

**THE LONDON BOROUGH OF SOUTHWARK
(ELEPHANT AND CASTLE TOWN CENTRE)
COMPULSORY PURCHASE ORDER (No. 2) 2023**

**SUPPLEMENTARY STATEMENT OF
CASE
OF THE LONDON BOROUGH
OF SOUTHWARK
(ACQUIRING AUTHORITY)**

Section 226(1)(a) Town and Country Planning Act 1990

Acquisition of Land Act 1981

Section 13 Local Government (Miscellaneous Provisions) Act 1976

Rule 7 of The Compulsory Purchase (Inquiries Procedure) Rules 2007

Date: XXX July 2024

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1. INTRODUCTION

- 1.1** The London Borough of Southwark (“**the Council**”) made the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order (No. 2) 2023 (“**the Order**”) on 29 December 2023.
- 1.2** The Order was submitted to the Secretary of State for Levelling Up, Housing and Communities for confirmation on 5 April 2024.
- 1.3** On 19 June 2024, the Council submitted its Statement of Case (“**the Statement**”). A Spanish version of the Statement was also provided where appropriate.
- 1.4** This Supplemental Statement of Case (“**SSoC**”) is supplemental to the Statement. Defined terms used in this SSoC have the meanings given to them in the Statement unless clearly indicated otherwise.
- 1.5** As explained in paragraphs 6.56 – 6.60 of the Statement, building regulation changes mean that it is no longer possible to construct the consented buildings on the West Site of the Scheme, so changes to the form of the development on the West Site are required. This SSoC provides more detail on the reasons for the changes, and the scope of those changes, to the West Site.
- 1.6** As foreshadowed in paragraph 6.63 of the Statement, EC publicly announced on 2 July 2024 that it intended to hold a public consultation on the amended proposals for the West Site of the Scheme. On 15 July 2024, that public consultation began.
- 1.7** On 15 July 2024, the Council published the agenda and reports for its 22 July Cabinet meeting. Agenda item XXX was a report requesting that Cabinet endorse the submission by the Council of this SSoC, as part of its CPO case, to reflect the proposed amendments to the West Site of the Scheme as outlined in the report, and that Cabinet agrees that the Order should be promoted on that basis. Cabinet was also asked 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 the Cabinet report, and that this would also be referred to in this SSoC. An advanced draft of this SSoC was appended to the Cabinet report.
- 1.8** Objectors to the Order and the Planning Inspectorate were sent a link by e-mail to the Cabinet report, as well as the consultation material, on 15 July 2024 with an explanation of the purpose of the report.
- 1.9** On 22 July 2024, Cabinet resolved to endorse the submission of this SSoC and that the Order should be promoted on the basis set out in the Cabinet report. A copy of the 22 July Cabinet report was also added to the Order website as Core Document 1.11.
- 1.10** This SSoC therefore sets out the Council’s case for the confirmation of the Order to reflect the amendments to the West Site. It explains the need for the amendments to the West Site; explains the amended West Site proposals; and then, where necessary, updates and supplements the Statement in certain respects to reflect those amendments.

1.11 There are no changes to the enabling powers for the Order as set out in section 2 of the Statement. Pursuant to section 226(1)(a) of the 1990 Act, the Council's purpose in making and promoting the Order is unchanged i.e. to facilitate the development, redevelopment or improvement on or in relation to the Order Land, by way of the Scheme. Furthermore, pursuant to section 226(1A) of the 1990 Act, the Council continues to think that such development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social and environmental well-being of the Borough of Southwark.

1.12 The promotion of the Order also continues to accord with the Guidance. The key parts of the Guidance were set out in Section 2 of the Statement.

1.13 A Spanish translation of this SSoC has also been made available.

2. WEST SITE – THE NEED FOR AMENDMENTS TO THE SCHEME

2.1 The changes to the building regulation regime (as regards second escape stairs in tall residential buildings) were published by the Government on 29 March 2024 and, in consequence, amendments are now required to the West Site element of the Scheme.

2.2 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.

2.3 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.

2.4 For the avoidance of doubt, this change in Government building regulation legislation does not affect the East Site element of the Scheme, which is already well underway. There are no physical changes to the East Site as a result of the West Site amendments.

2.5 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.

- 2.6** 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.
- 2.7** 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.
- 2.8** EC has therefore 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 in section 3.

3. THE WEST SITE AMENDMENTS

- 3.1** In summary, the amendments to the West Site element of the Scheme comprise two tall residential buildings with an increased footprint and a third tall building as purpose built student accommodation (“**PBSA**”), 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.
- 3.2** 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 July 2021 Permission). The same number of general-needs mixed-tenure residential units as originally provided in the three tall buildings (382) would be provided in the two redesigned residential tall buildings. It is proposed to retain the other range of uses all as previously consented, including the retail (including affordable retail) and the leisure use. The mansion blocks would remain largely the same but these too would need to accommodate the second stair case.
- 3.3** The new PBSA 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.
- 3.4** The amended West Site will deliver all of the elements that are currently consented but with the addition of the PBSA.
- 3.5** A new planning application for the West Site will be required. The Council as local planning authority will clearly need to 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.

4. UNCHANGED SECTIONS OF THE STATEMENT

- 4.1** The following sections of the Statement are unchanged as a result of the West Site amendments.
- 4.2** Section 2 (enabling powers) – there are no changes to the enabling powers for the Order nor to the Guidance. Continued compliance with the requirements of the legislation, and continued satisfaction of the Guidance, are demonstrated in sections 5, 7, 10, 11 and 12 of this SSoC.
- 4.3** Section 3 (Background and context).
- 4.4** Section 4 (Description of the Order Land) - there are no changes required to the extent or description of the Order Land, nor to the Order Map, nor to the parties set out in the Schedule. There are no changes to the number or nature of new rights being sought under the Order, all of which are still considered to be necessary in respect of the amended West Site redevelopment.
- 4.5** Section 8 (Special considerations affecting the Order Land).
- 4.6** Section 13 (Steps taken by the Council to negotiate for the acquisition of land).
- 4.7** Section 14 (Details of any related orders etc)
- 4.8** Section 15 (Response to objections)
- 4.9** Section 17 (Further information for persons affected by the Order)
- 4.10** Section 18 (Inspection of the Order and Order documents)
- 4.11** Section 19 (Further reference documents) – save that these are updated to include the objections to the Order, the Statement, the 22 July Cabinet report and this SSoC. All of these documents have been added to the documents which are on deposit at the Council’s 160 Tooley Street offices and can also be viewed on the Order website <https://gateleyhamer-pi.com/en-gb/elephant-and-castle>.
- 4.12** Those sections of the Statement which require updating in light of the West Site amendments are now considered. They are dealt with in the order that they appear in the Statement.

5. PLANNING POLICY FRAMEWORK

- 5.1** Section 5 of the Statement set out the relevant planning policy framework for the Scheme. This is largely unchanged but the addition of the PBSA on the West Site engages the following planning policies.
- 5.2** London Plan Policy H15 advises that boroughs should seek to ensure that local and strategic need for PBSA is addressed, subject to certain criteria. Those criteria include the provision of affordable student accommodation and a nominations agreement for the majority of the bedrooms in favour of one or more higher education institutions. Paragraph 4.15.6 states that PBSA should provide adequate functional

living space and layout for the occupants, and the design must be high quality in accordance with the requirements of Policy D3 “*optimising site capacity through the design led approach*”.

- 5.3 London Plan Policy D3 states that all developments must make the best use of land by following a design led approach that optimizes the capacity of sites. London Plan paragraph 4.1.9 states that net non-self-contained accommodation for students should count towards meeting housing targets on the basis of a 2.5:1 ratio.
- 5.4 Policy SP1 of the Southwark Plan 2022 states, inter alia that the Council “*will use every tool at our disposal to increase the supply of all different kinds of homes*”.
- 5.5 The supporting text to Southwark Plan Policy P5 - Student Homes, recognises there is a need for more student accommodation across the whole of London, but in Southwark this needs to be balanced with meeting the needs for other types of homes. Policy P5 states that the development of purpose built student housing must provide 5% of rooms adaptable for wheelchair users and sets out the requirements for affordable housing and affordable student rooms.
- 5.6 Southwark Plan Policy AV.09, setting out the Elephant and Castle Area Vision, was already summarised in the Statement but in the context of PBSA it is relevant that it identifies the need to maximise the delivery of new homes. The Area Vision seeks to harness the expertise and infrastructure from the universities to develop a strong dynamic specialised local economy and supports the provision of new university facilities.
- 5.7 The inclusion of PBSA in the revised proposals for the West Site would be in addition to the currently consented residential units and other uses. As such, the additional units would contribute directly to the need for student homes and indirectly to increasing the supply of general residential homes (Class C3) in the area.
- 5.8 Whilst Site Allocation policy NSP48 does not specifically refer to PBSA in the list of required land uses, it does not preclude that use. The relevant design and other factors in policy NSP48 will be addressed.

Conclusion on planning policy framework

- 5.9 All levels of planning policy strongly support the Scheme as amended. In the context of paragraph 106 of the Guidance, the purpose for which the land is being acquired (to facilitate the development, redevelopment or improvement on or in relation to the Order Land, by way of the Scheme) continues to very much fit in with the statutory development plan and the NPPF. Delivery of many of the local plan’s aims and targets for the Elephant and Castle Town Centre remains dependent on the successful completion of the Scheme.

6. PROPOSALS FOR THE USE OR DEVELOPMENT OF THE LAND - THE SCHEME

Planning Position

- 6.1** The planning position as to the Scheme was set out at section 6 of the Statement.
- 6.2** By way of update, the public consultation on the West Site amendments has begun and the following timetable is envisaged for the submission and determination of the requisite planning application for the West Site amendments: December 2024 – application submission; September 2025 – Planning Committee consideration; December 2025 – grant of planning permission.
- 6.3** 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 July 2021 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 the LCC Site into their new campus building (currently expected late 2027). As there will be some (albeit not extensive) physical differences between the July 2021 Permission and a planning permission for the proposed West Site amendments, the possibility arises (based on planning case law of *Pilkington* and *Hillside*) 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.
- 6.4** Please refer to section 11 of this SSoC as to the prospects of planning permission being granted for these aspects of the Scheme.

7. PURPOSE AND JUSTIFICATION FOR THE ORDER

- 7.1** The purpose of the Council in making and promoting the Order continues to be to facilitate the development, redevelopment or improvement on or in relation to the Order Land, by way of the Scheme.
- 7.2** The Council thinks the making and confirmation of the Order will facilitate the carrying out of development, re-development, or improvement on, or in relation to, the Order Land. The Scheme is already well underway on part of the East Site, adjacent to the Order Land, and EC has shown through all of its progress its continued

intention to proceed with the Scheme so as to complete the East Site redevelopment and then carry out the West Site redevelopment if CPO powers are utilised. Despite considerable effort being expended in seeking to acquire the requisite land interests for the Scheme as a whole by agreement, this has not occurred to date. Without the use of CPO powers, it will not be possible to deliver key areas of public realm on the East Site, including the Park Route, nor to complete the East Site redevelopment of the Scheme.

7.3 The title and new rights sought in relation to the West Site remain 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.

7.4 So the Order will facilitate the carrying out of redevelopment on, or in relation to, the Order Land and thus the test in section 226(1)(a) is satisfied.

7.5 In terms of the test under section 226(1A), the Scheme as amended continues to represent a vital, comprehensive redevelopment of Elephant and Castle town centre. In this case, the Council thinks the development, re-development or improvement is likely to contribute very significantly to the improvement of all three well-being objects.

Contribution to the economic, social and environmental well-being of the area

7.6 All of the well-being improvements identified in section 7 of the Statement, including those well-being improvements that the Order will directly deliver, still apply. It is likely that the changes to the Scheme will bring about additional economic, social and environmental well-being benefits.

7.7 In *economic* well-being terms, it is considered likely that the provision of the PBSA would be of benefit to the local education institutions in the vicinity, as it will provide conveniently located, new accommodation very close to those institutions, which is likely to assist in attracting students. This will be particularly so if a nominations agreement is entered into with one or more of those institutions, giving them the right to nominate that their students occupy bedrooms within the building.

7.8 In *social* well-being terms, the proposed PBSA use will contribute to a mixed and inclusive neighbourhood as envisaged by planning policy. There is significant demand for accommodation for students and the provision of PBSA in a highly accessible town centre location would assist in meeting that demand. It is also

considered likely that it would relieve some pressure on general needs housing in the area through displacement of student occupation from general housing.

- 7.9** The new PBSA would also comply with the 5% minimum easily adaptable for wheelchair users requirement in the New Southwark Plan thereby assisting in inclusion for people with disabilities.
- 7.10** In *environmental* well-being terms, the amended West Site proposals would meet the latest regulatory requirements as to second staircases and sustainability of the West Site accommodation (with the improvements as to the heating system).
- 7.11** The proposed amendments do not affect the East Site element of the Scheme. There are no additional adverse impacts that would arise for the objectors to the Order whose land or occupational interests are based around the railway viaduct arch units (Beset, some of the 7 Farrell Court occupiers, DistriAndina and Arch Co) and the railway viaduct (Network Rail). There are no changes to the proposed relocation opportunities being offered to Beset, the 7 Farrell Court occupiers and DistriAndina. There is no change to the justification for the Order in respect of the East Site as set out in paragraphs 7.3 – 7.11 inclusive of the Statement.
- 7.12** The West Site amendments would not cause any additional potential adverse impacts for the Metropolitan Tabernacle beyond those that have previously been identified. The legal agreement which is being negotiated with the Tabernacle also contains various safeguards for the benefit of the Tabernacle in the manner that the adjacent demolition works will be carried out, all of which will still apply in respect of the amended West Site proposal.
- 7.13** Notwithstanding that there will be negative effects on those affected by the Order, as considered fully again by the Council's Cabinet on 22 July (with updated analysis as to the negative effects of the Order, in light of the amendments to the West Site of the Scheme, contained in Appendix A to the 22 July Cabinet report) and having taken those negative effects into account, the development, re-development or improvement is likely to contribute to the achievement of all of the well-being objects in accordance with section 226(1A) of the 1990 Act.
- 7.14** 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.

Whether the purpose for which the Council is proposing to acquire the land could be achieved by other means

- 7.15** There is no change to the analysis set out in paragraphs 7.29 – 7.40 of the Statement, in particular (but not limited to) the fact that all of the elements included in the Order Map remain essential to the successful implementation, completion and use of the Scheme. The Order will address the last few pieces of the jigsaw in terms of land assembly.

8. HUMAN RIGHTS

Section 9 of the Statement dealt with human rights implications. The Council considered human rights aspects again as part of the 22 July 2024 Cabinet report. It is not considered that the West Site amendments give rise to any changes to the human rights implications, analysis and conclusions included in section 9 of the Statement.

9. EQUALITY ACT 2010

9.1 Section 10 of the Statement dealt with equalities aspects, including socio-economic disadvantage. The Council's Cabinet considered equalities aspects (including socio-economic impacts) again on 22 July 2024. The conclusions reached in paragraph 10.12 of the Statement continue to apply. The equalities position will continue to be monitored and reviewed throughout the progression of the Scheme.

9.2 Additional enquiries of the parties affected by the CPO have brought to light further information which will be taken into account as matters progress.

10. RESOURCES AVAILABLE FOR THE SCHEME

10.1 Section 11 of the Statement dealt with resources and viability.

10.2 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. The Council concurs that it is likely that the funding will be available.

10.3 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 11.14 of the Statement apply. As regards the West Site, the same position on the reality of the situation (i.e. that EC'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 11.14 of the Statement. The viability of 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.

11. HOW THE COUNCIL WILL OVERCOME ANY OBSTACLE OR PRIOR CONSENT NEEDED TO IMPLEMENT THE SCHEME

- 11.1** Section 12 of the Statement dealt with this subject.
- 11.2** As regards the need for a new planning permission for the West Site amendments, whilst the Council as local planning authority is not pre-judging the determination of the application, the analysis set out in paragraph 12.3.3 and 12.4 of the Statement still applies i.e. it is considered likely that planning permission will be granted and that planning permission is unlikely to be an impediment to the Scheme. There is policy support for PBSA within the development plan and it is considered likely that matters of detail such as the amount of affordable student accommodation will be resolved satisfactorily, similar to how they were resolved in 2019 and 2021 for the existing permissions.
- 11.3** Similarly, and again whilst the Council as local planning authority is not pre-judging the determination of any application, the East Site Phase 2 works further permission (if sought) would only be 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.
- 11.4** There are no other changes to the analysis as to potential impediments set out in the Statement i.e. there are unlikely to be any impediments to the Scheme if the CPO is confirmed.

12. OVERALL JUSTIFICATION - WHETHER THERE IS A COMPELLING CASE IN THE PUBLIC INTEREST FOR THE ORDER

- 12.1** Section 16 of the Statement dealt with this aspect and the analysis therein still holds good in light of the West Site amendments (with consideration having been given to the updated analysis of adverse effects at Appendix A of the 22 July 2024 Cabinet report).
- 12.2** All the paragraphs of the Guidance 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, 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 exercise of powers pursuant to the confirmed Order. The Order is still necessary to unlock these benefits of the Scheme. The public benefits arising from the use of the Order 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 Order.
- 12.3** 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 and promoting the Order is unchanged, i.e. to facilitate the development, redevelopment or improvement on or in relation to the Order Land,

namely the Scheme. All of the constituent elements of the Scheme previously identified are still present, and at the same quantum and quality, 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 floorspace and increased cost. 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 Order.

- 12.4** 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 highly 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.
- 12.5** In the Council's view, there continues to be a compelling case in the public interest to justify making and confirming the Order.

Dated XXX July 2024