

<b>Item No.</b> 22.	<b>Classification:</b> Open	<b>Date:</b> 6 December 2022	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Elephant and Castle Town Centre – Compulsory Purchase Order	
<b>Ward(s) or groups affected:</b>		North Walworth St George's	
<b>Cabinet Member:</b>		Councillor James McAsh, Climate Emergency and Sustainable Development	

## **FOREWORD - COUNCILLOR JAMES MCASH, CABINET MEMBER FOR THE CLIMATE EMERGENCY AND SUSTAINABLE DEVELOPMENT**

In April 2020 cabinet agreed to make and pursue a compulsory purchase order (CPO) for both the east and west Elephant and Castle town centre sites. This report explains that since then the developer has made considerable progress towards delivering the scheme. Vacant possession of the shopping centre and 26-32 New Kent Road were obtained without the need for CPO powers. Subsequently these buildings were demolished and the developer has appointed Multiplex, a major building contractor, to carry out the new development on the East site which is now visibly underway. The report sets out the considerable benefits that will arise from the development which include new homes, jobs, and work space.

Agreements have been reached with Transport for London (TfL) to enable the construction and handover of the new Northern Line Underground station box to London Underground. A revised planning permission has been secured which will allow for the incorporation of the Bakerloo Line when the Bakerloo Line extension proceeds. Contracts have been exchanged with the University of the Arts London to build a new campus for the London College of Communication on the east site which paves the way for the redevelopment of the west site. These are welcome developments that deliver on our commitments to enhance public transport provision and secure the long term future of LCC at its established home at the Elephant and Castle.

Throughout this process the council has continued to meet its commitment to local traders displaced by the redevelopment to ensure they have the opportunity to continue to operate in the area. The relocation funds secured through the s106 agreement and the £200,000 that the council made available have been now been largely expended. This has ensured that 53 eligible independent businesses have been relocated or are in ongoing and final legal discussions.

## **RECOMMENDATIONS**

That the Cabinet agrees:

1. That subject to the prior completion of an indemnity agreement with Elephant & Castle Properties Co. Limited ("EC"), the council makes and (subject to any

necessary confirmation from the Secretary of State) implements a compulsory purchase order ("CPO") under section 226(1)(a) of the Town and Country Planning Act 1990 and section 13 Local Government (Miscellaneous Provisions) Act 1976 (and in accordance with the procedures in the Acquisition of Land Act 1981) in respect of the area edged red on the plan at Appendix A ("the Order Land") for the acquisition of the land shown coloured pink on the same plan and the creation and acquisition of new rights over the land shown coloured blue on the same plan<sup>1</sup> for the purpose of facilitating the redevelopment, development and improvement on or in relation to that land, namely a mixed use town centre redevelopment scheme including residential, retail, offices, education, assembly and leisure, a new station entrance and station box for use as a London Underground operational railway station, nightclub, commercial, business and services, access and highway works, public realm and landscaping, car and cycle parking, plant and servicing and associated and ancillary works and structures ("the Scheme") on and adjacent to the Order Land, with the land comprised within the Scheme ("the Scheme Land") being shown edged red on the plan at Appendix B

2. The Director of Planning and Growth be authorised on behalf of the council to finalise the terms of and enter into the CPO indemnity agreement with EC to underwrite in full the council's costs and liabilities associated with the proposed CPO, including suitable security for the council's liabilities, and
3. Subject to completion of the CPO indemnity agreement referred to in recommendation 2, the Director of Planning and Growth be authorised on behalf of the council to :
  - (a) take all necessary steps to secure the making, confirmation and implementation of the CPO, including the publication and service of all notices and the presentation of the Council's case at public inquiry should one be called;
  - (b) acquire for planning purposes all interests in land and new rights within the Order Land as may be necessary to facilitate the Scheme, either by agreement or compulsorily, including entering into negotiations with any third parties for the acquisition of their land interests and/or for new rights over their land (as appropriate), the payment of compensation and dealing with any blight notices served in connection with the CPO;
  - (c) approve agreements with land owners setting out the terms for the withdrawal of objections to the CPO, including where appropriate seeking the exclusion of land or new rights from the CPO or giving undertakings as to the enforcement of the terms of the CPO;
  - (d) make any deletions or amendments to the draft CPO map at Appendix A and/or the related draft ownership schedules of the CPO (including any minor additions) should the need arise, so as to include all interests in

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<sup>1</sup> Colour versions of the CPO map are attached at appendix A; a black and white version of the draft CPO map, showing the areas to be acquired (pink) as hatched black and the areas of new rights (blue) as light grey is included at Appendix L.

land and rights required to facilitate the construction, maintenance and use of the Scheme;

- (e) dispose of the land acquired from third parties pursuant to the CPO and/or through private negotiations, pursuant to section 233 of the Town and Country Planning Act 1990, in accordance with the terms of the CPO indemnity agreement;
- (f) take all necessary actions in relation to any legal proceedings relating to the CPO, including defending or settling (as appropriate) any compensation claims referred to the Lands Chamber of the Upper Tribunal due to the making or implementation of the CPO, and to take all necessary steps in respect of other legal proceedings that relate to the making, confirmation or implementation of the CPO;
- (g) authorise entry onto land to undertake surveys under section 172 Housing and Planning Act 2016 and/or other relevant powers;
- (h) where necessary in the absence of agreement, to exercise powers under section 271 and/or 272 Town and Country Planning Act 1990 in respect of the extinguishment of rights of statutory undertakers and electronic communications code network operators;
- (i) appoint and/or retain such external professional advisors and consultants as are necessary to assist the Council in facilitating the Scheme, including in the promotion of the CPO and the settlement of any compensation claims;
- (j) take all necessary, ancillary or incidental steps to give effect to the recommendations in the report.

## **BACKGROUND INFORMATION**

### **Introduction and the need for a further Cabinet decision**

4. In April 2020, Cabinet considered a trio of reports on the redevelopment of the Elephant and Castle Shopping Centre and London College of Communication ("LCC site"). Cabinet unanimously resolved to authorise the use of CPO powers to facilitate the redevelopment and so deliver on the Council's long term vision for this strategic site within the Elephant and Castle opportunity area. The site is now designated as NSP48 in the recently adopted Southwark Plan. The site comprises: "the East Site", being the former Shopping Centre site and the immediately adjacent 26-32 New Kent Road (the buildings on those areas having now been demolished in full) and some of the arches under the adjacent railway viaduct; and "the West Site", comprising the LCC site and its immediate surroundings.
5. Considerable progress has been made since April 2020. The developer has acquired much of the land and new rights required for the Scheme by agreement, thus greatly reducing the potential adverse effects of compulsory purchase as previously considered by Cabinet. The old buildings on the Shopping Centre site

and at 26-32 New Kent Road have been demolished and the developer has secured funding for, and has begun, the new buildings on the East Site. Further detail on the considerable progress made can be found at paragraph 26 and Appendix D.

6. However, despite further negotiations between the developer and the remaining affected parties, agreement has not been reached to acquire all the land interests required for the Scheme. This raises the very real risk that parts of the East Site of the consented Scheme will not be delivered.
7. Amongst the areas at risk is a significant and important part of the planned public realm on the East Site, which currently comprises two railway arch units at 6 and 7 Farrell Court on Elephant Road and an area of hardstanding immediately adjacent to the railway viaduct. This would provide an important pedestrian link between the East Site, Elephant Road and Elephant Park, thus bringing the connectivity benefits that the Council has long been seeking for this part of the town centre. Furthermore, acquisition of land and new rights over the area immediately to the west of the viaduct is also needed to ensure the completion of other public realm including the completion of a new, direct, surface level access for pedestrians between the new London Underground station and the railway station.
8. As the approved phasing plan for the planning permission requires the East Site to be completed (save in certain respects) before development takes place on the West Site, as a consequence this jeopardises the delivery of the West Site.
9. Due to the progress that has been made to acquire interests through agreement, the extent of land and new rights that needs to be acquired by way of CPO is now significantly reduced as compared to what was envisaged in April 2020. While this is a welcome development, a new CPO resolution, focused on the reduced extent of land and the current circumstances, will now be needed. This requirement is in part necessary as the April 2020 Cabinet CPO resolution was amended by Cabinet so that only minor amendments to the then proposed draft CPO map could be made. The changes to the original map, though largely arising from the progress that has been made, cannot be considered to be minor amendments.
10. In broad terms, the outstanding interests and rights that still remain to be acquired are as follows (Cabinet may find the indicative plan of the railway arch units at Appendix E helpful in this context):
  - Arches 6 and 7 Farrell Court on Elephant Road are required to provide the pedestrian link between the East Site, Elephant Road and Elephant Park, to be known as the Park Route. Both the units are owned long leasehold by Arch Co and will need to be acquired from them to achieve this outcome. These arches are also currently occupied by two business tenants, DistriAndina and Beset. Beset have shared occupation of their unit with various other small businesses. The Council and the developer wish to relocate the tenants (and their occupiers) to enable the redevelopment of these arches. The developer is proposing to relocate DistriAndina to new premises it is developing on the East Site as part of the Scheme. It is

proposed that Beset would also be relocated within the Scheme, to the two arch units 4 and 5 Farrell Court currently occupied by Corsica Studios (see below).

- A corridor of land immediately to the west of the viaduct which is needed to provide the public realm to connect the East Site (including the new London Underground station) with the new public route beneath the viaduct and the overground railway station. The long leasehold title to the land is owned by Arch Co and will need to be acquired from them to ensure this outcome is achieved.
- A new right of way for pedestrians over the small area of Network Rail land to the immediate west of the railway station is also required. A tiny fragment of Network Rail land, which is not used operationally, is also required as part of the public realm area.
- Arches 113A, 120, 113B and 121 on Elephant Road (to the north of the railway station). These arches formed the vehicular access to the former Shopping Centre and a private pedestrian route providing access to the rear of the former Coronet. Both access routes are no longer needed following the demolition of those buildings on the East Site. It is proposed that these arches become the new home for Corsica Studios, a cultural venue specialising in electronic and dance music which is currently located to the south of the railway station at 4 and 5 Farrell Court on Elephant Road. It has been concluded that for the developer to meet the “agent of change principle” it has become necessary to relocate the club here, just a short distance up Elephant Road, so that it can continue to operate on Elephant Road. Although the developer has some leasehold interest in these arch units to the north of the railway station, its lease is constrained to be used only for access purposes. Arch Co also have a long leasehold interest in these arches, but their interest is not so constrained. Their interest will therefore need to be acquired to achieve this outcome.
- Arches 4 and 5 Farrell Court. These arches are currently home to Corsica Studios. As referred to above (and as explained in more detail in paragraphs 34 - 40) it has been concluded that the developer will need to relocate Corsica Studios a short distance up Elephant Road to ensure that the developer is meeting its obligations, as an agent of change, to mitigate impacts upon the operation of the club. If Corsica Studios were to relocate to Arches 113A/120 and 113B/121, 4 and 5 Farrell Court would become vacant. It is proposed that 4 and 5 Farrell Court would be used to relocate Beset, who will need to be relocated because of the creation of the pedestrian route in what is currently 6 and 7 Farrell Court. These Arches are also owned long leasehold by Arch Co and it will be necessary to acquire their interest in the arches to achieve this outcome.
- On the West Site there are a number of relatively minor issues but which could still potentially jeopardise the delivery of the Scheme. There are two small areas of unregistered land and two sub stations that the developer will need to acquire in order to proceed with the Scheme on the West Site.

The developer also requires some new rights over the Metropolitan Tabernacle land (but not the acquisition of the Tabernacle land), for a temporary period, to facilitate demolition of the current LCC building and to decouple the current LCC building from the northern façade of the Tabernacle. Some crane oversail rights are also sought over the Tabernacle and other areas adjacent to the LCC site.

## **KEY ISSUES FOR CONSIDERATION**

11. As stated in April 2020, exercising compulsory purchase powers is a power of last resort that should only be used appropriately. It continues to be the case that the Council's preference would be for the remaining issues to be resolved through negotiation between the parties. Officers are of the view, however, that there are significant differences in the views of the key parties (principally the developer and Arch Co) which mean that a negotiated outcome is not a realistic prospect at this point in time. This "deadlock" is creating uncertainty for the businesses occupying the arches and could frustrate the delivery of the full benefits of the Scheme. In these circumstances, officers have concluded that a new CPO resolution, and the making and pursuit of a CPO, is justified in the public interest.
12. The CPO process is legally complex and therefore this report is both long and technical in nature. It sets out why the use of CPO powers continues to be necessary and justified and should be pursued. It sets out the progress that has been made to date to acquire land and new rights, the public benefits of the Scheme and those benefits which would directly arise from the proposed CPO. The report also provides background information regarding the developer and confirms that an indemnity agreement will be completed with the Council to meet its costs in full arising from the CPO process.
13. In conclusion the CPO process is a long one and the Council's action is required now. Unless the Cabinet authorises a CPO as recommended in this report, there is a very real risk that the East Site will not be completed in full and therefore not all the public benefits of the Scheme would be secured. In particular, the long standing objective of establishing a pedestrian route between the East Site, Elephant Road and Elephant Park would not be provided. The location of the Park Route through what is currently 6 and 7 Farrell Court was the subject of careful consideration prior to the planning application being submitted, and the reasons why this route was chosen can be found at paragraph 12 of Appendix J. As explained above, due to the approved planning phasing, if the developer is not able to complete the East Site this could also jeopardise the ability to continue the Scheme onto the West Site. Agreeing this resolution will also ensure that the Council can be confident that its long term commitment to provide alternative locations for businesses impacted by the Scheme will be delivered.

## **The April 2020 Cabinet decisions**

14. On 7 April 2020, Cabinet considered three reports on the Scheme. Agenda Item 23 was a Progress Report which set out the context for the future of the Shopping Centre, detailed the planning benefits that would arise from the Scheme, public sector equality duty ("PSED") issues and recommended the allocation of

£200,000 of additional support for displaced traders. Agenda Item 24 considered the case for making a CPO to facilitate the Scheme and recommended that the Council make and pursue the confirmation of a CPO. Agenda Item 25 considered the case for overriding third party rights that affect the Scheme site (primarily rights of light) and recommended the use of the Council's statutory powers to override those rights, so as to facilitate the Scheme, with holders of those rights being entitled to compensation.

15. Cabinet resolved unanimously to follow officers' recommendations for all three items, with a slight amendment to the proposed recommendation on the CPO so that the Director of Regeneration has delegated authority to make minor (rather than any) alterations to the draft CPO map.
16. The general background and context to the redevelopment was considered in detail by Cabinet in April 2020, with paragraphs 3 – 26 of the Agenda Item 24 report explaining the general principles regarding compulsory purchase, the details of the developer, the site context and history and the planning policy as it then stood (links to that report are available at the end of this report - see Background Documents).

### **The developer**

17. EC is a company registered in the British Virgin Islands. It owns the freehold title to the former Shopping Centre site and the immediately adjacent New Kent Road properties. It is a subsidiary company of Get Living plc, an English public limited company. Get Living's shareholders are "the Triangle Partnership". The Triangle Partnership comprises three parties: (1) Dutch pension fund Stichting Depository APG Strategic Real Estate Pool, which has a 39% share in the Triangle Partnership and is the largest pension fund manager in the Netherlands; (2) QD UK Holdings Limited Partnership, a Scottish limited partnership, set up by Qatari Diar, the sovereign wealth fund of the State of Qatar, which has a 22% share in the Triangle Partnership; and (3) DOOR SLP, which has a 39% share in the Triangle Partnership. DOOR is a co-investment platform co-founded by Oxford Properties Group and DV4 Limited and it is a separate legal partnership registered in Jersey. All its assets are based in the UK. The Oxford Properties Group is the global real estate arm of the Ontario Municipal Employees Retirement System and is based in Toronto, Canada. DV4 is a real estate investment vehicle based in the British Virgin Islands.

### **The Scheme**

18. Full planning permission for the vast majority of the Scheme was granted by the Council on 10 January 2019 for the comprehensive redevelopment of the Shopping Centre, 26-32 New Kent Road, arches 6 and 7 Elephant Road and the LCC site. Planning Committee approval had been given in July 2018 subject to completion of the section 106 planning agreement and no call-in by the Mayor, and the planning permission was granted once those pre-conditions were satisfied. A judicial review court challenge to the planning permission failed on all grounds, with both the High Court (20 December 2019) and the Court of Appeal (28 May 2021) ruling that the Council had acted entirely lawfully in granting the permission.

19. Since April 2020 the Council has approved two section 73 applications to make material amendments to the Scheme. These did not fundamentally alter any components of the Scheme but included further planning benefits such as an increased number of affordable housing units, increased office space (including affordable workspace) and the construction of a larger new London Underground station box.
20. The July 2021 planning permission for the redevelopment (as amended by non-material amendment approvals) includes:
  - 18,210 sq m of new retail (use classes A1 – A4) floorspace (including 10% affordable retail space)
  - 6,462 sq m of assembly and leisure facilities
  - 983 new homes (with 35% affordable housing, comprising 119 flats at social rent equivalent levels, 57 flats at London Living Rent Levels and 161 flats at discounted market rent). 983 homes equates to 42% of the borough's annual housing target.
  - 7,019 sq m of new offices (including 10% affordable workspace)
  - a new London Underground station box and entrance to the East Site, with an enlarged station box to increase capacity and improve accessibility in the new Northern Line ticket hall, and to future-proof the station box so that it can also accommodate the Bakerloo Line extension if that project is delivered. The new station will improve operational capacity and accessibility from street level to platform level, with step-free access between the new ticket hall and the Northern Line platforms, and will provide the potential for a single entrance into both the Northern and Bakerloo Lines from the East Site. The new station will represent a significant improvement in strategic transport infrastructure at Elephant and Castle and is a key part of unlocking the growth required by planning policy in the town centre. Though there is some uncertainty as to the TfL funding position for the fit-out of the new station box due to the pandemic, all parties are working towards the provision of the new Underground station. Whilst there is some uncertainty as to whether the Bakerloo Line extension project will proceed, it remains an important policy commitment for the Council and in January 2020 the Council agreed to provide £7.5 million towards that project.
  - a new modern campus building of 43,870 sq m for the LCC on the East Site, to replace its current outdated buildings, helping to secure its long-term future in the area
  - a pedestrianised route from Elephant Road into the heart of the new development ("the Park Route"), through some of the railway viaduct arches adjacent to the Shopping Centre site, thereby improving the connectivity of the town centre and Elephant Park, fulfilling a key ambition for the Council.



- Significant improvements in public realm, permeability of the site and accessibility. The layout of the East Site has been planned to improve the transition between the national rail station, the Underground station and the wider town centre, improving the efficiency of this location as a major transport interchange. As well as the Park Route, a new "Station Route" will provide a direct surface pedestrian connection from the Underground station to the rail station. The Park Route and the Station Route will meet at a new space outside the rail station to be known as "the Court". A third pedestrian public realm route on the East Site will connect Walworth Road to the Court along the western side of the railway viaduct.
21. The Metropolitan Tabernacle is a Grade II listed building, part of which immediately adjoins the current LCC building. Listed building consent has been obtained to carry out minor alteration works to the northern façade of the Tabernacle, to allow for the separation of the two buildings to take place.

### **Planning Policy**

22. Paragraph 25 of the Agenda Item 24 April 2020 report, and Appendix H to that report, set out the strong planning policy support for a high density, mixed-use redevelopment on this large brownfield site. Since then, the Southwark Plan 2022 and the London Plan 2021 have been adopted and form the up to date development plan. At both the general and site specific levels, these new development plan documents continue to provide strong policy support for the Scheme. Appendix C to this report provides an updated summary of the development plan policy framework for the site. It can be seen from that there is specific planning policy support not just for the Scheme as a whole but also for the creation of the Park Route, pedestrian connectivity, connectivity between public transport nodes, public realm improvements and protecting the night-time economy (in relation to the electronic and dance music club). All of these important aspects will be facilitated by the proposed CPO.

### **Benefits of the Scheme**

23. In addition to the beneficial elements referred to at paragraph 20, the very considerable benefits arising from the Scheme include:
- The creation of 1,230 construction jobs per year over the 10 year build programme.
  - The generation of up to 2,085 gross new full time equivalent jobs, depending on the exact nature of the commercial uses which will ultimately come forward; this would be an increase of over 600 as compared to the estimated 1,418 such jobs across the East and West sites when the Shopping Centre and the New Kent Road properties were occupied.
  - Measures to secure jobs for unemployed borough residents are contained in the section 106 planning agreement and will deliver significant economic benefits to the local population. On the East Site there will be 282 construction jobs and courses for unemployed local residents and 70 apprenticeships. In the completed East Site there will be a minimum 212

jobs for local residents. On the West Site there will be 132 construction jobs and courses for unemployed local residents and 33 apprenticeships. In the completed West Site there will be a minimum of 45 jobs for local residents.

- 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.
  - The redevelopment of the two arches to the north of the railway station to provide a new cultural venue to cater for electronic and dance music, so that Corsica Studios can relocate there, thus ensuring the retention of that cultural use on Elephant Road, as explained in more detail later in this report.
  - The redevelopment of 4 and 5 Farrell Court, currently occupied by Corsica Studios, to provide a suitable relocation opportunity for the displaced tenant and occupiers of 7 Farrell Court (which is required for the Park Route), as explained in more detail later in this report.
  - A substantial investment in cycling infrastructure within the buildings and the public realm amounting to 2,115 long-stay and 302 short-stay cycle parking spaces. The Scheme will deliver an additional 60 cycle hire docking points, split between 2 new locations, one primarily serving the East Site and one the West.
  - Bus stop upgrades and real time information displays.
24. Many of the benefits of the Scheme depend on the proposed CPO because the Scheme cannot be progressed and completed (in accordance with the planning permission) without the CPO. Although work has begun on the East Site (as explained below), and the physical construction of the East Site new buildings can take place without the CPO, the completion of key parts of public realm, including the connectivity between the East Site and Elephant Park and the pedestrian connection to the railway station, are at risk; and the approved phasing of the planning permission requires the East Site to be completed (save in respect of the proposed redevelopment of the current LUL Northern Line station) before demolition of the West Site can begin. So the CPO is necessary to continue and complete the East Site, and thus to allow the redevelopment of the entirety of the West Site. The CPO is also required to facilitate the demolition and construction for the West Site. So the CPO is essential for the successful implementation and completion of the Scheme.

25. Specific benefits that the new CPO would directly deliver are:

- Improvements in pedestrian connectivity between the East Site and Elephant Park by enabling the creation of the Park Route beneath the railway viaduct;
- Improvements in pedestrian connectivity on the East Site between the new Underground station and the railway station;
- Improvements in the public realm on the East Site;
- Securing the future of Corsica Studios on Elephant Road, within Arches 113A/120 and 113B/121 to the north of the railway station;
- Providing a relocation opportunity for the displaced occupiers of 7 Farrell Court, within the adjacent 4 and 5 Farrell Court;
- The completion of the East Site, thus allowing the West Site to come forward in accordance with the approved phasing, with all the benefits that the West Site entails, including 498 new residential units (of which 165 are affordable housing units), 3,962 sq.m. of new retail units and a new cultural venue;
- The ability to physically construct the West Site through the acquisition of title to the small unregistered areas and the new rights to facilitate the development, as referred to in paragraph 10.

### **Progress of the Scheme since April 2020**

26. Very considerable progress has been made on the Scheme. A detailed list of the various milestones that have occurred since April 2020 appears at Appendix D. By way of a brief summary of some of the key events:

- EC and its group companies have entered into a contract with the key anchor tenant, the owner of the LCC site, University of the Arts, London ("UAL") to build a new university campus for UAL on the East Site, and once that is completed to purchase the LCC site, thereby paving the way for the West Site redevelopment to occur.
- The overriding rights mechanism approved by Cabinet as Agenda Item 25 in April 2020 was put in place for all requisite areas, thus removing the ability of third parties to prevent the development proceeding because of e.g. rights of light.
- Affordable replacement retail units were opened in Perronet House, 50 New Kent Road and on a temporary (5 year) basis at Castle Square.
- EC obtained vacant possession of the Shopping Centre and 26-32 New Kent Road, without any need to resort to CPO powers. The relocation funds under the section 106 planning agreement and the additional £200,000 allocated for traders by the Council have largely been expended.

- The Shopping Centre and buildings at 26-32 New Kent Road have been demolished.
- EC obtained a revised planning permission, refining parts of the East Site, in part due to changes required by UAL. The new Underground station box will now be bigger, to allow not just for the Northern Line but also potentially for the Bakerloo Line if the Bakerloo Line extension proceeds.
- Agreement has been reached with Network Rail and Govia Thameslink for the developer to fund the operational changes which will be required to the railway station.
- EC and its group company have entered into an agreement with LUL and TfL in respect of (among other aspects) the construction and handover of the new Underground station box to LUL and the transfer of various plots of TfL land to EC.
- A major building contractor, Multiplex, has been appointed to carry out the new construction on the East Site.
- EC has procured debt funding for the East Site (£365 million).
- Multiplex has begun the substantive new construction on the East Site.

### **Significant progress - but land assembly is not complete**

27. From the preceding section, Cabinet will see that there has been very significant progress towards the delivery of the Council's vision for the East Site. However, some key parts of the Scheme Land are not yet under EC's control and thus cannot be delivered, and without those key parts being delivered the Scheme cannot be delivered as envisaged. In broad terms the outstanding land requirements and related ownership issues can be summarised as follows (Cabinet may find the indicative plan at Appendix E helpful in respect of the railway arch units).

#### *The East Site - the Park Route*

28. Firstly, there is the need for the Park Route to be secured i.e. the pedestrian walkway, to the south of the railway station, under the railway viaduct through what are currently railway arch premises at 6 and 7 Farrell Court between the East Site and Elephant Road/Elephant Park. The requirement for such a link was first proposed in the Council's 2004 Elephant & Castle Supplementary Planning Guidance and has been a constant and longstanding aim of the Council in redeveloping the town centre. The requirement for such a pedestrian access link is now contained in the New Southwark Plan policy NSP48.
29. 6 and 7 Farrell Court are owned by Network Rail (freehold) and Arch Co (long leasehold). These two units are subject to tenancies granted to DistriAndina (6 Farrell Court) and Beset (7 Farrell Court). Beset has shared possession of that unit with small, micro businesses. To create the Park Route it will be necessary to acquire the long leasehold title of Arch Co and the tenancy interests in these

two units, thus allowing vacant possession of those two arch units to be achieved. The relocation of the occupiers of 6 and 7 is discussed below. As Arch Co's leasehold title to the railway arch units comprises the railway arch units and the subsoil beneath, and does not extend to the viaduct structure including the adjacent undersides and sides of arches, it is also necessary to acquire new rights from Network Rail to affix apparatus to the sides and undersides of those arches in connection with the proposed works. So, for the creation of the Park Route, new rights will need to be created in respect of the viaduct structure to allow for the necessary works to be undertaken to remove the existing arch unit premises and to affix eg lighting and signage to the sides and undersides of the arches, and to allow the affixing of a kiosk unit within one of the arches required for the Park Route.

30. In respect of the Park Route, and more generally, the Council's proposals and the proposed CPO will not interfere with the operational running of the railway and for the avoidance of doubt no title owned by Network Rail to any part of the operational railway is to be acquired as part of the CPO.

*The East Site - other public realm*

31. An important corridor of land required for proposed public realm immediately to the west of the railway viaduct has not been secured. This corridor can be seen on the draft CPO map at Appendix A (numbered parcels 22, 25 (part), 28 (part), 29 – 31, 34-36, 38 -40, 46 and 56 on Sheet 2 of the map). This is necessary to form part of the Park Route and to connect the East Site to the overground railway station via the Station Route, fully integrating those two sites and enabling the continuous public realm connection between the new Underground station and the overground railway station which the Council requires.
32. The freehold title to this area is largely unregistered, but accepted by all parties to be owned by Network Rail (who also own a registered freehold title to part of the corridor). Arch Co holds a long leasehold title to most of the corridor, though a small area to the immediate west of the railway station is owned solely by Network Rail. On one part of the corridor, immediately to the west of 4 and 5 Farrell Court, an external smoking shelter has been erected which is used by the tenant of 4 and 5 Farrell Court, Corsica Studios. It will be necessary to acquire Arch Co's long leasehold title to most of the corridor (and any interest that Corsica Studios has as occupier in the external smoking shelter area) and to acquire a new right of way for pedestrians across the small area owned by Network Rail and a corresponding right to pave and maintain the small area solely owned by Network Rail (parcels 34, 35 and 38 on the draft map at Appendix A). A new right is also sought to pave and maintain paving under an external staircase outside the railway station (parcel 39).
33. Adjacent to the corridor of land running along the western side of the railway viaduct is a tiny fragment of land which juts into the private vehicular access road which formerly led to the basement of the former Shopping Centre (parcel 37 on the draft CPO map at Appendix A). This parcel is owned by Network Rail. It is not clear why this land remained with Network Rail's predecessors (the British Railways Board) given that for many years it has formed part of the access into the Shopping Centre. It will be necessary to acquire this fragment of land from

Network Rail. This will have no operational impact on Network Rail given that the land has formed part of the Shopping Centre access for many years.

*The East Site – 4 and 5 Farrell Court and the arches to the north of the railway station*

34. Immediately to the south of 6 Farrell Court is 4 and 5 Farrell Court, occupied as a cultural venue specialising in electronic and dance music by Corsica Studios. London Plan policy D13 (The Agent of Change) places the responsibility for mitigating impacts from existing noise emitting activities or uses on the proposed new noise-sensitive development. This means that the responsibility for mitigating the impact of noise is on the proposer of eg the new residential development. As a consequence, the developer of residential units close to a noise emitting activity (such as Corsica Studios) may need to design them in a more sensitive way to protect the new occupiers from noise impacts and/or to pay for soundproofing of the existing music venue. Corsica Studios is on the GLA's Cultural Use at Risk register, so some intervention by the Council has been envisaged to ensure Corsica can continue to operate successfully.
35. Accordingly, the July 2021 planning permission envisages the need for some acoustic mitigation to take place in the new residential units on the East Site in addition to measures applied at source in 4 and 5 Farrell Court, with noise limits needing to be complied with at the boundary of the residential units by way of condition. EC proposed two methods of mitigation – high specification glazing on its new buildings and soundproofing of 4 and 5 Farrell Court which, taken together, would mitigate the noise impacts. The related section 106 planning agreement requires a payment to be made to the Council of £125,000 to be used for the purposes of funding the soundproofing works within 4 and 5 Farrell Court. That money has been paid to the Council by EC in accordance with the agreement. EC and the Council's intention has always been (and remains) to ensure that the electronic and dance music and residential uses can subsist harmoniously together.
36. In April 2020, when Cabinet first considered a CPO resolution, it was envisaged that the Council would acquire new rights over 4 and 5 Farrell Court, to undertake the sound insulation works within the existing music venue. However, as detailed technical discussions have progressed between Corsica and EC as to the location of the sound-proofing within 4 and 5 Farrell Court and the consequential works that would be required to the units, it has become clear that the sound insulation required would be so considerable (costing far in excess of the money secured under the section 106 agreement) and so extensive physically that the work would (in effect) require the complete remodelling of 4 and 5 Farrell Court - but would still result in a significant loss of useable floorspace, below that required by Corsica. The position is also complicated by the fact that, running through the centre of 4 and 5 Farrell Court, is a fire escape route, which Corsica have a right to use but which is not currently part of the demised area of their tenancy. To make the remodelling of their units work, this fire escape area would need to be leased to Corsica too. This cannot be done by the creation of new rights. Furthermore, to achieve the required remodelling of 4 and 5 Farrell Court would require physical works that will take between 3-6 months to carry out, during which time Corsica would not be able to trade and would close during that period.

37. EC therefore analysed whether, alternatively, it would be feasible to install further, additional acoustic insulation (beyond the higher specification glazing which had already been planned for the residential units) within the new residential units on the East Site. However, the detailed analysis demonstrated that further façade treatment of the residential units was not feasible, with the increased thickness of wall required on the residential tower leading to numerous apartments being impacted and the considerable loss of residential floorspace, including lost bedrooms (the majority being within the affordable units). In addition, the increased façade treatment would not work on its own (ie without some mitigation at the source in 4 and 5 Farrell Court).
38. As with the delivery of the new residential units, the retention of the electronic and dance music use in this location also attracts strong planning policy support (as seen at Appendix C) and the retention of that use as an important part of the night-time economy is needed. However, it is practically impossible for a satisfactory noise solution which leaves Corsica at 4 and 5 Farrell Court.
39. Faced with these facts, the only practical solution which enables the retention of the electronic and dance music use on Elephant Road, and one which would allow for Corsica to continue trading throughout, is for the set of railway arches to the north of the railway station, Arches 113A/120 and 113B/121, which are currently vacant (see the plan at Appendix E), to be developed into new premises for Corsica by EC. These units could accommodate the necessary sound insulation and would give Corsica the requisite floorspace. Once that new space is ready for Corsica, they could then move their operation seamlessly the short distance up Elephant Road, with no need to close their operation. This would also have the added benefit that Corsica would be able to operate entirely within an area clearly let to them – at present they are using areas which fall outside their tenancy area (to the rear of 4 and 5 Farrell Court, and within the fire escape) and the basis for their doing so is unclear.
40. EC owns a long leasehold title to Arches 113A/120 and 113B/121 which are proposed for the rehoused electronic and dance music club, but the leasehold title EC owns is constrained to be used for access purposes only. It does not allow for any beneficial occupational uses, and so would not allow for the proposed redevelopment of these arches. Arch Co owns a long leasehold interest in these arches which is not so constrained (other than by the EC leases) and the freehold title is accepted to be owned by Network Rail. To achieve the development of the Arches 113/120 and 113B/121 for the music use it will be necessary for the Council to acquire Arch Co's long leasehold title to the units, and to acquire new rights in respect of Network Rail's freehold title to the viaduct structure to undertake the necessary physical works (such as the affixing to the viaduct arches of new frontage and rear elevations for the club). So the acquisition of title and new rights in respect of Arches 113A/120 and 113B/121 is justified as it is the means by which the only practical way of retaining the electronic and dance music use, harmoniously with the new residential use, can be achieved.
41. Planning permission for the envisaged use of Arches 113A/120 and 113B/121 has not yet been granted, but EC's planning consultants are working up a planning application for the works and change in use. There is no reason why

the necessary consents should not be granted given the policy support for the cultural music use.

42. If, for some reason, that use was not instigated in Arches 113A/120 and 113B/121, the Council would not want to see those arches left vacant, as a gap in the arch units fronting Elephant Road, and EC would still wish to have some other beneficial use of those arches in that scenario. In April 2020, Cabinet approved the use of CPO powers for those arches on the basis that the intention was that these units would be converted into retail/café units. If the relocated electronic and dance music use was not instigated in those arches, the acquisition of greater title from Arch Co, and related rights from Network Rail, would still be justified to bring about retail/café uses. Again, planning permission for such alternative uses does not exist but there is no reason why permission would not be granted in this location.
43. The relocation of Corsica Studios to the northern arches would leave 4 and 5 Farrell Court vacant. As discussed above, the creation of the Park Route in 6 and 7 Farrell Court would displace the occupiers of those units. The Council is mindful that the occupiers of the units are small, local businesses. There is a need to mitigate any adverse impacts on those tenants and occupiers. Although efforts have been made to secure the relocation of the tenants and their occupiers elsewhere in the vicinity this has not been achieved. As described later in this report, it may be that the tenant of 6 Farrell Court (DistriAndina) relocates elsewhere in the vicinity but it is not clear to the Council that this will occur. No suitable alternative relocation premises has been found which meets the requirements of the tenant of 7 Farrell Court (Beset). Accordingly, the Council and EC intend to acquire 4 and 5 Farrell Court, immediately next door to 6 and 7 Farrell Court, as a relocation opportunity within the Scheme for Beset and the other occupiers of 7 Farrell Court. This would be the best mitigation against their displacement (and the potential adverse effects arising therefrom) as the units are suitable for their uses and are immediately adjacent. For DistriAndina, EC also proposes to relocate them within the Scheme, into a new unit fronting Walworth Road on the East Site.
44. It is not practicable to house both DistriAndina and Beset within 4 and 5 Farrell Court as there is not enough space to do so and in any event DistriAndina meet the eligibility criteria to move into new premises on the East Site under the terms of the existing section 106 planning agreement whereas Beset do not (as Beset are not a retailer), so DistriAndina have that option available to them (as well as possibly being able to take a unit on the adjacent Lendlease scheme as referred to below).
45. This proposal would require redevelopment of 4 and 5 Farrell Court by way of physical works and change in use from its current electronic and dance music venue use to the uses currently carried on by the occupiers of 7 Farrell Court. Planning permission for that element of the Scheme does not yet exist but there is no reason why such permission would not be granted given the proposal to create a new home for Corsica Studios further up Elephant Road. Again, EC's planning consultants are working up an application which would include those works and change in use for 4 and 5 Farrell Court.



46. The long leasehold title to 4 and 5 Farrell Court is owned by Arch Co, with Network Rail again owning the unregistered freehold title. To achieve the development of 4 and 5 Farrell Court referred to above it will be necessary for the Council to acquire Arch Co's long leasehold title to the units, and to acquire new rights in respect of Network Rail's freehold title to the viaduct structure to undertake the necessary physical works.

*The West Site*

47. There are several areas on the West Site where the acquisition of title or new rights is required. The approved phasing strategy for the Scheme is for the East Site to come forward first, but it is necessary to pursue and obtain CPO powers in respect of parts of the West Site now, to ensure that the West Site redevelopment can commence and be completed as envisaged. In summary the West Site outstanding land requirements and related ownership issues are as follows.

*The West Site – two strips of unregistered land*

48. Title to two strips of unregistered land is required. The first is an area of hardstanding to the immediate north of the LCC site, adjacent to St Georges Road, which will be used as paved public realm. This is needed to complete the public realm in that area. The second is an area of hardstanding immediately to the north of Pastor Street and forming part of the southern access into the LCC site. Again, this will be used as paved public realm, but the proposed basement of the new West Site buildings also just juts into this area. If this strip is not acquired then it would present an obstacle to the extension of the public access route north from Pastor Street, through the heart of the West Site, thus undermining the aim (and requirement) of planning policy to increase pedestrian connectivity throughout the site. It would also mean that a small part of the basement would not be delivered as permitted. As the strips are unregistered, their ownership is unknown and EC cannot negotiate for their acquisition.

*The West Site – two ground floor electricity sub-stations within the LCC site*

49. These two sub-stations are held on a long leasehold basis by the electricity statutory undertaker, London Power Networks. These areas will be built upon with new buildings, so the areas are required for the Scheme. It is hoped that a surrender of these leases can be negotiated by agreement, but given the location of the sub-stations on what will be the West Site redevelopment the Council must ensure that acquisition of the leasehold title to the sub-stations can take place.

*The West Site – new rights over the Metropolitan Tabernacle*

50. No acquisition of title to the Tabernacle's land is envisaged, but some new rights are required which are relatively minor in nature but which are nevertheless essential to the successful demolition and construction to be carried out on the West Site. New rights are needed to de-couple the current LCC building from the northern façade of the Tabernacle, and for carrying out any consequential amendments to that façade as a result, and to erect scaffolding over a relatively small part of the Tabernacle land (and to manage access thereto) whilst

demolition on the immediately adjacent LCC site takes place. This may require the temporary restriction of access through the walkway within the Tabernacle site which adjoins the LCC building for up to 3 months. This is to ensure safe working whilst the LCC building is removed and the decoupling works are undertaken. A right of crane oversail over part of the Tabernacle site is also sought. This is necessary to allow construction cranes to swing over the site. Without such a right the redevelopment of the West Site would be constrained and significantly more difficult.

*The West Site – crane oversail rights over other areas*

51. Crane oversail rights are required over a small part of The Castle Centre (leisure centre) to the south of the LCC site, part of the grounds of Perronet House to the north of the LCC site, and parts of highways adjoining the LCC site being Elephant and Castle, St George's Road, Oswin Street, and Brook Drive, and the entirety of Pastor Street. The rationale for seeking these rights is the same as for the crane oversail over the Tabernacle.

**Relocation**

52. The Council has been working to ensure that the occupiers of the affected railway arch units are relocated satisfactorily. Whilst the tenant of 6 Farrell Court (DistriAndina) has been negotiating the lease of a unit from Lendlease in its adjacent scheme, it is still present at 6 Farrell Court and may stay there (in addition to taking a lease of the nearby Lendlease unit).
53. Despite the efforts of EC and the Council, no suitable off site unit meeting the requirements of the tenant of 7 Farrell Court has been found.
54. The relocation provision summarised earlier in this report, i.e. Corsica to move to the arches north of the railway station, DistriAndina to move into a new unit within the Scheme, and Beset and the other occupiers of 7 Farrell Court to move within the Scheme into 4 and 5 Farrell Court, offers a solution which will not only deliver the Park Route as set out in the July 2021 planning permission but will also retain the electronic and dance music use, and facilitate relocation of those businesses, without the need for any period of closures of those businesses. The envisaged sequencing is that Corsica Studios would move first, out of 4 and 5 Farrell Court into Arches 113A/120 and 113B/121 to the north of the railway station, then EC would redevelop 4 and 5 Farrell Court for Beset and their occupiers. In the meantime, DistriAndina would fit out and open their new unit within the East Site. This would then free up 6 and 7 Farrell Court to be opened as the Park Route a few months later. It should be noted that this sequencing, which will ensure continuity of trading for all of the affected occupiers, may result in the Park Route opening slightly later than the rest of the East Site. However, it should only be a matter of months and officers are of the view that a short interval would be acceptable given the favourable outcomes for all of the affected occupiers.
55. The proposed relocation arrangements have been put to Arch Co and the affected tenants. Officers are of the view that the arrangements are reasonable and should very much be supported. The proposed agreement between the

Council and EC will contain provisions which will require EC to offer the envisaged relocation opportunities where land is acquired by the Council pursuant to a CPO and then disposed of to EC.

### **Attempts to acquire land interests by negotiation**

56. In collaboration with the Council, and in line with Government guidance, steady progress has been made by EC in acquiring the necessary land interests and rights required for the Scheme by agreement. This can be seen from the detailed list of update events in Appendix D.
57. Cabinet is referred to Appendix F, where the developer has provided an updated summary of the status of discussions with the remaining third parties. EC has been acting in collaboration with the Council in making offers to third parties, with the common aim of acquiring the necessary land interests by agreement wherever practicable and reducing the areas required to be compulsorily acquired. Officers have been kept regularly apprised of negotiations by EC. Officers are satisfied that genuine and reasonable attempts to acquire interests by agreement have been made. Credible and reasonable offers have been made by EC to acquire land interests over several years. The extent of agreements already reached with various other parties over several years is further evidence that EC has been acting reasonably.
58. Discussions with the Arch Co for its long leasehold interest were taking place for some considerable time before the Cabinet meeting of April 2020. Following the April 2020 resolution, EC has been seeking to agree commercial terms with the Arch Co and Council officers have been kept informed as to the negotiations. The Council's surveyor also wrote to Arch Co on 28 August 2020 to make plain the Council's intentions and to stress the importance of the Scheme to the Council. Council officers also met with Arch Co representatives in May 2022 to again impress on Arch Co the importance of the Scheme and to try to encourage Arch Co to reach agreement with EC. The offers put to Arch Co include a range of options which include, but went beyond, simply acquiring what is included in the CPO. Despite reasonable offers having been made by EC, the parties remain apart in their valuations.
59. In early June 2022, in a further genuine effort to reach agreement, EC put a proposal to Arch Co which involved the redevelopment of the arch units and the relocation arrangements of the tenants but which would also allow Arch Co to retain its long leasehold title of the arch units and the corridor immediately adjacent to the viaduct. In return, Arch Co would be required to (i) grant EC long leases of the corridor immediately adjacent to the viaduct and one of the arches to the north of the railway station, (ii) agree surrenders of the existing occupational tenancies in 4 and 5, and 6 and 7, Farrell Court and (iii) grant new tenancies in respect of 4 and 5 Farrell Court and the new home for the electronic and dance music club to the north of the railway station. EC would undertake the necessary works to create the new club and to create the Park Route in 6 and 7 Farrell Court and physical works to 4 and 5 Farrell Court, subject to obtaining Network Rail consent to do so. It is not clear to EC or the Council that Arch Co will engage with that proposal. Since it was submitted to Arch Co, there

has been no positive engagement on it and Arch Co have again referred to the possibility of an outright sale.

60. Offers have been made by EC to acquire the occupational tenancy interests owned in the railway arches needed for the Park Route from the Scheme to Elephant Road. So far those offers have not been accepted by the tenants.
61. It is important to note that the proposal put to Arch Co to potentially achieve the redevelopment of the arch units and the relocation of Beset and Corsica within them, outside the CPO context, would require the co-operation and agreement of all parties – EC, Arch Co, Network Rail and the tenants. Whilst officers hope that all parties will agree to those arrangements, the CPO is required to (among other things) facilitate those redevelopments and those relocation opportunities in the event that agreement is not reached with all parties. Moreover, even if agreement is reached with all parties, if any one party defaults on its contractual commitments that may lead to the proposal unravelling. For that reason, it is envisaged that the CPO would be pursued even if agreement was reached with Arch Co and all of the affected parties along the lines put to Arch Co in June 2022, but so that the Council would undertake not to implement the confirmed CPO in respect of the arches as long as all parties stuck to their contractual commitments. In this way, it is envisaged that in this scenario the CPO would act as a backstop in the event of default.
62. EC has also been in discussions with the Tabernacle to acquire the requisite new rights over the Tabernacle site for some time, but no agreement has yet been reached.
63. Accordingly, the making of a CPO by the Council (and the seeking of confirmation from the Secretary of State as to the CPO) is necessary to acquire the outstanding land interests and rights for the Scheme.
64. As pointed out in April 2020, where commercial property is involved it is often the case that the making of a CPO acts as a catalyst for the parties to enter into meaningful negotiations. Government guidance explicitly recognises this and suggests the making of a CPO can help make the authority's intentions clear, which might encourage parties to enter more readily into meaningful negotiations. That guidance also states that it may be sensible for the acquiring authority to instigate the formal CPO process whilst negotiations continue, to mitigate against valuable loss of time. That is the situation that now faces EC and the Council. Without the Council making a CPO, the delivery of important parts of the East Site is jeopardised, as is the ability to carry out the Scheme on the West Site.

### **The Council's powers and the legal and policy guidance framework**

65. Appendix G sets out the relevant legal and policy framework in respect of considering the exercise of CPO powers.
66. Among these, section 226(1)(a) of the Town and Country Planning Act 1990 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". Not only must this test be met, but in addition the Council must have regard to and apply Section 226(1A) of the 1990 Act 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
- (c) the promotion or improvement of the environmental well-being of their area.

67. As stated in more detail in Appendix G, the Government has set out detailed policy guidance to be followed by local authorities in respect of CPOs. Among the guidance tests are: a CPO should only be made where there is a compelling case in the public interest; compulsory purchase is intended as a last resort, however it may often be sensible to initiate formal CPO procedures to mitigate loss of valuable time; the purposes for which the CPO is made must justify interference with the human rights of affected parties; acquiring authorities should address sources of funding and the timing of that funding, and the potential financial viability of the scheme for which land is being acquired; the acquiring authority are expected to evidence that meaningful attempts at negotiation have been pursued and reasonable offers to acquire have been made by the acquiring authority; that the scheme is unlikely to be blocked by any physical or legal impediments; and the acquiring authority should show the extent to which the proposed purpose of the CPO will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area.

### **The proposed CPO**

68. The proposed CPO will enable the outstanding land interests that are required for the Scheme shown shaded pink on the plan at Appendix A to be acquired. It will also provide for the creation and acquisition of new rights over the land shaded blue on the plan at Appendix A. Seeking such new rights is relatively common in a CPO and will particularly facilitate the construction process. The rationale for including these areas is included in the "Significant progress – but land assembly is not complete" section above.
69. The area required for compulsory acquisition as compared to April 2020 is considerably reduced on the East Site, which reflects EC's success in ensuring title to and vacant possession of the large majority of the East Site. With the construction process having begun on East Site, EC has also been able to consider with its contractor what is possible to be undertaken from the western side of the railway viaduct, without access through the railway station and some of the other railway arch premises, which also explains why less land is being included for new rights within the railway viaduct than in 2020. Crane oversail rights have also been obtained from TfL and LUL in respect of the East Site, removing the need to seek the same by compulsory acquisition.

70. It may nevertheless be necessary as part of the finalisation of the CPO to make amendments to the draft CPO map and the recommendations allow for this.
71. Cabinet may note that some of the railway arch areas are shaded pink on the CPO map (for acquisition) but also have corresponding areas of blue (creation of new rights) on inset plans on the draft CPO map. This is due to the fact that it is the arch units (and the airspace and subsoil therein) which are being acquired, not the viaduct structure itself, so it is necessary to acquire new rights in respect of the railway viaduct for the minor works required to eg affix apparatus to the sides and undersides of those arches and to remove existing frontage and rear elevations at 6 and 7 Farrell Court from the viaduct.

### **The CPO Process**

72. Appendix H explains the detailed (and lengthy) process of a CPO and the compensation that would be payable to affected parties both for the acquisition of title and for new rights.
73. Importantly, all costs associated with the process and all compensation payable to third parties for the acquisition of their land (or for new rights) will be underwritten by EC through the CPO indemnity agreement.

### **The terms of the CPO indemnity agreement**

74. Cabinet is referred to paragraphs 72 – 81 of the April 2020 Agenda Item 24 report which set out the proposed terms of the CPO indemnity agreement between EC and the Council. These remain relevant. A satisfactory CPO indemnity agreement with EC (complete with guarantee of EC's obligations by Get Living Plc) has been negotiated by officers, and the completion of such an agreement is a prerequisite of making a CPO under the proposed Cabinet resolution.
75. The previous Cabinet resolution required the exchange of the UAL sale contract as a pre-condition to the making of the CPO. This is no longer required because the UAL sale contract was entered into in 2020.
76. It is unnecessary, as part of the CPO indemnity agreement, to include an obligation on EC to build the Scheme. In April 2020 the Council took the considered view that the heavy investment and commitment to the Scheme shown by EC meant it was likely that EC would progress with the Scheme, such that an obligation on EC to build the Scheme was unnecessary. That view has been borne out (and reinforced) by the considerable progress that EC has subsequently made with the Scheme. The numerous commitments and heavy investment since April 2020 lend further weight to the conclusion that the Scheme will progress and be completed subject to the Council using CPO powers. Similarly, it is now unnecessary for the CPO indemnity agreement to contain a pre-condition to exercise of the confirmed CPO powers that the Council must be satisfied that there is a reasonable prospect of the land being redeveloped within a reasonable period of time. The extent of EC's resolute commitment to go forward with the Scheme has already been demonstrated.

## **Adverse effects of the CPO**

77. The proposed CPO will (or in some cases may) result in some adverse effects for those affected. Appendix I contains details of the adverse effects that can be ascribed to the CPO. Given that EC was able to acquire title to and vacant possession of the large majority of the East Site without the need to have recourse to CPO powers, these adverse effects are greatly reduced as compared to the potential adverse effects in April 2020.
78. Regard is to be had to the adverse effects at Appendix I and weighed in considering whether to resolve to authorise the CPO.

## **Policy framework implications**

79. Planning policy is addressed at paragraph 22 and Appendix C.

## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

#### *Human Rights Implications*

80. The acquisition of land (and the creation and acquisition of new rights) authorised by this report will interfere with rights under Article 1 of the First Protocol to the European Convention on Human Rights (right to peaceful enjoyment of possessions). The CPO will give rise to the acquisition of property interests against the will of the owner and may also in certain instances infringe the enjoyment of existing assets with economic value, such as the goodwill of a business (which could happen in a worst case scenario in respect of the tenants of 4 and 5 Farrell Court and 6 and 7 Farrell Court). It will also interfere with rights over the CPO site. However, Article 1 of the First Protocol allows for such interference if it is in the public interest and subject to the conditions provided for by law and the principles of international law. The interference must also be in pursuit of a legitimate aim, which is the case here. Therefore, the use of planning powers contemplated in this report is lawful in Article 1 terms provided that the Council strikes a fair balance between the public interest and the private rights protected by Article 1. It is also relevant that compensation is available to persons affected by compulsory acquisition in certain instances. By way of the very considerable benefits that will arise from the Scheme (even limited to those specific benefits that the CPO would directly deliver), it is considered the compelling benefits in the public interest when weighed against the private rights of individuals, and indeed the wider adverse implications set out in Appendix I, justify the interference with Article 1 rights in this case.
81. As regards Article 6 Convention rights (right to a fair and public hearing to determine a person's civil rights), there are well-established statutory procedures that give all of those likely to be affected by the CPO the right to be notified and the opportunity to object. Any such objections may cause a public inquiry where such objections can be heard. Disputes as to compensation can be referred for hearing by the Lands Chamber of the Upper Tribunal. For these reasons, Article 6 is complied with.

82. Article 8 Convention rights (right to respect for private and family life, a person's home and his correspondence) can potentially be relevant in compulsory acquisition. The rights guaranteed by Article 8 may include the right to respect for private and family life enjoyed at a company or individual's business premises. Since Article 8 guarantees the right to a "private social life", it covers private social life enjoyed at a place of work or in professional, business or commercial activities. Article 8 does, though, allow for interference if it is necessary in the public interest and proportionate to the legitimate aim being pursued (here, economic wellbeing). For this CPO, there is no evidence to show Article 8 is engaged but assuming conservatively that Article 8 is engaged by reason of any interference with business premises and to affected individuals' private social lives derived from the business setting, given the public benefits of the Scheme (even if limited to those specific benefits that the CPO will directly deliver) and the compensation which will be payable in respect of any acquisition of land or new rights over land or the overriding of rights, any interference with rights in this case is proportionate, in the public interest and in pursuit of a legitimate aim.
83. Regard has been had to whether Articles 9 (freedom of thought, conscience and religion), 11 (freedom of peaceful assembly and association) or 14 (freedom from discrimination) of the Convention are engaged and whether there is any infringement of them. In each case it is considered that they are not engaged and there is no infringement.

### **Equalities (including socio-economic) impact statement**

84. The nature and effect of the Public Sector Equality Duty (PSED) is set out in Appendix G. In considering the recommendations herein the Cabinet must have due regard to the possible effects of them on any groups sharing a protected characteristic to discharge the PSED. This is an ongoing obligation.
85. The April 2020 Cabinet report set out the work that the Council had then done to consider the PSED and the impacts on those with protected characteristics. To assist the Council in meeting its duty, Council officers have undertaken an updated equalities impact assessment of the proposed CPO. As part of this, the Council appointed Tree Shepherd to independently gather information on the nature of the occupiers in 6 and 7 Farrell Court and their businesses. The full analysis by the Council's officers is set out in Appendix K. The key findings in respect of the exercise of the CPO powers now envisaged are in summary:
- There is a potential adverse effect on the Latin American and (in one case) Black African (protected characteristic of race) businesses who occupy 6 and 7 Farrell Court, which in a worst case scenario may include the closure and loss of those businesses. However, the Council and EC are seeking to acquire 4 and 5 Farrell Court to redevelop it into a relocation opportunity within the Scheme for Beset and their occupiers, and to relocate DistriAndina into the Scheme in a new unit on the East Site, thus mitigating the adverse impacts on those occupiers. Accordingly, it is considered unlikely that their businesses would close as a result of the exercise of CPO powers.



- In respect of Corsica Studios, and a worst case scenario of its business closing if the confirmed CPO does not include the acquisition of all necessary rights and interests in EC's northern arches for them to relocate to, it is not considered that any one group with protected characteristics would be disproportionately affected. However, the Council and EC's intention is to facilitate the redevelopment of the arches to the north of the railway station and to offer Corsica the opportunity to relocate to those new premises, avoiding any need for Corsica to close, even temporarily. If Corsica moved to those new premises it is likely that their clientele (and employees) would benefit from a unit with better internal access, which would benefit all users including those with disability.
  - There will potentially be some temporary, short term (up to 3 months) adverse impacts on the Tabernacle due to the need to scaffold part of their land whilst works to decouple and demolish the immediately adjacent LCC building take place. This is explained in detail in Appendix K and potentially could disproportionately affect groups sharing the protected characteristics of religion, age, race, pregnancy and maternity, and disability. Any adverse impacts are considered to be minor. For the avoidance of doubt, the Tabernacle will be able to remain open and the main entrance on the front façade will remain open, and the disabled entrance within the front side arch will be available at all hours when the Tabernacle is being used.
  - There will be benefits to all users of the East Site from the creation of surface level public access to create the Station Route, the Park Route and further public realm adjacent to the railway viaduct. This is likely to be particularly beneficial to the elderly, those with ambulant disability, pregnant women and families with young children. It will also ensure the permeability of the site for visitors to all parts of the East Site, including the replacement affordable retail floorspace and proposed replacement bingo facility, both of which are included in the East Site at least in part to address adverse equality impacts identified at the planning permission stage.
  - In addition, the approved phasing plan under the July 2021 Permission requires the East Site (other than the current LUL Underground station) to be completed prior to works beginning on West Site. So the CPO will unlock the ability to develop West Site, including the affordable retail floorspace, new dwellings (including affordable housing units, and 10% wheelchair accessible units) and job opportunities associated with that phase of the Scheme, all of which are considered to have positive equality impacts.
  - It is not considered that the daylight and sunlight impacts which could arise from the construction of tall buildings on the West Site would disproportionately affect any one group with protected characteristics.
86. The decision before Cabinet is whether to exercise the CPO powers now envisaged. Any PSED implications arising from the decision to close the Shopping Centre and its market area in 2020 (which was not a decision made by the Council) are not attributable to the decision now before members.

87. The recommendations in this report will facilitate the redevelopment of the East Site and the West Site. This will bring benefits to all, including groups sharing protected characteristics, as set out elsewhere in this report. Weighing up the relevant considerations and recognising the potential adverse impacts on those with protected characteristics as set out above, which the Council has sought and will continue to seek to mitigate, for the reasons summarised in this report there is a compelling case for the CPO and the benefits that will result to the community at large.
88. In terms of socio-economic impacts, as explained earlier in this report, 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
  - (c) the promotion or improvement of the environmental well-being of their area.
89. For the reasons set out in detail in paragraphs 3-19 of Appendix J, it is considered that the redevelopment is likely to contribute to the achievement of all three of the well-being objects.

### **Health impact statement**

90. If the recommendations of this report are adopted and a CPO is made and subsequently confirmed and implemented, this will facilitate development of the Elephant and Castle Town Centre. Whilst the making of a CPO has no direct health impacts it is considered that the development, with improved public realm, better housing, new facilities and access as described elsewhere in this report will have beneficial effects on the locality and the local population. The route through the railway arches will encourage greater pedestrian access.

### **Climate change implications**

91. If the recommendations of this report are adopted and a CPO is made and subsequently confirmed and implemented, this will facilitate development of the Elephant and Castle Town Centre. Whilst the making of a CPO has no direct climate change implications the development which is facilitated by it will have climate change impacts.
92. One of the key purposes of the CPO is to secure the delivery of a new pedestrian link between the East site, Elephant Road and Elephant Park. This route will connect the town centre with adjoining communities providing a safe, convenient and sustainable option for residents to walk to retail and leisure facilities. The connection will also provide a convenient route to the new integrated underground station, Network Rail over ground station and to bus services helping to encourage the use of public transport and reducing the reliance on the car. This approach is consistent with the council's objectives in the adopted movement plan. The proposals for the rail arches will require planning permission

and the applicant will need to demonstrate how the scheme complies with the council's carbon reduction policies.

### **Resource Implications**

93. The making of a CPO and, if there are objections, the resulting public inquiry, will require significant staff resources. This will come from various disciplines including Regeneration, Planning, Legal and Communications, as well as external advisors including Counsel. The making of the CPO is conditional on EC meeting these costs in full, so there will be no negative cost implications, but the process will result in staff resources being diverted from normal duties as necessary. This will create some challenges that will be managed.

### **Legal Implications**

*Whether the use of the Council's CPO powers is justified*

94. This question involves testing the proposed use of the powers against the legal and policy guidance framework set out in Appendix G of this report. A detailed analysis has been undertaken in Appendix J and in respect of human rights and the PSED in the preceding sections of this report. It is concluded all of the relevant legal and policy tests are met.
95. Cabinet will note that careful consideration has been given (at paragraph 12 of Appendix J) to the possibility of using Arches 113A/120 and 113B/121, to the north of the railway station, as an alternative route for the Park Route. However, for the detailed reasons given in that paragraph, this would be a much inferior route to that which has been approved under the planning permission (through 6 and 7 Farrell Court).

### **Financial implications**

96. The Council's costs of the CPO process and all compensation payable to affected parties will be underwritten in full by EC, with Get Living Plc providing a guarantee. Accordingly, there should be no adverse financial implications for the Council.

### **Consultation**

97. The parties directly affected by the making of a CPO have all been contacted and made aware of the Council's proposals. This follows engagement between them and the developer (and the Council) in relation to the arrangements for their relocation, details of which are given in Appendix F.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Governance**

98. The acquisition of land through the use of compulsory purchase powers is a matter reserved to Cabinet by virtue of part 3C of the Council's constitution.

99. The purpose of this report is to seek authorisation for the making and (subject to confirmation by the Secretary of State) the implementation of a CPO under section 226(1)(a) of the 1990 Act. In addition, the Director of Regeneration is to be authorised to enter into CPO indemnity agreement, the purpose of which is to ensure that all of the Council's costs in using its CPO powers are underwritten by the developer.
100. A detailed summary of the legal powers available to the Council in connection with the use of its CPO powers and the curbs on the use of those powers is set out in Appendix G to this report. These include the tests to be met under sections 226(1)(a) and 226(1A) of the 1990 Act (among other legal requirements). The tests under those sections are also set out earlier in this report (paragraph 66).
101. Paragraphs 20 and 23 of this report set out a summary of the benefits of the Scheme and paragraph 25 summarises the specific benefits that the CPO would directly deliver.
102. Appendix I provides detail on the adverse effects which can be attributed to the CPO, and the preceding sections of this report detail the human rights and equalities implications of the use of CPO powers. Due regard must be had to the equality implications of the CPO, particularly on groups sharing a protected characteristic as defined in the Equality Act, including eliminating discrimination, harassment and victimisation, and advancing equality of opportunity and fostering good relations between persons who share a relevant protected characteristic and persons who do not share it. In terms of human rights, there needs to be a fair and proportionate balance struck between the adverse effects of the CPO and the public interest benefits which the CPO will directly deliver.
103. Appendix J provides a detailed analysis of the justification of the use of the Council's powers.
104. The Council has received advice from specialist legal counsel in the use of its CPO powers, including the impact on human rights and equalities. Further specialist legal advice will be sought as the matter progresses.

### **Strategic Director of Finance and Governance**

105. The Strategic Director of Finance and Governance notes that the CPO is subject to the prior completion of the indemnity agreement with EC which will underwrite in full the Council's costs and liabilities associated with the proposed CPO. Staffing and any other costs connected with this report to be contained within existing departmental revenue budgets.

### **CONCLUSIONS**

106. The town centre redevelopment comprised in the Scheme is a crucial component in meeting the Council's long held policy aims for the Elephant & Castle Opportunity Area.
107. The Council has been patient in allowing time for private negotiations to resolve land ownership issues but there is a significant risk these will not be successful.

108. The compulsory acquisition of land and new rights pursuant to a CPO will interfere with the human rights of those parties who hold the land interests. These rights have been carefully considered, as have the significant public benefits which are likely to arise from the exercise of the CPO powers and the fact that compensation is payable to anyone whose interests are acquired or whose rights are infringed.
109. Having regard to government guidance on the use of CPO powers, including the fit of the Scheme with the planning policy framework, the efforts made to acquire by agreement, the purpose for which the CPO is being made and whether that justifies the interference with human rights, the lack of likely impediments to the delivery of the Scheme if the CPO is made, resources and funding, and consideration of any alternative means of achieving the Council's objectives, the CPO proposals are no more than necessary to accomplish the objectives of the CPO and there is a compelling case in the public interest for making a CPO to facilitate the Scheme. Such a case is consistent with the statutory tests set out in the 1990 Act, the PSED and the Human Rights Act.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Reports to Cabinet April 2020	160 Tooley Street London SE1 2QH	Jon Abbott 020 7525 4902
<a href="#">Cabinet report template 2012 (southwark.gov.uk)</a> <a href="#">Report EC CPO.pdf (southwark.gov.uk)</a> <a href="#">Report EC Property Rights.pdf (southwark.gov.uk)</a>		
Elephant and Castle Supplementary Planning Document and Opportunity Area Planning Framework	160 Tooley Street London SE1 2QH	Jon Abbott 020 7525 4902
<a href="https://www.southwark.gov.uk/assets/attach/1817/1.0.5-elephant-castle-spd-oapf.pdf">https://www.southwark.gov.uk/assets/attach/1817/1.0.5-elephant-castle-spd-oapf.pdf</a>		
Southwark Plan 2022	160 Tooley Street London SE1 2QH	Jon Abbott 020 7525 4902
<a href="https://www.southwark.gov.uk/assets/attach/94325/Southwark-Plan-2022.pdf">https://www.southwark.gov.uk/assets/attach/94325/Southwark-Plan-2022.pdf</a>		
The London Plan 2021	160 Tooley Street London SE1 2QH	Jon Abbott 020 7525 4902
<a href="https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf">https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf</a>		
Listed building consent report 16/AP/4525	160 Tooley Street London SE1 2QH	Dipesh Patel 020 7525 1778
<a href="http://moderngov.southwark.gov.uk/documents/s76029/ITEM%20%20-%20REPORT%2016AP4525.pdf">http://moderngov.southwark.gov.uk/documents/s76029/ITEM%20%20-%20REPORT%2016AP4525.pdf</a>		
Planning Committee report Application 16/AP/4458	160 Tooley Street London SE1 2QH	Dipesh Patel 020 7525 1778
<a href="#">Report - Shopping Centre site Elephant and Castle 26 28 30 and 32 New Kent Road Arches 6 7 Ele.pdf (southwark.gov.uk)</a>		

Background Papers	Held At	Contact
Officer report, section 73 application 20/AP/3675	160 Tooley Street London SE1 2QH	Dipesh Patel 020 7525 1778
<a href="https://planning.southwark.gov.uk/online-applications/files/BADE128DB62EE9E05BD128DEC7D3EF02/pdf/20_AP_3675--1109296.pdf">https://planning.southwark.gov.uk/online-applications/files/BADE128DB62EE9E05BD128DEC7D3EF02/pdf/20_AP_3675--1109296.pdf</a>		
Officer report, section 73 application 21/AP/1104	160 Tooley Street London SE1 2QH	Dipesh Patel 020 7525 1778
<a href="#">Report - E and C Shopping centre.pdf (southwark.gov.uk)</a>		
Guidance on Compulsory Purchase Process and The Crichel Down Rules	160 Tooley Street London SE1 2QH	Jon Abbott 020 7525 4902
<a href="#">Compulsory purchase process and the Crichel Down Rules (publishing.service.gov.uk)</a>		

## APPENDICES

No.	Title
Appendix A	Draft CPO Map (sheets 1 of 2 and 2 of 2)
Appendix B	Plan of Scheme Land
Appendix C	Planning policy framework
Appendix D	Progress of the Scheme since April 2020
Appendix E	Indicative arch units location plan
Appendix F	Updated summary of status of negotiations
Appendix G	Legal and policy guidance framework
Appendix H	CPO process and compensation
Appendix I	Potential adverse effects of the CPO
Appendix J	Analysis of whether the use of CPO powers is justified
Appendix K	Equalities impact assessment in respect of the CPO
Appendix L	Further version of draft CPO map in black and white

**AUDIT TRAIL**

<b>Cabinet Member</b>	Councillor James McAsh, Cabinet member for the Climate Emergency and Sustainable Development	
<b>Lead Officer</b>	Steve Platts, Director of Planning and Growth	
<b>Report Author</b>	Jon Abbott, Head of Regeneration North	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Governance	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>	24 November 2022	