

APPENDIX THREE

Elmington Estate Phase Three Compulsory Purchase Orders Procedural and Legal matters

Acquisition of Leasehold Interests

1. The council holds the freehold interest of all the land within the areas shown **edged** on the Plans at Appendix One. These four parcels of land contain a number of blocks of flats and maisonettes.
2. The Housing Act 1985 gives qualifying council tenants the right to buy their homes. Thirty one tenants at these properties purchased their homes under these provisions.
3. The council can only repurchase these leases in the following circumstances:
 - Where there is agreement with the leaseholder; *or*
 - Following a confirmed compulsory purchase order.
4. The statutory compensation code provides that a leaseholder is entitled to the following compensation following a compulsory acquisition:
 - the market value of the leasehold interest acquired;
 - a home loss payment: this is 10% of the market value where the leaseholder resides at the property or 7½% of the market value where the leaseholder is non-resident; and
 - a disturbance payment to cover the leaseholder's reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include removal costs, legal fees, surveyors fees and costs of adapting a new property.
5. Where an acquisition takes place by agreement ahead of the exercise of compulsory purchase powers, the leaseholder is treated in the same way and with the same entitlements as would be the case if there was a compulsory purchase order.

Third party and statutory utility rights

6. Utility companies have legal rights across the sites that enable them to provide their infrastructure to the Estate. To enable regeneration to proceed these legal rights will have to be acquired or extinguished. It is also possible that persons may have acquired unregistered rights over the sites such as a right of access and these rights, if any, will need to be dealt with in the same way as those of the utility companies.
7. Other leaseholders on the Estate benefit from rights over the subject areas; the council's standard form of lease provides for them having rights over the whole Estate including roads, paths and gardens. These rights will have to be included within the Order[s] for extinguishment.

OUTLINE OF COMPULSORY PURCHASE PROCEDURE

Resolution

8. The Cabinet passes a resolution to make the optimum number of Order(s). This is the purpose of this report.

Referencing

9. The council assembles information that provides details of all owners, mortgagees, tenants, occupiers and those that may have acquired rights over each individual site. This is to identify what interests need to be acquired and who is entitled to receive a notification of the publication of the Order. This stage will enable the precise details of the Order areas to be determined. The boundaries shown **edged** on the plans at Appendix One may need subtle amendment in the light of this and it is recommended that the Director of Regeneration be given delegated authority to set the Order extents.

Resolving planning and finance

10. In considering an Order the Minister needs to be confident that the proposals behind it are likely to come to fruition. In this connection s/he will need to be satisfied that there are no significant town planning or financial obstacles that will frustrate it. The regeneration proposed will be subject to obtaining planning permission and considerable pre-application discussion has already taken place between the council's Development Management, Property Development Team and selected development partners. Planning permission will need to have been achieved before the Order is confirmed. The agreement with the developer and housing association (council's development partners) will impose a timetable for submission of a planning application. As regard to finance for the regeneration, financial robustness was a material consideration of the developer selection process and when the development agreement with the Housing Association and Developer is in place, it should be possible to demonstrate that this consideration has been satisfied.

Making the Order

11. The council makes the Order to a defined format. A schedule accompanies the Order identifying ownership details of all land within it. A Statement of Reasons must also be prepared to accompany the Order. This is a critical document that may be challenged by objectors and therefore needs to be carefully drafted. The need for regeneration of the areas **edged** on the plans together with the planning permission obtained by the council's property development team and the confirmation that funding is available to carry out the development will need to be demonstrated in the Statement of Reasons for the regeneration of Elmington Estate Phase Three.

Publication of the Order

12. The council serves notice of making of the Order on all owners, mortgagees, tenants and occupiers affected by it. A notice of the making of the Order has to be published for two successive weeks in a local newspaper.

13. The notices will advise that objections to it can be made to the relevant Government Minister and specify an address for this purpose. The Order is then passed to the Government Minister for confirmation.

Confirmation of the Order

14. The Order does not become effective unless confirmed by the Minister. Where there are objections to the Order they must be considered before confirmation. This is usually done by way of a public inquiry but can sometimes be dealt with by written representations.
15. After considering the objections [if there has been a public inquiry there will be an Inspector's Report] the Minister may confirm, modify or reject the Order. If it is rejected that is the end of the process and the council will need to revisit its plans for regeneration of the Estate.
16. Following confirmation of the Order or if applicable, modification, a notice advising of this must be published in the local newspaper and all leaseholders, tenants and occupiers should also have a notice served on them. A confirmed Order should be implemented within three years to retain its validity.

Taking Possession

17. This can be achieved by either Notice to Treat/ Notice of Entry or by using General Vesting Declaration procedure. The latter is considered the most appropriate for the Elmington Estate Phase Three as it transfers both the right to possession and title of the land to the council.
18. Therefore we could be looking at around a year and a half to two years between making this resolution and obtaining possession; if there are complications it could be longer. It is assumed that there will be objections to the Order and that these will require protracted negotiations and/or a public inquiry to resolve. If a public inquiry is needed, this will be called for and arranged by the Minister so the council has little control over this process. Resource availability could cause this to be scheduled rather later than would be preferred and is a risk to be factored into project planning. If there are no objections or ones that are quickly able to be resolved, the period between publication and confirmation could be significantly reduced.

Number of Orders

19. Elmington Estate Phase Three is a large area and includes four distinct, separate sites: C, D, E and G. It is recognised that a single planning application could be submitted for the whole scheme or four separate applications with one single overarching S106 agreement. It is also possible that if separate applications are made there could be a combined one for sites C and D.
20. One Order is more administratively convenient; however, such an approach is inflexible because if there are objections it cannot become effective until all of them have been dealt with. If individual Orders are made for the sites this is more flexible since objections on one site will not prevent an Order for another site without objections being confirmed.

21. The optimum approach to this issue is likely to emerge after further engagement with the selected developer and housing association. It is therefore recommended that the Director of Regeneration be granted authority to review and amend the number of Orders after discussions with those parties.

Power to make a Compulsory Purchase Order

22. It is anticipated that Counsel's advice will be sought as to the preferred power under which the Order(s) should be made. If Section 226 of the Town and Country Planning Act 1990 is recommended by Counsel as the enabling provision for the purpose of compulsorily acquiring all the interests required to progress the implementation of the regeneration of the sites, then the detailed application and use of this power is set out below at paragraphs 30-37.
23. If, however, it is recommended by Counsel that acquisition powers are used from the 1985 Housing Act then the matter will follow the application and use of this power also set out below at paragraphs 38-44.

POLICY IMPLICATIONS

Corporate

24. The regeneration of the Elmington Estate is a long standing council policy. The making of the proposed Order[s] will underpin this.
25. The Elmington Estate Phase Three is the final part of the council's Elmington Estate initiative that started in 2000 when the Tower blocks were demolished and Phase One of new council housing was developed. Phase Two has planning permission and it is likely that Notting Hill Housing Trust will start construction work on site later this year or early next year.

Planning

26. The selected Housing Association and Developer for Phase Three have been through an extensive pre-application assessment prior to selection to establish that the proposals upon which their bid was based were planning compliant.

Housing Strategy

27. The regeneration of the Elmington Estate is a key strategic housing priority both in terms of the new high quality housing to be delivered, and the reduced long term impact on the Housing Investment Programme. The successful delivery of Phase Three is the final part of the Elmington Estate regeneration programme.

Re-housing requirements

28. The making of the Order[s] is in pursuance of a scheme that will give rise to the need to re-house secure tenants and some leaseholders. The planned timescale for the Elmington Phase Three re-housing takes into account the council's capacity within the overall social housing supply, including the replacement social housing that the scheme itself will provide. The re-housing process will be managed by use of a Housing Supply and Demand model which will enable the balancing of competing high priority demands for housing across the period. Re-housing in regeneration schemes is regulated by the council's lettings policy. The policy provides a choice for tenants between re-housing to

a new housing association property built as part of the scheme or to an existing property elsewhere in the borough. Initially, re-housing will be managed through choice based lettings, i.e. tenants bidding (with the highest priority and in date order of their priority) under the council's Homesearch scheme, until programme requirements necessitate the use of pro-active re-housing, including if necessary court proceedings.

Property

29. The council has over the past year been endeavouring to acquire by agreement the leasehold interests to move the scheme forward. The passing of this resolution will show the seriousness of the council's intentions and may encourage some leaseholders to enter into meaningful negotiations. The Leaseholder Assistance Scheme (as specified in the Leaseholder's Toolkit that has been given to all leaseholders) provides help and increased options for leaseholders unable to make their own rehousing arrangements to enable them to move.

Legal Implications

30. Section 226(1)(a) of the Town and Country Planning Act 1990 (the Act) (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) is often the appropriate power to secure the compulsory acquisition of properties within the Regeneration scheme. Section 226(1)(a) enable authorities to exercise their compulsory purchase powers if they think that the land in question will:

"Facilitate the carrying out of development, redevelopment, or improvement on, or in relation to, the land."

31. The council, in exercising its power under this Section must have regard to section 226(1A) which states:

"(1A) But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think 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. It may be that the use of this section is the most appropriate having regard to the council's aspirations for Phase Three of the Elmington Estate regeneration. The interests to be acquired by the Order[s] are required in order to permit the redevelopment and regeneration of the area to take place. The proposal also satisfies the "well being" element of the Act in that the regeneration of Phase Three of the Elmington Estate is clearly required in order to provide a better standard of accommodation for residents compared to its current state and to create a sustainable and diverse community of mixed tenure homes. Thus the proposals will assist in promoting the social, economic and environmental well being of the area.

33. Appendix A of Circular 06/2004 ("Compulsory Purchase and the Criche Down Rules") ("the Circular") sets out the circumstances in which this power may be relied on by a local authority for the purposes of compulsorily acquiring land. It recognises that compulsory purchase powers under the Act provide a "positive tool" to local authorities in assisting them to acquire and assemble land where it is necessary to implement the proposals set out in the community strategies. It is now no longer the case that a planning permission is granted in order to justify the making of a compulsory purchase order under this section. Indeed paragraph 15 of Appendix A of the Circular states:
- "It is also recognised that it may not always be feasible or sensible to wait until the full details of the scheme have been worked up and planning permission obtained, before proceeding with the Order."*
34. Instead the Circular advocates progressing and justifying a compulsory purchase order against a clear strategic framework and that the acquiring authority is able to confirm there are no planning hurdles or other impediments to the implementation of the scheme.
35. For the purposes of confirming a compulsory purchase order, the guidance identifies considerations which will be taken into account by the Secretary of State in making such a decision, namely:
- (a) *The purpose for the land being acquired fits in with the adopted planning framework for the area or where not such up to date framework exists, with the core strategy and any relevant Area Action Plan in the process of preparation in full consultation with the community;*
 - (b) *The extent to which the proposed plan will contribute to the achievement of the promotion or improvement of the economic social or environmental well being of the area;*
 - (c) *The potential financial viability of the scheme for which the land is being acquired, a general indication of funding intentions and commitments from third parties should suffice; and*
 - (d) *The purpose for which the acquiring authority is proposing to acquire the land could be achieved by other means.*
36. Having regard to the guidance, the primary aims of the council in progressing the Order[s] (and ensuring their success if considered by the Secretary of State) should include the following:
- i. Secure an appropriate delivery partner
 - ii. Obtain any other Order which may be required as part of the development proposals. It may be that various stopping up orders will be required and the council should seek to progress these so far as it is possible.
37. If Counsel recommends pursuing compulsory acquisition of the property interests in Elmington Estate Phase Three through the use of powers under the Housing Act 1985 ("the 1985 Act"), then the following guidance must be complied with.

38. Section 17 of the 1985 Act empowers a local housing authority to compulsorily acquire land, houses or other properties for the provision of housing accommodation. The acquisition must achieve a quantitative or qualitative housing gain. This power is commonly used to improve sub-standard or defective properties. It is considered that the proposed regeneration of Elmington Estate Phase Three would satisfy both the quantitative and qualitative objectives set out in the Act and the guidance in the Circular. The number of dwellings across all four sites at present is 144; following the regeneration this will increase to approximately 226.
39. The design and construction of the new dwellings will be a major improvement on the existing dwellings. The existing blocks listed in Appendix 2 require substantial investment to the main components. The walls, roofs, windows and chimneys were deemed defective or sub-standard in a stock condition survey as two or more of the building components were considered too costly and difficult to repair or replace. Consequently, these blocks will not be retained due to the nature of construction.
40. The new dwellings will be built to modern standards. The proposal will include a broad range of tenure and dwelling types across all four sites. A number of family-sized units will be designed to meet housing need and the scheme where possible will exceed national, regional and local standards and include key environmental criteria such as code for sustainable homes level 4, advanced standards of energy efficiency, lifetime homes standards, improved residential accessibility and sustainable modes of transport.
41. Appendix E of the Circular states that when applying for confirmation of a compulsory purchase order made under the 1985 Act, the authority should include in its statement of reasons for making the Order information regarding needs for the provision of further housing accommodation in its area. This information should normally include the total number of dwellings in the district, unfit dwellings, other dwellings in need of renovation and vacant dwellings; the total number of households and the number for which, in the authority's view, provision needs to be made.
42. The local housing authority should also provide information about its proposals for the land or property it is seeking to acquire. Having selected a Developer and Housing Association which has already taken significant steps to design a scheme for the land, the council will be able to provide this information.
43. Section 17(4) of the 1985 Act provides that the Secretary of State may not confirm a compulsory purchase order unless he is satisfied that the land is likely to be required within 10 years. The Secretary of State would not normally regard compulsory purchase as justified where development will not be completed within 3 years of acquisition.
44. As is already set out in this report, officers will continue to seek to negotiate the acquisition of interests by agreement rather than relying solely on the compulsory acquisition powers available. Section 120 of the Local Government Act 1972 contains wide powers for a local authority to acquire land by agreement for any of their statutory functions or for '*the benefit, improvement or development of their area*'. Section 227 of the Town and Country Planning Act 1990 also enables a council to acquire land by agreement for facilitating the carrying out of development, redevelopment of improvement and for the social

economic and environmental well being of the area. It is considered therefore that there are adequate powers available to the council to secure outstanding interests in the land by Agreement.

45. Other rights may also be required in order to progress the aspirations of the council. For this reason, it is recommended that the council also acquire/ create new rights for the purposes of craneage and/ or oversailing. Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 is applicable in this regard and will enable the council to acquire/ create such new rights as may be necessary to facilitate the development taking place.
46. Demolition notices may need to be served on relevant dwellings within Phase Three of the Elmington Estate regeneration areas. This will ensure that no further tenants are able to exercise their right to buy which will minimise the council's exposure in terms of new interests being created in the site whilst the Order[s] are being prepared and progressed.
47. The initial stage of the compulsory purchase process will be to ensure that the council correctly identifies all necessary interests in the Order land that need to be incorporated within the schedule of the Order. As the council is the freeholder of the Order land much of this information should be readily available. Nonetheless it is advised that formal requisitions for information should be served on all known owners, mortgagees and occupiers of each property to be subject to the Order[s] pursuant to Section 5A of the Acquisition of Land Act 1981 (as amended). It is important that the council takes all reasonable steps to ensure that all interests are properly captured in the Order[s] and are properly notified, the requisition for information is a means of ensuring the council fulfils this.
48. In the event that the Order[s] is eventually confirmed, the next stage will be to vest all necessary title in the council. In these circumstances as has already been mentioned that the best means of doing so will be by way of the General vesting Declaration Procedure. This is something that can be carried out by the council's legal advisors as and when this stage is achieved.

Human Rights Considerations

49. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("the Convention").
50. In proposing the Order[s] the council has duly considered the rights of property owners under the Convention, notably under the following Articles: *Article 1 of the First Protocol*. This protects the right of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international law.
51. The council has also considered the rights contained within Article 8 of the convention, which protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interest of national security, public safety or the economic well being of the country.
52. In relation to these Convention rights, the council has been conscious of the need to strike a balance between the rights of the individual and the interest of the public. In light of the significant public benefit that would arise from the

regeneration of the Elmington Estate Phase Three, it will be appropriate to make the Order[s], if the relevant leaseholder interests cannot be acquired by agreement. Objections can be made against the Order[s] that will then have to be considered by the Secretary of State before he decides whether or not to confirm the Order[s].