

<b>Item No.</b> 2	<b>Classification:</b> Open	<b>Date:</b> 3 <sup>rd</sup> August 2005	<b>MEETING NAME:</b> Regeneration and Resources Scrutiny
<b>Report title:</b>		Business Continuity at the Elephant and castle Shopping Centre	
<b>Ward(s) or groups affected:</b>		Cathedral, Chaucer, East Walworth and Newington	
<b>From:</b>		Strategic Director of Regeneration	

## RECOMMENDATION(S)

1. That Scrutiny Committee notes proposals being prepared to encourage effective trading during the remaining life of the existing centre eg by imposing obligations within its stage 3 commercial partner procurement competition documents requiring an annual contribution in a sum to be approved by Executive following consultation with shopping centre business and the shopping centre landlord to support active promotion and marketing of the centre in a form designed to encourage customer loyalty.
2. That Scrutiny Committee notes proposals being prepared to secure locations for replacement business premises eg through extending the adopted Supplementary Planning Guidance in relation to the Elephant and Castle to incorporate a planning gain arrangement under which replacement business premises are secured on terms designed to be affordable for "local" businesses as set out within the body of the report.
3. That Scrutiny Committee notes the allocation of £15,000 to Business Extra to fund advice to shopping centre businesses that will assist them to prepare proposals for additional public sector assistance.

## BACKGROUND INFORMATION

4. The Elephant and Castle Shopping Centre is a two level shopping mall with sub ground car parking and surmounted by commercial leisure and office accommodation. It is located within the Elephant and Castle core development area as defined by Southwark's adopted Supplementary Planning Guidance (SPG) dated 19<sup>th</sup> February 2004. Its demolition is a pre-requisite to the achievement of the road layout and general disposition of development plots as described in the illustrative masterplan that accompanies the SPG.
5. The intended redevelopment of the shopping centre has obvious implications for both the occupying businesses and the customer catchments that they serve. This report deals with the issues raised by this and the need to identify measures that will assist businesses to trade through and beyond this period of change. It also considers the wider policy objective of the Council to secure a substantial and sustainable presence of local and small businesses within the redeveloped area.

6. In earlier discussions with the Committee further information or action was sought on:
- **Experience elsewhere:** We have made extensive enquiries about recent and past schemes in other areas and sought information about some international experience. The attached note (Annex 1) sets out some detail, including an LDA paper about the action being taken in the Olympics site. In summary we have found no examples where the elements of any relocation are significantly different from that discussed here i.e.: action mainly by a private developer under Landlord powers or the use of CPO powers. There has also been recent LDA research on premises for BME businesses. This does not deal in great detail with the issue of relocation. (It can be made available separately if the Committee wishes)
  - **The legal position in general and for specific groups of traders:** This is dealt with below in the main body of the report. The LGA guidance about the “well being power” is attached at Annex 2.
  - **The succession arrangements for the SRB:** The current position is referred to in para 23.
  - **Questions raised with the Executive Member** are covered in the discussion of the policy position set out below
  - **Further discussions with the Traders:** These have taken place directly and a number of the Traders also raised issues at the Equalities and Diversity Strategic Reference Group. Key points raised in those discussions are covered below.

## KEY ISSUES FOR CONSIDERATION

### *Planning*

7. The Elephant and Castle Shopping Centre is considered in the context of its wider surroundings within the Elephant and Castle SPG. In total approximately 60 acres including the Heygate Estate, railway viaduct, road system and a number of key sites as well as the shopping centre have been considered in terms of the opportunity area status of the Elephant and Castle as defined in the London Plan. The combination of the London Plan, the SPG and the identification of the Elephant and Castle in the post inquiry UDP create an opportunity, subject to land assembly and detailed consents, to secure a major transformation of the entire area. This planning status is by definition permissive i.e. it does not compel land to be brought into play and nor does it render existing uses or activity unlawful. However it is apparent that the likelihood of redevelopment has been increased as a consequence of these planning measures.

### *Timetable*

8. At this stage there is no formally binding timetable but the Council as landowner, housing authority and regeneration agency has, since July 2002, put in place arrangements to implement an SPG-compliant scheme of development. The competition processes currently underway assume that the shopping centre will be demolished in or about 2010.

### *Ownership*

9. The shopping centre is in the freehold ownership of Key Property Investments (KPI) which is a joint venture between Sahlia and St Modwen. The former is a Kuwaiti based private investment vehicle and the latter is a publicly quoted UK-based property company. St Modwen is in all practical respects responsible for the day-to-day management of the centre.
10. From the freehold ownership a large number of sub-interests have been created. These include occupational arrangements with a range of retailers, leisure operators, restaurants and other businesses which range from national multiples to small and medium sized businesses of a more local character. The centre also includes a significant number of market traders who operate from stalls both inside and outside the building.
11. The centre also contains agreements incorporating legal rights in favour of Network Rail, the current train operating company, commercial advertisers, telecommunications operators, National Car Parks and a number of railway arch occupiers.

### *Lease Structure*

12. It is important to note at the outset that the Council does not hold, and does not have direct access to, copies of any of the formal agreements between KPI and its various tenants, licensees and other contracting parties. It is therefore only possible to give an indication of legal arrangements based upon undocumented information received from the tenants and the landlord.
13. KPI bought the Elephant and Castle shopping centre approximately 3 years ago from Pinkland. At the time of purchase most of the current spaces users were in place and KPI took the freehold subject to their pre-existing terms of occupation. Since that time there has been a relatively small number of new lettings and there have been the normal landlord and tenant transactions including rent reviews and lease renewals which will have served to change the terms of occupation of individual units and trading spaces.
14. It is known that KPI has attempted wherever possible to renegotiate lease terms in order to create the potential to achieve vacant possession in or around 2010. As leases fall in (i.e. reach their contractual expiry dates) KPI seeks to grant short leases or leases with break clauses in order to improve its capacity to synchronise lease terminations as closely as possible to the eventual last day of operation.
15. For tenants with existing leases which extend beyond 2010 without break provisions, and who are not in breach, KPI currently has no formal opportunity to reduce their security of tenure. It does potentially have incentives at its disposal to encourage tenants to voluntarily vary their leases in the landlords favour (e.g. rent reductions or reverse premium payments) but the Council is not currently aware of instances where this approach has been used.
16. Market stall traders are believed to all occupy under licence agreements. Normally these are terminable upon, or shortly following service of notice and afford little or no protection to licensees beyond the terms set out in the

licence itself. The external stall holders are believed to be licensees of Urban Space management, an independent company which manages the market area under a lease it holds from KPI. The traders within the Centre are assumed to be licensees of KPI directly.

### *Landlord and Tenant Act*

17. Under the Landlord and Tenant Act 1954 (Part II) as amended, business tenants are entitled upon expiry to be granted a new lease on substantially the same terms as the old one providing certain conditions are met. Generally these are that the original lease was not 'contracted out' of the provisions of the 1954 Act, that they are not in breach of its terms, that they are actually in occupation etc. Where new lease terms cannot be agreed between the Landlord and the tenant they may be referred to the court where the judge will issue an order as to the form of the new lease after hearing evidence from both parties.
18. Where the landlord requires vacant possession to redevelop the property, a notice may be served specifying opposition to the grant of the new lease but this can only issued to coincide with the contractual lease end date or a specified break. In these circumstances compensation is payable by the landlord to the tenant in a sum which is normally equivalent to or twice the rateable value in the current rating list.
19. It appears that KPI is making full use of its entitlements under this legislation to manage the leases through to 2010. In this respect it is behaving as would be the case with any commercial landowner seeking to prime a property in preparation for redevelopment. Individual tenants are fully entitled to oppose the landlord in these matters and normally the decision of the court will be dependant upon the extent to which the landlord has proved "intention" (i.e. has made a settled decision to proceed with development and has the means to do so) rather than the merits of any argument the tenant may put up that the injury or loss to them is inadequately covered by the statutory scheme of compensation.
20. In relation to leases which run on beyond the required date of possession, as noted above the matter would normally proceed in the first instance by negotiations. In these circumstances the tenant is in a strong position as the landlord has no formal powers available under the 1954 Act to end the lease prematurely and in an unregulated market the tenant may well be able to argue for a substantial payment or other advantageous terms e.g. provision of new premises etc. However where the landlord is unable to arrive at a voluntary deal the local authority may agree to sponsor a Compulsory Purchase Order. CPO is governed by a different system of compensation and business tenants (as well as other qualifying land owners) are able to claim compensation based on an assessment of the disturbance caused to them as a consequence of their property interest being terminated. If the business has a substantial profit rent and/or is trading at a sustained level of profitability compensation can be considerably in excess of the entitlement of that of a similar business whose lease is terminated under the Landlord and Tenant Act. This gap has been further widened as a consequence of Loss Payment provisions introduced by the Planning and Compulsory Purchase Act 2004.

### *Application of the Legislation*

21. As noted above the precise individual circumstance of each trader in the shopping centre is not known to the Council. However it seems reasonably clear that they will fall into definable categories as set out in the flow chart attached as Appendix 3. As noted above this means that the legislation will operate differentially in terms of compensation according to the lease arrangements under which each business operates.
22. The Council has put into place a number of measures to ascertain more accurately how this impacts at the shopping centre but so far only with limited success. It was originally planned that Business Extra, the SRB funded business advice centre on Walworth Road should carry out individual business assessments but most traders have been unwilling to participate in this exercise. More recently the Council has committed £15,000 through Business Extra to commission professional advice on behalf of the shopping centre businesses. This will produce a programme of independent generic advice from a specialist chartered surveyors and solicitors with particular expertise in landlord and tenant and compulsory purchase matters. That appointment was only confirmed at the end of July and their report back to the businesses is not due until approximately the end of August.

Receipt of this advice should assist the businesses to consider the widest possible range of options individually and collectively. The scope of the advice will allow the businesses to consider any additional measures that public agencies such as the London Borough of Southwark or the London Development Agency may be able to make available that haven't already been identified.

### **Council Policy in Relation to Small Businesses at the Elephant and Castle**

23. Under the Council's adopted SPG it has explicitly rejected the large institutionally owned mall in favour of a street based arrangement designed to create a location able to hold a large representation of small local businesses that are reflective of the population in the surrounding area. Necessarily this representation must include substantial numbers of BME businesses because as employers, goods and service providers and contributors to the general character of the town centre they will contribute to creating a distinctive and recognisable place that is 'in tune' with its surrounding catchment area.

This is reflected in the SRB arrangements, which have been set up in order to represent local interests. The government recognised the need to support the regeneration of the E&C with the award of £20m SRB funding which commenced in 1999 and will conclude in March 2006. The programme was designed to assist local individuals and groups to benefit from the large scale regeneration of the area and although the funding will cease just at the point at which the redevelopment programme takes off it is hoped that a succession strategy will ensure that the benefits and good practice of the programme will carry on into the future. The body which oversees the SRB programme, the E&C Community Partnership Board, has agreed that a new body will be established to implement the succession strategy for the SRB i.e. to support, where possible, the continued work of the SRB programme and provide effective management for community assets developed as part of the programme. It is hoped that once the Trust has established itself as a credible and responsible body it will consider adopting a range of wider roles which

may include promoting the area's economy and, in particular, developing initiatives which will maintain its unique character through a period of change and uncertainty

24. It is considered a reasonable starting point to assume that retaining as much of the existing local enterprise as possible will create a strong foundation from which this sector can be expanded within the areas of new development. The council is particularly aware that BME businesses may be especially vulnerable to the effects of large-scale redevelopment. On this basis the Council should commit itself to taking all reasonable measures within the powers available to it to protect the continuity of existing businesses by seeking to protect them whilst they remain in their present locations, by helping to ensure that they make smooth transitions into new premises and by testing the plans for the future town centre against their likely capacity to sustain such businesses in the long term.

A. Protecting Business Continuity within the Shopping Centre

The Council has received conflicting messages about current trading arrangements within the shopping centre. KPI as landlord reports that the shopping centre is fully let and that rents have been rising strongly. They report no significant increases in bad debts or tenants default amongst the retail and leisure traders. However they do acknowledge that the centre has lost revenue and footfall as a consequence of the Department of Health's departure from the 93,000 sq.ft. of offices contained in Hannibal House above the Centre.

By contrast, most tenants report that trade has been declining over recent years and those that attend the meetings of the Shopping Centre Liaison Group for the most part advise that the position has worsened recently.

It is difficult for the Council to be definitive on these issues in the absence of accounts information from either party. However the landlord has been requested to release information that it is believed to hold or to which it can secure access concerning footfall figures, catchment area statistics, demographic data and customer travel information. This information may assist in targeting promotional material more intelligently in order to derive the maximum benefit for centre businesses.

Whatever the precise current position the Council accepts that trading conditions must tend to become more difficult as final closure is approached. It is important to take active measures to counteract the likelihood of decline both in order to protect the services the centre provides to local people and in order to protect businesses so that as many as possible remain strong enough to make the transition to new premises. The Council has already contributed to promotions and marketing campaigns, provision of environmental lighting schemes, support for the community warden scheme which includes patrols of the centre, has placed major exhibitions within the shopping centre building, and uses the shopping centre as the principal point for information distribution. Over the same period KPI has repainted the centre and carried out some external improvements much of the cost

of which is recovered through service charges levied by the occupying businesses.

It is likely that a more planned programme over the remainder of the period through to closure could improve the effectiveness of these arrangements. It is therefore proposed that a sum of money to be agreed with KPI and the business tenants should be built into the working arrangements with the eventual commercial partner in order to support active measures to maintain the maximum shopping centre viability. To be effective this will require the full support of the landlord and the occupying businesses.

#### B. Transition to New Premises

During July 2005 a survey was carried out of shopping centre businesses to assess their future trading intentions. This was commissioned by the council through Elephant Enterprises and was undertaken in a form agreed with the Shopping Centre Liaison Group. 76 businesses completed returns of which at least 52 intend or hope to be trading at the Elephant and Castle after the demolition of the existing centre. The survey provides helpful information about the nature of individual requirements and will help to set a basis for securing new premises over the life of the redevelopment.

There are presently a number of major schemes in preparation which have the capacity to provide floor space aimed at existing businesses. These include schemes on the New Kent Road, Walworth Road, Newington Butts and Newington Causeway.

In each case s.106 arrangements could capture a predefined set of requirements in terms of space and could extend to defining "affordability" on the basis of restricting their availability to "local" businesses. This will require a careful definition of terms for use within the planning system and will need to be tested as to their lawfulness and enforceability. These are matters that are capable of being contained within the Business Extra professional brief and therefore can be reported back upon after detailed discussions with the appointed advisors have taken place.

In terms of a workable scheme it is proposed that the Council should consider a package of support designed to achieve its overall economic policy objectives through a means tested package of financial and practical assistance funded through the commercial partnership and targeted upon businesses with a settled intention to remain in the area who meet the definitions referred to above. It is likely that a detailed mechanism will have to be established under which such a proposal could operate.

For instance, it may be possible to require the provision of a stepped rent which commences at current shopping centre levels and rises to meet future prevailing rent levels over a period of say 5 years. The profile of this phasing could be designed to provide most assistance in the first two years of the period and to rise more rapidly once the business has re-established itself. Such a benefit may have to be expressed as un-assignable except in relation to an incoming

business which meets the same “local” qualifications as the original. This may be supplemented by the availability of business grant from the Council or from the partnership which could assist with one-off costs such as shop fitting, relocation costs, professional fees etc.. Such payments may best be calculated and administered on a basis which recognises their purpose is in pursuit of an economic development objective and not merely to supplement the compensation arrangements that exist within the relevant statutory provisions.

In respect of the approximately 24 businesses that do not intend or expect to continue trading in the future it remains difficult to be specific about their individual treatment. Some may hold long leases and will be in a strong negotiating position vis-à-vis the centre landlord. Where those businesses come within a compulsory purchase scheme they will be entitled to compensation based upon the value of their property interest and the disturbance caused to the business. In the case of sole traders who have reached the age of 60 they are entitled as of right to receive a total extinguishment payment i.e. a professionally calculated assessment of the total value of the business. The same applies to a business that can demonstrate that it is practically impossible to preserve the goodwill of the business through relocation to new premises.

The position of businesses with leases vulnerable to termination before 2010 is more precarious and their strict statutory entitlement to compensation is likely to be minimal. By departing from the centre and from the area they are by definition unable to assist the achievement of the Council's broader economic objectives and would not be likely to come within a scheme of public compensation because of their susceptibility to removal by the landlord.

#### C. Viability of the Future Centre

This is not immediately an issue for Scrutiny Committee consideration but it is worth noting that the adopted SPG does consider the issue of long term ownership and management of the redeveloped Elephant and Castle core. A management regime similar in character to a Business Improvement District may emerge as the most suitable vehicle to own, manage and promote the centre and provisions designed to maintain the local character of the occupying businesses will have to be written into its terms of creation. Past examples include Covent Garden which was set up in a manner which prevented existing multiples from taking space in the original scheme and there are believed to be emerging examples in a variety of locations in Europe and North America

### **SUMMARY**

The Council's plans for the Elephant and Castle are designed to secure a new retail area, which will provide improved trading conditions while retaining businesses, which serve the local community. It aims to ensure that the existing businesses are supported through the change:

- By assisting in securing the best possible trading conditions during the



- remaining effective life of the current centre, working with the traders and the landlord;
- By using agreements with the development partners to secure appropriate new premises for those wishing to transfer and continue trading.

While the emphasis must be on supporting the continuation of businesses for the benefit of the local community the Council will consider the position of any traders unable or unwilling to make the transition to the new area and who may wish to relocate elsewhere.

The appointment of specialist advisors to work with the businesses should improve the traders' ability to work within the established Shopping Centre Liaison Group and will allow models of future working based upon some of the suggestions contained within this report to be further developed and tested.

## **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Elephant & Castle SCLG papers	Coburg House	Chris Horn

## APPENDIX A

### Audit Trail

Lead Officer	Paul Evans, Strategic Director of Regeneration		
Report Author	Chris Horn, Elephant and Castle Development Director		
Version	Final		
Dated	2 August 2005		
Key Decision?			
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER			
Officer Title		Comments Sought	Comments included
Date final report sent to Constitutional Support Services			

## **APPENDIX 1 - LDA Guidance**

## **APPENDIX 2 - LGA Guidance on use of Well-Being powers**

### **Appendix 3 – Flow Chart**