

APPENDIX J

ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

WHETHER THE USE OF THE COUNCIL'S POWERS IS JUSTIFIED

1. Firstly, sections 226(1)(a) and 226(1A) of the 1990 Act are considered.
2. Section 226(1)(a) gives the Council power to acquire compulsorily any land in their area if the Council thinks that the acquisition will "facilitate the carrying out of development, re-development, or improvement on, or in relation to, the land". The making of a CPO will facilitate the carrying out of development, re-development, or improvement on, or in relation to, the land covered by the CPO. The Scheme has already begun on part of the East Site, adjacent to the CPO land, and EC has shown through all of its progress its continued intention to proceed with the Scheme so as to complete the East Site redevelopment and then carry out the West redevelopment if CPO powers are utilised. Without the use of the CPO powers, it will not be possible to deliver key areas of public realm on the East Site, nor to complete the East Site redevelopment of the Scheme, which will mean that EC could not comply with the approved phasing plan under the July 2021 planning permission to move onto the West Site redevelopment. Moreover, as explained in the main body of the report, the title and new rights sought in respect of the West Site are necessary to enable demolition and construction in respect of the West Site. Also as explained in the main body of the report, the acquisition of title to certain railway arch premises and related new rights over the viaduct structure is required to deliver the new home for Corsica Studios and the relocation opportunity for the tenant and occupiers of 7 Farrell Court. So the CPO will facilitate the carrying out of redevelopment on, or in relation to, the land included in the CPO and thus the test in section 226(1)(a) is satisfied.
3. In addition to section 226(1)(a), section 226(1A) applies, so the Council must not exercise the power under section 226(1)(a) unless it thinks 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; and (c) the promotion or improvement of the environmental well-being of their area. In this case, the Council thinks the development, re-development or improvement is likely to contribute to the improvement of all three well-being objects.
4. The Scheme is likely to result in *economic* well-being improvements, including a material increase in the quantity and quality of town centre uses, including providing additional and better quality retail, leisure, education and office provision, consistent with the long term strategy to regenerate the Town Centre and enhance its vitality and viability. The Scheme will create enhanced linkages, and assist in the regeneration of the wider centre. The Scheme includes the provision of affordable retail and office floorspace. The education facility will secure LCC's long-term future in the area.

5. The Scheme will create 1,230 construction jobs per year over the 10 year build programme. The completed Scheme will generate up to 2,085 gross new full time equivalent jobs, depending on the exact nature of the commercial uses which will ultimately come forward, an increase of over 600 when compared with the estimated 1,418 full time equivalent jobs on the East and West Sites before the development commenced. Measures to secure jobs for unemployed borough residents are contained in the section 106 agreement and will deliver significant economic benefits to the local population.
6. The Scheme will secure key new transport infrastructure, including a new station entrance, create enhanced linkages between existing transport provision, and provide a comprehensive package of measures to enhance the connectivity of the new town centre. These measures will make the town centre more competitive, better able to retain and attract trade from within its catchment, including meeting the needs of the additional local residents, workers and students, and encourage the use of sustainable means of transport.
7. As regards the fitting out and opening of the underground station box, the amendments made to the section 106 agreement due to TfL's funding position means that there is an increased chance (as compared to the position in April 2020) that the new station box will not be fitted out and come into operation, but the likelihood of the new station being fitted out and becoming operational at a reasonable point in the future is still high. Even if reduced weight was given to the new station box due to the TfL funding uncertainty, the CPO would still be justified for all the other economic, social and environmental well-being improvements that the Scheme would bring.
8. The new residential population (up to 1,880 people) is expected to have a total household expenditure in excess of £28 million per annum, some of which would be spent locally on goods and services, thereby contributing to the local economy and supporting new jobs locally. It is estimated that Council Tax revenue could be up to £2.1 million per annum, based on 2020-21 Council Tax bands and assuming all units are fully occupied and no rebates or discounts are offered. The Scheme will generate estimated CIL payments (assuming social housing relief is applied) of £4,278,679 Mayoral CIL and at least £11,230,308 Southwark CIL.
9. The Scheme will deliver significant *social* well-being improvements. These include the creation of a more balanced mix of uses, creating quality homes, offices, education and community facilities, including the provision of affordable retail, workspace and homes. The Scheme includes the provision of cultural and community facilities, including new and enhanced public realm and public toilets which will benefit all sections of the community. It will include a new home for Corsica Studios, thus giving the opportunity to safeguard the longer term future of this cultural electronic and dance music club on Elephant Road. It will also include relocation premises for the small, local businesses which will be displaced by the creation of the Park Route.

10. The Scheme will also deliver significant *environmental* well-being improvements. In addition to providing well designed buildings and well connected spaces, the Scheme will contribute to securing more sustainable travel patterns, by better serving the needs of current and future residents, workers and students. The Scheme includes improved pedestrian permeability, increased site wide cycle facilities and public realm improvements, including additional landscaping and tree planting. The Scheme also includes a new home for Corsica Studios which will have better sound insulation than the current premises, thus alleviating noise amenity concerns.
11. Notwithstanding that there will be some negative effects to those affected by the CPO, as referred to in this report, and having taken those negative effects into account, the development, re-development or improvement is likely to contribute to the achievement of all of the well-being objects in accordance with section 226(1A) of the 1990 Act.
12. The specific economic, social and environmental well-being improvements that the CPO will deliver directly are in themselves sufficient to satisfy section 226(1A) of the 1990 Act. Firstly, without the CPO, the Park Route as shown in the planning permission approved drawings cannot be delivered. It has been a key aspect of the Council's planning vision for a long time that the redeveloped Shopping Centre site should be opened up for pedestrians to what is now Elephant Park, thus facilitating the connection of these two key sites. EC is under an obligation in the section 106 agreement to use reasonable endeavours to open the Park Route prior to the East Site opening. Although the section 106 agreement allows for an alternative route for the Park Route through one of the arches that EC has some long leasehold to, or such other alternative route that the Council may approve, the July 2021 planning permission only shows the route through 6 and 7 Farrell Court, so that is the approved route under the permission. That route was chosen for the planning application, after analysis of likely pedestrian footfalls, and what would be the optimum route through the East Site because it forms a natural pedestrian "desire line", as it aligns with a boulevard from Elephant Park and so represents the optimum connection to Elephant Park and Lendlease's new redevelopment around it. From the chosen Park Route, pedestrians will be able to continue west through the new town centre to Elephant & Castle highway with its bus services (and Brook Drive beyond), or to move northwest to the new Underground station. This route is also close to Castle Square and Walworth Road. By contrast the arch EC has some long leasehold title to is situated further away from Walworth Road and Elephant Park and so would be inferior as a direct pedestrian link to those areas. In addition, it is located close to (and opposite) the proposed new building for the LCC, Building E1, and for pedestrians to emerge opposite Building E1 and close to the railway station, when considered along with users of the rail station, risked creating a pinchpoint. Building E1 would likely have had to have been smaller to accommodate additional pedestrian circulation space, losing mass from its south eastern corner. Reduced footprint of that building would be problematic, due to UAL's requirements for the new educational facility to achieve critical mass in order to retain the LCC at Elephant & Castle. Shifting

Building E1 to the west would have impacted on the Station Route, making it too narrow and affecting the clear and permeable route through the East Site to the Elephant & Castle peninsula.

13. Secondly, areas of new public realm adjacent to the railway viaduct are also at risk of not being delivered without the CPO, including the ability to complete the Station Route from the new Underground station box to the railway station for pedestrians, via the new right sought in that respect. Again, this is a key aspect of the East Site.
14. Thirdly, the use of the CPO powers will facilitate the only practical solution for the retention of the electronic and dance music use in this location, as explained in more detail in the main body of the report.
15. Fourthly, the use of the CPO powers will facilitate the redevelopment of 4 and 5 Farrell Court to provide a suitable and immediately adjacent relocation opportunity for the tenant and occupiers of 7 Farrell Court, thus mitigating adverse impacts on them.
16. Fifthly, without the use of CPO powers there is now a significant risk that the East Site will not be completed. The approved phasing plan under condition 3 of the planning permission requires the East Site to be completed prior to the West Site redevelopment taking place, save for the redevelopment of the current LUL Underground station, which will only be redeveloped after the new station box has been opened (so as to ensure continuity of Underground provision). So the completion of these areas of the East Site is necessary for the West Site to proceed in accordance with the approved phasing, thus the CPO unlocks all the benefits associated with the West Site, including 498 residential units (165 of which are to be affordable), new retail floorspace (including affordable retail) and a new cultural venue.
17. Sixthly, the CPO elements being sought in relation to the West Site itself are all necessary for the West Site redevelopment to proceed, as explained in the main body of the report.
18. The CPO is therefore essential to the successful implementation and completion of the Scheme and many of the well-being improvements it will bring.
19. Accordingly the statutory test in 226(1A) is met.
20. The key paragraphs from the Guidance are now considered.

Acquiring authorities should use compulsory purchase powers where it is expedient to do so

21. Given the conclusions in relation to the tests under section 226(1)(a) and section 226(1A) above, it is clearly expedient to make a CPO to facilitate this very important redevelopment. For the reasons explained above, the CPO is essential to the successful implementation and completion of the Scheme. The only change as to expediency (as compared to April 2020) is the fact that

redevelopment has begun, which makes it even more expedient than was previously the case that the CPO is made so that the Scheme can continue and be completed.

However, a CPO should only be made where there is a compelling case in the public interest

22. The Scheme will transform the town centre. Although there are some adverse effects, as referred to elsewhere in this report, it is considered that these are relatively minor and in any event need to be weighed against the very significant and numerous public benefits that will accrue from the Scheme. This is considered to be the case even in relation to the specific benefits that would be directly delivered through the use of the CPO powers (as detailed above). The CPO is necessary to unlock these benefits of the Scheme. The public benefits arising from the use of the CPO powers amount to sufficiently compelling reasons for powers to be sought and outweigh the loss and any overriding of property interests to individuals and businesses arising from the CPO. As vacant possession of most of the East Site was obtained by agreement, confirming the CPO will not have many of the potentially adverse impacts it could have caused as originally envisaged in April 2020, so there is now less private loss to be outweighed by the public benefits. There is an increased need for the redevelopment to proceed and be completed given that the large majority of the East Site has been demolished and cleared and the early stages of construction are underway. So, the case for a CPO is now more compelling than ever.

The acquiring authority will be expected to demonstrate that it has made reasonable offers to acquire land and rights by agreement

23. It is considered that this part of the Guidance has been satisfied to date and will continue to be so. EC, acting in collaboration with Council officers, has been making reasonable efforts to acquire outstanding land interests and new rights by agreement over a significant period of time. Council officers have been kept regularly apprised of, and have been consulted in respect of, the ongoing negotiations. The Council's officers have also been directly involved with discussions with Arch Co, seeking agreement. This approach has generally worked well, as evidenced by the fact that EC has concluded various acquisitions and agreements with third parties already, thus avoiding the compulsory acquisition of various interests, but as explained below a CPO is now required to give impetus to negotiations with the remaining affected parties. EC is continuing its attempts to acquire by agreement and will be obliged to continue to do so under the CPO indemnity agreement. The Council will take an active role, in collaboration with EC, to take those negotiations forward and in making offers to the remaining parties.

Compulsory purchase is intended as a last resort; but it may be sensible for the acquiring authority to plan a compulsory purchase timetable as a contingency measure and initiate formal proceedings to mitigate loss of valuable time and to encourage those whose land is affected to enter into meaningful negotiations

24. The making of a CPO will assist in the remaining negotiations as it will make all parties aware of the seriousness of the Council's intentions, as is recognised in the Guidance. The CPO is being used as a genuine last resort to ensure the land assembly needed to continue and complete the Scheme. The CPO will underpin the remaining negotiations that need to be concluded to enable the Scheme. The use of CPO as a last resort is evidenced by the considerable reduction in land that has been included in the CPO as compared to that in April 2020 (because much of the necessary land has been acquired by agreement). The fact that development has commenced makes it all the more important to have the CPO to complete the development. Delaying the CPO risks being unable to complete the Scheme in accordance with the development programme, or at all.

When making ... [a CPO] acquiring authorities ... should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected.

25. The Council's purpose in making the CPO is to facilitate the development, redevelopment or improvement on or in relation to the CPO land, namely the Scheme. The Scheme represents a vital, comprehensive redevelopment of the town centre. The very considerable benefits that will arise from the Scheme have been summarised elsewhere in this report. These public benefits outweigh and justify interference with, human rights and such interference is proportionate to the large level of public benefits that would arise from the Scheme. The purpose to be achieved by the CPO justifies interference with human rights even if the interference was a lot wider or more severe than considered in this report, given the benefits of the Scheme. The public benefits of the Scheme outweigh the private losses. This is the case even if the specific benefits that would be directly delivered by the CPO are considered in isolation and weighed against the interference with the human rights of the affected parties.

In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.

26. Please refer to paragraph 23 above as to offers to date and the intention for the Council and EC to actively pursue further negotiation. The Council has sought to engage constructively with those affected, as evidenced by Council officers addressing affected traders as to the proposals, the appointment of Tree Shepherd to assist affected parties with relocation advice and the other measures in the agreed relocation strategy under the section 106 agreement. The Council and EC are also seeking to constructively work towards 4 and 5 Farrell Court being redeveloped as a relocation opportunity for displaced occupiers of 7 Farrell Court as part of the Scheme, and to facilitate the relocation of Corsica Studios within the Scheme into a new home in Arches 113A/120 and 113B/121.

The acquiring authority must be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought at this time... [the acquiring

authority should] have a clear idea of how it intends to use the land which it is proposing to acquire and [should be able to] show that all necessary resources are likely to be available to achieve that end within a reasonable time-scale.

27. The Council plans to use the CPO acquisitions and new rights to facilitate the carrying out of the Scheme to enable the Scheme to continue and be completed. The powers need to be sought now, otherwise the East Site will not be able to be completed in accordance with the development programme, or at all, and thus the West Site redevelopment could not begin in accordance with the approved phasing. The Council and EC, with the best of intentions, have sought to be patient in allowing time for private treaty negotiations to bear fruit but the CPO is needed to ensure the Scheme can continue and be completed. Resources are dealt with below.

The acquiring authority should address (a) sources of funding ... available for both acquiring the land and implementing [the Scheme] ... and (b) the timing of that funding - funding should generally be available now or early in the process ... evidence should be ... provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.

28. The Council will be entering into a CPO indemnity agreement with EC (backed by a guarantee from Get Living Plc) whereby the Council will receive a complete indemnity in respect of all compensation to be paid pursuant to the CPO and/or through blight notices under section 137 of the 1990 Act. All other costs associated with the CPO will be borne by EC too (again, guaranteed by Get Living Plc). The Council is satisfied that Get Living Plc has good covenant strength to meet its obligations in the unlikely event that EC defaulted.

29. In addition, further details of funding have been provided by EC which has been reviewed and officers are satisfied that the funding is either already available, for East Site, or is likely to be available in good time to commence the West Site redevelopment as envisaged. It is anticipated that around 40% of the West Site redevelopment cost (including land acquisition) will be financed by equity payments from the Triangle partners and a further affordable housing grant in respect of the West Site, with around 60% being provided through debt funding. Understandably, the developer will not seek that debt funding for the West Site until closer to the time that the West Site redevelopment is begun, otherwise it would incur significant and unnecessary interest charges in the interim period. (By way of example, the East Site debt funding for the construction of new buildings on East Site was put in place in December 2021, and piling began in March 2022.) As to whether the West Site debt funding is likely to be obtainable on reasonable commercial terms to the developer, it is considered that this is likely to be the case given: the identity of EC's backers; the central London location and prestige of the redevelopment, with which lenders are likely to wish to be associated; that Delancey, who advise EC, are experienced in and have obtained significant debt funding on other large scale redevelopment projects for their clients; and

the fact that EC was able to procure debt funding to fully fund the East Site redevelopment.

30. As regards non-financial resources, EC has procured a professional team from all disciplines to advise in respect of the Scheme. It is advised by Delancey, an experienced property development and asset management company. The Triangle partners (EC's backers) have developed large schemes before, as referred to in the April 2020 Cabinet report. Officers are satisfied the developer has the expertise and the ability to attract the funding to deliver the West Site. It has already demonstrated its commitment by at considerable expense securing a planning consent, acquiring much of the land needed to deliver the Scheme, securing funding for the construction phase of the East Site and commencing on the East Site. This is therefore not an impediment. There are no known external factors that may frustrate delivery of the Scheme.

Acquiring authorities will need to demonstrate that the scheme is unlikely to be blocked by any physical or legal impediments. These include:

(a) the programming of any infrastructure accommodation works or remedial work which may be required

31. It is considered there are no such impediments. LUL has planning permission for its connecting tunnel works for the new station box and the revised planning permission allows for the new station box to be larger, thus accommodating the Northern and potentially the Bakerloo Line too.

(b) any need for planning permission for the scheme or other consent or licence.

32. The vast majority of the Scheme has been granted planning permission. The new relocation premises for Corsica Studios and retail kiosk use envisaged for the arch units to the north of the railway station do not yet have the requisite consents. Subject to the imposition of suitable conditions, there is no reason why such consents would not be granted, as this would be in keeping with the current uses on Elephant Road and the policies applicable to the Opportunity Area. The proposed change in use of 4 and 5 Farrell Court to a commercial, business and services use as a relocation opportunity, with associated physical works, will also require planning permission. Given the proposed relocation of Corsica Studios further up Elephant Road as described, again, there is no reason why such planning permission would not be granted. In each case, EC has advised that it has instructed its planning consultants to prepare the necessary planning application.

33. The April 2020 Cabinet report stated that the listed building consent for the minor works to the façade of the Tabernacle only had a 3 year period in which to begin works. This was an error, the consent has, in fact, a 10 year implementation period and so there is no need to seek a longer consent as was envisaged in that report. This is beneficial.

34. Planning permission has also been obtained by EC on 10 June 2022 in respect of a heating network pipe which will run from 50 New Kent Road (owned by EC's group company) under Elephant Road into the East Site. An easement has been completed with Network Rail to facilitate this.
35. Highway stopping-up orders in respect of both East and West Sites have already come into operation and so there are no further stopping-up orders required in respect of the Scheme.
36. One or more agreements under the Highways Act 1980 with TfL and the Council, as highway authorities, will be required for highway works. Agreement will very likely be reached on these, as they are, routinely, on many different types of development. The section 106 agreement imposes restrictions on certain milestones in the development programme until the highways agreements, and their respective works, are completed. The Council's consent, as highway authority, would also be required if the highway layer is to be disturbed to facilitate the heating pipe network works referred to above. Again, there is no reason why that consent should not be forthcoming.
37. Licences will be required under the Highways Act 1980 for oversailing the highway, any scaffolding over the highway or hoarding affecting the highway. Again, though, such licences are routinely granted in all manner of developments. Such licences are already in place in respect of the works to date on East Site.
38. There are no physical impediments which are known which will prevent the Scheme from proceeding.
39. The CPO legislation affords special protection to statutory undertakers' operational land. Statutory undertakers can make representations to their appropriate minister (i.e. the minister who is responsible for that undertaker) against the inclusion of their operational land, as well as objecting to the Secretary of State in the normal manner. If such a representation is made and not withdrawn, generally the Secretary of State will not confirm the CPO as regards that interest in land unless the appropriate minister gives a certificate that the land can be taken without serious detriment to the statutory undertaker.
40. There is some operational land of statutory undertakers within the CPO area, notably the railway viaduct and the area of land immediately to the west of the railway station over which a new pedestrian right of way (and related right to pave and maintain that area) is sought. However, it is not the intention of EC or the Council to interfere with the operational running of the railway. Discussions are progressing between EC and Network Rail in these respects and EC is confident that agreement shall be reached on all matters. EC has been keeping the Council apprised of progress and given confidence that agreement can be reached, thereby bringing Network Rail into the Scheme by agreement. Nevertheless, the CPO is needed as a backstop. Although crane oversail will take place over some highway areas administered by TfL

and the Council, there should be no operational impact on TfL and the Council as highway authorities.

41. There are also electricity sub-stations within the CPO area, held by London Power Networks. Again, this is operational land and EC will work towards procuring their agreement to bring the leases to an end but the CPO is needed as a backstop.
42. The CPO land also includes statutory undertaker and telecommunications operator apparatus and EC is already in discussions with the utility companies and the telecommunications operators to reach agreement with them.
43. There are no areas of land which attract special protection under section 19 Acquisition of Land Act 1981 (common land, open space or allotments).
44. Therefore, there are unlikely to be any impediments to the Scheme if a CPO is made.

Acquiring authorities are expected to evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted.

45. This is addressed above.

Whether the purpose for which the land is being acquired fits with the adopted Local Plan for the area or, where such no up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework.

46. The Council's purpose in making the CPO is stated above. It fits with the adopted development plan, which supports the regeneration envisaged by the Scheme. The CPO is necessary to implement the Council's and the Mayor's objectives as specified in the New Southwark Plan 2022 and the London Plan 2021. Both of these documents had been envisaged by the Cabinet report in April 2020 and the policies in both were considered by the Council at Planning Committee for the revised planning application on 6 July 2021.

The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area.

47. This is addressed at paragraphs 3 -19 above.

Whether the purpose for which the acquiring authority is proposing to acquire the land would be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose of which the land is being acquired.

48. The prospects of acquiring all the relevant land interests by agreement to enable the comprehensive redevelopment within a reasonable timescale are

unlikely. The Council has already, with the best intentions, allowed time for negotiations to reach fruition. If the Council does not act now then the completion of the East Site, and the West Site redevelopment, will be entirely dependent on the owners and occupiers of the outstanding land interests.

49. Consideration has been given to whether the Council's objectives might be achieved by individual landowners within the land separately carrying out development of their land. This would be likely to result in poorly co-ordinated redevelopment of parts of the CPO land, in a piecemeal fashion, which will contrast badly with the comprehensive vision of the Scheme. Any proper redevelopment needs the interests/rights covered by the CPO and certainly any redevelopment in line with planning policy does. The Scheme, as per planning policy, is an holistic concept which cannot be delivered on a piecemeal basis and any attempt by third parties to redevelop parts of the land on a piecemeal basis without the use of CPO powers would destroy the additional benefits that come from a co-ordinated, holistic regeneration in line with planning policy.
50. The Council has considered whether there are alternative proposals for this land and whether such proposals would be appropriate. There are no known alternative proposals that the Council is aware of, and even if there were, such alternatives would not (1) meet the objectives of planning policy for a comprehensive redevelopment of the Scheme Land and (2) provide the benefits of the Scheme.
51. Consideration has been given to if the Council's objectives in making a CPO can be achieved at a different location. The scope for any alternative location in the context of the particular objectives here is absent. The Scheme is to regenerate this area of land, which cannot be achieved on another area of land.
52. Consideration has also been given as to whether an alternative alignment for the Park Route, through Arches 113A/120 and 113B/121, to the north of the railway station, would have avoided the need to acquire the leasehold title to 6 and 7 Farrell Court and associated new rights. For the reasons given at paragraph 12, that alternative alignment would have been significantly inferior to the chosen route, such that 6 and 7 Farrell Court do need to be acquired. Consideration has also been given to whether it would have been practicable to retain Corsica Studios within 4 and 5 Farrell Court, thus avoiding the need to acquire Arch Co's long leasehold title to Arches 113A/120 and 113B/121 to relocate Corsica Studios. For the reasons explained in paragraphs 32 to 38 of the main body of the report, the only practical solution for retention of the venue on Elephant Road is to relocate it to Arches 113A/120 and 113B/121, and EC does not have the necessary title to bring that about, so the acquisition of greater leasehold title and associated new rights is necessary to achieve this. Consideration has also been given to whether it is necessary to acquire 4 and 5 Farrell Court to accommodate Beset and their occupiers. No suitable alternative relocation opportunity which meets Beset's requirements has been found. 4 and 5 Farrell Court would become vacant once Corsica move to the northern arches and they represent a suitable relocation premises for Beset and their occupiers.

The potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be.

53. Funding intentions are dealt with above. The potential viability of the Scheme has been examined as part of the planning application process in the context of the maximum level of affordable housing the Scheme can provide. Discussion took place during the original planning application process as to what the appropriate level of developer profit should be to reflect the risk and complexity of the Scheme. The relevant expression of profit level for a developer for a build to rent housing scheme is the internal rate of return ("IRR"). EC's target rate of return is 11%. Viability assessment work was carried out during the planning application process in the context of the maximum amount of affordable housing that can reasonably be supported by the Scheme. The viability experts appointed by EC concluded that the then current IRR was 7.51% but both they and the experts appointed by the Council nevertheless both agreed, as part of the viability work for the planning application, that a full target return of 11% is achievable over the lifetime of the development, having regard to market forecasts which have been adopted from residential and commercial agents, as well as costs advice from cost advisors. The advice from GVA (now Avison Young), advising the Council, was that all current forecasts at that time suggested that this growth in IRR over the construction period is achievable and possibly conservative.
54. In June 2021, as part of consideration of the revised planning application, DS2 (advising EC) concluded that there had been a notional increase in viability so that the ungeared IRR had risen to 10.23% but pointed out this was derived only from the fact that the East Site value had reduced due to the demolition of buildings, and that in real terms there was a reduction in retail values due to the COVID-19 pandemic, and the general decline in high street retailing, increased construction costs and the pandemic's effect meant that development economics were extremely challenging. Avison Young concurred that the target level of profit was not predicted to be met with the requisite level of affordable housing.
55. Some time has passed since the revised planning permission was granted in July 2021. Accordingly, the viability position has been the subject of further expert work by Avison Young for the Council. Avison Young have carried out a high level review of the viability of the Scheme. The exercise took the form of a review of the updated proposed Scheme appraisals and commentary upon whether the inputs are reasonable at this point in time. This high-level review has been undertaken on a desktop basis to inform the Council's decision making. Avison Young advise that this exercise would likely have to be reviewed again in the run up to a CPO inquiry. The review also included a sensitivity analysis of the IRR, commercial rents and yields.

56. On the basis of their high level analysis, Avison Young have concluded that the Scheme is viable. Avison Young advise that the following points further reinforce their conclusion that the Scheme is viable: the East Site works have been procured under a fixed price Design and Build Contract with a major building contractor, Multiplex; full funding for the East Site has been secured; the existence of the contractual agreement with UAL/LCC; the Scheme has commenced and is proceeding; whilst the current macro-economic situation is challenging, there nevertheless remains underlying demand for high quality professionally managed residential stock, and rental forecasts remain positive.
57. Viability is a moot point in respect of the East Site because EC has chosen to proceed, has funded it and has a contractor appointed and on site to build it (subject in the case of the CPO areas to being able to do so). As regards the West Site, the reality is that once the new university campus building has been completed on the East Site for UAL, the completion of the sale of the LCC site is triggered, albeit UAL will have some time in which to move across to the East Site. So, having paid a very considerable sum to acquire the West Site at that point, it is highly likely that EC's group company, Elephant Three Properties Limited, would then proceed with the West Site redevelopment (subject to the CPO enabling it to do so), to recoup a return on its investment. The Guidance points out that a CPO can still be confirmed if there is uncertainty over financial viability if the case for it is very compelling. In this case, the Council has the benefit of Avison Young's updated expert advice that they believe the Scheme is viable. Moreover, officers do not consider there is any real uncertainty that the West Site will proceed given the factors above but, even if there was such uncertainty, the confirmation of the CPO will still be justified because the case for the CPO is so very compelling.
58. In terms of the CPO indemnity agreement, all interests to be acquired by the Council, whether by agreement or by CPO, will be acquired for planning purposes. Under section 233(3) of the 1990 Act, the Council needs to achieve best consideration when disposing of land under this provision. This however needs to be judged in the context of the totality of the arrangements for the transfer of interests pursuant to the CPO indemnity agreement. The Council will only be acquiring interests from third parties or creating rights over their land on the basis that funding for the initial acquisitions or rights (at market value) is coming from EC and on the basis that it will thereafter dispose of any acquired land to EC or EC's group company. As such, there is no realistic prospect of the Council obtaining consideration in respect of the disposals to EC (or its group company) under the CPO indemnity agreement beyond the indemnity arrangements, such that these arrangements are the best consideration that can reasonably be obtained in the circumstances.
59. The Council is required to exercise its power under section 233 in a manner which, so far as practicable, secures that relevant occupiers of that land are provided with a suitable opportunity to obtain accommodation on the land in question (section 233(5)). Relevant occupiers for these purposes means residents and those carrying on business on the land that wish to obtain accommodation. As explained in the main body of the report, the Council

and EC's intention is to offer relocation opportunities to the affected occupiers of 4 and 5 Farrell Court (Corsica Studios), and 7 Farrell Court (Beset), to relocate within the arch units which are the subject of the CPO. It is not practicable to relocate both DistriAndina and Beset into 4 and 5 Farrell Court as the units will not fit both of them, and in any event DistriAndina are being offered the opportunity to relocate elsewhere within the Scheme, in a new unit on the East Site. As explained in the main body of the report, it is envisaged that none of the existing occupiers will need to cease trading nor suffer any material delays in re-opening. The indemnity agreement between the Council and EC will require EC to offer relocation opportunities in accordance with section 233 in respect of any land that is acquired by the Council and disposed of to EC pursuant to the CPO arrangements. Accordingly it is concluded that the duty under section 233(5) will be satisfied.

60. In addition, the section 106 agreement relocation strategy requires that 10% of the new retail floorspace pursuant to the July 2021 planning permission will be affordable retail floorspace and will be offered in the first instance to eligible businesses displaced from the East Site. Similarly, 10% of the commercial floorspace pursuant to the July 2021 permission will be provided as affordable workspace, again offered in the first instance to eligible businesses from the East Site displaced by the redevelopment.
61. In respect of the statutory duty under section 66(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings, in the exercise of the powers of disposal under section 233, the Metropolitan Tabernacle is a listed building and some minor works to that building are required and have received listed building consent. The Council will acquire new rights over the land under the CPO and EC will be able to utilise those new rights. Cabinet will note that notwithstanding the substantial weight given to harm to the setting of the Tabernacle, the Planning Committee concluded that such harm would be outweighed by the significant public benefits accruing from the Scheme. Any effects the Scheme may have on the other designated heritage assets in the locality, including the Faraday Memorial and Metro Central Heights listed buildings, listed buildings at West Square and the West Square and Elliott Row Conservation Areas, and any undesignated heritage assets, were fully considered by the Planning Committee. Officers consider that there is no breach of this statutory duty by reason of the proposals set out in this report.

That the correct statutory procedures have been correctly followed

62. It is considered that the relevant statutory procedures have been correctly followed to date. It will be necessary for the Council to follow the correct statutory procedures in making the CPO and publicising the same and serving notice of it on the affected parties, and to follow the Guidance policy on (among other things) providing a Statement of Reasons to affected parties. Thereafter the Council will need to adhere to the statutory procedures as regards the proposed confirmation of the CPO, including adhering to the inquiry rules.