

## APPENDIX THREE

### Heygate Compulsory Purchase Orders Procedural and Legal matters

#### LEGAL MATTERS

##### Acquisition of Residential Leasehold Interests

1. The Right to Buy provisions of the Housing Act 1985 (as amended) give qualifying Council tenants the right to buy their homes. One hundred and seventy-nine Heygate tenants purchased their homes under these provisions
2. The Council can only repurchase these leasehold properties in the following circumstances:
  - where there is agreement with the leaseholder *or*
  - following a confirmed Compulsory Purchase Order
3. The statutory compensation code under Compulsory Purchase legislation provides that a leaseholder is entitled to the following compensation following a compulsory acquisition:
  - a) the market value of the interest acquired
  - b) 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
  - 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 removal costs, legal fees, surveyors fees and adaptation expenses; this is not an exhaustive list
4. 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.

##### Acquisition of Commercial Leasehold Interests

5. As previously mentioned, with one exception, these leases expire before either site is needed to be demolished ahead of transfer to Lend Lease. On expiry these leases will not be renewed although where prudent short-term non-secure extensions may be allowed. The lease of one shop however in Brandon Street does not expire until 2014 and it does not contain any early termination provisions to enable the Council to terminate before it expires. In the absence of agreement with the lessee the Council can only acquire the lease before termination with a confirmed Compulsory Purchase Order.
6. 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;

## APPENDIX THREE

### Heygate Compulsory Purchase Orders Procedural and Legal matters

- 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 Non-residential Freehold Interest

- 7. Site Two includes one plot of land that is owned by a third party; Crossways Church at 1 Deacon Way. The land is held by the United Reform Church and is used for worship and community interaction purposes. Discussions have over a period of time taken place with the Church who is supportative of the regeneration in principle but wish to retain a presence in the immediate area. In cases such as this where there is no general market for specialised properties rule 5 of section 5 of the Land Compensation Act 1961 provides that the compensation payable is to be assessed on the basis of the reasonable cost of equivalent reinstatement.

#### PROCEDURAL 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, 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*

- 10. 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 regeneration of the sites will be in accordance with the detailed planning guidance for the area. The Council is presently negotiating the Regeneration Agreement with Lend Lease Corporation [ranked third among the top 20 global companies by sales in the real estate industry as classified by Dow Jones (06/10/09)]. The Regeneration Agreement is likely to contain a requirement on Lend Lease to use reasonable endeavours to support the Council's application for a Compulsory Purchase Order. This will include a requirement on them to

## APPENDIX THREE

### Heygate Compulsory Purchase Orders Procedural and Legal matters

provide evidence that the scheme is deliverable in planning terms and that finance will be available. This is not unusual for a scheme of this size and complexity.

#### *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 to be prepared accurately and with great precision.

#### *Publication of the Order*

12. 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.
13. 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.

#### *Confirmation of the Order*

14. 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.
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 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*

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 Heygate as it transfers both the right to possession and title of the land to the Council.

#### **Indicative Timescale**

18. 

■	Resolution to make the Order	
■	Referencing/Finance/Planning	12 weeks
■	Making the Order to Publication	6 weeks

## APPENDIX THREE

### Heygate Compulsory Purchase Orders Procedural and Legal matters

■	Publication to Confirmation	40 weeks
■	Confirmation to taking Possession	18 weeks

19. Therefore we are looking at around a year and a half between making this resolution and obtaining possession but 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.

#### Power to make a Compulsory Purchase Order

20. 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 in both instances 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 29-41 of this Appendix.

#### Policy Implications

##### *Corporate*

21. The regeneration of the Elephant and Castle is a long standing Borough policy. The making of the proposed Compulsory Purchase Orders for the Heygate Estate will underpin this.
22. The regeneration of the Elephant and Castle 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*

23. The Heygate Estate forms part of the Elephant & Castle core area site 39P in the Southwark Plan which is identified for redevelopment to provide a range of new uses and activities including homes, retail, leisure and employment space. The site is within the Elephant & Castle Opportunity Area as identified in the London Plan and has been identified as having the capacity to contribute to London’s requirements for new homes and jobs. The 39P site is therefore of strategic importance to the delivery of both Southwark and London wide targets and there is strong planning support for redevelopment within it.
24. The Council has produced supplementary planning guidance in the form of a development framework which provides more detailed information as to how policies in the development plan are to be given spatial affect. The 2004 Elephant & Castle Supplementary Planning Guidance [SPG] addresses land use, movement, public realm and built form for the entire site including the

## APPENDIX THREE

### Heygate Compulsory Purchase Orders Procedural and Legal matters

Heygate Estate. The SPG suggests a phased approach to redevelopment and delivery commencing on the southern part of the Estate. It also recognises that in appropriate circumstances the Council will be prepared to use its Compulsory Purchase powers to assemble land required for development.

#### *Housing Strategy*

25. The regeneration of the Heygate 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.

#### *Rehousing requirements*

26. The planned timescale for the Heygate regeneration phase takes into account the Council's capacity within the overall social housing supply. The overall supply of homes available for letting is mapped against demand in the Housing Supply and Demand model - as anticipated up to 2030. The model shows that up to 2014 the proportion of homes needed for regeneration rehousing schemes equates to approximately 10% of the total supply available. Although this may seem a modest proportion of the overall available supply, it is recognised that tenants on regeneration schemes have high aspirations and tend to limit their choices to the most desirable homes, often only in the immediate neighbourhood of their current home. The Council's lettings policy is based on choice, i.e. tenants bidding (with the highest priority and in date order of their priority) under the *Homesearch* scheme, until contractual requirements mean the Council needs to instigate court proceedings. This tenant/customer led approach naturally limits the proportion of properties that can be deemed suitable for rehousing on regeneration schemes. On the other hand, it does mean that a reasonable number of properties remain available for other groups of applicants on the Council's housing list - the main effect of which falls on the desirability of the remaining properties. The Housing Supply and Demand model is up-dated half-yearly against performance and any additional demand from newly identified regeneration schemes, emergency measures etc is re-assessed at these times.

#### *Property Acquisitions*

27. The Council has for a number of years been endeavouring to acquire by agreement leasehold properties to move the scheme forward. The passing of this resolution should encourage the remaining leaseholders to enter into meaningful negotiations with the Council.

#### **Financial Implications**

28. The estimated net cost of acquiring the remaining third party interests on the Estate is £6.25million at present value levels. There is provision in the Elephant and Castle project programme for this expenditure. There will be staff resource costs in taking the Orders to completion, relocating tenants and acquiring leasehold interests for which there is also provision for in the overall project programme.

## APPENDIX THREE

### Heygate Compulsory Purchase Orders Procedural and Legal matters

#### Legal Implications

29. 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 the Heygate Estate. 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"*

30. 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-*

*(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."*

31. It is considered that the use of this section is therefore most appropriate having regard to the Council's aspirations for the regeneration of the Heygate Estate. The interests to be acquired by the compulsory purchase order 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 the Heygate Estate is clearly 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 and an improved public realm which will assist in attracting investment and growth opportunities to the area. Thus the proposals will inevitably assist in promoting and improving the social economic and environmental well being of the area.

32. 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

## APPENDIX THREE

### Heygate Compulsory Purchase Orders Procedural and Legal matters

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."*

33. 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.
34. 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;*
  - (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.*
35. The Elephant and Castle is identified in the Southwark Plan as a regeneration area and is the subject of a site specific detailed development framework in the form of the Elephant and Castle SPG that was adopted by the Council in 2004 after extensive public consultation. The London Plan also identifies the Elephant and Castle as an Opportunity Area for new and improved homes and commercial opportunities. The intended regeneration agreement with Lend Lease will provide for the comprehensive master planning of the area in accordance with the SPG. It is therefore considered that there are no major planning hurdles to frustrate the aspirations of the Compulsory Purchase Orders.

## APPENDIX THREE

### Heygate Compulsory Purchase Orders Procedural and Legal matters

36. The completion of the regeneration agreement with Lend Lease will secure conditional funding for the delivery of the regeneration aspirations. Legal advice has been taken on this specific aspect from Guy Roots QC who reports:
- “there would undoubtedly be a better chance of the CPO being confirmed with Lend Lease’s involvement than without.....involvement would assist with satisfying the tests relating to how the Council intended to use the land, resourcing that enabled such use in a reasonable period”*
37. 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 delivery partner and
  - (ii) Obtaining 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 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.
39. Other rights may also be required in order to progress the aspirations of the Heygate part of the Elephant and Castle regeneration. 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. One of the first tasks in preparing a compulsory purchase orders 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 Orders. As the Council is the freeholder of almost all the Order areas much of this information should be readily available. Nonetheless 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



## APPENDIX THREE

### Heygate Compulsory Purchase Orders Procedural and Legal matters

properly captured in the Orders and are properly notified, the Requisition for Information is a means of ensuring this is fulfilled.

41. 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

42. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("the Convention").
43. In proposing these Orders 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.
44. 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.
45. 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 Heygate Estate it will be appropriate to make the Orders, if the relevant leaseholder interests cannot be acquired by agreement. Objections can be made against the Orders that will then have to be considered by the Secretary of State before s/he decides whether or not to confirm the Orders.