD	Patrick McGreal 020 7525 5626

APPENDICES

No.	Title
Appendix 1	Plan of 25-29 Harper Road and the Harper Road [LBS] Heygate Early Housing site
Appendix 2	Photograph of 25-29 Harper Road

AUDIT TRAIL

Lead Officer	Stephen McDonald, Strategic Director of Major Projects		
Report Author	Patrick McGreal, Principal Surveyor		
Version	Final		
Dated	13 December 2007		
Key Decision?	Yes	If yes, date appeared on forward plan	General Exception published on December 20 2007.
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER			
Officer Title	Comments Sought	Comments included	
Strategic Director of legal and Democratic Services.	Yes	Yes	
Finance Director	Yes	Yes	
Head of Property	Yes	Yes	
Executive Member			
Date final report sent to Constitutional Team		January 15 2007	

Appendix 2
25 – 29 Harper Road London SE1

