

APPENDIX H

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

Further detail on CPO process and compensation

1. The ability to make compulsory purchase orders is limited to predominantly public sector organisations. EC does not have these powers, hence its approach to the Council to utilise its powers to facilitate the Scheme.
2. Section 226(4) Town and Country Planning Act 1990 makes clear that it is a perfectly legitimate use of compulsory purchase powers for a local authority to make a CPO for planning purposes even though it is not the Council itself who is to undertake the development.
3. Since EC will be the beneficiary of the CPO it is therefore appropriate that it indemnifies the Council against all the costs arising from its making and subsequent execution.

The measure of compensation available to owners/occupiers

4. If compulsory purchase takes place the property or rights owner will be compensated on the basis of the statutory "land compensation code", which is a mixture of statute and case law based rules and principles for compensation in compulsory acquisition. Disputes about compensation can be resolved by referring the matter to the Upper Tribunal (Lands Chamber).
5. The statutory compensation code provides that commercial leaseholders are entitled to the following compensation following a compulsory acquisition:
 - (a) The market value of the leasehold interest in the property;
 - (b) Statutory loss payments based on a fixed percentage of market value and/or a formula based on the area of the property
 - (c) Payment for loss of profits arising from the relocation or extinguishment of the business (as appropriate)
 - (d) a disturbance payment to cover the leaseholder's reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include relocation costs, legal fees and surveyors fees
 - (e) where the lease is held as an investment rather than for occupation the reasonable costs of acquiring a replacement investment provided that is done within twelve months of the transfer of ownership of the asset
6. The freeholders of properties subject to statutory compensation are entitled to:
 - (a) The market value of the freehold interest in the property;

- (b) Statutory loss payments based on a fixed percentage of market value and/or a formula based on the area of the property
 - (c) Payment for loss of profits arising from the relocation or extinguishment of the business if the premises are occupied by the freeholder
 - (d) Where the freeholder is in occupation, a disturbance payment to cover the reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include relocation costs, legal fees and surveyors fees
 - (e) Where the property is held as an investment rather than for occupation the reasonable costs of acquiring a replacement investment provided that is done within twelve months of the transfer of ownership of the asset.
7. Where part only of an interest in land is acquired the owner of the land has the opportunity to claim compensation under section 7 of the Compulsory Purchase Act 1965 for severance or injurious affection.
8. Where new rights over land (as opposed to the title to the land) are acquired, such as an easement, the owner of the land over which the new right is acquired is entitled to compensation. For this purpose, section 7 of the 1965 Act is adapted so that in assessing compensation, regard shall be had not only to the extent, if any, to which the value of the land over which the right is purchased is depreciated by the purchase but also to the damage, if any, to be sustained by the owner of the land by reason of injurious affection of other land of the owner by the exercise of the right.

Outline of Compulsory Purchase Procedure

Resolution

9. The Cabinet passes a resolution to make a CPO. This is the purpose of this report.

Land Referencing

10. Final details are assembled of all owners, tenants and occupiers that have land interests in the CPO land and of parties that may have rights over the CPO land. This is to both identify what interests need to be acquired and who is entitled to receive a notice of the publication of the CPO. These relevant interests will be set out in a Schedule that will be incorporated into the CPO. Formal requisitions for information have been served on all known owners and occupiers of each property to be subject to the CPO but with the Council having made very clear that this does not in any way pre-judge any decision by Cabinet as to the merits or otherwise of any CPO. It is important that the Council takes all reasonable steps to ensure that all interests are identified and included in the CPO. This stage will also enable the precise details of the CPO areas to be determined. The boundaries shown on the draft CPO map

at Appendix A may need amendment in the light of this and it is recommended that the Director of Regeneration is delegated authority to set the extent of the CPO.

Making the CPO

11. The Council makes the CPO, to a defined format. A schedule goes with the CPO identifying ownership details of all land within it. A Statement of Reasons must also be prepared to accompany the CPO. This document sets out the Council's reasoning and justification for the CPO.

Publication of the CPO

12. The Council serves notice of making of the CPO on all freeholders, leaseholders, tenants and occupiers affected by it, which may include persons outside the CPO land who have (or potentially have) rights over the CPO land. A notice of the making of the CPO has to be published for two successive weeks in a local newspaper.
13. The notices will advise that any objections to it can be made to the relevant government minister and specify an address for this purpose. The CPO is then passed to the government minister for confirmation.

Confirmation of the CPO

14. The CPO does not become effective unless and until it is confirmed by the Secretary of State. Where there are objections to the CPO they must be considered before confirmation. This is usually done by way of a public inquiry 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 Secretary of State may confirm, modify or reject the CPO. If it is rejected that is the end of the process and EC and the Council will need to revisit the Scheme, unless it is considered that the Secretary of State has erred in his decision in which case a statutory judicial review can be requested.
16. Following confirmation or if applicable, modification and confirmation, a notice advising that the CPO has been confirmed must be published in the local newspaper and served on all freeholders, leaseholders, tenants and occupiers affected by the Order. A confirmed CPO can only be implemented within three years to retain its validity, though if there is a statutory judicial review this time period is extended by (a) a period equivalent to the period beginning with the day the review challenge is made and ending on the day it is finally withdrawn or finally determined or (b) if shorter, one year.

Implementation of the CPO and taking possession

17. Implementation of the CPO can be achieved by either Notice to Treat/Notice of Entry or by using the General Vesting Declaration procedure under the Compulsory Purchase (Vesting Declarations) Act 1981. The creation of new

rights under section 13 Local Government (Miscellaneous Provisions) Act 1976 can only be done using the notice to treat route.

18. Section 8 and Schedule 2A of the Compulsory Purchase Act 1965, and section 12 and Schedule A1 of the Compulsory Purchase (Vesting Declarations) Act 1981, address circumstances where the acquiring authority propose to acquire part only of a house, building or factory under confirmed CPO powers. Broadly, these provisions allow a landowner to instigate a process whereby it can seek for the acquiring authority to acquire the whole of the house, building or factory. In the event of a dispute on that point, the Upper Tribunal (Lands Chamber) has jurisdiction to resolve such a dispute. The Tribunal must determine whether the severance of the land proposed to be acquired would in the case of a house, building or factory cause material detriment to the house, building or factory. If the Tribunal determines that the severance of the land proposed to be acquired would have that consequence it must determine how much of the additional land the acquiring authority ought to be required to take in addition to the land proposed to be acquired. If the Tribunal does determine that additional land is required to be taken, the CPO has effect as if it included the owner's interest in that additional land. In certain circumstances the acquiring authority may be able to withdraw any notice to treat in respect of (and any vesting declaration is to have effect as if it did not include) the land proposed to be acquired together with the additional land required to be taken.

Indicative Timescale

- 19.
- Resolution to make the CPO *
 - Making the Order to Publication 6 weeks
 - Publication to Confirmation 40 weeks
 - Confirmation to taking Possession 18 weeks
- * will follow completion of prerequisite documentation, including the indemnity agreement.
20. It is therefore likely that it will take, say, around a year and a half between resolving to make a compulsory purchase order and obtaining possession but if there are complications it could be longer. It is assumed for the purpose of this indicative timescale that there will be objections to the CPO and that these will require protracted negotiations and/or a public inquiry to resolve. If a public inquiry is needed this will be called for and arranged by the Secretary of State, with an inspector presiding over the inquiry, so the Council has little control over this process. Resource availability at the Planning Inspectorate can cause this to be scheduled rather later than preferred and is a risk to be factored into project planning. If there are no objections or ones that are quickly resolved the period between publication and confirmation may be significantly reduced.

Property Acquisitions

21. Should the recommended resolution be passed, EC will continue to endeavour to acquire all interests by agreement. Once the CPO is confirmed the Council will have the ability to acquire properties by compulsion and any properties acquired compulsorily are vested in the Council. Again, these will be transferred to EC or its group company. Once the land vests in the Council, it becomes responsible for the payment of compensation. Any compensation agreed or determined by the Tribunal will be paid by the Council but funded by EC pursuant to the indemnity agreement. In certain circumstances, affected owners of land included in the CPO may be able to claim that their land is “blighted” because of the CPO that has been made and serve a “blight notice” on the Council, requesting that the Council purchases their interest. The costs of acquiring a property pursuant to a blight notice because of the making of the CPO (if appropriate) will be covered in the CPO indemnity agreement.