

Item No.	Classification: Open	Date: 9 February 2010	Meeting Name: Executive
Report title:		Aylesbury Phase 1 Compulsory Purchase Orders	
Ward:		Faraday	
From:		Strategic Director of Regeneration & Neighbourhoods	

RECOMMENDATIONS

That the Executive agrees:

1. The council makes three or more Compulsory Purchase Orders (“Order[s]”) under section 226 (1) of the Town & Country Planning Act 1990 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of the land and new rights within the areas edged red on the plan at Appendix One for the purpose of securing the regeneration of the Aylesbury Estate in accordance with the provisions of the Aylesbury Area Action Plan.
2. The Head of Property be authorised to:
 - a) determine and implement the optimum number of Order[s] to deliver the overall regeneration aspiration
 - b) take all necessary steps to secure the making, confirmation and implementation of the Order[s] including the publication and service of all notices and the presentation of the council’s case at Public Inquiry should one be called
 - c) acquire interests in land within the Order[s] areas either by agreement or compulsorily
 - d) approve agreements with land owners setting out the terms for the withdrawal of objections to the Order[s], including where appropriate seeking exclusion of from the Order[s]
 - e) amend the boundaries of the area shown edged red on the plan at Appendix One

BACKGROUND INFORMATION

3. On October 20 2009 the Executive approved that the council jointly with the Homes and Communities Agency procure one or more partners to take forward the regeneration of Phase 1 of the Aylesbury. The extent of the Phase is shown edged red on the plan at Appendix One to this report and includes the properties listed in Appendix Two. Work is currently underway in connection with the procurement with the intention of achieving the commencement of construction work in 2012.

370 Albany Road [Ellison House]

4. The Aylesbury Area Action Plan includes within the Phase I area 370 Albany Road which serves as accommodation for Probation Service clients. The

property is held on a long lease under a complex ownership arrangement involving the London Probation Service and the Home Office. It is Crown property and cannot be subject to a compulsory purchase order. It is therefore excluded from the areas shown on the plan at Appendix One and the property Schedule at Appendix Two.

5. Meetings have taken place with the owners of Ellison House that have indicated a willingness to work with the Council to achieve the regeneration aspirations but subject to the re-provision of the accommodation in the immediate area. A review of the costs and risks involved in meeting the requirements of the owners has resulted in the view being taken that the property be taken out of Phase 1 and be designated as a separate phase that may proceed in the future. The regeneration around the property will have to be designed to take into account the existence of this facility whilst recognising the aspiration for it to be ultimately included within the regeneration.

KEY ISSUE FOR CONSIDERATION

6. This phase contains 639 dwellings; of these eighty-five are held by leaseholders. Negotiations to acquire these leasehold interests by agreement have been taking place since December 2008 and have enabled some properties to be purchased. The council's aspiration to deliver the regeneration of the phase cannot be achieved without acquiring all the leaseholds. Negotiation will continue with leaseholders but without a compulsory purchase order it is unlikely that all these interests can be acquired within the planned timescale [by 2012]. The making of a compulsory purchase order is therefore recommended to achieve certainty of acquiring the leaseholds within the envisaged timescale and to mitigate risk to the project.

UNDERLYING INFORMATION IN RESOLVING TO MAKE THESE COMPULSORY PURCHASE ORDERS

7. The compulsory purchase procedure is complex and has regard to a variety of factors. Details of relevant procedural and legal matters are set out at Appendix Three to this report.

Community Impact Statement

8. The effect of the negotiated acquisition or compulsory purchase order will be to dispossess persons of their rights in land. This is a necessary process to ensure the redevelopment and regeneration of the Aylesbury Estate can proceed. This is considered acceptable where the proposals are in the public interest and where, as in this case, the advantages of regeneration substantially outweigh the disadvantages to those dispossessed.
9. The regeneration of the Aylesbury Estate is considered to have benefits to not only immediate community but also the Borough as a whole in that it will act as a catalyst to further investment. It is therefore necessary to balance the benefits that could be provided by the proposed scheme against the possible impact to those with an interest in the affected land. In carrying out this exercise a degree of proportionality should therefore be adopted. The Human Rights of these individuals have accordingly been considered and commented upon in this report.
10. The furtherance of the regeneration will not negate the council's Diversity and

Equal Opportunities policies. Indeed in the long term it is anticipated the diversity of the area will be widened.

Consultation

11. There has been extensive consultation with Aylesbury Estate residents [including tenants and leaseholders] at all stages of the regeneration and the making of compulsory purchase orders has been included within this consultation.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Communities, Law & Governance

12. As noted in paragraphs 33-35 of Appendix Three to this report, Section 226(1)(a) of the Town and Country Planning Act 1990 (the "1990 Act") is the appropriate power under which the council may seek to secure the compulsory purchase of the Phase 1 sites. The Executive will note from paragraph 32 of Appendix Three to this report that consideration has been given to the well being objectives under Section 226(1A) of the 1990 Act in relation to the council's aspirations for the regeneration of the Aylesbury Estate. It is considered that the regeneration of the area will assist the council in promoting and improving the economic, social and environmental well being of the Aylesbury Estate and therefore there are adequate powers available to the council to acquire all the land and property interests in the sites either compulsorily or by agreement. Ancillary powers to create new rights are also provided under s.13 of the Local Government (Miscellaneous Provisions) Act 1976. As noted in paragraph 46, the council also has power under Section 227 of the 1990 Act or Section 120(1) of the Local Government Act 1972 (the "1972 Act") to acquire interests in the Phase 1 sites by agreement with the owners. Further, by virtue of Section 120(2) of the 1972 Act, any properties acquired under the 1972 Act that are not required immediately for the purposes for which they have been acquired, can be used in the interim for the purpose of any of the council's functions.
13. Part 3C of the council's constitution reserves to the Executive decisions on acquisition of land and property where the market value exceeds £100,000, and the acquisition of land and property which involves the use of compulsory purchase orders.

Finance Director

14. The Finance Director notes the recommendations to the Executive made in paragraphs one and two of this report. It is acknowledged that on October 20 2009 the Executive approved that the council jointly with the Homes and Communities Agency procure one or more partners to take forward the regeneration of Phase 1 of the Aylesbury Estate.
15. It is acknowledged that Ellison House, as Crown Property, cannot be subject to a compulsory purchase and that the view has therefore been taken that the Property be removed from Phase 1 of the scheme and designated as a separate phase. The financial, development and risk implications of this aspect will need to be fully understood by the project team in order that appropriate action can be taken for incorporating this aspect of the development into the wider Phase 1 scheme.

16. It is noted in paragraph 10 of Appendix Three that in consideration of an Order, the Minister responsible will need to be confident that the proposals requiring the Order are likely to materialise and that there are no significant town planning or financial obstacles that will frustrate it.
17. In connection with this it is noted in paragraph 30 of Appendix Three that the estimated cost of acquiring the leasehold interests is £11.923m, plus potential homelessness payments of £1.192 at 10% of market value and potential disturbance payments of £0.064 where there are 85 units concerned and where, based on prior experience disturbance payments are around £750 per unit.
18. In light of these costs, provision of financial assurance in relation to the procurement of Phase 1 developers and in relation to the identification of funds to defray the cost of leaseholder acquisitions will need to be a key consideration for this process and the failure to achieve this assurance presents a significant risk to the success of Phase 1 that will need to be addressed by the project team. Progression with the purchase of properties without a secure funding arrangement to defray the cost of such purchases could expose the council to significant financial risk and work will therefore need to be undertaken by the Project Team to validate, reinforce and profile indicative funding sources to ensure that the purchase cost can be defrayed and that the council remains within any legal requirements/guidance for compulsory purchase orders as necessary.
19. The Finance Director recognises the Strategic Director of Environment and Housing's statement that, it is appropriate to apply for Order(s) for Aylesbury Phase 1 given the number of leaseholders involved, in the hope that the vast majority of repurchases will be by agreement.

Strategic Director of Environment and Housing

20. Initial demolition notices were served pursuant to Housing Act 2004 on all Phase 1 properties on March 31 2006. These had the effect of suspending all existing and future Right to Buy applications for a period of 5 years (this the statutory five year period has been extended to seven years by virtue of schedule 13 Housing and Regeneration Act 2008) the legislation is not retrospective hence the Aylesbury notices still last only 5 years. The legislation then allows the service of Final demolition notices where the blocks are due to be demolished within the following two years and these serve to end any suspended Right to Buy applications. The expiry of the Initial demolition notice period without the service of final demolition notices would mean any suspended Right to buy applications being able to proceed; in addition, notices have to be served on all residents informing them that the initial notices have expired and the right to buy is available. There is though a statutory provision for an application to the Secretary of State to extend the initial demolition notice period (with whatever conditions the Secretary of State considers appropriate).
21. There is a financial incentive to buying back properties without recourse to a compulsory purchase order, this incentive is now set out in SI 2003/3146 The Local Authorities (Capital Finance and Accounting)(England) Regulations. Councils are allowed to pool 35% of their annual costs (over £50,000) of administering and buying back ex council properties, offsetting this amount against the set aside for capital receipts from the Right to Buy. Instead of having to pay 75% of RTB capital receipts to the government, councils are obliged only to pay a lesser sum, the original amount being reduced by a sum equivalent to

35% of all non compulsory purchase order buy back costs over £50,000 in any financial year. It is appropriate to apply for Order[s] for Aylesbury Phase 1 given the number of leaseholders involved, although it is hoped that the vast majority of repurchases will be by agreement and therefore the advantages explained in this paragraph can be taken advantage of.

BACKGROUND PAPERS

Background Papers	Held At	Contact
Area Action Plan	http://www.southwark.gov.uk/YourServices/planningandbuildingcontrol/planningpolicy/localdevelopmentframework/aylesburyareaactionplan.html	Patrick McGreal 0207 525 5626
Report to Council Assembly resolving to publish Area Action Plan	http://moderngov.southwarksites.com/Data/Council%20Assembly/20090128/Agenda/Item%2061%20-Aylesbury%20Area%20Action%20Plan.pdf	
Report to Executive approving procurement for Phase 1 of the Aylesbury regeneration	http://moderngov.southwarksites.com/Published/C00000118/M00002833/AI00000958/\$AylesburyRegenerationPhase1open.docA.ps.pdf	

APPENDICES

No.	Title
Appendix One	Location plan showing Phase 1 and sites within
Appendix Two	Property schedule
Appendix Three	Procedural and legal matters

AUDIT TRAIL

Lead Officer	Richard Rawes, Strategic Director of Regeneration & Neighbourhoods	
Report Author	Patrick McGreal, Property Advisor – Major Projects	
Version	Final	
Dated	January 27 2010	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Strategic Director of Environment and Housing	Yes	Yes
Executive Member	Yes	No
Date final report sent to Constitutional/Community Council/Scrutiny Team	1 February 2010	