

APPENDIX E

ELEPHANT AND CASTLE SHOPPING CENTRE - COMPULSORY PURCHASE ORDER

Further detail on CPO process and compensation

Background

1. The ability to make compulsory purchase orders is limited to predominantly public sector organisations. EC does not have these powers hence its approach to the Council to utilise its powers to enable the Scheme to happen.
2. Section 226(4) Town and Country Planning Act 1990 makes clear that it is a perfectly legitimate use of compulsory purchase powers for a local authority to make a CPO for planning purposes even though it is not the Council itself who is to undertake the development.
3. Since EC will be the beneficiary of the CPO it is therefore appropriate that it indemnifies the Council against all the costs arising from its making and subsequent execution.

Interaction between the CPO and the Landlord and Tenant Act 1954 and the measure of compensation available to owners/occupiers

4. As set out in the main body of the report, all the property interests in the Shopping Centre will be brought to an end using standard landlord and tenant procedures under the Landlord and Tenant Act 1954 ("the 1954 Act") or using the contractual break notices and the inclusion of these properties in the CPO is a protective measure in the event that there is any unexpected delay or problem in obtaining possession through that route.
5. Where there is no means of acquiring properties or rights through the landlord and tenant route then, in the absence of agreement with the relevant owners of the property interest, compulsory purchase will be the only available option. If compulsory purchase takes place the property or rights owner will be compensated on the basis of the statutory "land compensation code", which is a mixture of statute and case law based rules and principles for compensation in compulsory acquisition. This is different from the compensation regime under the 1954 Act set out above.
6. The statutory compensation code provides that commercial leaseholders are entitled to the following compensation following a compulsory acquisition:
 - a) The market value of the leasehold interest in the property;
 - b) Statutory loss payments based on a fixed percentage of market value and/or a formula based on the area of the property
 - c) Payment for loss of profits arising from the relocation or extinguishment of the business [as appropriate]

- d) 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
 - e) where the lease is held as an investment rather than for occupation the reasonable costs of acquiring a replacement investment provided that is done within twelve months of the transfer of ownership of the asset
7. The freeholders of properties subject to statutory compensation are entitled to:
- a) The market value of the freehold interest in the property;
 - b) Statutory loss payments based on a fixed percentage of market value and/or a formula based on the area of the property
 - c) Payment for loss of profits arising from the relocation or extinguishment of the business if the premises are occupied by the freeholder
 - d) Where the freeholder is in occupation, a disturbance payment to cover the reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include relocation costs, legal fees and surveyors fees
 - e) Where the property is held as an investment rather than for occupation the reasonable costs of acquiring a replacement investment provided that is done within twelve months of the transfer of ownership of the asset.

Outline of Compulsory Purchase Procedure

Resolution

8. The Cabinet passes a resolution to make a CPO. This is the purpose of this report.

Land Referencing

9. Final details are assembled of all owners, tenants and occupiers that have land interests in the CPO land and of parties that may have rights over the CPO land. This is to both identify what interests need to be acquired and who is entitled to receive a notice of the publication of the CPO. These relevant interests will be set out in a Schedule that will be incorporated into the CPO. Formal requisitions for information have been served on all known owners and occupiers of each property to be subject to the CPO but with the Council having made very clear that this does not in any way pre-judge any decision by Cabinet as to the merits or otherwise of any CPO. It is important that the Council takes all reasonable steps to ensure that all interests are identified and included in the CPO. This stage will also enable the precise details of the CPO areas to be determined. The boundaries shown on the draft CPO map at Appendix A may need amendment in the light of this and it is recommended that the Director of Regeneration is delegated authority to set the extent of the CPO.

Making the CPO

10. The Council makes the CPO, to a defined format. A schedule goes with the CPO identifying ownership details of all land within it. A Statement of Reasons must also be prepared to accompany the CPO. This document sets out the Council's reasoning and justification for the CPO.

Publication of the CPO

11. The Council serves notice of making of the CPO on all freeholders, leaseholders, tenants and occupiers affected by it, which may include persons outside the CPO land who have (or potentially have) rights over the CPO land. A notice of the making of the CPO has to be published for two successive weeks in a local newspaper.
12. 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 CPO is then passed to the government minister for confirmation.

Confirmation of the CPO

13. The CPO does not become effective unless and until it is confirmed by the minister. Where there are objections to the CPO 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.
14. After considering the objections (if there has been a public inquiry there will be an Inspector's Report) the Secretary of State may confirm, modify or reject the CPO. If it is rejected that is the end of the process and E&C and the Council will need to revisit the Scheme, unless it is considered that the Secretary of State has erred in his decision in which case a statutory judicial review can be requested.
15. Following confirmation or if applicable, modification and confirmation, a notice advising that the CPO has been confirmed must be published in the local newspaper and served on all leaseholders, tenants and occupiers affected by the Order. A confirmed CPO can only be implemented within three years to retain its validity.

Implementation of the CPO and taking Possession

16. Implementation of the CPO can be achieved by either Notice to Treat/Notice of Entry or by using the General Vesting Declaration procedure. The latter is considered the most appropriate for the Shopping Centre as it transfers both the right to possession and title of the land to the Council. However, the creation of new rights under section 13 Local Government (Miscellaneous Provisions) Act 1976 can only be done using the notice to treat route.

Indicative Timescale

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| 17. | ■ | Resolution to make the CPO | * |
| | ■ | Making the Order to Publication | 6 weeks |
| | ■ | Publication to Confirmation | 40 weeks |
| | ■ | Confirmation to taking Possession | 18 weeks |

* will follow completion of prerequisite documentation including the indemnity agreement

18. It is therefore likely that it will take around a year and a half between making this resolving to making a compulsory purchase order and obtaining possession but if there are complications it could be longer. It is assumed for the purpose of this indicative timescale that there will be objections to the CPO 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, with an inspector presiding over the inquiry, so the Council has little control over this process. Resource availability at the Planning Inspectorate can cause this to be scheduled rather later than 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 may be significantly reduced.

Property Acquisitions

19. Should the recommended resolution be passed, EC will continue to endeavour to acquire all interests by agreement wherever reasonably practical. Once the CPO is confirmed the Council will have the ability to acquire properties by compulsion and any properties acquired compulsorily are vested in the Council. Again, these will be transferred to E&C or its group company. Once the land vests in the Council, it becomes responsible for the payment of compensation. Any compensation agreed or determined by the Upper Tribunal will be paid by the Council but funded by E&C pursuant to the indemnity agreement. In certain circumstances, affected owners of land included in the CPO may be able to claim that their land is "blighted" because of the CPO that has been made and serve a "blight notice" on the Council, requesting that the Council purchases their interest. It is likely to be of limited application in this instance but in any event the costs of acquiring a property pursuant to a blight notice because of the making of the CPO (if appropriate) will be covered in the CPO indemnity agreement.