

Planning Committee (Major Applications) A

Tuesday 29 April 2025

6.30 pm

Ground Floor Meeting Room G02 - 160 Tooley Street, London SE1 2Q

Supplemental Agenda No.1

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6.	Borough Triangle (18-54 Newington Causeway, 69 Borough Road, 82-83 Borough Road, London) - Business Relocation Strategy S106 obligation To consider the draft of the Business Relocation Strategy in the s106 legal agreement and approve the wording.	1 - 11

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Webpage: www.southwark.gov.uk

Date: 17 April 2025

Meeting Name:	Planning Committee (Major Applications) A
Date:	29 April 2025
Report title:	Borough Triangle (18-54 Newington Causeway, 69 Borough Road, 82-83 Borough Road, London) - Business Relocation Strategy S106 obligation
Ward(s) or groups affected:	Borough and Bankside
Classification:	Open
Reason for lateness (if applicable):	Not applicable
From:	Director of Planning and Growth

RECOMMENDATION

1. That members note and consider the draft of the Business Relocation Strategy in the s106 legal agreement as set out in Appendix A of this report, and approve the wording.

BACKGROUND INFORMATION

2. Planning Committee (Major Applications) A resolved to grant planning permission for a mixed use development on the site known as Borough Triangle at 69 Borough Road, 82-83 Borough Road on 26 March 2025. The resolution was subject to a number of matters, including the section of the s106 legal agreement relating to the Business Relocation Strategy being reported back to committee for approval.
3. There are a total of 33 organisations trading at Mercarto Metropolitano (some organisations have more than one stall). The number of sites they operate from differs and is summarised in the table below:

Trader category	Total
Single Site at Mercarto Metropolitano	12
Two Sites	2
Three to Nine sites	14
Multiple Sites outside MM 10 or more	5
Total	33

KEY ISSUE FOR CONSIDERATION

Business Relocation Strategy

4. Council Officers, Berkeley Homes and their respective lawyers have been discussing the wording of that section of the legal agreement, this is presented to the committee in Appendix 1 for the committee's approval. The draft attached has been shared with traders and with Southwark Law Centre (SLC).
5. The draft wording includes seven arms of the strategy that are:
 - Final Business Relocation Strategy
 - Temporary Food Market
 - Independent Business Advisor
 - Business Relocation Fund
 - Sui Generis Unit (the new permeant market)
 - Trader Steering Group
 - Relocation Information
6. The agreement for these parts of the draft legal agreement is summarised below.

Final Business Relocation Strategy

7. This will need to be submitted 12 months after the planning consent is free of legal challenge (Legal challenge period of 6 weeks post the issue of the planning consent) and will include, as a minimum:
 - Confirmation that the Temporary Food Market planning application has been submitted
 - Details of assistance for traders in business planning
 - Details of how potential premises for relocation will be communicated to traders and other site tenants
 - An updated Equalities Impact Assessment

Temporary Food Market

8. Berkeley will consult with the traders on the design of the temporary food market. An application for temporary market (to be in place for a minimum of 5 years) will be submitted no later than 12 months after the permission is free for challenge and will include:
 - A minimum of 12 stalls
 - Space for shared seating and dining
 - Details of fit out of the temporary market, including toilets, heating, lighting, cooling, venting, kitchen and storage facilities including cold storage

- Details of rent, which shall be no more than rents currently being paid
 - Marketing strategy to raise awareness and to facilitate high footfall
 - Details of hours of operation, maintenance, cleaning and security
9. The existing Mercarto Metropolitano will not be closed until the Temporary Food Market is ready to be occupied to ensure continuity of trade.

Independent Business Advisor

10. This advisor will:
- Provide practical support and business planning to traders through confidential one to one sessions
 - Provide enterprise support and organise workshops
 - Give guidance for traders on applying for the Temporary Food Market and Business Relocation Fund
 - Provide assistance for traders for whom English is not their first language
 - Assist with locating and assessing alternative business premises

Business Relocation Fund

11. This fund of £200,000 will be managed by the Council in consultation with a Berkeley and the Independent Business Advisor to allocate funds to traders relocating. This fund will only be available to traders who are in Mercarto at the date planning permission is issued and will not be available for traders with 10 or more locations.
12. This fund will be able to cover costs attributable to relocation, including legal and surveyor costs for taking a new lease on premises, costs of removal, relocation and fit out.

Sui Generis Unit (new permanent food market)

13. Existing traders will have will exclusive right of application for tenancies in the new food hall for three months and be able to continue to apply after that initial period. The Temporary Food Market will not be closed until the new permanent food market is ready for occupation.

Trader Steering Group

14. This will comprise the Council and Berkeley Homes who will govern the Business Relocation Strategy and meet quarterly until the new food market is ready for occupation. It is this group that will assess and award stalls for the Temporary Food Market.

Relocation Information

15. Berkeley will share a database of vacant premises within the local area, elsewhere in the borough and in Lambeth in addition to vacant sites the Council

has with traders, and other tenants on site for a period of one year after the closure of the existing market.

Further engagement

16. Berkeley have continued speaking to traders about the Business Relocation Strategy. Since the committee meeting on 26 March they have met with 15 traders, all of whom have confirmed to Berkeley that they support the business support package offered. Berkeley will continue arrange meetings with traders they haven't yet met.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Copies of S106 All documents can be accessed online at the link below	160 Tooley Street London SE1 2QH	Dipesh Patel Dipesh.patel@southwark.gov.uk 020 7525 1778
Link: https://www.southwark.gov.uk/planning-and-building-control/planning-applications/planning-register-search-view-and-comment-on-planning-applications		

APPENDICES

No.	Title
Appendix A	Draft s106 wording for the Business Relocation Strategy

AUDIT TRAIL

Lead Officer	Stephen Platts, Director of Planning and Growth		
Report Author	Dipesh Patel, Head of Strategic Applications, Planning and Growth		
Version	Final		
Date	17 April 2025		
Key Decision?	No		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title		Comments Sought	Comments included
Assistant Chief Executive – Governance and Assurance		No	No
Strategic Director, Resources		No	No
Director of Planning and Growth		No	No
Cabinet Member		No	No
Date final report sent to Constitutional Team			17 April 2025

APPENDIX A

Draft s106 wording for the Business Relocation Strategy

DEFINITIONS TO BE INSERTED AT CLAUSE 1.1

"Available for Occupation"	means, in respect of the Sui Generis Unit and the Temporary Food Market, practically completed and available for occupation and operation;
"Business Relocation Fund Contribution"	means the sum of £200,000 (two hundred thousand pounds) to be paid by the Owner to the Council in accordance with paragraph 4.1 of Schedule [X] of this Agreement and to be used by the Council for the purposes of the Business Relocation Fund;
"Business Relocation Fund"	means the fund held by the Council for the purposes of assisting eligible Market Tenants with financial support towards the costs associated with relocating their business from the Existing Market, to be used by the Council in accordance with the criteria specified in paragraph 4.3 of Schedule [X] of this Agreement;
"Business Relocation Strategy"	means the strategy submitted by the Owner to the Council as part of the Application and which has subsequently been updated detailing how the Owner intends to assist the relocation of, and support, the Food Market Tenants appended hereto at appendix [X] of this Agreement;
"Business Relocation Top-up Contribution"	means the sum of £150,000 (one hundred and fifty thousand pounds) which may be payable by the Owner to the Council pursuant to paragraph 2.6 of Schedule [X] of this Agreement in the event that the Temporary Food Market Planning Application is refused by the Council and which if payable shall be applied by the Council for the purposes of assisting Market Tenants selected for the Temporary Food Market with financial support towards the costs associated with relocating their business from the Existing Market, to be used by the Council in accordance with the criteria in paragraph 4.3 of Schedule [X];
"Existing Market"	means the market operational at the Site as at the date of this Agreement;
"Final Business Relocation Strategy"	means the final strategy to be submitted by the Owner to the Council pursuant to paragraph 1.1 of Schedule [X] of this Agreement detailing how the Owner intends to assist the relocation of, and support, the Market Tenants and the Wider Site Tenants and, which shall accord with the Business Relocation Strategy and which shall, as a minimum, include the matters outlined in paragraph 1.2 of Schedule [X] of this Agreement;
"Free of Challenge"	means the Planning Permission not being the subject of a claim for Judicial Review or a Statutory Challenge or, in the event that it is, the final determination of the relevant court proceedings resulting in the validity of the Planning Permission being upheld;
" Market Tenants"	means the sub-tenants of the Existing Market as at the date of this Agreement;
"Independent Business Advisor Contribution"	means the sum of £40,000 (forty thousand pounds) paid by the Owner to the Independent Business Advisor in accordance with paragraph 3.1 of Schedule [X] of this Agreement for the purposes of appointing and retaining the Independent Business Advisor;

"Independent Business Advisor"	means Tree Shepherd or any other replacement organisation appointed by the Owner with the prior written approval of the Council and who shall administer the Business Relocation Strategy and consult on the administration of the Business Relocation Fund;
"Judicial Review"	means judicial review under Part 54 of the Civil Procedure Rules 1998 or any succeeding or replacement rules or regulations;
"Statutory Challenge"	means a court challenge made pursuant to section 288 of the 1990 Act;
"Sui Generis Unit Leaseholder"	means the leaseholder of the Sui Generis Unit;
"Sui Generis Unit"	means the sui generis space to be provided in Block C and Block D as part of the Development as shown shaded light yellow on the plan with reference E505-MLA-XX-00-DRG-AR-00210000 appended hereto at appendix [x] of this Deed;
"Temporary Food Market"	means the temporary food market to be provided at the Site as shown indicatively lined and hatched blue on the indicative temporary food market location plan appended hereto at appendix [x] of this Agreement to provide a minimum of 12 stalls (unless otherwise agreed with the Council in writing), space for the sale of food and beverages, space for leisure and entertainment and a shared seating and dining area;
"Temporary Food Market Management Plan"	<p>means a management plan for the marketing, application process and management of the Temporary Food Market to be provided by the Owner for the approval of the Council as part of the Temporary Food Market Planning Application and which shall include as a minimum:</p> <ul style="list-style-type: none"> (a) a marketing strategy demonstrating how the Owner will proactively market the Temporary Food Market to the Market Tenants and which shall also include the proposed measures to market and raise general public awareness of the Temporary Food Market to encourage and facilitate a high level of footfall; (b) provision that the stalls at the Temporary Food Market shall be allocated only to Market Tenants unless otherwise agreed with the Council in writing; (c) full details of the fit-out of the Temporary Food Market to include (as a minimum) toilets, heating, lighting, cooling, venting, kitchen and storage facilities including cold storage all of which shall be provided by the Owner in a ready-to-operate condition to the reasonable satisfaction of the Council; (d) a clear and transparent selection process for the selection of traders for the Temporary Food Market, such process to be administered by the Trader Steering Group; (e) details of the rents to be charged for the Temporary Food Market for the duration that it is in situ and which shall be at a rate which is no higher than the rents charged at the Existing Market as at the date of this Deed; (f) full details of the proposed hours of operation, maintenance, cleaning and security provisions for the Temporary Food Market;

"Temporary Food Market Planning Application"	means the planning application to be submitted by the Owner for approval by the Council in accordance with paragraph 2.3 of Schedule [X] of this Deed for temporary planning permission for the Temporary Food Market to be occupied by the selected Market Tenants and which shall be for an initial duration of a minimum of five (5) years and thereafter maintained as such by the Owner unless and until the Sui Generis Unit is Available for Occupation;
"Temporary Food Market Planning Permission"	means the planning permission for the Temporary Food Market which may be granted by the Council pursuant to the Temporary Food Market Planning Application;
"Trader Steering Group"	means a group established and operated pursuant to paragraph 6 of Schedule [X] the purposes of which is to assist Market Tenants to benefit from short and long-term retail opportunities offered within the Elephant & Castle Opportunity Area and to monitor and govern the implementation of the Business Relocation Strategy, the Final Business Relocation Strategy and the Temporary Food Market and consult on the administration of the Business Relocation Fund in accordance with paragraph 6.2 of Schedule [X] of this Agreement;
"Wider Site Tenants"	means the Institute of Optometry, JM Holdings Limited, and the London School of Musical Theatre;

SCHEDULE [X]

Business Relocation Strategy

1. FINAL BUSINESS RELOCATION STRATEGY:

The Owner covenants with the Council:

- 1.1 To submit the Final Business Relocation Strategy to the Council for approval no later than the date which is twelve (12) months following the date that the Planning Permission is Free of Challenge;
- 1.2 The Final Business Relocation Strategy shall include as a minimum details of the following matters:
 - 1.2.1 confirmation that the Temporary Food Market Application has been submitted;
 - 1.2.2 the proposed assistance to Market Tenants in respect of business planning;
 - 1.2.3 details of how other available premises for potential relocation will be communicated to Market Tenants;
 - 1.2.4 details as to the relocation support available to Market Tenants and Wider Site Tenants;
 - 1.2.5 an updated Equalities Impact Assessment and provision for the Equalities Impact Assessment to be further updated and submitted from time to time and as a minimum every 6 months following the approval of the Final Business Relocation Strategy until the Sui Generis Unit is Available for Occupation; and
 - 1.2.6 details as to the process by which the Owner will assist and support Market Tenants with any applications for tenancies of the Sui Generis Unit,
- 1.3 Not to serve notice to close the Existing Market and/or serve notice to remove any Market Tenants from the Existing Market unless and until the Final Business Relocation Strategy has been approved by the Council;

- 1.4 To comply with the approved Final Business Relocation Strategy until the Sui Generis Unit is Available for Occupation to the reasonable satisfaction of the Council.

2. **TEMPORARY FOOD MARKET**

The Owner covenants with the Council:

- 2.1 To consult with the Market Tenants prior to the submission of the Temporary Food Market Planning Application with such application to include details as to the consultation activities undertaken with the Market Tenants and how any representations made by the Market Tenants during the consultation exercise have been reasonably considered by the Owner in the submitted Temporary Food Market Planning Application.
- 2.2 To consult with the Council through the pre-application advice service prior to the submission of the Temporary Food Market Planning Application.
- 2.3 To submit the Temporary Food Market Planning Application to the Council for approval no later than the date which is twelve months following the date that the Planning Permission is Free of Challenge;
- 2.4 To use all reasonable endeavours to secure the grant of the Temporary Food Market Permission;
- 2.5 In the event the Council grants the Temporary Food Market Permission pursuant to the Temporary Food Market Planning Application the Owner hereby covenants with the Council:
 - 2.5.1 not to serve notice to close the Existing Market until the Temporary Food Market Planning Permission has been granted by the Council; and
 - 2.5.2 to implement and fully comply with the approved Temporary Food Market Management Plan (unless otherwise agreed with the Council in writing);
 - 2.5.3 no later than four (4) months prior to the closure of the Existing Market, to allocate the stalls in the Temporary Food Market in accordance with the approved Temporary Food Market Management Plan;
 - 2.5.4 not to serve notice to close the Existing Market or remove any Market Tenant until the Temporary Food Market is Available for Occupation to the reasonable satisfaction of the Council; and
 - 2.5.5 not to serve notice to close the Temporary Food Market unless and until the Sui Generis Unit is Available for Occupation to the reasonable satisfaction of the Council.
- 2.6 In the event that either (i) the Council refuses the Temporary Food Market Application or (ii) the Temporary Food Market Permission is quashed following a claim for Judicial Review or Statutory Challenge or is revoked, the Owner hereby covenants to:
 - 2.6.1 pay to the Council the Business Relocation Top-Up Contribution within ten (10) Working Days of the relevant applicable date in paragraph 2.6 of Schedule [X] of this Deed; and
 - 2.6.2 not to serve notice to remove any Market Tenant from the Existing Market unless and until the Business Relocation Top-Up Contribution has been received by the Council;
 - 2.6.3 not to serve notice to close the Existing Market unless and until the Business Relocation Top-Up Contribution has been received by the Council.

3. **INDEPENDENT BUSINESS ADVISOR**

- 3.1 The Owner covenants with the Council to pay the Independent Business Advisor Contribution to the Independent Business Advisor no later than the date which is five (5) Working Days after the date that the Planning Permission is Free of Challenge. The Owner

shall procure that the Independent Business Advisor will continue to operate and offer assistance to Market Tenants until the date that is 12 months following the closure of the Existing Market.

- 3.2 The Owner shall procure that the Independent Business Advisor's scope of service for the Market Tenants shall include as a minimum the following:

- 3.2.1 practical support and business planning provided through one-to-one confidential business advice and mentoring sessions;
- 3.2.2 providing enterprise support and business advice & workshops;
- 3.2.3 guidance on the application process for stalls within the Temporary Food Market and for the Business Relocation Fund;
- 3.2.4 reasonable assistance for those who do not speak English and for whom English is not their first language; and
- 3.2.5 reasonable assistance with locating and assessing alternative business premises for relocation.

4. **BUSINESS RELOCATION FUND**

- 4.1 The Owner covenants with the Council to pay the Business Relocation Fund Contribution to the Council on the later of (1) the date that the Planning Permission is Free of Challenge and (2) the date which is twelve (12) months prior to the intended closure of the Existing Market.

- 4.2 The Business Relocation Fund shall be managed, overseen and administered by the Council in consultation with the Trader Steering Group and the Independent Business Advisor and any financial contribution payable from the Relocation Fund to a Market Tenant shall be supported by evidence of valid invoices or receipts.

- 4.3 The Council (in consultation with the Trader Steering Group and Independent Business Advisor) will be responsible for assessing applications from Market Tenants for a grant from the Business Relocation Fund and determining how much financial support should be provided to each Market Tenant applying for a grant in accordance with the following criteria and considerations:

- 4.3.1 any Market Tenant with outlets at ten (10) or more locations as of [29 April 2025] shall not be eligible to apply for the Business Relocation Fund;
- 4.3.2 any applicant must have been a Market Tenant at the date of grant of the Planning Permission;
- 4.3.3 an assessment as to the Market Tenant's length of tenure at the Existing Food Market;
- 4.3.4 an assessment as to the nature and scale of the Market Tenant; and
- 4.3.5 an assessment as to whether any costs applied for are reasonable and directly relevant to the actual cost of relocation

PROVIDED ALWAYS THAT any grant from the Business Relocation Fund Top-up Contribution (if payable) shall be allocated as a priority to the Market Tenants selected to occupy the Temporary Food Market pursuant to paragraph 2.5.4 above.

- 4.4 The Council shall procure that financial support from the Business Relocation Fund provided to a Market Tenant shall only be applied towards:

- 4.4.1 legal, agent and surveyor costs for taking a new lease of a new premises;
- 4.4.2 costs of removal, relocation and fit out of new premises as appropriate; and
- 4.4.3 any other capital services or costs directly attributable to relocation that the Council deems appropriate given the particular need of the Market Tenant,

provided always that a Market Tenant who has successfully applied for financial support from the Business Relocation Fund may request that the Council uses the Business Relocation

Fund to pay the relevant invoices for the approved scope of assistance under paragraphs 4.4.1-4.4.3 directly.

- 4.5 The Relocation Fund shall remain available unless and until the Sui Generis Unit is Available for Occupation. If any monies remain in the Business Relocation Fund following this date, such monies shall be allocated by the Council towards initiatives which support relocated businesses and the local town centre trading environment.

5. **SUI GENERIS UNIT**

- 5.1 The Owner covenants with the Council:

5.1.1 that the lease between the Owner and the Sui Generis Unit Leaseholder shall include, as a minimum, obligations providing that the Sui Generis Unit Leaseholder shall:

(A) review applications for tenancies of the Sui Generis Unit from Market Tenants for a period of three (3) months before any tenancies are reviewed from other prospective tenants; and

(B) proactively market the Sui Generis Unit to Market Tenants;

5.1.2 not to serve notice to close the Temporary Food Market unless and until the Sui Generis Unit is Available for Occupation to the reasonable satisfaction of the Council.

6. **TRADER STEERING GROUP**

- 6.1 The Trader Steering Group shall comprise:

6.1.1 The Owner; and

6.1.2 The Council.

- 6.2 The Owner and the Council shall procure that the Trader Steering Group will hold a monitoring and governance role during the implementation of the Business Relocation Strategy and shall:

6.2.1 meet quarterly from its establishment until the Sui Generis Unit is Available for Occupation;

6.2.2 consult with the Council on applications for grants requested from the Business Relocation Fund; and

6.2.3 assess applications for and award stalls within the Temporary Food Market.

7. **RELOCATION INFORMATION**

- 7.1 The Owner covenants with the Council:

7.1.1 to share a database of vacant local retail units within the Elephant & Castle Opportunity Area, the London Borough of Southwark and the London Borough of Lambeth; and

7.1.2 to share a database of vacant local retail units within the Council's ownership or control once the Council has provided details of the same to the Owner,

with the Market Tenants, the Wider Site Tenants and the Independent Business Advisor for a period of one year following the closure of the Existing Market.

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OPEN**COMMITTEE:****PLANNING COMMITTEE (MAJOR APPLICATIONS) A****MUNICIPAL YEAR 2024-25****NOTE:**

Original held in Constitutional Team; all amendments/queries to Gerald Gohler, Constitutional Team, Tel: 020 7525 7420

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		List Updated: 14 April 2025	