

APPENDIX G

ELEPHANT AND CASTLE SHOPPING CENTRE - COMPULSORY PURCHASE ORDER

WHETHER THE USE OF THE COUNCIL'S POWERS IS JUSTIFIED

1. Firstly, sections 226(1)(a) and 226(1A) of the 1990 Act are considered.
2. The making of a CPO will facilitate the carrying out of development, re-development, or improvement on, or in relation to, the land. There is sufficient evidence that the Scheme is likely to proceed if CPO powers are utilised (together with the Council's other powers as envisaged by the linked reports). Notwithstanding that there will be some negative effects to those affected by the CPO, as referred to in this report and having taken those negative effects into account, the development, re-development or improvement is likely to contribute to the achievement of all of the well-being objects in section 226(1A) of the 1990 Act. The considerable economic, social and environmental benefits that are likely to arise from the Scheme are referred to earlier in this report. Accordingly the statutory tests in sections 226(1)(a) and 226(1A) are met. It has been considered whether this would be the case even if all of the adverse effects of the Scheme generally were ascribed to the CPO and have concluded that even in that scenario the significant benefits of the Scheme are compelling and outweigh those adverse effects.
3. The key paragraphs from the Guidance are now considered.

Acquiring authorities should use compulsory purchase powers where it is expedient to do so –

4. Given the benefits of the Scheme, it is clearly expedient to make a CPO to facilitate this very important development. The CPO is essential to the successful implementation of the Scheme.

However, a CPO should only be made where there is a compelling case in the public interest

5. having regard to the considerable contributions to the economic, social and environmental well-being of the area that are likely to accrue from the Scheme, which Will transform the town centre, there is a compelling case in the public interest for the use of CPO powers. The public benefits arising from the Scheme amount to sufficiently compelling reasons for powers to be sought and outweigh the loss, creation and overriding of property interests to individuals and businesses arising from the CPO. Without the use of CPO powers there is uncertainty that the necessary land assembly can be achieved in a reasonable timeframe. Accordingly it is necessary in the public interest for a CPO to be made.
6. The CPO covers land owned by TfL and LUL. As referred to in the main body of the report, the intention is to bring this land into the Scheme by agreement but the CPO allows for its acquisition if necessary. It is not considered that the acquisition of the TfL paved areas immediately adjacent to the Shopping Centre and the LCC Site will give rise to any significant detriment to TfL's undertaking. Indeed, the acquisition will facilitate the revised highway boundary arrangements which were expressly agreed with TfL in the section 106 planning agreement. The acquisition of the current LUL Northern Line station against the wishes of LUL is clearly something that the Council

would do only as a last resort and the Council would only do so in a manner which did not affect the smooth running of the Tube network. In practice this situation is very unlikely to occur as the developer is required by the terms of the section 106 agreement to reach agreement with LUL at an early stage of the Scheme. In each case TfL and LUL will be entitled to compensation for any land acquired.

Compulsory purchase is intended as a last resort; however... it may often be sensible ... for the acquiring authority to plan a compulsory purchase timetable as a contingency measure and initiate formal procedures [to mitigate loss of valuable time];

7. EC, acting in consultation with Council officers, has been making reasonable efforts to acquire outstanding land interests and new rights by agreement over a reasonable period of time. This is evidenced by the fact that it has concluded various acquisitions already. EC will be obliged to continue to negotiate for acquisitions by agreement under the CPO indemnity agreement. The Council will also take an active role, in collaboration with EC, to facilitate negotiations. The making of a CPO will assist in these negotiations as it will make all parties aware of the seriousness of the Council's intentions, as is recognised in the Guidance. The CPO is being used as a last resort to underpin the remaining negotiations that need to be concluded to enable the Scheme.
8. As regards adjacent properties which have the benefit of rights of light and other rights that would be overridden by the proposed CPO, EC has not negotiated with these parties to date. This is also explained in the linked report for interfering with rights elsewhere on the Agenda but given the sheer number of property interests which will need to be negotiated with in connection with the Scheme it will not be practicable or in any way realistic for releases to be negotiated in any sort of reasonable timeframe in this case. In addition, it will only take one of the interested parties to either not sign a release or not to engage and the entire Scheme would be jeopardised. The use of section 203 of the 2016 Act to override the rights is the only realistic way for this development to be able to proceed in any reasonable time frame and at a cost which can be identified. The holders of the rights will be compensated under section 204. In the particular circumstances of this case, it will be pointless to require EC to undertake such negotiations. There is no practical alternative to the use of statutory powers on this occasion, given the scale and complexity of the rights of light issue. The same is true of the rights sought over the viaduct structure for cabling and wiring works.

When making ... [a CPO] acquiring authorities ... should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected.

9. The Council's purpose in making the CPO is to facilitate the development, redevelopment or improvement of land. The Scheme represents a vital, comprehensive redevelopment of the town centre, providing substantial improvements in the town centre's retail and leisure offer, improvements to the town centre environment and new housing. The very considerable benefits that will arise from the Scheme have been summarised above these public benefits outweigh and justify interference with, human rights and such interference is proportionate to the large level of public benefits that would arise from the Scheme. The purpose to be achieved by the CPO justifies interference with human rights even if the interference was a lot wider or more severe than considered in this report, given the benefits of the Scheme. The public benefit of the Scheme outweighs the private losses.

In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.

10. Offers made to date by EC, are reasonable. This is evidenced by the fact that various acquisitions have taken place already. Reasonable steps have been taken to acquire the interests in land and rights by agreement. The Council has sought to engage constructively with those affected, as evidenced by Council officers addressing affected traders as to the proposals, the appointment of Tree Shepherd to assist affected parties with relocation advice and the other measures in the agreed relocation strategy under the section 106 agreement. Those relocation measure obligations are ongoing.

The acquiring authority must be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought at this time... [the acquiring authority should] have a clear idea of how it intends to use the land which it is proposing to acquire and [should be able to] show that all necessary resources are likely to be available to achieve that end within a reasonable time-scale.

11. The Council plans to use the CPO acquisitions and new rights to facilitate the Scheme and the benefits derived from the Scheme are sufficiently compelling to warrant seeking the powers now, so that valuable time is not lost as recognised in the Guidance. Resources are dealt with below.

The acquiring authority should address (a) sources of funding ... available for both acquiring the land and implementing [the Scheme] ... and (b) the timing of that funding - funding should generally be available now or early in the process ... evidence should be ... provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.

12. The Council will be entering into a CPO indemnity agreement (and other agreements) with EC whereby the Council will receive a complete indemnity in respect of all compensation to be paid pursuant to the CPO and/or through the operation of sections 203-205 of the 2016 Act and/or through blight notices under section 137 of the 1990 Act. All other costs associated with the CPO will be borne by EC too.

13. In addition, further details of funding have been provided by EC which has been reviewed and officers are satisfied that the funding is either already available or will be available on confirmation of the CPO and the use of the Council's powers to override rights are utilised to override third party rights (as recommended elsewhere on the agenda). As regards non-financial resources, EC has procured a professional team from all disciplines to advise in respect of the Scheme. It is advised by Delancey, an experienced property development and asset management company. The Triangle partners have developed large schemes before, as referred to earlier in this report. Officers are satisfied the developer has the expertise and the ability to attract the funding to deliver the Scheme. It has already demonstrated its commitment by at considerable expense securing a planning consent and acquiring much of the land needed to deliver the scheme. This is therefore not an impediment. There are no known external factors that may frustrate delivery of the scheme.

Acquiring authorities will need to demonstrate that the scheme is unlikely to be blocked by any physical or legal impediments. These include:

- (a) *the programming of any infrastructure accommodation works or remedial work which may be required*

14. It is considered there are no such impediments. As Cabinet is aware, as well as the proposals contained in the scheme, TfL/LUL is promoting the Bakerloo Extension line proposals. This was the subject of a paper to Cabinet on 21 January 2020. If the Bakerloo Line extension goes forward, it is likely to require a larger combined, station box at Elephant & Castle than that presently proposed in the Scheme, which was designed for the Northern Line. The Council wishes to see both the Scheme and the Bakerloo Line extension progress and to that end Cabinet approved in January a contribution of £7.5 million (to be matched by TfL) towards the Bakerloo Line Extension at Elephant & Castle. Discussions are taking place between EC and LUL as to the provision by EC of a bigger new station box within the Scheme to incorporate the Bakerloo Line extension too. This will necessitate amendments to the Scheme in terms of the extent of the station box. It is also understood that LUL plans to submit a planning application shortly for connecting tunnel works, to ensure that the connecting tunnels to the new station box are as per its specific requirements. In both cases, although planning consent will be required for such changes, there is no obvious reason why such consent would not be forthcoming.

- (b) *any need for planning permission for the scheme or other consent or licence.*

15. As advised earlier, the Scheme has been granted planning permission. The judgment in the judicial review proceedings was the subject of an application for leave to appeal but this has been dismissed on all grounds by the High Court. The claimant may choose to pursue its application for leave to appeal to the Court of Appeal. Officers are satisfied that, now that the permission has the benefit of a High Court judgment in the Council's favour on all grounds, there is a low risk of that appeal succeeding. The Council is entitled to proceed on the basis, as found by the High Court, that it has acted entirely lawfully. In any event, even if the planning permission was quashed on appeal (which officers think is unlikely) there is no obvious reason why planning permission for the Scheme would not be forthcoming again, given its general fit with the development plan policy and the Council's long term policy aspirations for the Opportunity Area.

As stated above, the de-coupling works to the northern façade of the Metropolitan Tabernacle have the benefit of listed building consent. That consent has a time period of 3 years (expiring 10 January 2022) - if the works are not begun by then the consent will lapse. It is possible that those works will be begun by then, but it is fair to say that the envisaged programme of works envisages commencement on the West Site after January 2022, because the first phase of development will be on the East Site. This has been discussed with EC, who advise that they have instructed their planning consultants to prepare a further listed building consent application which will request a longer implementation date for those works. Again, there is no obvious reason why such consent would not be forthcoming, particularly in light of the current extant consent.

16. As explained earlier in the report, EC envisages that the two railway arches owned long leasehold by EC shall be brought into beneficial occupational use for A Use Classes. The current planning permission for the Scheme does not specifically

include a change of use to those purposes for those units. Again, EC advise that it has instructed planning consultants to formulate an application for such planning consent in respect of those arches. There is no obvious reason why such consent will not be forthcoming, subject to suitable conditions, as such uses will be in keeping with the current uses on Elephant Road and the planning policies for the Opportunity Area. The units would also represent a potential further relocation opportunity in the medium term.

17. The Scheme requires the stopping up of some highways. EC has made applications under section 247 of the 1990 Act to stop-up areas that are (or potentially could be) subject to highway rights. The applications were advertised in the local newspaper and London Gazette in January 2020 and interested parties had twenty-eight days in which to object. Any objections received will be for EC to endeavour to resolve. The Mayor of London has a power to dispense with a public inquiry into objections in certain circumstances but if that power is not utilised it will be necessary to arrange for a Public Inquiry. Should there be unresolved objections in respect of both the CPO and the stopping up of highways the Secretary of State may resolve that they both be considered at the same Public Inquiry. Stopping up orders are common in development scenarios and there is no obvious reason why such orders would not be made in respect of the Scheme.
18. One or more agreements under the Highways Act 1980 with TfL and the Council, as highway authorities, will be required for highway works. Agreement likely be reached on these, as they are, routinely, on many different types of development. The section 106 agreement imposes restrictions on certain milestones in the development programme until such agreements, and their respective works, are completed.
19. Licences will be required under the Highways Act 1980 for oversailing the highway, any scaffolding over the highway or hoarding affecting the highway. Again, though, such licences are routinely granted in all manner of developments.
20. There are no physical impediments which are known which will prevent the Scheme from proceeding.
21. The CPO legislation affords special protection to statutory undertakers' operational land. Statutory undertakers can make representations to their appropriate minister (i.e. the minister who is responsible for that undertaker) against the inclusion of their operational land, as well as objecting to the Secretary of State in the normal manner. If such a representation is made and not withdrawn, generally the Secretary of State will not confirm the CPO as regards that interest in land unless the appropriate minister gives a certificate that the land can be taken without serious detriment to the statutory undertaker.
22. There is some operational land of statutory undertakers within the CPO area, most notably the Northern Line tube station, TfL highway, the railway viaduct and the railway station. However, it is not the intention of EC or the Council to interfere with the operational running of e.g. the London Underground station nor the railway. Discussions are progressing between EC and London Underground and between EC and Network Rail in these respects and EC is confident that agreement shall be reached on all matters. EC has been keeping the Council apprised of progress and given confidence that agreements with these parties can be exchanged in a reasonable period, thereby bringing them into the Scheme by agreement. Nevertheless, the CPO is needed as a backstop.

23. There are also electricity sub-stations within the CPO area, held by London Power Networks. Again, this is operational land and EC envisages that agreement will be reached to bring the leases to an end but the CPO is needed as a backstop.
24. The CPO land also includes statutory undertaker and telecommunications operator apparatus and EC is already in discussions with the utility companies and the telecommunications operators to reach agreement with them.
25. There are no areas of land which attract special protection under section 19 Acquisition of Land Act 1981 (common land, open space or allotments).
26. Therefore, there are unlikely to be any impediments to the Scheme if a CPO is made (taken together with the utilisation of the Council's other planning powers as envisaged by the linked reports).

Acquiring authorities are expected to evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted.

27. This is addressed above.

Whether the purpose for which the land is being acquired fits with the adopted Local Plan for the area or, where such no up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework.

28. The Council's purpose in making the CPO is stated above. It fits with the adopted local plan, which supports the regeneration envisaged by the Scheme. The CPO is necessary to implement the Council's objectives as specified in the Local Plan and the SPD. It also fits in with the emerging development plan policies.

The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area.

29. By virtue of the very significant benefits that will arise from the Scheme as summarised earlier in this report, the Council's purpose in pursuing the CPO will contribute very significantly to all three of the well-being objects in Section 226(1A) of the 1990 Act. The Scheme will have regenerative benefits that will lead to the improvement of the economic well-being of the area. Additional jobs will be created, having social and economic benefits. Additional homes will be created, contributing to the social well-being of the area. New buildings, a new tube-station and new public realm areas will contribute to the environmental improvement of the area.

Whether the purpose for which the acquiring authority is proposing to acquire the land would be achieved by any 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 reuse. It may also involve examining the suitability of any alternative locations for the purpose of which the land is being acquired.

30. The prospects of acquiring all the relevant land interests by agreement to enable the comprehensive redevelopment within a reasonable timescale are unlikely. It will be entirely dependent on the owners and occupiers of the outstanding land interests. Consideration has been given to whether the Council's objectives might be achieved by individual landowners within the land separately carrying out development of their land. This would be likely to result in poorly co-ordinated redevelopment of parts of the CPO land, in a piecemeal fashion, which will contrast badly with the

comprehensive vision of the Scheme. It is very doubtful if any alternative, credible redevelopment proposals are likely to come forward.

31. Consideration has been given to if the Council's objectives in making a CPO can be achieved at a different location. The scope for any alternative location in the context of the particular objectives here is very limited. There are no other sites within the town centre which can realistically achieve the objectives of the CPO.
32. A delay in the Council supporting the Scheme through a CPO and its other planning powers may give rise to the following adverse implications:
 - Significant delay to delivering the new town centre or risk it may not be delivered at all, due to the lack of certainty for EC's investors and funders;
 - Continuation of Elephant and Castle Northern Line operating at over capacity with increased overcrowding and temporary closures likely to increase;
 - A protracted period of a demolished site (on the Shopping Centre site); and
 - The risk of EC selling the Shopping Centre site to another investor that may not have the appetite for the risk involved in the current comprehensive Scheme.
33. None of the above implications is desirable. Neither is the maintenance of the status quo of the current buildings on the Scheme site - this will not deliver the vision for the town centre envisaged by development plan policy and in any event is not a realistic option as regards the Shopping Centre and the external market area within it as the developer has already decided to close it. The making of a CPO is essential to guard against the risk of the regeneration project being delayed or frustrated. EC will, however, continue to try to acquire the outstanding land interests in the CPO land by agreement.

The potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment 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.

34. Funding intentions are dealt with above. As regards the potential viability of the Scheme, discussion took place during the planning application process as to what the appropriate level of developer profit should be to reflect the risk and complexity of the Scheme. The relevant expression of profit level for a developer for a build to rent housing scheme is the internal rate of return ("IRR"). EC's target rate of return is 11%. Viability assessment work was carried out during the planning application process in the context of the maximum amount of affordable housing that can reasonably be supported by the Scheme. The viability experts appointed by EC concluded that the then current IRR was 7.51% but both they and the experts appointed by the Council nevertheless both agreed, as part of the viability work for the planning application, that a full target return of 11% is achievable over the lifetime of the development, having regard to market forecasts which have been adopted from residential and commercial agents, as well as costs advice from cost advisors. The advice from GVA, advising the Council, was that all current forecasts at that time suggested that this growth in IRR over the construction period is achievable and possibly conservative.

35. Some time has passed since the planning permission was granted. Accordingly, the viability position has been the subject of further expert work by DS2 (for EC) and Avison Young (for the Council). DS2 conclude that the viability position remains largely unchanged from what was previously agreed with Avison Young as part of the planning application process, but that for various reasons (including increasingly positive property market sentiment following the general election and long term trends in rental growth) the target rate of return is achievable. Avison Young advise the viability of the project has not deteriorated since the planning stage. Whilst the viability position may be challenging, EC is proceeding with the Scheme on the basis of the agreed expert advice that the target rate of return is achievable over the lifetime of the development. The Guidance points out that a CPO can still be confirmed if there is uncertainty over financial viability if the case for it is very compelling. In this case the confirmation of the CPO will still be justified because the case for the CPO is so very compelling.