

Meeting Name:	Cabinet
Date:	22 July 2024
Report title:	Elephant and Castle Town Centre – Compulsory Purchase Order – Update
Cabinet Member:	Councillor Helen Dennis, New Homes and Sustainable Development
Ward(s) or groups affected:	North Walworth, St George's
Classification:	Open
Reason for lateness (if applicable):	N/a

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

The council is committed to seeing the Elephant and Castle town centre delivered, to provide a much-needed improvement to the locality, including the new transport infrastructure, new mixed-tenure homes, an enhanced retail and cultural offer, improved premises for further education, and high quality public realm that will better stitch the town centre into its wider urban context.

The report draws Cabinet's attention to an update to the council's case for the CPO for the acquisition of land and rights, necessary for the implementation and completion of the Town Centre Scheme. The update primarily relates to the West Site of the scheme, where amendments are necessary largely due to recent changes to building regulation legislation. These amendments will be addressed through the Planning process and are being made widely available through public consultation and engagement.

The update will assist in ensuring proper procedure in the lead up to the CPO public inquiry is followed, with early notification to Cabinet and to the public, of the amended elements of the scheme. The update is therefore another important step towards realising this ambitious development for the borough.

RECOMMENDATIONS

Recommendations for the Cabinet

That the Cabinet:

1. endorse the submission by the council of a Supplementary Statement of Case for the CPO which will reflect the proposed amendments to the West Site of the scheme as outlined in this report and agrees that the CPO should be promoted on this basis.

2. note that further planning permission may be sought (to the extent required) for the East Site Phase 2 element of the scheme as set out in this report, and that this will also be referred to in the Supplementary Statement of Case.
3. approve the Director of Planning and Growth be authorised on behalf of the council to take all necessary, ancillary or incidental steps to give effect to the recommendations in the report.

REASONS FOR RECOMMENDATIONS

4. The council should bring any changes to its case for the CPO to the attention of affected parties at the earliest opportunity. For the reasons set out in this report, there are some proposed amendments to the West Site element of the scheme, and there is the possibility that planning permission may be re-applied for in respect of a small part of the East Site works. It is therefore considered prudent for the council to submit a Supplementary Statement of Case to the CPO inquiry to include these aspects and for Cabinet to endorse that position. A draft of the Supplementary Statement of Case is annexed to this report at Appendix B.

ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

5. The council could have proceeded without Cabinet endorsement but officers felt that, given the clarity now provided by the Government's updated building regulations legislation (as explained below), and the proposal for the West Site amendments to include student accommodation, it was better for Cabinet to consider and endorse the council's position on the West Site for the avoidance of doubt. Similarly it was felt prudent for Cabinet to be informed of the possibility that planning permission may be re-applied for in respect of a small part of the East Site works.

POST DECISION IMPLEMENTATION

6. The council will send its Supplementary Statement of Case to the Planning Inspectorate and the objectors to the CPO as soon as practicable after this Cabinet meeting.

BACKGROUND INFORMATION

7. Cabinet is aware of the town centre redevelopment scheme ("the Scheme"), having unanimously approved the use of CPO powers on 17 October 2023, which followed two earlier unanimous resolutions to use those powers to support the Scheme (in April 2020 and December 2022). The Scheme comprises two main geographical phases, the East Site (which is already well underway) and the West Site.
8. In summary, and with reference to drawings appended to the October 2023 cabinet report (as to which please see the background documents), the council is seeking to progress a December 2023 CPO ("the CPO") for the acquisition of land, primarily on the East Site, and the creation and acquisition of new rights over land on both the East Site and the West Site. The full background to the Scheme, the benefits of the Scheme, the relevant planning policies, the council's

powers and the legal and policy guidance framework, and the adverse effects of the CPO on affected parties, were set out in the cabinet Report of 17 October 2023.

9. In accordance with the October 2023 resolutions, the CPO was made on 29 December 2023 and the February 2023 CPO was withdrawn.
10. Statutory notice of the making of the CPO was given, with the council allowing over five weeks to object (as opposed to the statutory minimum of three weeks). The council provided Spanish translations of the main CPO documents to Spanish speakers.
11. Ten objections to the CPO were made. In addition, one holding representation was made by Corsica Studios, who are in advanced stages of negotiation with the developer, Elephant and Castle Properties Co Limited ("EC"), to agree a private treaty deal. .
12. In all cases the council and EC are continuing to seek to resolve matters through private treaty agreements so as to remove the objections.
13. A public inquiry will take place in October 2024 to hear the remaining objections against the CPO. In June 2024 the council sent its Statement of Case to the Planning Inspectorate and the objectors to the CPO. All of the principal documents relating to the CPO, including the Statement of Reasons and the Statement of Case, can be found on the CPO website at <https://gateleyhamer-pi.com/en-gb/elephant-and-castle>.
14. As explained further below, it has become necessary to amend the design of the residential buildings on the West Site, including the provision of second staircases within those buildings, to meet the updated building regulations regime. It will not be possible to build the currently consented West Site residential buildings under the revised building regulations regime. EC also proposes to incorporate a student accommodation use on the West Site in addition to the residential units.
15. The proposed amended West Site element of the Scheme will require further planning permission. The prospect of further planning permission potentially being required to meet the then emerging changes in the building regulations regime was identified in the October 2023 Cabinet report. However, as this has now occurred, and means that part of the Scheme does not yet have an implementable planning permission, and as the student accommodation use was not previously considered by Cabinet, it is considered prudent to obtain Cabinet's endorsement of the submission of a Supplementary Statement of Case for the CPO which will reflect the proposed amendments to the West Site of the Scheme as outlined in this report.
16. As explained later in this report, a technical point may also arise which means that planning permission for a small part of the East Site works may also need to be reapplied for to ensure it can be built once the West Site amendments are implemented.

KEY ISSUES FOR CONSIDERATION

The need for amendments

17. The changes to the building regulation regime (as regards second escape stairs in tall residential buildings) were published on 29 March 2024 and, in consequence, amendments are now required to the West Site element of the Scheme.
18. The updated Government building regulation legislation on the provision of second escape stairs in tall residential buildings takes effect on 30 September 2026 for all new residential buildings of 18 metres or over in height. Under transitional arrangements, the present rules, which require only one staircase in tall buildings, will continue to apply where (i) a building notice or an initial notice has been given to, or a building control approval application with full plans made to, the relevant authority before 30 September 2026 and (ii) the building work to which it relates has either started and "sufficiently progressed" before that day or is started and sufficiently progressed within the period of 18 months beginning on that day i.e. before 30 March 2028.
19. Due to the phasing and sequencing interdependency between the East Site completion and the West Site commencement (the one providing decant facilities for the other), it is unlikely that the piling for the new buildings on the West Site will have begun by March 2028, so the new building regulation legislation will apply to the West Site. It will not be possible for those buildings to be built as currently consented. For the avoidance of doubt, this change in Government building regulation legislation does not affect the East Site element of the Scheme.
20. EC estimates that, if the currently consented residential buildings on the West Site simply maintained their external building envelopes unamended, the introduction of the second staircase would result in the residential tall buildings on the West Site losing some 72 habitable rooms i.e. 72 two bedroom units would become one bedroom units to physically accommodate the additional staircases. Clearly neither EC nor the council wish to see a loss of habitable residential rooms, which would decrease the public benefit arising from the Scheme.
21. In addition to the loss of habitable floor-space, the introduction of second staircases significantly increases the building costs in relation to the residential buildings, EC estimates by approximately £5 million for the West Site as a whole at present day cost.
22. Loss of habitable rooms and an increase in costs due to the second staircase would have an adverse effect on the viability of the West Site element of the Scheme.
23. So, EC has had to respond to the introduction of the second staircase, the loss of the habitable floor-space and the increased cost arising from the second staircases. EC has sought to do so by designing amendments to the Scheme as described below.

The amendments to the Scheme on the West Site

24. On 2 July 2024 EC publicly announced that it would be consulting on its proposed amendments to the West Site element of the Scheme. The public consultation began in the week commencing 15 July.. A copy of the proposals has also been sent to the council as local planning authority. In summary, these comprise two tall residential buildings with an increased footprint and a third tall building as student housing, in lieu of the three tall residential buildings with smaller footprints in the current planning permission. Other proposed amendments address further updates to building legislation, including the introduction of electric powered air source heat pumps, in lieu of gas boilers.
25. It is proposed that the redesigned two residential buildings accommodate the second staircase in a central core and 8 residential units on a floor per core (rather than 6 per core as under the existing permission). The same number of general-needs mixed-tenure residential units (382, private rented and Intermediate affordable) as originally provided in the three tall buildings would be provided in the two redesigned residential tall buildings. The mansion blocks would remain largely the same (including the 116 Social Rent units) but these too would be amended to accommodate the second staircase. It is proposed to retain the other range of uses all as previously consented, including the retail (including affordable retail) and the leisure use.
26. The new student housing tall building would provide approximately 450 student accommodation bedrooms (subject to final detail). The student accommodation bedrooms will be in addition to the general needs residential units - it is proposed that the total number of the general needs residential units on the West Site (498) and the affordable housing provision within them remain unchanged. The affordable provision in respect of the student accommodation will be developed through the planning process.
27. A new planning application for the West Site will be required. The council as local planning authority will consider the full details of that application once it is made and cannot (and will not) pre-determine the outcome of that application. In principle the amendments to the Scheme are in line with planning policy.
28. EC has confirmed to the council the intention to proceed with the submission of a planning application for these amendments, with the envisaged planning timetable as follows: December 2024 – application submission; September 2025 – Planning Committee consideration; December 2025 – grant of planning permission.
29. Although there are no proposed physical changes to the East Site design as compared to the currently permitted design, EC may also choose to submit a separate planning application for the small element of the East Site which comprises the works to demolish the current Northern Line ticket hall and then incorporate that area into the remainder of Plot E2 (known as the East Site Phase 2 works). These works are already consented under the existing planning permission but there is a technical legal reason for potentially seeking a new permission in this limited respect. Whilst the East Site of the Scheme is largely scheduled to complete in 2026, that particular element of the East Site works can

only be completed after the new Underground station has opened and LUL have then decommissioned the current Northern Line ticket hall and handed it over to EC. At present, these particular works on the East Site are not likely to commence until at least 2029. In the meantime, it is envisaged that the new planning permission required for the West Site amendments will likely have been implemented on the West Site after LCC vacate that site into their new campus building (currently expected late 2027). As there will be some (albeit not extensive) physical differences between the current permission and a planning permission for the proposed West Site amendments, the possibility arises (based on planning case law) that implementing the proposed West Site amendments planning permission might prevent the carrying out of the later works on the East Site under the current permission. The submission of what would in effect be a renewal application for that limited element of the East Site works may therefore be pursued by EC on an avoidance of doubt basis. Such an application (if made) would only arise due to this potential, technical legal point. The council as local planning authority cannot (and will not) pre-determine the outcome of such an application. In principle it is considered that planning permission would be granted again for that element.

Analysis of the statutory tests and guidance in light of the West Site amendments

30. In light of the Scheme amendments, Appendix A contains an updated, detailed analysis of whether the use of CPO powers is justified, including an updated review of adverse impacts. Cabinet will see that the analysis concludes that the relevant tests and the 2019 Government Guidance on CPOs are all still met, and that all of the specific benefits arising from the use of the CPO powers that were previously identified still apply. It is considered that there are compelling reasons for continuing to seek the CPO powers at this time.

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

Community impact statement

Human Rights Implications

31. There is not considered to be any change to the human rights implications referred to in the October 2023 Cabinet report.

Equalities (including socio-economic) impact statement

32. The October 2023 Cabinet report contained analysis on the equalities impacts on the affected parties. The council and EC are continuing to seek to mitigate any adverse impacts as referred to in the October 2023 report. The council's June 2024 Statement of Case also considered equalities impacts in line with the continuing nature of the public sector equality duty, including socio-economic impacts, which the council treats as part of its public sector equality duty even though not enacted by the Equality Act 2010. In practice the inclusion of the socio-economic duty makes no difference to the analysis previously presented to cabinet, as the council was already appropriately mindful of these matters when deciding to make the CPO.

Health impact statement

33. The health impacts referred to in the October 2023 report are considered to still apply. Increased fire safety will also occur due to the proposed second staircases on the West Site.

Climate change implications

34. The climate change implications referred to in the October 2023 report are considered to still apply.

Resource implications

35. There are no changes to the resource implications noted in the October 2023 report.

Legal Implications

36. Please refer to paragraph 30 above and Appendix A for an updated analysis which confirms the use of the council's CPO powers remains justified.

Financial implications

37. There are no changes to the financial implications noted in the October 2023 report.

Consultation

38. EC is consulting upon the proposed amendments to the West Site. In terms of the CPO process, the council and EC continue to seek to resolve the objections so that private treaty deals can be achieved. All of the affected parties were afforded the opportunity to object to the CPO and the affected parties who are objectors will have the right to appear at the inquiry. The Council's Statement of Case has provided the other parties to the inquiry with advance notice of the council's case. The parties to the inquiry will have the opportunity to respond to the council's Supplementary Statement of Case and this will be the subject of evidence at the inquiry and consideration by the CPO Inspector.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Assistant Chief Executive, Governance and Assurance (LEG/KR)

39. The purpose of this report is to seek Cabinet's endorsement of the submission of a Supplementary Statement of Case for the CPO to reflect the fact that the West Site of the Scheme will need to be amended as outlined in this report.
40. The CPO is not specific to the existing planning permission and the Government's July 2019 Guidance on Compulsory Purchase Process does not require that planning permission must already have been granted. The council as acquiring authority will need to show that the Scheme is unlikely to be blocked by the need for planning permission.

41. The council should bring any changes to its case for the CPO to the attention of the affected parties at the earliest opportunity. The inclusion of the amendments to the West Site through a Supplementary Statement of Case (and referring to the fact that planning permission may be re-applied for in respect of a small part of the East Site works within that Supplementary Statement of Case) is therefore considered to be the prudent course of action.

Strategic Director of Finance (FC24/005)

42. This report is requesting the cabinet to endorse the submission by the council of a Supplementary Statement of Case for the CPO which will reflect the proposed amendments to the West Site of the Scheme as outlined in this report and agrees that the CPO should be promoted on this basis and to note that further planning permission may be sought (to the extent required) for the East Site Phase 2 element of the scheme as set out in this report, and that this will also be referred to in the Supplementary Statement of Case.
43. This report is also requesting the cabinet to approve the Director of Planning and Growth be authorised on behalf of the council to take all necessary, ancillary or incidental steps to give effect to the recommendations in the report.
44. The Strategic Director of Finance notes that 'Elephant and Castle Properties Co Limited' continues to underwrite in full the council's costs and liabilities associated with the CPO.
45. Staffing costs associated with this report will be contained within existing departmental revenue budgets.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Cabinet 17 October 2023_Public reports pack, Agenda item 14, p. 157	Sustainable Growth North, 5 th Floor, 160 Tooley Street, SE1	Catherine Brownell 020 7525 3625
Link: Agenda for Cabinet on Tuesday 17 October 2023, 11.00 am - Southwark Council (item 14)		
Cabinet 17 October 2023_Minutes of meeting, Item 14, p. 6	Sustainable Growth North, 5 th Floor, 160 Tooley Street, SE1	Catherine Brownell 020 7525 3625
Link: Cabinet minutes 17 October 2023		

APPENDICES

No.	Title
Appendix A	Updated analysis whether CPO powers are justified
Appendix B	Supplementary Statement of Case_status DRAFT

AUDIT TRAIL

Cabinet Member	Councillor Helen Dennis, New Homes and Sustainable Development	
Lead Officer	Steve Platts, Director of Planning and Growth	
Report Author	Catherine Brownell, Programme Manager, Sustainable Growth, North	
Version	Final	
Dated	9 July 2024	
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, Finance	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		9 July 2024