

<b>Item No.</b>	<b>Classification:</b> Open	<b>Date:</b> 9 February 2010	<b>Meeting Name:</b> Executive
<b>Report title:</b>		Heygate Estate: Compulsory Purchase Orders	
<b>Ward:</b>		East Walworth	
<b>From:</b>		Deputy Chief Executive	

## **RECOMMENDATIONS**

That the Executive agrees:

1. The Council makes two Compulsory Purchase Orders under section 226 (1) of the Town & Country Planning Act 1990 (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) 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 and shown as Sites One and Two on the plan at Appendix One for the purpose of securing the regeneration of the Heygate Estate in accordance with the provisions of the Southwark Plan.
2. The Head of Property be authorised to:
  - a) take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Orders including the publication and service of all notices and the presentation of the Council's case at Public Inquiry should one be called
  - b) to acquire all interests in land within the compulsory purchase order areas either by agreement or compulsorily
  - c) approve agreements with land owners setting out the terms for the withdrawal of objections to the Orders, including where appropriate seeking exclusion of land from the Orders and
  - d) amend the boundaries of the Sites shown edged red on the plan at Appendix One should the need arise.
3. The resolution passed by Major Projects Board on 30 July 2007 to make a Compulsory Purchase Order covering a wider area be withdrawn.

## **BACKGROUND INFORMATION**

4. Following further detailed analysis and due diligence around the extent and scope of the Elephant and Castle regeneration the Council has a much clearer vision of the Project's scope and programme delivery. In order to secure delivery of this exciting area transformation it is clear that it is necessary to secure compulsory purchase powers to acquire outstanding leasehold properties and third party rights.

5. The Council has for a number of years been working hard to empty the Estate by relocating tenants and purchasing the interest of leaseholders. As the table overleaf demonstrates excellent progress has been made.

Category	Prior to vacation of Estate plans	As at 18 Jan 2010*	Percentage vacated
Residential tenants	1,033	60	94%
Residential leaseholders	179	27	85%
Commercial leaseholders	11	10	9%
Non-residential freeholder	1	1	0

6. In fact, the position is better because for a number of leaseholders and tenants agreements are in hand that will see them move in the near future. Also, Site One on the plan that includes blocks in Rodney Road and Wingrave have no leaseholders and only two remaining tenants and will be totally vacant very shortly. The blocks will thereafter be demolished and regenerated by Lend Lease as Phase 1 of the regeneration.
7. Despite the significant progress made to date it is getting harder and harder to move forward with the remaining residential leaseholders. Appendix Two to this report lists the outstanding properties and it can be seen they are spread throughout the Site Two area.

#### KEY ISSUES FOR CONSIDERATION

8. The making of a compulsory purchase order is essential in these circumstances to guard against the risk of the regeneration project being delayed. Efforts will however continue to acquire the outstanding interests by agreement.
9. The remaining commercial leases are in respect of shops in Brandon Street and the petrol filling station in Walworth Road. Of these, with the exception of one shop in Brandon Street, the leases will have expired by the time [2012] their sites are needed for regeneration. Negotiations are taking place with the shop lessee concerned but his current monetary aspirations cannot be met. A confirmed order will therefore ensure possession of that property in line with the regeneration timetable. Maintaining income from these units [in excess of £75,000 per annum] and enabling local service providers to continue their work have been a material consideration in delaying possession.
10. The non-residential freeholder is the United Reform Church that fronts New Kent Road. It is accepted that this property is to be reprovided as part of the regeneration and discussions have taken place with Church representatives who are supportive of the regeneration. However, until the master planning of the area is completed it is not possible to move this aspect forward.
11. Site Two contains some Council service buildings; a former doctor's surgery used for project delivery purposes, a tenant's hall and a housing office. With the Estate almost now vacant the need for the project office will end shortly and the tenant's hall is no longer used. The housing office fronts Rodney Road and serves residents in this area of Walworth and this service provision will need to be reprovided.

12. It is appropriate to separate the Heygate into two sites for the following reasons:
  - a) Rodney Road forms a distinct boundary between Sites One and Two
  - b) Site One will be free of occupiers imminently and is already free of third party land owners
  - c) The latest strategy is for the regeneration of Site One as a single phase
  - d) It is intended to bring Site One forward for early regeneration
13. Therefore by separating the sites it will enable their respective Compulsory Purchase Orders to proceed independently of each other and this should speed up the confirmation of the Order in respect of Site One. This is the approach recommended by this report.
14. Consideration has been given to excluding Site One in its entirety from the Compulsory Purchase process since all third party land ownerships have been acquired. However, the site may be subject to third party rights over it [such as those of utility companies] and its inclusion within an order mitigates the risk of the existence of such rights delaying/obstructing the regeneration. In addition, any third party rights not identified at the referencing stage will be over-ridden so long as the land is used for the undertakings of the Council. This will be of assurance to Lend Lease.
15. In July 2007, Major Projects Board resolved to make a Compulsory Purchase Order covering a wider area than the one shown at Appendix One. In light of the evolution of the regeneration it is appropriate now for that resolution to be withdrawn.

#### **UNDERLYING INFORMATION IN RESOLVING TO MAKE THESE COMPULSORY PURCHASE ORDERS**

16. 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**

17. 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 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
18. The regeneration of the Heygate Estate is considered to have benefits to not only the 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 later in this Report.

19. 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**

20. There has been extensive consultation with Heygate Estate residents [including tenants and leaseholders] at all stages of the regeneration and the making of a compulsory purchase order has been included within this consultation.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Communities, Law & Governance**

21. The Executive is advised that the Council has a power to compulsorily acquire land and property interests under Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended by Section 99 of the Planning and Compulsory Purchase Act 2004) ("the 1990 Act").
22. Section 226(1)(a) gives the Council power to acquire compulsorily any land in their area if the Council think that the acquisition will "facilitate the carrying out of development/re-development, or improvement on, or in relation to, the land". In exercising this power the Council must have regard to Section 226(1)(b) of the 1990 Act and must not exercise the power unless it thinks 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 of improvement of the economic well being of the area;
  - (b) The promotion or improvement of the social well being of the area;
  - (c) The promotion or improvement of the environmental well being of the area.
23. The Executive is further advised that there are a number of powers available to the Council to acquire land and property interests voluntarily. Section 120 (1) of the Local Government Act 1972 ("the 1972 Act") authorises the Council to acquire any land by agreement for the purposes of (a) any of its statutory functions or (b) for the benefit, improvement or development of its area. Under Section 120 (2) of the 1972 Act the Council may acquire by agreement any land for any purpose for which it is authorised by the 1972 Act or any other Act to acquire land, notwithstanding that the land is not immediately required for the purpose; and, until it is required for that purpose, it may be used for the purpose of any of the Council's functions.
24. Section 227 of the 1990 Act also enables the Council to acquire land by agreement if it will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land if this is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area, or if it is required for a purpose which is necessary to achieve in the interests of the proper planning of an area in which the land is situated.

25. In relation to the creation of new rights, Section 13(1) of the Local Government (Miscellaneous Provisions) Act 1976 provides that a local authority which may be authorised by a Minister of the Crown, by means of a Compulsory Purchase Order, to purchase any land compulsorily for any purpose may be authorised by that Minister, by means of such an Order, to purchase compulsorily for that purpose such new rights over the land as are specified in the Order; and “new rights” means rights which are not in existence when the Order specifying them is made.
26. The Council’s duty to consider rights of property owners under the Human Rights Act 1988 are explained in paragraphs 42-45 of Appendix Three to this report.
27. The Executive will note from paragraph 31 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 Heygate 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 Heygate 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.

#### **Finance Director**

28. The Finance Director notes the recommendations to the Executive made in paragraphs one, two and three of this report.
29. It is acknowledged that a statutory compensation code exists which provide Residential and Commercial Leaseholders with financial compensation when leasehold interests are acquired via Compulsory Purchase Orders.
30. 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.
31. In connection with this it is noted in paragraph 28 of Appendix Three that the estimated cost of acquiring the remaining third party interests on the site is £6.25m at present value levels.
32. In light of these costs, provision of financial assurance 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 the process 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.

## Strategic Director of Environment and Housing

33. Initial demolition notices were served pursuant to Housing Act 2004 on all Heygate properties in November 2005. These had the effect of suspending the then existing and future Right to Buy applications for a period of five years (this statutory five year period has been extended to seven years by virtue of schedule 13 of the Housing and Regeneration Act 2008 but the legislation was not retrospective hence the Heygate notices last only five years). As at 5 September 2005 there were eight live Right to Buy applications. The legislation then allows the service of Final Demolition Notices where the blocks are due to be demolished within the following two years, 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). Having said this, the eight existing Right To Buy (RTB) applications have all expired so consideration will be given over the next six months to determine whether it is appropriate to serve final demolition notices on Heygate Estate.
34. There is a financial incentive to buying back properties without recourse to a CPO, 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 RTB. 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 CPO buy back costs over £50,000 in any financial year. It is appropriate to apply for a CPO for the Heygate Estate given that twenty-eight leaseholders are still to be bought out, although it is hoped that the majority of remaining 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
2007 Compulsory Purchase Order resolution by Major Projects Board	<a href="http://moderngov.southwarksites.com/Data/Major%20Projects%20Board%20(Executive%20Committee)/20070730/Agenda/Minutes.pdf">http://moderngov.southwarksites.com/Data/Major%20Projects%20Board%20(Executive%20Committee)/20070730/Agenda/Minutes.pdf</a>	Patrick McGreal 0207 525 5626
Heygate Action Plan	<a href="http://moderngov.southwarksites.com/Data/Executive/20070619/Agenda/Item%2016%20-%20Heygate%20ActionPlan.pdf">http://moderngov.southwarksites.com/Data/Executive/20070619/Agenda/Item%2016%20-%20Heygate%20ActionPlan.pdf</a>	

Report to Executive on 24 November 2009 giving details of revised heads of terms with Lend Lease	<a href="http://modern.gov.southwark.gov.uk/Published/C00000118/M00002834/AI00006178/\$ElephantandCastleHeadsofTerms.docA.ps.pdf">http://modern.gov.southwark.gov.uk/Published/C00000118/M00002834/AI00006178/\$ElephantandCastleHeadsofTerms.docA.ps.pdf</a>	
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## APPENDICES

No.	Title
Appendix One	Location plan showing Order sites
Appendix Two	Property schedule
Appendix Three	Procedural and Legal matters

## AUDIT TRAIL

<b>Lead Officer</b>	Eleanor Kelly, Deputy Chief Executive	
<b>Report Author</b>	Patrick McGreal	
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<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Strategic Director of Environment and Housing	Yes	Yes
<b>Executive Member</b>	Yes	Yes
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