

Item No. 14.	Classification: Open	Date: 17 October 2023	Meeting Name: Cabinet
Report title:		Elephant and Castle Town Centre – Compulsory Purchase Order	
Ward(s) or groups affected:		North Walworth, St George's	
Cabinet Member:		Councillor Helen Dennis, New Homes and Sustainable Development	

FOREWORD - COUNCILLOR HELEN DENNIS, CABINET MEMBER FOR NEW HOMES AND SUSTAINABLE DEVELOPMENT

In December 2022 Cabinet unanimously agreed to make and pursue a compulsory purchase order (CPO) for the Elephant and Castle Town Centre development scheme. The CPO was made in February 2023.

Further discussions with affected parties have resulted in improved proposals for local businesses impacted by the CPO. These revised proposals would enable the local nightclub to have a long term future in its current premises (rather than having to relocate to different premises on Elephant Road), an outcome which would be in general accordance with the Council's July 2018 planning committee report and would be one which the Council would very much welcome. Also, under the revised proposals, a number of small, local, mainly Latin-American businesses will be able to relocate into a like-for-like premises on Elephant Road with improved frontage which is more suited to their needs. That these revised proposals have been achieved in response to points raised by the affected businesses is a testament to the positive collaborative approach between the Council, the developer and the affected parties, with detailed and innovative input from specialist acoustic consultants.

Considerable benefits will arise from the town centre development, including new homes, jobs and workspace. The main change under these revised proposals is that the adverse impacts on the affected businesses will be less than those previously set out and approved by Cabinet in 2022. Accordingly, I look forward to Cabinet endorsing both the making of a fresh CPO to reflect the new proposals and the withdrawal of the current CPO.

The development is progressing on site and the Council is committed to supporting all those concerned to achieve the best outcome and completion of the scheme.

RECOMMENDATIONS

That the Cabinet agrees:

1. To authorise the withdrawal of the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023 dated 2 February 2023.
2. The Director of Planning and Growth be authorised on behalf of the Council to notify the Secretary of State and affected parties of the withdrawal referred to in recommendation 1 and to take any steps necessary to deal with all ancillary or incidental issues arising from such withdrawal.
3. That subject to the prior completion of a deed of variation to the existing CPO indemnity agreement between the Council, Elephant & Castle Properties Co. Limited ("EC") and Get Living plc dated 1 February 2023, the Council makes and (subject to any necessary confirmation by the Secretary of State) implements a new CPO ("the new 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 plan¹ 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 incorporating sound mitigation lobby, 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.
4. The Director of Planning and Growth be authorised on behalf of the Council to finalise the terms of and enter into the deed of variation to the CPO indemnity agreement dated 1 February 2023, and
5. Subject to completion of the deed of variation to the CPO indemnity agreement referred to in recommendation 4, 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 new 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

¹ 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 C**.

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 new CPO;

- (c) approve agreements with land owners setting out the terms for the withdrawal of objections to the new CPO, including where appropriate seeking the exclusion of land or new rights from the new CPO or giving undertakings as to the enforcement of the terms of the new CPO;
- (d) make any deletions or amendments to the draft CPO map at Appendix A and/or the related draft ownership schedules of the new CPO (including any minor additions) should the need arise, so as to include all interests in 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 new 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 (as varied);
- (f) take all necessary actions in relation to any legal proceedings relating to the new 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 new CPO, and to take all necessary steps in respect of other legal proceedings that relate to the making, confirmation or implementation of the new 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 new 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

1. Cabinet is well aware of the redevelopment, having previously received two reports concerning compulsory purchase powers to support the implementation of the E&C town centre scheme. On both occasions Cabinet unanimously supported the use of those powers. The first of these was approved in April 2020 and encompassed all of the land required to deliver the 2019 planning consent

on both the East and West Sites. The developer subsequently made significant progress acquiring land and interests within this area through negotiation and therefore it was not necessary to implement this CPO.

2. The second report in December 2022 was for a much smaller and more targeted CPO. The scope of the CPO was significantly reduced when compared with the original 2020 report. In broad summary the 2022 CPO resolution sought to achieve the following objectives;
 - (a) The delivery of the pedestrian route (referred to as the Park Route) identified in the 2019 planning consent and the Southwark Plan. The route beneath the rail viaduct is intended to connect the town centre site to Elephant Road and Elephant Park. Two rail arches (6/7 Farrell Court, Elephant Road) owned by Arch Co are required to achieve this outcome. The arches are currently occupied by two local businesses, Beset (7 Farrell Court) and DistriAndina (6 Farrell Court). Beset have shared occupation of 7 Farrell Court with various other small businesses.
 - (b) The relocation of Corsica Studios from their current premises at 4/5 Farrell Court Elephant Road to a new venue in Arches 113A/120 and 113B/121 Elephant Road. Corsica Studios is identified as a grass roots music venue in the Mayor for London's Culture and Night Time Economy SPD. The town centre scheme includes the construction of new residential properties within 10m of the western elevation of the venue. A condition of the planning permission requires the developer to provide details as to how the scheme will ensure that the amenity of residents occupying these units is protected from noise emanating from the premises. Planning policy requires the developer to take appropriate mitigation measures in line with the agent of change principle to ensure that the venue can continue to operate in the new context created by the town centre redevelopment. The evidence available at the time of the December 2022 report suggested that relocation of the venue further up Elephant Road was the only practical way to achieve this outcome and meet planning policy requirements. The December 2022 report included that arches 113A/120 and 113B/121 would be used for retail/café uses if not for relocating Corsica Studios.
 - (c) Securing Corsica Studios existing premises at 4/5 Farrell Court so that it could be used to facilitate the relocation of Beset and its occupiers who are required to relocate from their current premises to provide the Park Route. It was envisaged at the time of the report that DistriAndina would move to an affordable retail unit within the town centre scheme.
 - (d) To secure other relatively minor land interests along the edge of the viaduct to facilitate the delivery of public realm necessary to complete the East Site. On the West Site there is a need to acquire two sub-stations to ensure the second phase of the development can be implemented.
 - (e) In addition some limited rights were sought to ensure the scheme could be implemented e.g. from Network Rail to implement works to the

underside of the Arches and on the West Site for access to the Metropolitan Tabernacle to remove the immediately adjacent London College of Communication building and for crane oversailing rights from the Tabernacle.

3. Following the Cabinet decision to approve the December 2022 report, the CPO indemnity agreement (whereby EC, backed by the guarantee of Get Living, underwrites the cost of the CPO process) was completed on 1 February 2023 and the CPO was made on 2 February. The relevant statutory procedures were followed as to notification to affected parties and 11 objections were received. Following the making of the CPO further discussions were held with Corsica Studios. While Corsica recognised that relocation a short distance up Elephant Road was one option, having considered it in detail it was not their preferred outcome and they requested that the Council reassess whether there was a solution by which they could continue to operate from their current premises at 4 and 5 Farrell Court. This was the outcome which had been envisaged at the time of the 2018 planning committee report.
4. To facilitate the review, new acoustic surveys were undertaken during the summer period. These were overseen by a specialist acoustic engineer appointed to advise the Council. Corsica also participated in this exercise and had their own independent acoustic advisor.
5. This work has had a positive outcome. A technical solution has now been devised in the form of the construction of a sound mitigation lobby on the western façade of 4 and 5 Farrell Court. This intervention is considered sufficient to mitigate noise from the premises.
6. Corsica will have the option to continue to operate from their current premises through the grant of a new lease. In the event that they opt not to do this, the design of the premises with the sound mitigation lobby will be such that the premises can continue to be used as a nightclub by an alternative operator.
7. The developer does not currently have the necessary land interests and rights to construct the sound mitigation lobby, nor to grant Corsica a new lease. To enable it to do so, it needs to acquire Arch Co's long leasehold interest and a right from Network Rail to affix the lobby to the viaduct structure (as well as carrying out associated works).
8. The solution summarised above is materially different from that set out in the December 2022 report. Moreover, the February 2023 CPO does not contain the new right to affix the sound mitigation lobby to the viaduct. A new CPO resolution is therefore sought from Cabinet as detailed in this report. In summary, the following changes to the approach set out in the December 2022 report are proposed: (**Appendix D** contains an updated indicative location plan of the Elephant Road arch units which Cabinet may find helpful in this respect)
 - (a) CPO powers will no longer be required for the relocation of Corsica to new premises in Arches 113A/120 and 113B/121 Elephant Road.

- (b) In order to ensure that Corsica can have the option to operate from their current premises at 4/5 Farrell Court Elephant Road with the benefit of a single new lease over 4/5 Farrell Court and the sound mitigation lobby (once built), it is necessary to acquire Arch Co's long leasehold interest in that land and the new right from Network Rail referred to above. Without these, the construction of the sound mitigation lobby, which is intended to mitigate noise from the premises, and associated works, will not be possible.
- (c) It is proposed that Arches 113A/120 and 113B/121 Elephant Road remain in the new CPO. Given the change of position with a solution now having been devised to allow Corsica to remain in situ, the need for the acquisition of these arches is no longer to provide replacement premises for Corsica but rather to provide replacement premises for Beset and its occupiers (in arch 113B/121) and (potentially, if they wish) DistriAndina (in arch 113A/120), both of whom are still required to relocate to deliver the Park Route. Therefore it will ensure that these Black Asian Minority Ethnic (BAME) businesses have options for continuity of trade in the immediate area of their current premises. DistriAndina as a retail business continues to have an option to take an affordable business unit in one of the new blocks on the East Site should they wish to do so. The Council is seeking to give effect to whichever is DistriAndina's preferred relocation option. To the extent that Beset and DistriAndina do not take up the offers in respect of arches 113A/120 and 113B/121, those premises will otherwise be used for retail/café purposes. At the moment the long leasehold interest held by the developer in arches 113A/120 and 113B/121 is not sufficient to allow any beneficial occupation and the Council does not want to see these units left vacant.
9. Positive progress is being made through negotiation to secure the other minor interests and rights summarised in paragraph 2 above. Despite this progress, CPO powers are still required to address these issues, which will ensure the full delivery of the Scheme benefits detailed elsewhere in the report.
10. In conclusion, the proposed changes compared to the CPO agreed by Cabinet in December 2022 are overwhelmingly positive ones which will help facilitate the delivery of the Council's objectives for the Scheme with even further reduced impacts.
11. Paragraphs 4-13 of the December 2022 report (as corrected in respect of the phasing plan point by the December 2022 addendum report)² set out the general position at that time, the need for CPO powers and in broad terms the outstanding land interests and new rights required for the Scheme to continue and be completed. Further detail on the outstanding land interests and why they were required was set out in paragraphs 27-51 of the December 2022 report. Although some progress has been made in private treaty negotiations, the same

² References hereafter in this report to the December 2022 Cabinet report are references to that report as corrected by the December 2022 addendum report. Members can find the relevant extracts from the December 2022 Cabinet papers at **Appendix K** to this report. A full set of the December 2022 Cabinet papers can also be accessed via the background papers link at the end of this report.

outstanding land interests and new rights are still at issue now (although as explained above, the proposals for 4-5 Farrell Court and 113A/120 and 113B/121 have altered), except that it is also necessary now to acquire an additional new right to affix the sound mitigation lobby and associated works to the western elevation of the railway viaduct, to the rear of 4-5 Farrell Court. Such an additional new right would need to be exercised against Network Rail who own the viaduct structure. Given the change in nature for what is proposed for arches 113A/120 and 113B/121, a further additional new right to affix two kiosk units to the railway viaduct which enclose those arches is also sought. As with the other new rights sought in respect of the railway viaduct, these proposed additional new rights in the new CPO would be subject to the caveat that the rights would not be exercised so as to interfere with the railway. Otherwise the requisite land and new rights are as they were when Cabinet last considered them. No additional areas of land are required as compared to the February 2023 CPO.

12. The justification for acquiring the Arch Co title to the land to the immediate rear of 4 and 5 Farrell Court was previously so that it could form part of the proposed public realm. That is still correct in part but, as the proposed sound mitigation lobby will be located there, it is necessary to acquire the rear area for the construction of that lobby too. Without being in control of that area EC and the Council cannot bring about the construction of the lobby. The Arch Co title to 4 and 5 Farrell Court and the fire escape accessway which bisects those two units is required because EC intends to undertake internal reconfiguration works in addition to the lobby works, which will require adjustments to the fire escape and other alterations and, once the works are complete, EC needs to offer Corsica a new lease of the unified area. The cost of these works is considerable and EC, understandably, wishes to have the comfort that it can control the whole of the unit plus the rear area, so as to deliver the lobby and other works and to grant a lease of the unified whole, before embarking on those works.
13. The uncertainty about the solution for Corsica gave rise to uncertainty about whether 4 and 5 Farrell Court would be available as relocation premises for displaced occupiers of 7 Farrell Court. In addition, in the continuing negotiations for the acquisition of its interest and its relocation on Elephant Road, after the CPO had been made, the tenant of 7 Farrell Court (Beset) expressed a preference to have one relocation unit with a mezzanine floor (as it currently has), of comparable size to 7 Farrell Court, rather than two adjoining units which together are of comparable size (such as 4 and 5 Farrell Court). Neither 4 nor 5 Farrell Court have the height to incorporate a mezzanine floor on the scale which is currently in 7 Farrell Court, whereas arch 113B/121 does have such height.
14. Objections to the February 2023 CPO were made by some of the affected parties. Given the uncertainty that occurred as regards the Corsica situation, the Council held off from submitting the February 2023 CPO to the Secretary of State for confirmation. When the Corsica position had become clearer, the Council wrote to affected parties in July 2023 notifying them that the February 2023 CPO had not been submitted to the Secretary of State, that there was a likelihood that a different solution for Corsica would be found, and that the Council was proposing that the occupiers of 7 Farrell Court would be relocated to one of arches 113A/120 or 113B/121. EC have therefore offered arch 113B/121 to

Beset, which as explained above, would be a suitable replacement premises in which to re-create their current trading arrangements.

15. The February 2023 CPO does not include a right to attach the sound mitigation lobby to the railway viaduct, which will be necessary to implement the new technical solution.

KEY ISSUES FOR CONSIDERATION

16. As stated in December 2022, exercising compulsory purchase powers is a step of last resort that should only be used appropriately. Cabinet was unanimous in its support for the Scheme in December 2022 and there are compelling reasons for the Council to continue its support through the new CPO. This report sets out why the use of CPO powers through the new CPO continues to be necessary and justified and should be pursued. Unless the Cabinet authorises the new 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. Title and new rights are also required in respect of 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 and that the position of Corsica Studios will be secured.

The Scheme and its benefits

17. Paragraphs 18-21 of the December 2022 Cabinet report (contained within Appendix K to this report) described the Scheme, and paragraphs 23 – 25 of the December 2022 Cabinet report (also within Appendix K of this report) described the many benefits of the Scheme and the specific benefits that would be derived from what became the February 2023 CPO. That description of the Scheme is still applicable now, in respect of the new CPO, except with the introduction of the sound mitigation lobby, and the benefits of the Scheme are as set out in **Appendix J** and now include securing the long term future of Corsica Studios within 4 and 5 Farrell Court (rather than relocating them in arches 113A/120 and 113B/121) and providing a relocation opportunity for the displaced occupiers of 7 Farrell Court within arch 113B/121 (rather than in 4-5 Farrell Court). Both of these outcomes have been shaped by discussions with the affected tenants as to what they want and it is considered that, as they will result in only one move on Elephant Road (rather than two as previously proposed), they are better outcomes than the Cabinet had previously approved, and should be supported. For the avoidance of doubt, the 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;
- Allowing for the longer term future of Corsica Studios at 4 and 5 Farrell Court, at their option, with the benefit of the sound mitigation lobby; and, if they choose not to take up that option, nevertheless facilitating the use of the units as a nightclub with the benefit of the sound mitigation lobby. The new lease would be of benefit to Corsica as it would regularise their use of the fire escape which bisects 4 and 5 Farrell Court and the area to the rear and would be a longer-term lease and therefore offers a more secure future.
- Providing a relocation opportunity for the displaced occupiers of 7 Farrell Court within arch 113B/121 on Elephant Road.
- The ability to physically construct the West Site through the acquisition of title to the small unregistered areas and the electricity sub-stations thereon and the new rights to facilitate the redevelopment of the West Site, with all the benefits that 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.

Planning Policy

18. Paragraph 22 of the December 2022 Cabinet report (contained within Appendix K to this report) pointed out that there was strong planning policy support not just for the Scheme as whole but also for (among other things) the creation of the Park Route, pedestrian connectivity, public realm improvements and protecting the night-time economy. Officers have considered whether there have been any relevant planning policy changes since that time and also whether the same positive conclusions can be drawn in respect of the revised proposals. An updated planning policy summary is included at **Appendix E**. It is not considered that there are any planning policy changes which undermine the Scheme and the Scheme continues to enjoy strong policy support and the revised proposals for the relocation of the Elephant Road occupants are considered to be better than Cabinet approved in December. Planning permission will need to be secured for the sound mitigation lobby, the refurbishment and change in use of arches 113A/120 and 113B/121 and the installation of the additional kiosks to the viaduct where it encloses arches 113A/120 and 113B/121, but it is considered likely that planning permission will be granted in respect of the same, because they will lead to improvements in land use terms.

Progress on site

19. Construction on the East Site continues. Officers are of the view that this makes it all the more imperative that the Council supports the Scheme through CPO powers to enable the Scheme to continue and be completed.

Efforts to acquire interests by agreement

20. Paragraphs 56-64 of the December 2022 Cabinet report and Appendix F thereto (contained within Appendix K to this report) set out in some detail the efforts that had been made at that time to acquire the necessary land and rights by

agreement. Officers consider that the making of the February 2023 CPO has had the beneficial effect of convincing some of the affected parties about the seriousness of the Council's intentions. An update on the current status of the negotiations is set out at **Appendix F**. Cabinet will see that some progress has been made with the various parties but no agreed terms have been reached. Officers and EC are very much of the view that the new CPO will be needed to underpin continuing efforts to acquire the necessary interests by agreement wherever possible. Without the Council making the new 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, and the impetus for private negotiations will be removed.

Relocation

21. The relocation provisions now proposed are for Beset and the other occupiers of 7 Farrell Court to move within the Scheme to arch 113B/121 on Elephant Road; and DistriAndina (for their retail/café operation) to move into a new unit within one of the new buildings on the East Site or to take arch 113A/120 (whichever is their preference). To the extent that Beset and DistriAndina do not take up the offers in respect of arches 113A/120 and 113B/121, those premises will otherwise be used for retail/café purposes.
22. Currently Corsica have a periodic tenancy of short duration and EC has offered to grant them a 15 year lease of the revised 4 and 5 Farrell Court once it has acquired the necessary land interests. As and when EC acquires the necessary land interests EC proposes to bring to an end Corsica's existing tenancy, and grant them a new lease with clear title of a slightly bigger area, incorporating the sound mitigation lobby to the rear and the fire escape which bisects 4 and 5 Farrell Court. At Corsica's request it is proposed that they would be given (at the outset) an option for a new lease which Corsica could choose to activate once EC had acquired the necessary interests and obtained the requisite planning permission for the sound mitigation lobby works. If Corsica do not wish to take up the proposed option, it is intended that EC would then offer the space to other nightclub operators. This 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 nightclub use. The physical alterations that have been discussed with Corsica would necessitate 4 and 5 Farrell Court closing temporarily (potentially for around 9 months) whilst EC carries out the necessary works to these units, but this is understood by Corsica and would facilitate their chosen solution.
23. Detailed discussions are still taking place with Corsica and agreed heads of terms have not been signed. However, it is felt that the offer that has been made to Corsica, with the option for a much longer new lease than they currently have, is reasonable and deserves support.
24. The envisaged sequencing is that the public realm areas on the other areas of the East Site would be complete by around February 2026; it would then take approximately 6 months to construct and fit out the replacement units for Beset (and their occupiers) in arch 113B/121 and potentially DistriAndina in arch 113A/120 (August 2026); the works to alter 4 and 5 Farrell Court as summarised above are envisaged to complete by the end of 2026; and the Park Route would

be ready by February 2027. It can be seen that this sequencing, which will ensure continuity of trading for Beset (and their occupiers) and DistriAndina, would result in the Park Route opening after the rest of the East Site. However, officers are of the view that the likely interval would be acceptable given the more favourable outcomes for affected occupiers enabled by the new CPO. EC has confirmed that it will be responsible for the fit out of arch 113B/121 and (if DistriAndina take up the offer in respect of it) arch 113A/120.

25. Officers are of the view that the revised arrangements are reasonable and beneficial, are an improvement over that approved by the Cabinet in December 2022, and should very much be supported.

Objections to the February 2023 CPO

26. A summary of the objections received to the February 2023 CPO is set out at **Appendix G**. It seems likely that similar objections will be made by the same persons to the new CPO. Those objections should therefore be borne in mind in taking the decisions to which this report relates. This report does not seek to rebut the points made by the objectors - the Council will do that in due course in the context of the new CPO by way of its Statement of Case and its evidence before the anticipated public inquiry. Officers have considered the objections and are satisfied that, for the reasons set out in this report, there is a compelling case in the public interest for making and pursuing the implementation of the new CPO, notwithstanding the objections that have been raised against the February 2023 CPO.
27. Cabinet will note that some of the occupiers of 7 Farrell Court objected to the February CPO in very similar terms. Officers and EC are of the view that the revised relocation proposal to relocate Beset and their occupiers to arch 113B/121 is a suitable relocation opportunity, objectively judged, and one which better suits Beset's preferred arrangements (and which would more accurately reflect the current trading arrangements) than the previously identified solution of their relocation to 4-5 Farrell Court.
28. Council officers and EC's representatives met with the occupiers of 7 Farrell Court in September to explain further the revised proposal for them to relocate and to seek to understand what concerns they may have as regards that relocation. These meetings were positive and further discussions will take place in an effort to address any residual concerns they may have.
29. Corsica Studios have not submitted an objection to the February 2023 CPO. Instead they sought and were granted several extensions of time by the Secretary of State in which to object if they wish. The Council supported these applications for an extension of time on the basis that the additional time was used to devise a workable solution in respect of 4 and 5 Farrell Court. This has now happened and also has what officers consider to be a benefit of being able to offer arch 113B/121 to Beset and their occupiers, which would allow for a closer recreation of the trading arrangements in 7 Farrell Court.

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

30. Appendix G to the December 2022 report (contained within Appendix K to this report) sets out the relevant legal and policy framework in respect of considering the exercise of CPO powers. There has been no change in this respect.
31. Among the key legal and policy tests, 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.
32. Among the Government's 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 new CPO

33. The new 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. As with the February 2023 CPO, title is being sought in respect of the arch units, with new rights being sought against the viaduct structure. There are no changes to the extent of land areas which would be affected by the new CPO as compared to the February 2023 CPO. The only substantive change in terms of the acquisitions would be the acquisition of the additional new rights to affix the sound mitigation lobby and associated works to

the railway viaduct, and to affix additional kiosks to the viaduct where it encloses arches 113A/120 and 113B/121.

34. The rationale for including these areas was explained in the "Significant progress – but land assembly is not complete" section of the December 2022 report, save that the proposals for 4-5 Farrell Court and arches 113A/120 and 113B/121 have altered, as explained above.
35. It may nevertheless be necessary as part of the finalisation of the new CPO to make amendments to the draft new CPO map and the recommendations allow for this.

The CPO Process

36. Appendix H to the December 2022 report (contained within Appendix K to this report) 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.
37. As with the February 2023 CPO, all costs associated with the new CPO process and all compensation payable to third parties for the acquisition of their land (or for new rights) under the new CPO will be underwritten by EC (and guaranteed by Get Living) through the CPO indemnity agreement as varied.

Revisions to the CPO indemnity agreement

38. Cabinet is referred to paragraphs 74-76 of the December 2022 report (contained within Appendix K to this report). The CPO indemnity agreement was entered into on 1 February 2023. Some minor revisions will be required to that agreement to reflect the revised proposals for relocation of the Elephant Road occupiers and the withdrawal of the February 2023 CPO. In addition, a further provision will be added to the agreement with the intention of requiring Beset, if they take up the proposed relocation premises, to offer comparable floorspace on comparable terms in those premises to their occupiers. In this way, the occupiers of 7 Farrell Court can have further comfort that they will be offered the opportunity to relocate with Beset. The completion of a deed of variation to the CPO indemnity agreement is a prerequisite of making the new CPO under the proposed Cabinet resolution.

Adverse effects of the new CPO

39. The new CPO will (or in some cases may) result in some adverse effects for those affected. These are very similar to, but overall less than, the adverse effects for the February 2023 CPO. **Appendix H** contains details of the adverse effects that can be ascribed to the new CPO.
40. Regard is to be had to the adverse effects at Appendix H and they should be weighed in considering whether to resolve to authorise the new CPO.

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

Community impact statement

Human Rights Implications

41. 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 new 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 new 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 H, justify the interference with Article 1 rights in this case.
42. 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 new 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.
43. 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 the new 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 new 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.

44. 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

45. Cabinet is referred to Appendix G of the December 2022 report, contained within Appendix K to this report, which sets out the nature and effect of the Public Sector Equality Duty (PSED). 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.
46. The PSED analysis was updated in January 2023 prior to the making of the February 2023 CPO and a copy of that analysis is at **Appendix L**. An updated PSED analysis for the new CPO has been undertaken by officers and Cabinet is referred to this at **Appendix I**. The conclusions reached are similar to those previously reached but Cabinet will note that, as a result of some of the objections made to the February 2023 CPO, it is also recommended that the key new CPO documents produced by the Council be translated into Spanish (in a reasonable and proportionate way) to aid the understanding of those affected occupiers whose first language is Spanish. 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 113A/120 and 113B/121 Elephant Road to redevelop them, with 113B/121 being used as 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 or into arch 113A/120 (whichever is their preference), 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 the new CPO powers or suffer significant uncompensated adverse effects.
 - To avoid potential disadvantage to those affected occupiers whose first language is Spanish, the Council will make available Spanish translations of its key CPO documents to those parties in a reasonable and proportionate way.
 - In respect of Corsica Studios, and a worst case scenario of its business permanently closing if the confirmed new CPO does not include the acquisition of all necessary rights and interests for EC to deliver the proposed solution of a long term home for them at 4 and 5 Farrell Court, it is not considered that any one group with protected characteristics would

be disproportionately affected. However, the Council and EC's intention is to acquire the long leasehold title to those units and to construct the sound mitigation lobby to the immediate rear of the units and offer the unified floorspace to Corsica on a new lease for a longer term basis than they currently have. If Corsica do not take up the offer of a new lease then the intention is that the units would be offered to another nightclub operator so that the use would be preserved in situ.

- 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 I 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 title and new rights being sought in respect of the West Site will enable the ability to develop the 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.
47. The decision before Cabinet is whether to exercise the CPO powers now envisaged.
48. 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 new CPO and the benefits that will result to the community at large.

49. In terms of environmental and 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.
50. For the reasons set out in detail in paragraphs 3-18 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

51. If the recommendations of this report are adopted and the new CPO is made and subsequently confirmed and implemented, this will facilitate development of the Elephant and Castle Town Centre. Whilst the making of the new 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

52. If the recommendations of this report are adopted and the new CPO is made and subsequently confirmed and implemented, this will facilitate development of the Elephant and Castle Town Centre. Whilst the making of the new CPO has no direct climate change implications the development which is facilitated by it will have climate change impacts.
53. One of the key purposes of the new 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

54. The making of the new 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. EC will meet these costs in full

under the CPO indemnity agreement, 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

55. This question involves testing the proposed use of the powers against the legal and policy guidance framework set out in Appendix G of the December 2022 report, contained within Appendix K to 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.

Financial implications

56. The Council's costs of the new 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

57. The parties directly affected by the making of the new CPO have 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

Assistant Chief Executive, Governance and Assurance

58. 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.
59. The purpose of this report is to seek authorisation for the withdrawal of the current CPO and the making and (subject to confirmation by the Secretary of State) implementation of the new CPO under section 226(1)(a) of the 1990 Act. In addition, variations to the existing CPO indemnity agreement would be authorised.
60. 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 the December 2022 report, contained within Appendix K 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.

61. Appendix J sets out a summary of the benefits of the Scheme and paragraph 17 of this report summarises the specific benefits that the new CPO would directly deliver.
62. Appendix H provides detail on the adverse effects which can be attributed to the new 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 new 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 new CPO and the public interest benefits which the new CPO will directly deliver.
63. Appendix J provides a detailed analysis of the justification of the use of the Council's powers.

Strategic Director of Finance

64. The Strategic Director of Finance notes that EC will underwrite in full the Council's costs and liabilities associated with the existing CPO and the proposed new CPO through the operation of the CPO indemnity agreement as varied. Staffing and any other costs connected with this report to be contained within existing departmental revenue budgets.

CONCLUSIONS

65. 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. This comprehensive redevelopment is supported in national, London and local planning policy. It would contribute very significantly to the improvement of the economic, social and environmental well-being of the area.
66. It is genuinely a matter of last resort that the Council and EC are pursuing compulsory acquisition.
67. The Council has been patient in allowing ample time for private negotiations to resolve land ownership issues but there is a significant risk these will not be successful. The new CPO is needed to enable the Scheme to continue and be completed. The new CPO is essential to the successful implementation and conclusion of the Scheme.
68. The compulsory acquisition of land and new rights pursuant to the new 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.

69. 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 new 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 new CPO is made, resources and funding, and consideration of any alternative means of achieving the Council's objectives, the new CPO proposals are no more than necessary to accomplish the objectives of the new CPO and there is a compelling case in the public interest for making the new 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
December 2022 Cabinet papers – report with appendices, addendum report	160 Tooley Street London SE1 2QH	Catherine Brownell 020 7525 3625
https://moderngov.southwark.gov.uk/mgAi.aspx?ID=65541#mgDocuments		
Reports to Cabinet April 2020	160 Tooley Street London SE1 2QH	Catherine Brownell 020 7525 3625
Cabinet report template 2012 (southwark.gov.uk) Report EC CPO.pdf (southwark.gov.uk) Report EC Property Rights.pdf (southwark.gov.uk) Agenda for Cabinet on Tuesday 7 April 2020, 4.30 pm - Southwark Council		
Elephant and Castle Supplementary Planning Document and Opportunity Area Planning Framework	160 Tooley Street London SE1 2QH	Catherine Brownell 020 7525 3625
Link (please copy and paste into browser): https://www.southwark.gov.uk/assets/attach/1817/1.0.5-elephant-castle-spd-oapf.pdf		
Southwark Plan 2022	160 Tooley Street London SE1 2QH	Catherine Brownell 020 7525 3625
Link (please copy and paste into browser): https://www.southwark.gov.uk/assets/attach/94325/Southwark-Plan-2022.pdf		
The London Plan 2021	160 Tooley Street London SE1 2QH	Catherine Brownell 020 7525 3625
Link (please copy and paste into browser): https://www.london.gov.uk/sites/default/files/the_london_plan_2021.pdf		
Listed building consent report 16/AP/4525	160 Tooley Street London SE1 2QH	Dipesh Patel 020 7525 1778
Link (please copy and paste into browser): http://moderngov.southwark.gov.uk/documents/s76029/ITEM%20%20-%20REPORT%2016AP4525.pdf		
Planning Committee report Application 16/AP/4458	160 Tooley Street London SE1 2QH	Dipesh Patel 020 7525 1778
Link (please copy and paste into browser): https://moderngov.southwark.gov.uk/documents/s73204/Report%20-%20Shopping%20Centre%20site%20Elephant%20and%20Castle%2026%2028%2030%20and%2032%20New%20Kent%20Road%20Arches%206%207%20Ele.pdf		
Officer report, section 73 application 20/AP/3675	160 Tooley Street London SE1 2QH	Dipesh Patel 020 7525 1778

Background Papers	Held At	Contact
Link (please copy and paste into browser): https://planning.southwark.gov.uk/online-applications/files/BADE128DB62EE9E05BD128DEC7D3EF02/pdf/20_AP_3675--1109296.pdf		
Officer report, section 73 application 21/AP/1104	160 Tooley Street London SE1 2QH	Dipesh Patel 020 7525 1778
Link (please copy and paste into browser): Report - E and C Shopping centre.pdf (southwark.gov.uk)		
Guidance on Compulsory Purchase Process and The Crichel Down Rules	160 Tooley Street London SE1 2QH	Catherine Brownell 020 7525 3625
Compulsory purchase process and the Crichel Down Rules (publishing.service.gov.uk) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071500/CPO_guidance_-_with_2019_update.pdf		

APPENDICES

No.	Title
Appendix A	Draft new CPO Map (sheets 1 of 2 and 2 of 2)
Appendix B	Plan of Scheme Land
Appendix C	Further version of draft new CPO map in black and white
Appendix D	Indicative arch units location plan
Appendix E	Updated planning policy summary
Appendix F	Updated summary of status of negotiations
Appendix G	Summary of objections to the February 2023 CPO
Appendix H	Potential adverse effects of the new CPO
Appendix I	Equalities impact assessment in respect of the new CPO
Appendix J	Analysis of whether the use of CPO powers is justified for the new CPO
Appendix K	Extracts from December 2022 Cabinet papers
Appendix L	January 2023 Equalities impact assessment in respect of the February 2023 CPO
Appendix M	February 2023 Statement of Reasons (in respect of the February 2023 CPO, not the new CPO – some elements of this Statement have been superseded)

AUDIT TRAIL

Cabinet Member	Councillor Helen Dennis, Cabinet member for New Homes and Sustainable Development	
Lead Officer	Steve Platts, Director of Planning and Growth	
Report Author	Catherine Brownell, Programme Manager, Sustainable Growth, North	
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Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Strategic Director of Finance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		5 October 2023