

## APPENDIX THREE

### Land at Southampton Way and New Church Road Camberwell Compulsory Purchase Order Procedural and Legal matters

#### LEGAL MATTERS

##### Acquisition of Freehold interests

1. The freeholders will be entitled to the following compensation:
  - a) The market value of their interest subject to any leases or tenancies that may or may not exist
  - b) In the event of a land holding being reduced in part (plot 6), a severance payment as appropriate, to reflect the diminution in value of the retained land as a result of the loss of the part being acquired
  - c) a disturbance payment to cover the freeholder's reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include incidental costs of acquiring a replacement asset , legal fees and surveyors fees

##### Acquisition of Leasehold Interests

2. As previously mentioned, it has been indicated verbally by the freeholders of the Southampton Way plots that there are tenants in occupation but when asked to produce details of the lettings agreements they have not been provided. The alleged lettings are not shown on the Land Registry. This situation can be clarified by serving Requisition Notices on the freeholders that will oblige them to provide details of any leases or tenancies.
3. The statutory compensation code provides that the commercial leaseholder is entitled to the following compensation following a compulsory acquisition:
  - a) The market value of the leasehold interest in the property;
  - b) Payment for loss of profits arising from the relocation or extinguishment of the business [as appropriate]
  - c) a disturbance payment to cover the leaseholder's reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include relocation costs, legal fees and surveyors fees

##### Acquisition of Plot 6

4. This plot is part of a larger commercial undertaking. Where part of a landholding is acquired by compulsion s8 Compulsory Purchase Act 1965 provides that where such an acquisition results in the material detriment of the retained land the owner can oblige the acquiring authority to purchase the whole of the land holding. These provisions only apply however to a house (including its gardens and/or parks), building or manufactory. Prima facie, this does not seem to apply in this instance because the landholding of which Plot 6 forms part appears to be a maintenance rather than manufacturing undertaking. However there remains a small risk that manufacturing is taking place and the owner can prove that the acquisition of Plot 6 will have a disproportionate affect

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on the overall viability of the undertaking. In such circumstances the acquiring authority may decide to proceed to purchase the entire land

#### PROCEDURAL MATTERS

##### Outline of Compulsory Purchase Procedure

###### *Resolution*

5. The Cabinet passes a resolution to make an Order. This is the purpose of this report.

###### *Referencing*

6. The Council assembles information that provides details of all owners, tenants and occupiers. This is to both identify what interests need to be acquired and who is entitled to receive a notice of the publication of the Order. This stage will enable the precise details of the Orders areas to be determined. The boundaries shown edged red on the plan at Appendix One may need subtle amendment in the light of this and it is recommended that the Head of Property be given delegated authority to set the extent of the Orders.

###### *Resolving planning and finance*

7. In considering the Orders the Minister needs to be confident that the proposals behind them 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 them. The intended incorporation of the sites within Burgess Park (paragraphs 11&12 of the open report refer) will be in accordance with the detailed planning guidance for the area. The closed version of the report confirms the funding for acquisitions and the subsequent incorporation on the plots into Burgess Park

###### *Making the Order*

8. The Council makes the Order, to a defined format. A schedule goes with 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 prepared accurately and with great precision.

###### *Publication of the Order*

9. The Council serves notice of making of the Order on all leaseholders, 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.
10. The notices will advise that any 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.

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#### *Confirmation of the Order*

11. The Order does not become effective unless and until it is 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.
12. 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.
13. Following confirmation or if applicable, modification, a notice advising that the Order has been confirmed must be published in the local newspaper and served on all leaseholders, tenants and occupiers affected by the Order. A confirmed Order should be implemented within three years to retain its validity.

#### *Taking Possession*

14. 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 these areas of land as it transfers both the right to possession and title of the land to the Council.

#### **Indicative Timescale**

15. 

■	Resolution to make the Order	
■	Referencing/Finance/Planning	12 weeks
■	Making the Order to Publication	6 weeks
■	Publication to Confirmation	30 weeks
■	Confirmation to taking Possession	18 weeks
16. Therefore a period of around eighteen months is anticipated from resolution to confirmation. 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 resolved the period between publication and confirmation could be significantly reduced.

#### **Power to make a Compulsory Purchase Order**

17. Section 226 of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004) is the recommended enabling provision for the purpose of compulsorily acquiring the interests required to progress the implementation of the incorporation of the plots within Burgess Park. The detailed application and use of this power is set out in paragraphs

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29-41 of this Appendix. Whilst powers exist relating to the compulsory acquisition of open spaces and the report confirms that these areas are designated Metropolitan Open Land. The subject land is not currently used as open space and is not open to the public for recreation or other purposes. Therefore the compulsory purchase powers for open space land are not triggered.

#### Policy Implications

##### *Corporate*

18. The provision and improvement of Burgess Park to be an excellent open space for south London is a long standing Council policy.

##### *Planning*

19. As set out in paragraphs 11&12 of the open report the subject plots have through planning policies been safeguarded as metropolitan open land and the making of the proposed Order and subsequent acquisition of the land concerned will bring that planning policy to fruition. It is the intention that the subject plots, will if the resolution in the report is passed, be the subject of a planning application for a change of use to open space land.

##### *Property Acquisitions*

20. The Council has been endeavouring to acquire by agreement plots 1-5 to move the scheme forward. The passing of this resolution should encourage those with a property interest in the plots to enter into meaningful negotiations with the Council.

#### Legal Implications

21. 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 the appropriate power in this instance to secure the compulsory acquisition of plots referred to in this Report for incorporation within Burgess Park. Section 226(1)(a) enables authorities to acquire compulsorily any land in their area if the authority think that the acquisition will:

*"facilitate the carrying out of development, redevelopment, or improvement on, or in relation to, the land"*

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

*"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-*

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- (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."*
  
- 23. It is considered that the use of this section is therefore most appropriate having regard to the Council's aspirations for the improvement of Burgess Park. The interests to be acquired by the compulsory purchase order are required in order to permit the improvement of the area to take place. The proposal also satisfies the "well being" element of the Act in that the improvement of Burgess Park is clearly in order to provide an improved public realm which will assist in attracting investment and growth opportunities to the wider area. Thus the proposal will inevitably assist in promoting and improving the social economic and environmental well being of the area.
  
- 24. The scope and application of Section 226 is set out in Circular ODPM 06/2004 Appendix A ("Compulsory Purchase and the Crichel 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 need have been granted in order to justify the making of a compulsory purchase order under this section. Indeed paragraph 15 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."*
  
- 25. 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.
  
- 26. For the purposes of confirming a compulsory purchase order, the Circular identifies considerations which will be taken into account by the Secretary of State in making such a decision, namely:
  - (a) *Whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area or where no such up to date framework exists, with the core strategy and any relevant Area Action Plans in the process of preparation in full consultation with the community;*

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- (b) *The extent to which the proposed purchase 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 any commitments from third parties will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme however the more compelling the other grounds for undertaking the Compulsory Purchase will need to be and*
  - (d) *Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land or any other persons for its re-use.*
- 27. Having regard to the Circular, the primary aims of the Council in progressing the compulsory purchase order (and ensuring its success if it is considered by the Secretary of State) should include the following:
  - (i) Commitment of the Council to the improvement of Burgess Park and
  - (ii) Obtaining any other order which may be required as part of the improvement proposals. It is likely that a stopping up order will be required for New Church Road and the Council should seek to progress this when plot 6 has been acquired.
- 28. As is already set out in the 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 local authorities 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 or 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.
- 29. One of the first tasks in preparing a compulsory purchase order is to identify all the relevant interests in the land to be acquired. These relevant interests will be set out in a Schedule which will be incorporated in the Order. It is advised that formal Requisitions for Information should be served on all known owners and occupiers of each property to be subject to the compulsory purchase order pursuant to Section 5A of the Acquisition of Land Act 1981. It is important that the Council takes all reasonable steps to ensure that all interests are properly captured in the Orders and are properly notified, the Requisition for Information is a means of ensuring this is fulfilled.

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30. In the event that the compulsory purchase order is 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 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

31. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("the Convention").
32. In proposing this Order 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.
33. In relation to this convention right the Council has been conscious of the need to strike a balance between the rights of the individual and the interest of the public. Having considered these matters, it is felt that the public benefits associated with the proposals underpinning the proposed order outweigh the interference with individuals' rights. Given that the proposals cannot be advanced without securing the outstanding interests in the areas and the existing buildings being demolished, it is also considered that the use of CPO powers is proportionate. Secretary of State before s/he decides whether or not to confirm the Orders.
34. In reaching this view, the officers have also had regard to the facts that those whose land is acquired by compulsory acquisition will be compensated on the basis of ensuring that they are not left out of pocket.