

Item No. 8.	Classification: Open	Date: 24 January 2008	MEETING NAME Major Projects Board
Report title:		Resolution to Make a Compulsory Purchase Order in Furtherance of Heygate Early Housing Sites	
Ward affected:		East Walworth Ward	
From:		Strategic Director of Major Projects	

RECOMMENDATIONS

1. That the Major Projects Board approve the acquisition of the freehold interests and leasehold interests in shop premises known as 98-104 Rodney Road and the freehold interest in the Church Hall at Stead Street through negotiation subject to Guinness Housing Trust and Wandle Housing Association underwriting all the Council's costs in making the acquisitions.
2. That the Major Projects Board resolve to make a compulsory purchase order for the acquisition of the interests set out in the above paragraph (and other interests as may arise); 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.

BACKGROUND INFORMATION

4. Appendix One to this Report contains a plan showing the sites edged red and their larger housing re-provision sites shaded blue. Appendix Two contains a photograph of 98-104 Rodney Road and Appendix Three contains a photograph of the Church Hall in Stead Street.
5. 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. These two sites are included within that decision but both are subject to third party interests.
6. In order to be able to deliver its undertaking to provide the replacement housing, the Council needs to acquire the outstanding third party interests in these sites.
7. It is still hoped to acquire the interests by agreement but the making of a Compulsory Purchase Order will focus the minds of the third parties and encourage them to enter into meaningful negotiations. The Order will ultimately enable the Borough to obtain possession even if purchase terms have not been agreed.
8. The Church Hall in Stead Street is owned by the Roman Catholic Archdiocese of Southwark. The Archdiocese is happy to co-operate with the Council's aspirations but subject to there being continuity of the Hall's service. This means that either a replacement Hall needs to be provided before the subject property is vacated or it has to be relocated temporarily whilst construction of a permanent replacement is in progress. The Hall benefits from an alcohol and public entertainment licences and finding suitable temporary or permanent alternative premises in the neighbourhood is challenging. Constructive discussions with the Hall's representatives continue and it appears possible to accommodate the Hall's re-provision

whilst maintaining the continuity of their operation by a phased development. It is nevertheless considered prudent to include it in the proposed Compulsory Purchase Order as a prudent protective measure in the event that the present strategy does not work out.

9. The freehold interest in the four Rodney Road shops is held by two unrelated individuals. Initial discussions have taken place with them about the Council acquiring their interests but they have indicated an unwillingness to sell voluntarily. They have aspirations of being involved as a development partner. Their aspiration has been referred to Wandle Housing Association the Council's partner for the site who has investigated a joint development with the owners but having regard to their financial requirements it is not possible to make this work.
10. The Rodney Road shops are prominently located but do not provide the imposing presence that such a location both needs and deserves. The forthcoming redevelopment of the area will highlight their deficiencies in both land utilisation and appearance terms. Their redevelopment is therefore considered a key aspect of the area's regeneration and to deliver this it is considered vital the Council takes ownership. In these circumstances compulsory purchase powers are necessary to secure ownership of not just the third party freehold interests but also the leasehold interests of tenants. Should the Board resolve to exercise compulsory purchase powers discussions will continue to see if agreement can be reached but the existence of an Order will concentrate the minds of both the freeholders and leaseholders.
11. The aspiration for the site is that the Council's partner Wandle Housing Association will develop it with shops at ground floor level and flats above. The existing shop tenants can be given first option to relocate to the new premises. However, owing to the limited availability of other shops in the area it will not be possible to maintain the continuity of their trading by providing interim premises for them between leaving the existing ones and relocating to the new ones.
12. The proposed number of replacement units to be provided from the respective sites are as follows:

Stead Street 110 units of which 55 will be affordable
Rodney Road 29 units of which at least 13 will be affordable

KEY ISSUES FOR CONSIDERATION

Acquisition of Third Party Interests

12. 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; the two sites at Stead Street and Rodney Road covered by this Report are such housing sites. The subject sites are under-utilised and their regeneration will as well as providing rehousing, improve and revigorate this area of Walworth.
13. The Council can only purchase third party property interests in the following circumstances:
 - 13.1 where there is agreement between the Council and the freeholders and leaseholders
 - 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 an 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. Where an acquisition takes place by agreement ahead of the exercise of compulsory purchase powers the leaseholder is treated in the same way and with the same entitlement as would be the case if there was a Compulsory Purchase Order.
 16. If it is decided not to seek a Compulsory Purchase Order in respect of the properties covered and agreement is not reached by agreement with the third parties then Rodney Road site won't be providing any replacement housing for the Heygate and Stead Street will provide less than planned and this deficit will have to be made up elsewhere.

Resolution to make a Compulsory Purchase Order

17. 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 32-45 below.
18. 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 (after 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.

Policy implications

20. 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.
21. 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.
22. The recently adopted Southwark Plan and the Elephant and Castle SPG [adopted Feb 2004] provides 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. Both the English Martyrs Church Hall and Rodney Road shops form part of site 51P which is allocated for housing

purposes. The SPG specifically identifies the site as being needed for development to accommodate residents from the Heygate estate.

- 23 The loss of both sites would have a significant impact on the Council's ability to provide a housing programme of sufficient scale and mix to meet the identified needs of Heygate residents. It is estimated that if both these sites were omitted from the early housing schemes approximately 40-50 units affordable units would be lost representing around 10% of the total programme. 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

24. 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.
25. The regeneration of Elephant and Castle 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.
26. 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.
27. 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.
28. 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

29. There are no direct staffing implications arising from the proposed Compulsory Purchase Order.
30. The project management and compensation costs will be met from the financial provision already approved for the Elephant & Castle Regeneration.

Financial implications

31. 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. Since the Church Hall is a type of property for which a general sale market does not exist its measure of compensation is likely to be the cost of providing an equivalent sized and type of building [with allowance for depreciation/obsolescence] on an equivalent sized site. As detailed estimates of acquisition costs have not yet been prepared it is recommended that the Head of Property be delegated to enter into and conclude negotiations with each interest holder to agree each compensation figure and settle each claim in line with the Borough's statutory responsibility under the compensation code.
32. Before the Council exercise compulsory purchase powers in respect of either site it will be necessary for Guinness Housing Trust [in the case of the Church Hall] and Wandle Housing Association [in the case of the Rodney Road shops] to enter into a written agreement to meet all the Council's costs arising from making of an Order. Such agreements will provide that following acquisition of the sites they will be transferred to the respective Association for the consideration paid by the Council.

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

33. Paragraphs 33- 45 have been adapted from recent advice given in similar circumstances.
34. 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 for the Elephant and Castle 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."

35. 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."

36. 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.

37. 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."

38. 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.

39. 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*

40. Elephant and Castle Regeneration Initiative is subject to area guidance set out in the Southwark Plan (Unitary Development Plan)

41. 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 should seek to progress these so far as it is possible

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43. 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 interests in the sites by agreement.
44. 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 Borough fulfils this.
45. 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.

Human Rights Considerations

46. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("the Convention").
47. 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.
48. 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.
49. 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

50. 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 sites a two day specific public consultation has taken place in Stead Street and a further one is planned later in the year.

Identified risks and how they will be managed.

51. 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

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

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

54. 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

Finance Director

55. The sites adjacent to the subject properties are planned for redevelopment by RSLs as part of the overall regeneration of the Elephant & Castle area. Discussions have taken place and outline agreement has been reached with the respective RSLs to the effect that they will reimburse the council the costs of any CPO. The RSLs will then proceed to develop the site as outlined in this report.

56. Prior to embarking on a CPO process it would be necessary to for council officers to agree with the RSL exactly which costs will be reimbursed. These should take into consideration the compensation paid to third parties, property costs, legal & professional fees and administration costs.

57. Should it become necessary to pursue a CPO for the subject properties, then the costs will be met from existing budgets until the CPO has been completed. At the same time as the completion of the CPO, agreed costs incurred should be reimbursed by the RSL. Should the CPO be withdrawn then any abortive costs incurred by the Property section will be met by the Major Projects Department."

Strategic Director of Legal And Democratic Services

58. The powers under which the Council operates when taking and implementing these decisions are set out in paragraphs 33-45 (voluntary and compulsory purchase acquisition of property interests in land) and paragraphs 46-49 (duty to consider rights of property owners under the Human Rights Act 1998) . As is set out in paragraph 33 of this report, Section 226(1)(a) of the Town and Country Planning Act 1990 ("the 1990 Act") is the power under which the Council may seek to secure the compulsory purchase acquisition of the properties referred to in paragraph 1 of this report ("the Properties"). As is set out in paragraph 41, the Council has power under Section 227 of the 1990 Act or Section 120 (1) of the Local Government Act 1972 ("the 1972 Act") to acquire the Properties by agreement with the owners. Further, and by virtue of Section 120 (2) of the 1972 Act, if the Properties are acquired under the 1972 Act but are not required immediately for the purposes for which

they have been acquired, the Council may until the Properties are so required, use them for the purpose of any of the Council's functions.

59. Part 3C 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 of land and property which involves the use of compulsory purchase orders. On the 27 June 2007 the Council Assembly decided that Executive committees have the power within the role and functions delegated to them to decide all matters reserved to the Executive. This report describes how the proposals put forward are within the Elephant and Castle Regeneration Project and therefore the Major Projects Board has the power to approve the recommendations put forward in this report.

Head of Property

60. No further comment.

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 depicting the Stead Street and Rodney Road Early Housing sites
Appendix 2	Photograph of 98-104 Rodney Road
Appendix 3	Photograph of English Martyrs Church Hall Stead Street

AUDIT TRAIL

Lead Officer	Stephen McDonald, Strategic Director of Major Projects		
Report Author	Patrick McGreal, Principal Surveyor		
Version	Final		
Dated	16 January 2007		
	Yes	If yes, date appeared on forward plan	December 17 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 for Regeneration	Yes	No	
Date final report sent to Constitutional Support Services	16 January 2007		