

APPENDIX THREE

Tustin Estate Phase 1 Compulsory Purchase Order Procedural and Legal matters

Acquisition of Leasehold Interests

1. The Council holds the freehold interest of all the land within the area shown edged red on the Plan at Appendix One. The site contains a block of flats (Hillbeck) and a hostel (Ullswater) and surrounding amenity land.
2. The Housing Act 1985 gives qualifying Council tenants the right to buy their homes. Fifty one tenants at these properties purchased their homes under these provisions.
3. The Council can only repurchase these leases in the following circumstances:
 - where there is agreement with the leaseholder; *or*
 - following a confirmed compulsory purchase order.
4. The statutory compensation code provides that a leaseholder is entitled to the following compensation following a compulsory acquisition:
 - the market value of the interest acquired;
 - a home loss payment; this is 10% of the market value where the leaseholder lives at the property or 7½% of the market value where the leaseholder lives elsewhere; and
 - a disturbance payment to cover the leaseholder's reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include removal costs, legal fees, surveyors fees and adaptation expenses.
5. 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.

Third party and statutory utility rights

6. Utility Companies may have rights across the sites that enable them to provide their infrastructure to the Estate. To enable redevelopment to proceed these rights will have to be acquired or extinguished. It is also possible that persons may have unregistered rights over the site such as a right of access and these rights, if any, will need to be dealt with in the same way as those of the utility companies.
7. Other leaseholders on the Estate may benefit from rights over the subject areas; the Council's standard form lease provides for them having rights over the whole Estate including roads, paths and gardens. These rights will have to be included within the Order for extinguishment.

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Outline of Compulsory Purchase Procedure

Resolution

8. The Cabinet passes a resolution to make an Order. This is the purpose of this report.

Referencing

9. The Council assembles information that provides details of all owners, mortgagees, tenants and occupiers. This is to both identify what interests need to be acquired and who is entitled to receive a notification of the publication of the Order. This stage will enable the precise details of the Order areas to be determined. The boundaries shown edged red on the plan at Appendix One may need subtle amendment in the light of this and it is recommended that the Director of Planning and Growth be given delegated authority to set the order extents.

Resolving planning and finance

10. In considering an Order the Minister needs to be confident that the proposals behind it are likely to come to fruition. In this connection s/he will need to be satisfied that there are no significant planning or financial obstacles that will frustrate it.

Making the Order

11. The Council makes the Order, to a prescribed format. A schedule accompanies the Order identifying ownership details of all land within it. A Statement of Reasons must also be prepared to accompany the Order. This is a critical document that may be challenged by objectors and therefore needs careful drafting.

Publication of the Order

12. The Council serves notice of making of the Order on all owners, mortgagees, tenants and occupiers affected by it. A notice of the making of the Order has to be published for two successive weeks in a local newspaper.
13. The notices will advise objections to it can be made to the relevant Government Minister and specify an address for this purpose. The Order is then passed to the Government Minister for confirmation.

Confirmation of the Order

14. The Order does not become effective unless confirmed by the Minister. Where there are objections to the Order they must be considered before confirmation. This is usually done by way of a public inquiry (which can take days or weeks) but can sometimes be dealt with by written representations.
15. After considering the objections [if there has been a public inquiry there will be an Inspector's Report] the Minister may confirm all or part, modify or reject

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the Order. If it is rejected that is the end of the process and the Council will need to revisit its plans.

16. Following confirmation of the Order or if applicable, modification, a notice advising of this must be published in the local newspaper and all leaseholders, tenants and occupiers should also have a notice served on them. A confirmed Order should be implemented within three years to retain its validity.

Taking Possession

17. This can be achieved by either Notice to Treat/Notice of Entry or by using General Vesting Declaration procedure. The latter is usually considered the most appropriate as it transfers both the right to possession and title of the land to the Council.

Power to make a Compulsory Purchase Order

18. Section 226 of the Town and Country Planning Act 1990 is the recommended enabling provision in this instance for the purpose of compulsorily acquiring the interests required to progress the implementation of the redevelopment of the site. The detailed application and use of this power is set out in paragraphs 19-27 below.

Legal Implications

19. Section 226(1)(a) of the Town and Country Planning Act 1990 (the Act) (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) is the appropriate power in this instance to secure the compulsory acquisition of properties within Phase 1 of the Tustin Estate redevelopment. Section 226(1)(a) enables authorities to exercise their compulsory purchase 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."

20. 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;

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(c) The promotion or improvement of the environmental well-being of their area."

21. It is considered that the use of this section is therefore most appropriate having regard to the Council's aspirations for the estate as a whole. The interests to be acquired by the Order are required in order to permit the redevelopment of the area to take place. The proposal also satisfies the "well being" element of the Act in that the rebuilding of Phase 1 is clearly required in order to provide a better standard of accommodation for residents compared to its current state and to create a sustainable and diverse community, and the provision of new facilities which are able to meet the needs of the area. Thus the proposals will inevitably assist in promoting the social economic and environmental well being of the area.
22. Government Guidance on the use of CPO powers (Compulsory Purchase and the Criche! Down Rules – July 2019 –"the Guidance") 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 compulsory purchase powers under the Act provide an "important tool" to local authorities in assisting them to acquire and assemble land where it is necessary to help deliver social, environmental and economic change.
23. The Guidance acknowledges that CPO powers are intended as a last resort to secure land assembly for the implementation of projects, but that time may be lost if an authority waits for negotiations to break down before starting the process. Authorities may therefore plan a compulsory purchase timetable as a contingency measure and initiate formal procedures. This will also help to make the seriousness of the authority's intentions clear from the outset, which might encourage more meaningful negotiations.
24. For the purposes of confirming a compulsory purchase order, the Guidance identifies considerations which will be taken into account by the Secretary of State in making such a decision.
25. In particular, if an acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire, and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale, it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest, at any rate at the time of its making.
26. The Guidance also makes clear that compulsory purchase of land needs to be set within a clear strategic framework. The planning framework providing the justification for an order should be as detailed as possible and where development plan documents have been through the consultation processes but have not yet been examined or are awaiting the recommendations of the planning inspector, this will be given due weight.
27. However the Guidance recognises that it may not always be possible to wait until planning permission has been obtained.

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28. As is already set out in this 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 land by Agreement.
29. The initial stage of the compulsory purchase process 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. As the Council is the freeholder much of this information should be readily available. Nonetheless it is advised that formal requisitions for information should be served on all known owners, mortgagees and occupiers of each property to be subject to the Order 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.
30. In the event that the Order is confirmed, the next stage will be to vest all necessary title in the Council. In these circumstances as has already been mentioned, the best means of doing so will be way of the General Vesting Declaration Procedure. This is something that can be carried out by the Council's legal advisors as and when this stage is achieved.

Human Rights Considerations

31. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("the Convention").
32. In proposing the Order the Council has duly considered the rights of property owners under the Convention, notably under the following Articles: *Article 1 of the First Protocol*. This protects the right of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international law.
33. 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.
34. In relation to these Convention rights the Council has been conscious of the need to strike a balance between the rights of the individual and the interest of the public. In light of the significant public benefit that would arise from the redevelopment of the Tustin Estate it will be appropriate to make the Order, if the relevant leaseholder interests cannot be acquired by agreement. Objections can be made against the Order that will then have to be

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considered by the Secretary of State before he decides whether or not to confirm the Order.

Community Impact Statement

35. 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 of the Tustin Estate can proceed. This is considered acceptable where the proposals are in the public interest and where, as in this case, the advantages of redevelopment substantially outweigh the disadvantages to those dispossessed.
36. The redevelopment of the Tustin Estate is considered to have benefits to 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 in this report.
37. The furtherance of the redevelopment will not negate the Council's Diversity and Equal Opportunities policies. Indeed in the long term it is anticipated the diversity of the area will be widened.
38. Section 149 of the Equality Act 2010 requires the Council to have due regard to the need to:
 - a. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
39. The Council must, in order to comply with this Public Sector Equality Duty, take steps to ensure that it considers equalities issues throughout the compulsory purchase process and has due regard to its duties under the Equality Act.

Consultation

40. There has been extensive consultation with Tustin Estate residents [including tenants and leaseholders] at all stages of the development culminating in the ballot earlier this year. Consultation will continue as the development proceeds.