

APPENDIX A

Updated analysis as to whether the use of CPO powers is justified (including updated adverse impacts)

1. Appendix J of the October 2023 report set out in detail the council's justification for the use of CPO powers, in the context of the statutory requirements and the CPO guidance.
2. The proposed amendments do not affect the East Site element of the Scheme. There is therefore no change to the adverse impacts that would arise from the redevelopment of the East Site as set out in paragraphs 1 -3, 5, 10 and 12 (as to the railway arches) of Appendix H of the October 2023 Cabinet report, nor to the analysis in Appendix J of the October 2023 report as to whether the use of CPO powers is justified in so far as that analysis applies to the East Site.
3. The potential adverse impacts in respect of the Tabernacle, crane oversail and equalities (as to the Tabernacle) as set out in paragraphs 6, 7 and 12 of Appendix H of the October 2023 Cabinet report still apply.
4. The overriding of rights of light and other rights held by third parties in respect of the East and West Sites as referred to in paragraph 9 of Appendix H of the October 2023 report will still apply, with the overriding applying to the amended West Site buildings as it applied to the originally consented buildings. That will be the case even without the CPO due to the separate process that the council put in place under section 203 Housing and Planning Act 2016, pursuant to a Cabinet resolution in April 2020.
5. Given the change in footprint of the tall buildings, it is considered likely that there will be some changes to rights of light infringements as compared to the infringements which would have been caused by the consented buildings. This can only be established definitively once the final design is settled but initial analysis by EC's rights of light surveyors, GIA, indicates that some properties in the surrounding vicinity, all of which were previously considered, are thought to be more impacted than was previously estimated. However, as referred to in paragraph 9 of Appendix H to the October 2023 report, it is not considered that there are any such rights in respect of the areas that will be subject to acquisition under the CPO which would be problematic, but any such rights as exist will be overridden by way of the implementation of the CPO.
6. Adverse daylight, sunlight and overshadowing effects will still occur in respect of nearby properties as referred to in paragraph 10 of Appendix H of the October 2023 report. Any change in impacts in this respect could only be established definitively once the final design of the West Site buildings is settled, but GIA have conducted initial analysis and they do not believe that the proposed changes will materially alter their previous results and conclusions on daylight, sunlight and overshadowing.

7. As noted in paragraph 11 of Appendix H of the October 2023 report, the currently permitted design would cause harm (in the planning sense) to the setting of the Metropolitan Tabernacle and substantial weight is given to that harm. With the change in footprint of the West Site buildings, the harm will need to be considered again once the final design is submitted in the planning application, but it is expected that the amended buildings would still cause harm to the setting of the Tabernacle (with approximately the same degree of harm) and substantial weight should still be given to that harm.
8. Section 226 (1)(a) test – the council thinks that the acquisition of title and new rights as per the CPO will facilitate the carrying out of the development, re-development or improvement on, or in relation to, the land covered by the CPO. The title and new rights sought in relation to the West Site are still necessary to enable demolition and construction in respect of the West Site. The design changes for the buildings on the West Site do not affect the need to be able to access the Tabernacle to facilitate the demolition, nor the need to use cranes which will need to swing over the Tabernacle and other adjacent areas. EC has confirmed to the council that the amended footprints of the tall buildings on the West Site should not alter the proposed crane oversail areas shown on the CPO map. The acquisition of the small areas of unregistered land as shown on the CPO map is still required for the amended design, as is the acquisition of the two leasehold sub-station interests which still sit in the middle of the proposed redevelopment. EC and Get Living have confirmed to council officers the intention to go ahead with the West Site element of the Scheme as amended subject to planning permission being granted and the confirmation of the CPO.
9. Section 226(1A) test – the council thinks that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects: (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; and (c) the promotion or improvement of the environmental well-being of their area. In this case, the council thinks that the redevelopment is likely to contribute to the improvement of all three well-being objects. The improvements in economic, social and environmental well-being (including the specific improvements that the CPO would directly deliver) as set out in Appendix J of the October 2023 report will still apply. Indeed it is likely that the changes to the Scheme will bring about additional economic, social and environmental well-being benefits.
10. The CPO remains essential to the successful implementation and completion of the Scheme and the many well-being improvements it will bring and the test in section 226(1A) is met.
11. In terms of the key paragraphs from the Government’s July 2019 Guidance on CPOs (the Guidance), Cabinet is referred to paragraphs 20-23 and 25 of Appendix J of the October 2023 report – all the paragraphs of the Guidance therein stated are considered still to be met, including (but not limited to) the “*compelling case in the public interest*” for the use of CPO powers. The Scheme will transform the town centre. Although there are some adverse effects, as referred to elsewhere in this report, it is considered that these are

relatively minor and in any event need to be weighed against the very significant and numerous public benefits that will accrue from the Scheme. This is considered to be the case even in relation to the specific benefits that would be directly delivered through the use of the CPO powers. The CPO is still necessary to unlock these benefits of the Scheme. The public benefits arising from the use of the new CPO powers amount to sufficiently compelling reasons for powers to be sought and outweigh the loss and any overriding of property interests to individuals and businesses arising from the CPO.

12. In terms of the Guidance paragraph 12 that *“when making [a CPO] acquiring authorities...should ensure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected”*, the council's purpose in making the CPO is unchanged, i.e. to facilitate the development, redevelopment or improvement on or in relation to the CPO land, namely the Scheme. All of the constituent elements of the Scheme previously identified are still present, with the addition of the student accommodation. The evolution of the Scheme on the West Site has been driven in large part by the need to meet the new regulatory requirements and by the need to respond to the challenges that has brought in terms of loss of habitable floor-space and increased cost referred to in the main body of the report. The public benefits arising from the Scheme outweigh, and justify interference with, human rights and such interference is proportionate to the large level of public benefits that would arise from the Scheme, even if those benefits are limited to those directly delivered by the CPO.
13. As to paragraph 13 of the Guidance that *“the acquiring authority must be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought at this time...”*, there are sufficiently compelling reasons for the CPO powers to be sought at this time – whilst the new planning permission will need to be granted on the West Site, and the council is not pre-judging the determination of the application, it is considered likely that such permission will be granted given the development plan allocations for the site and its planning history, and that therefore planning consent is unlikely to be an impediment. Subject to permission being granted, and the CPO being confirmed, in a reasonable timeframe, it is not considered that the West Site construction works will occur any later than previously envisaged.
14. As to funding (paragraph 14 of the Guidance), EC has confirmed that the funding intentions for the West Site remain unchanged and EC is confident that funding will be in place in good time to carry out the West Site works as envisaged.
15. As to paragraph 15 of the Guidance *“that the acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation”*, including any need for planning permission, whilst it is accepted that the building regulations changes and student accommodation use necessitate a new permission on the West Site, for the reasons given above it is considered likely that planning permission would be granted for the West Site revisions to the Scheme. Similarly, the East Site Phase 2 works further permission is only being sought to address a potential technical legal point and given that consent already exists for

those works it is considered likely that it will be granted again. There are no other changes to the analysis as to potential impediments set out in the October 2023 report i.e. there are unlikely to be any impediments to the Scheme if the CPO is confirmed.

16. As to paragraph 2 of the Guidance that the Secretary of State “*will expect the acquiring authority to demonstrate that they have taken reasonable steps to acquire all of the land and rights included in the Order by agreement*”, the council and EC continue to act reasonably in seeking negotiated settlements, as evidenced by the agreement of heads of terms with Corsica Studios since Cabinet last considered the CPO, and the removal by the gas undertaker SGN of its objection to the CPO following discussions with EC.
17. As to paragraph 106 of the Guidance that the Secretary of State can be expected to consider “*whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area...and the National Planning Policy Framework*”, the council’s purpose in pursuing the CPO is referred to above. It is considered that in land use and planning policy terms the student accommodation use in principle fits with the London Plan, the Southwark Plan and the National Planning Policy Framework. The Scheme as a whole continues to comply with planning policy.
18. Paragraph 106 of the Guidance also states that the Secretary of State can be expected to consider “*the extent to which the purpose of the CPO will contribute to the promotion or improvement of the economic, social or environmental well-being of the area*”. It is considered that the amendments to the West Site will enhance the benefits arising pursuant to the Scheme in all three well-being categories.
19. Paragraph 106 of the Guidance also states that the Secretary of State can be expected to consider “*whether the purpose for which the acquiring authority is proposing to acquire could be achieved by other means*”. As per the October 2023 Cabinet report, it remains the case that the proposed purpose for which the council is acquiring the land would not be achieved by any other means.
20. As to the “*potential financial viability*” of the Scheme (paragraph 106 of the Guidance), the same comments about the East Site as were made in paragraph 58 of Appendix J of the October 2023 report apply. As regards the West Site, the same position on the reality of the situation (i.e. that the developer’s group company is committed to buying the West Site at a considerable sum, and so it is likely the site will be redeveloped to recoup a return on investment) still applies as set out in paragraph 58 of Appendix J of the October 2023 report. The viability of the Scheme amendments on the West Site will be influenced in part by the level of affordable accommodation provision which is required in respect of the student accommodation, which will need to be discussed as part of the planning application in due course. A similar situation occurred in respect of the affordable housing provision on the residential aspects of the East and West Sites and a satisfactory outcome for the council and EC was achieved, and the East Site of the Scheme is advancing even though the target rate of return was not forecast to be met.

Whatever the position, the addition of the student accommodation use will make the redevelopment on the West Site markedly more viable. The Guidance points out that a CPO can still be confirmed if there is uncertainty over financial viability if the case for it is very compelling. There is no real uncertainty that the West Site (with the amendments) will proceed given the factors above but, even if there was such uncertainty, the confirmation of the CPO will still be justified because the case for the CPO is so very compelling.

21. The analysis set out in the October 2023 report as to relocation opportunities is unchanged by the amendments to the West Site.
22. In respect of the statutory duty under section 66(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings, in the exercise of the powers of disposal under section 233, the Metropolitan Tabernacle is a listed building and some minor works to that building are required and have received listed building consent. The council will acquire new rights over the land under the CPO and EC will be able to utilise those new rights. Cabinet will note that notwithstanding the substantial weight given to harm to the setting of the Tabernacle, for the currently permitted design the Planning Committee concluded that such harm would be outweighed by the significant public benefits accruing from the Scheme. Any effects the Scheme (as currently permitted) may have on the other designated heritage assets in the locality, including the Faraday Memorial and Metro Central Heights listed buildings, listed buildings at West Square and the West Square and Elliott Row Conservation Areas, and any undesignated heritage assets, were fully considered by the Planning Committee. This exercise of assessment and consideration of any harm as to heritage assets will need to be repeated once the West Site amendments final design is submitted by way of the planning application. It is expected that harm to the setting of the Tabernacle will still arise from the amended design and substantial weight is given to that harm. Based on the pre-application submission it is considered unlikely that there would be any significant increase in adverse heritage impacts in this respect.
23. As per the Guidance, the correct statutory procedures have been followed by the council, as evidenced by the fact that any affected parties who wished to do so were able to object during the objection period, which was considerably longer than the statutory minimum objection period. The council will continue to comply with the correct statutory procedures.