

APPENDIX THREE

Aylesbury Phase 1 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 red on the Plan at Appendix One. These three parcels contain a number of blocks of flats and maisonettes.
2. The Housing Act 1985 gives qualifying council tenants the right to buy their homes. Eighty-five 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 interest acquired;
 - a home loss payment; this is 10% of the market value where the leaseholder lives at the property or 7½% of the market value where the leaseholder lives elsewhere; 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 adaptation expenses.
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 entitlement as would be the case if there was a compulsory purchase order.

Third party and statutory utility rights

6. Utility Companies have rights across the sites that enable them to provide their infrastructure to the Estate. To enable regeneration to proceed these rights will have to be acquired or extinguished. It is also possible that persons may have 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 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.

APPENDIX THREE

Aylesbury Phase 1 Compulsory Purchase Orders Procedural and Legal matters

OUTLINE OF COMPULSORY PURCHASE PROCEDURE

Resolution

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

Referencing

9. The council assembles information that provides details of all owners, mortgagees, tenants and occupiers. This is to both 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 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 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. Since the regeneration being procured will be subject to compliance with the Aylesbury Area Action Plan planning should not be an issue. As regards finance for the regeneration, once the procurement is completed it should be possible to demonstrate that this is in place particularly as financial robustness will be a material consideration of the bid evaluation.

Making the Order

11. 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 careful drafting. The AAP will be the backbone for the Statement of Reasons for the Aylesbury.

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 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.

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.

APPENDIX THREE

Aylesbury Phase 1 Compulsory Purchase Orders Procedural and Legal matters

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.
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 Aylesbury as it transfers both the right to possession and title of the land to the council.

Indicative Timescale

Resolution to make the Order	
Referencing/Finance/Planning	12 weeks
Making the Order to Publication	6 weeks
Publication to Confirmation	40 weeks
Confirmation to taking Possession	18 weeks

18. Therefore we are looking at around a year and a half 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 resolved the period between publication and confirmation could be significantly reduced.

Number of Orders

19. Phase 1 covers a large area and includes three distinct sites: 1B/C, 7 and 10. It is recognised that site 1B/C is still large and may warrant division into two or even more sites. At this time, it is not known how the sites will be regenerated; this will emerge when one or more partner is procured.
20. One Order could be made to cover all the sites or individual ones could be made in respect of each of the sites. One Order is more administratively convenient however such an approach is inflexible because if there objections it cannot be 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.

APPENDIX THREE

Aylesbury Phase 1 Compulsory Purchase Orders Procedural and Legal matters

21. The optimum approach to this issue is likely to emerge after engagement with the procured regeneration partner[s]. It is therefore recommended that three Orders be made; one for site 1b/c, one for site 7 and one for site 10 but that the Head of Property be granted authority to review and amend the number of Orders after discussions with identified partners[s].

Power to make a Compulsory Purchase Order

22. Section 226 of the Town and Country Planning Act 1990 is the recommended enabling provision in this instance for the purpose of compulsorily acquiring the interests required to progress the implementation of the regeneration of the site. The detailed application and use of this power is set out in paragraphs 38-49 below.

POLICY IMPLICATIONS

Corporate

23. The regeneration of the Aylesbury Estate is a long standing council policy. The making of the proposed Order[s] will underpin this.
24. The regeneration of the Aylesbury Estate is a specified policy under the theme of *"Places Where People Love to Live"* in the *Corporate Plan 2009 – 2011*. It is also a *"Delivering Change"* policy of the Sustainable Community Strategy *"Southwark 2016"*.

Planning

25. The council has adopted an Area Action Plan (AAP) for the Aylesbury estate and surrounding area. Together with the Core Strategy, the AAP will replace the Southwark Plan and all future planning applications will be assessed against these documents. The Order[s] are a necessary tool to deliver the AAP.

Housing Strategy

26. The regeneration of the Aylesbury 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 commencement and successful delivery of Phase 1 is key to providing the rehousing capacity which enables the further Phases to be unlocked.

Rehousing requirements

27. 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 timescales for each Aylesbury rehousing phase 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 rehousing process will be managed by use of Housing Supply and Demand model which will enable the balancing of competing high priority demands for housing across the period. Rehousing in regeneration schemes is regulated by the council's lettings policy.

APPENDIX THREE

Aylesbury Phase 1 Compulsory Purchase Orders Procedural and Legal matters

The policy provides a choice for tenants between rehousing to a new RSL property built as part of the scheme or to an existing property elsewhere in the Borough. Initially, rehousing will be managed through choice based lettings, i.e. tenants bidding (with the highest priority and in date order of their priority) under the *Homesearch* scheme, until programme requirements necessitate the use of proactive rehousing, including if necessary court proceedings.

Property

28. The council has over the past year been endeavouring to acquire by agreement leaseholds to move the scheme forward. The passing of this resolution will encourage leaseholders to enter into meaningful negotiations. Once the Leaseholder Assistance Scheme as specified in the Leaseholder's Toolkit becomes operative later this year it is anticipated that the rate of acquisition will accelerate as issues faced by resident leaseholders with limited wealth can be resolved.

Financial Implications

29. The estimated net cost of acquiring the leasehold interests is £11.923million at present value levels. There is provision in the Aylesbury project programme for this expenditure. There will be staff resource costs in taking the Order[s] to completion, relocating tenants and acquiring leasehold interests there is also provision for them in the overall project programme.

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 the appropriate power in this instance to secure the compulsory acquisition of properties within Phase 1 of the Aylesbury Regeneration. 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 being acquired and it is not certain that they will be able to acquire it by agreement."

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."*

APPENDIX THREE

Aylesbury Phase 1 Compulsory Purchase Orders Procedural and Legal matters

32. It is considered that the use of this section is therefore most appropriate having regard to the council's aspirations for Phase 1 of the Aylesbury 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 1 of the Aylesbury 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, the provision of new facilities which are able to meet the needs of the area, together with commercial uses which will assist in attracting investment and growth opportunities to the area. Thus the proposals will inevitably 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") 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."*
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.*

APPENDIX THREE

Aylesbury Phase 1 Compulsory Purchase Orders Procedural and Legal matters

36. Paragraph 1.1 of the adopted Aylesbury Area Action Plan provides:

“The redevelopment of the Aylesbury Estate will create a new neighbourhood that will radically change the lives of everyone in this part of south east London. This is a once in a generation opportunity to improve the quality of life for everyone living in the area.”

37. 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. Procure and 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.

38. 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 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 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.

39. Other rights may also be required in order to progress the aspirations of the Aylesbury Area Action Plan. 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.

40. Demolition notices have been served on relevant dwellings within Phase 1 of the Aylesbury regeneration area. 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.

41. 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 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 1980. 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.

APPENDIX THREE

Aylesbury Phase 1 Compulsory Purchase Orders Procedural and Legal matters

42. In the event that the Order[s] are 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 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

43. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("the Convention").
44. 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.
45. 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.
46. 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 Aylesbury Estate 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].