

| | | | |
|------------------------------------|--------------------------------|---|--|
| Item No: 6. | Classification: Open | Date: 6 October 2020 | Meeting Name: Planning Committee |
| Report title: Final | | <u>Elephant and Castle Independent Trader support</u> To release £692,649.50 from the S106 agreement 16/AP/4458 associated with Elephant and Castle Town Centre development, for the purpose of support of Independent Traders in the red line of the development. | |
| Ward(s) or groups affected: | | Project: North Walworth, St George Funds: North Walworth, St George | |
| From: | | Director of Planning | |

RECOMMENDATION

1. That Planning Committee approve the release of £692,649.50 S106 funding from the agreement 16/AP/4458 in order to support the Independent Traders at the Elephant and Castle Shopping Centre being displaced by the development. This money represents £647,835.84 for a Relocation Fund, and £44,813.66 as the balance of payment for the Independent Business Advisor.

BACKGROUND INFORMATION

2. Planning obligations under S106 of the Town and Country Planning Act 1990 are used to address the negative impacts caused by a development and contribute to providing infrastructure and facilities necessary to achieve sustainable communities. The council can enter into a legal agreement with a developer whereby the developer agrees to provide planning obligations. These obligations can take the form of financial contributions and can cover a range of purposes.
3. In May 2017, cabinet agreed to require the developer of the Elephant and Castle Town Centre to implement a package of measures to support relocation and mitigate the impact of the closure of the shopping centre on local traders and residents. This package has been developed further through the planning process and significant progress has been made in delivering a comprehensive offer to traders. Progress is summarised below against the principles agreed by cabinet in 2017, and additional mitigations secured throughout the planning process are also discussed.

Independent Business Advisor

4. The Town Centre s106 requires the developer to fund a business support and relocation advisor to support traders. The s106 initially secured £192,900 (CPI linked) for this amount. Tree Shepherd (The Advisor) has been contracted by the council to deliver this service since August 2017. Tree Shepherd is based in the Shopping Centre to provide confidential advice to independent traders on a 1:1 and group basis to support their business planning, search for relocation premises and preparations to move.

5. The developer paid costs upfront from August 2017 to the council in lieu of the s106 being signed 10 January 2019, and a Judicial Review challenging housing matters found for the council 20 December 2019.
6. The balance remaining is £44,813.66 and is being sought as a release by the report.
7. The Advisor has supported with trader consultations on the administration of the relocation fund. The Advisor will administer applications to the relocation fund, on behalf of the council.

Relocation fund

8. A business relocation fund of £634,700 (CPI adjusted to £647,835.84) has been secured as part of the planning consent to support businesses with their costs of relocation. The amount of £647,835.84 is also being sought as a release by the report
9. The relocation fund is designed to be a contribution to eligible business's reasonable costs relocation. The fund is not designed to be a form of compensation, nor will it replace any statutory compensation due.
10. The relocation fund secured by the s106 represents a minimum guaranteed fund. In addition, the developer has made clear at all-trader meetings on 10 September 2019 and 14 January 2020 that they are open to considering meeting additional relocation costs where the fund does not extend to cover all needs, and in the case of hardship. During the application process for the fund, traders will be supported to calculate their full costs of moving by the business advisor.

Other mitigations in the s106

11. There are a number of other mitigations for traders in the s106. These are listed in the Appendix to this report.

Additional mitigations outside of the s106

12. The offer to traders has been further developed through the planning process and consultation with affected traders. These are listed in the Appendix A to this report.

KEY ISSUES FOR CONSIDERATION

13. The contributions released through this report will be used to support the independent traders at the Elephant and Castle in relocating their businesses where they wish to do so.

Relocation fund

14. Businesses able to claim from the fund are defined in the Section 106 agreement. In that agreement, eligible businesses are called 'Local Independent Operators'.
15. 'Local Independent Operators' are defined as all existing, independently-owned, retail businesses, traders, kiosk holders, restaurants, and market stall holders and charitable organisations on the East Site in the redline of the E&C opportunity area that meet the three criteria below:
 - i. do not trade from more than three locations, and include restaurant operators, café operators and market stall holders;

- ii. lawfully hold a lease or licence including so that any sub-letting or assignments have been with the approval of the developer or Network Rail (as appropriate);
 - iii. occupied any part of the East Site at the date of the resolution to grant Planning Permission (3 July 2018) and continued to occupy any part of the East Site at the date the Planning Permission was granted (10 January 2019).
16. Businesses can apply to the relocation fund for a period of one year following demolition of the Shopping Centre. Additionally, should the occupiers of the railway arches on the East Site remain in that location, the relocation fund shall continue to be available to them for a further six months.
17. The council wrote to traders on 25 February 2020 informing them the relocation fund was open for applications.

Business advice

18. The advisor was originally commissioned in August 2017, and has been contract managed by the council since then.
19. Phase 1 and 2 of the advisor's work was conducted from July 2017 to December 2019, and principally involved, understanding key trader concerns, extensive business planning, and trader preparation for the application process for the affordable units at Perronet House, Elephant One, and Castle Square in March 2019. The Advisor also advised businesses in relocating to other locations. The balance of payments (£44,813.66) is for this part of the contract.
20. A Gateway 3 was approved on 25 February 2020 for Phase 3 support (support and business advice during the closure period, from 1 January 2020 to closure 31 July 2020) and Phase 4, which shall be for one year after closure (1 August 2020 to 31 July 2021).
21. The developer will continue to fully fund the Advisor service during Phases 3 and 4. This money is outside of and additional to the s106. During the period leading up to closure of the centre, the advisor will provide additional support as a priority to traders that are still looking to secure a relocation site for their business.
22. The advisor will also administer applications to the relocation fund and distribute monies on behalf of the council.

Project management and monitoring

23. Southwark Council, through the Local Economy Team as part of the Chief Executive's Office's, has responsibility for procuring and managing the Independent Business advisor, and managing the scope and payment of the relocation fund.

Community impact statement

24. Key target groups are those who own and run independent businesses in the Elephant and Castle Shopping Centre. An Equalities Impact Assessment was conducted as part of the submission to Cabinet in May 2017, and the presentation to Planning Committee 3 July 2018, where the resolution to grant permission was given.
25. The mitigations described in this report follow from the recommendations of that Assessment.

Consultation

26. The amounts secured in the s106 came through the planning process and negotiation with the developer.
27. The trader panel has held a consultative role as well as a representational role during the implementation of the relocation strategy. The panels have been well attended and have addressed a number of issues connected with the relocation of traders.
28. Tree Shepherd ran four trader focus groups in August and September 2019 to get input into the criteria that should be used for assessing the applications, which was reported back to the panel and helped construct the process.
29. The panel members have helped the council and developers understand business's priorities for the application and administration process.

Resource implications

30. This work will be managed by the Local Economy Team which has extensive experience of the development and ongoing work at the Elephant and Castle. Staffing and any other costs connected with this recommendation are to be contained within existing departmental revenue budgets.

Policy implications

31. The projects meet the following Fairer Future Promises:
 - Theme 2: A place to belong
 - Theme 8: A vibrant Southwark

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Law and Democracy

32. This report seeks the release of £692,649.50 from a single planning section 106 Agreement which relates to the Elephant and Castle shopping centre. This Agreement was concluded in January 2019 but the planning permission has been subject to an application for Judicial Review which was refused by the High Court in December 2019. The Claimant sought leave to appeal this decision but this was refused by the High Court. The Claimant has now referred the issue to the Court of Appeal but it is likely to be some weeks and very probably some months before the further application for leave is determined.
33. In the meantime, the planning permission remains valid and indeed the developer has now implemented the permission with the result that various financial obligations have been paid to the council. One of these is a contribution to provide a relocation fund for traders affected by the proposed redevelopment with the payment being intended to cover the reasonable costs incurred by traders on a variety of business related issues such as obtaining professional advice, capital costs in connection with fit-out; and time spent in seeking alternative premises. The amount payable would be considered on a case by case basis and administered by the council in conjunction with the business advisor, Tree Shepherd. It should be noted that pay-outs from the Fund will be without any restrictions relating to length of occupancy and that it would be available to occupiers of not just the shopping centre but also the market stalls and kiosks, and businesses within the railway arches

34. In the case of this particular financial obligation, the council was under a wider duty when considering the planning application as any decision needed to take into account the issues introduced by the Equality Act 2010. Various additional mitigations are listed in Appendix A to this report. The provision of the relocation fund was considered a key element in order for the council to safeguard and promote the objectives protected by section 149, Equality Act as far as reasonably possible taking into account the proposed redevelopment which will undoubtedly bring about significant change. It should be noted that failure to take into account the provisions of the Equality Act was not one of the grounds of the legal challenge.
35. It is essential that section 106 monies are spent strictly in accordance with the terms of the relevant Agreement and it is confirmed that the Elephant and Castle shopping centre agreement has been reviewed and that this release is compliant. Members are therefore advised that they may approve the proposed expenditure as this is consistent with the Committee's functions as laid down by paragraph 6, part 3f of the council's Constitution.

Strategic Director of Finance and Governance CAP20/011

36. This report recommends that Planning Committee approves the release of £692,649.50 S106 funds from legal agreement 16/AP/4458, towards the relocation costs of independent retailers affected by the development of Elephant and Castle Shopping Centre. Details outlined in the body of this report.
37. The strategic director of finance and governance confirms that the council has received the funds associated with the legal agreement, and they are available for the purposes outlined in the report.
38. Staffing and any other costs associated with this recommendation are to be contained within existing departmental budgets

BACKGROUND DOCUMENTS

| Background Papers | Held At | Contact |
|---|------------------------------------|---------------------------------|
| Planning Committee Report, AP/16/4458, 3 July 2018 | Planning Team, Place and Wellbeing | Victoria Lewis 020 7525 5410 |
| Equalities Impact Assessment, Elephant and Castle, May 2017 | Planning Team, Place and Wellbeing | Victoria Lewis 020 7525 5410 |

APPENDICES

| No. | Title |
|------------|--------------------------------|
| Appendix A | Mitigations |
| Appendix B | East and West sites |
| Appendix C | Affordable relocation clusters |
| Appendix D | Council response to COVID |

AUDIT TRAIL

| | | |
|---|---|--------------------------|
| Lead Officer | Stephen Gaskell, Head of Chief Executive's Office | |
| Report Author | Richard Pearce, Senior Strategy Officer of Chief Executive's Office | |
| Version | Final | |
| Dated | 8 September 2020 | |
| Key Decision? | No | |
| CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER | | |
| Officer Title | Comments Sought | Comments included |
| Director of Law and Democracy | Yes | Yes |
| Strategic Director of Finance and Governance | Yes | Yes |
| Date final report sent to Constitutional Team | | 18 September 2020 |

APPENDIX A

Mitigations

Other mitigations in the s106

Database of opportunities

1. The Town Centre s106 agreement (16/AP/4458) requires the developer to create a database of vacant retail units (including market pitches) within the Elephant and Castle Opportunity Area and to maintain the database for a period of one year following the cessation of trading in the Shopping Centre. This database went live in December 2018 and includes affordable retail units from nearby developments, high street units, and market stall opportunities, as well as selected sites from outside of the boundaries of the Opportunity Area to increase choice. This is a secure website that traders have a login and password for.

Affordable Retail Units under the Elephant and Castle Opportunity Area SPD

2. The Elephant and Castle Opportunity Area SPD required local developments to set aside 10% of any retail units as affordable and for displaced traders within the opportunity area to have the first right to apply for those units.
3. The two principal sites with units available are the Lendlease development at Elephant Park (12/AP/1092) and the development at 50 New Kent Road known as Elephant One or Elephant Central.
4. The developer's affordable units at Elephant One were allocated under a single application process described at paragraphs 13-17

Trader Panel

5. The developer has established the Trader Panel and its membership, which has been approved by the council as required by the Town Centre s106. The panel has met monthly since January 2019. The panel is comprised of representatives from the developer and 12 representatives from businesses within the Application Site. The advisor and council officers attend by invitation. Ward councillors from North Walworth and St George's wards sit as chair and vice-chair.
6. The panel holds an oversight and monitoring role during the implementation of the relocation strategy including to:
 - i. Receive regular updates from the developer on a database of available vacant retail premises within the town centre area suitable for traders.
 - ii. Receive regular reports from the council and the business support and relocation advisor on the distribution of payments from the relocation fund. and
 - iii. Receive regular reports from the council and the business support and relocation advisor on successful bids and consequent allocation of affordable retail units.
 - iv. Consult with the business support and relocation advisor, the council and the developer on relevant issues from the development which affect traders.

7. The Trader Panel is anticipated to continue to meet monthly until three months after the closure of the Shopping Centre, and thereafter quarterly until 6 months following practical completion of the retail floorspace on the West Site.

Additional Mitigations outside of the s106

Perronet House

8. The council has invested in the conversion of the garages underneath Perronet House into a bespoke retail space named Elephant Arcade. The space will be managed through Meanwhile Space, a retail management specialist, to provide a permanent affordable location for displaced traders in the centre of Elephant and Castle.
9. Meanwhile Space will send the lease for to review in the last week of March. Meanwhile Space's lease with Southwark Council as superior landlord will begin 1st June. Therefore this is the earliest a trader's lease can start. Perronet House is currently planned to 'open doors' on Saturday 1st August

Castle Square

10. The Castle Square planning consent (18/AP/2108) requires the developer to construct a bespoke site for the relocation of traders from the shopping centre during the East Site construction period, for five years or until Practical Completion (which ever is longer). The developer was required to secure planning permission for this site before implanting the main consent.
11. Consent was granted on 9 January 2019. The scheme is being constructed and will be available for occupation from June 2020. This site's units were also allocated under a combined affordable unit process.
12. Those traders moving to Castle Square will have access to a dedicated business support service for the site provided by the developer, in addition to ongoing advice from Tree Shepherd.

Relocation of traders to affordable unit clusters

13. A single application process was conducted by the council and developer in March 2019 for the affordable units at Castle Square, Elephant One and Perronet House.
14. There were 64 separate applications, with 36 successful applications, and 28 unsuccessful applications who could not be accommodated in the space available. Successful applicants were asked to for an in-principle acceptance of the offer within 14 days, with the respective landlords following up after this period with a formal lease.
15. Owing to the absence of certainty over the closure of the centre between March 2019 and January 2020, landlords have been flexible in allowing potential tenants time to consider their options.
16. The distribution of businesses in each affordable cluster may change during the closure of the shopping centre, as businesses finalise their decisions on offers of units. Where

units are not taken up, every effort will be made to find a new tenant from traders that have not yet secured a relocation site for their business.

17. The businesses that were not successful in securing an offer of a unit in this process will be the priority for the business advisor and any other units that become available.

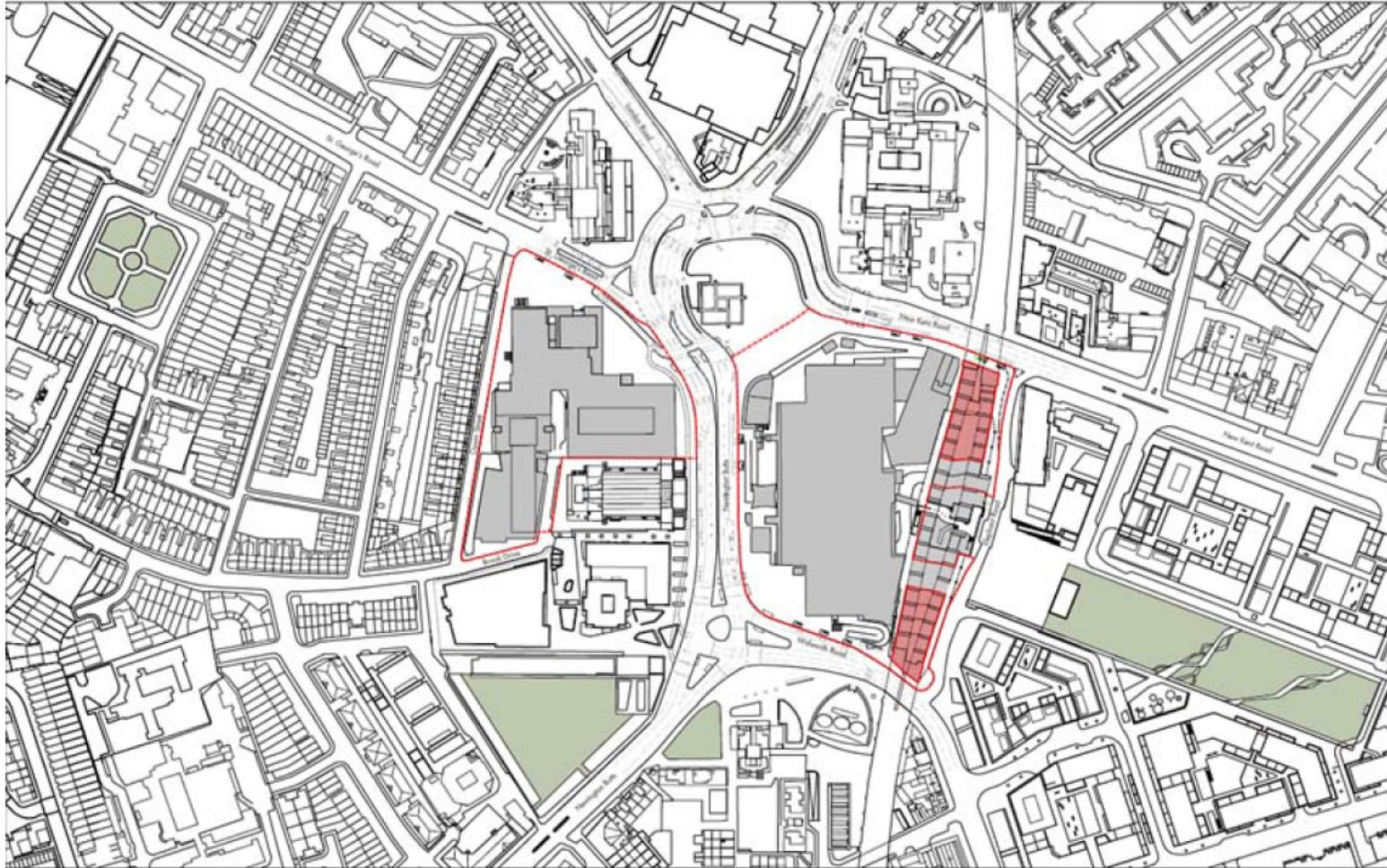
Rent Reduction for Shopping Centre traders

18. At the July 2019 trader panel, the developer implemented a rent reduction for Shopping Centre traders of 50% from June 2019 and 80% from November 2019.
19. Urban Space Management (USM) is the contracted market operator for the developer at the Shopping Centre. The developer agreed that USM would pay £0 in rent and service charge and USM have passed on a discount to the traders.

Centre marketing initiatives

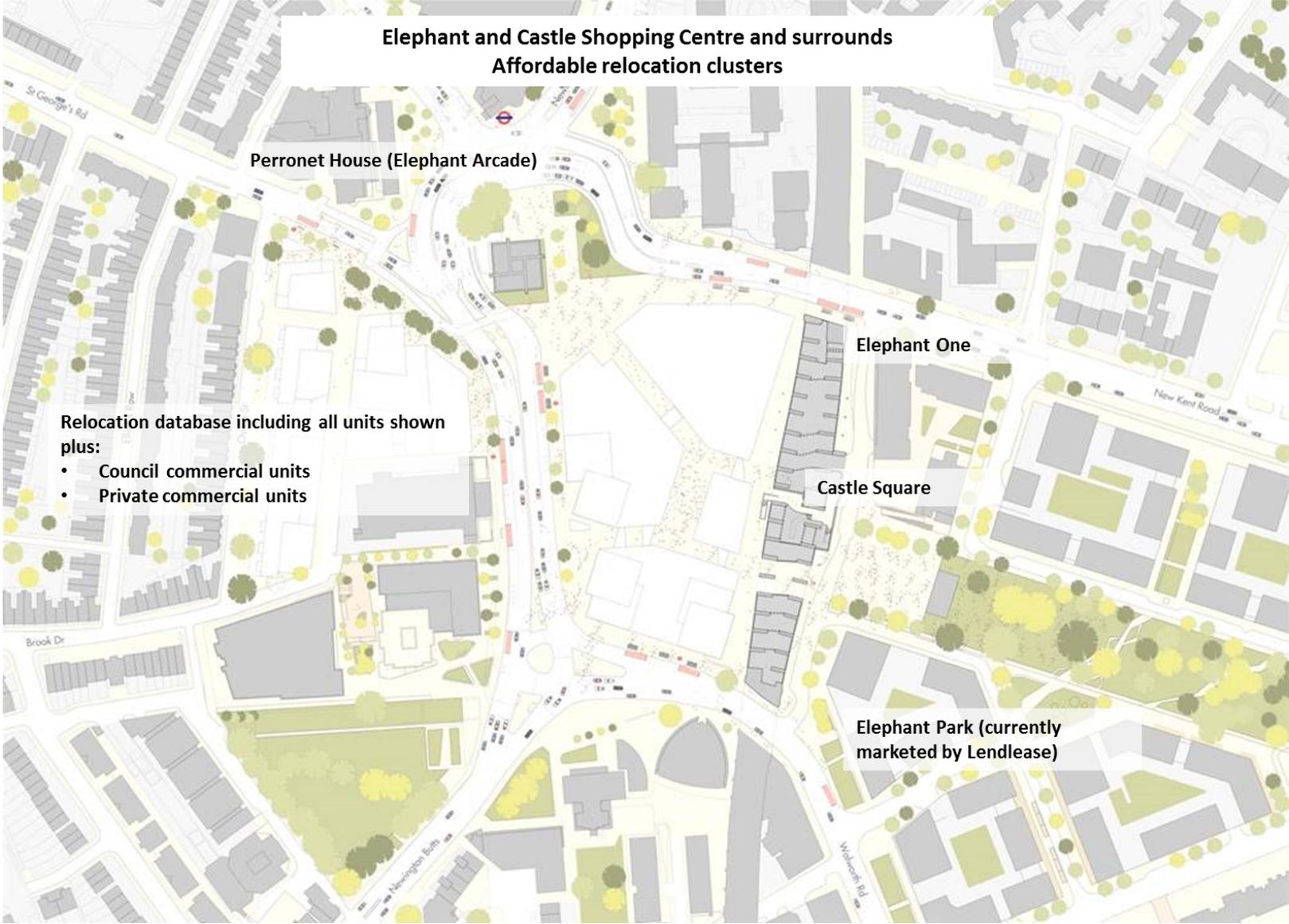
20. The developer has set up a staffed community space at the centre to show the history and progress of the development. This space is also available for events for local community groups.
21. The developer has also produced a brochure in September 2018 called 'The Herd' which details the traders currently in the centre who will be moving locally. This was most recently updated in December 2019 and distributed to 30,000 homes in the immediate area and provided to traders to give to customers.
22. In addition, the developer has instituted a number of events around holidays to keep the centre attractive for both customers and traders, including a recent 'Twelve Days of Christmas' showpiece where shop fronts were dressed and decorated for the Christmas period.

East and West sites



East and West Sites

Affordable relocation clusters



APPENDIX D

Council response to COVID

The economic impacts of the COVID-19 crisis will be profound, far-reaching and difficult to predict. Many will arise over the longer term, some are already with us and others will come about as society continues to emerge from lockdown.

Council is developing an economic renewal plan with immediate, short, medium and long term priorities, set around four key themes of employment & skills; business; high streets and town centres, and wellbeing. Prioritising in this fashion will ensure that our resources are targeted for maximum local impact in the short term, such as vital support for key local employment sectors most heavily impacted by the crisis, but done in tandem with longer term planning and strategy development,

It will align with the council's other recovery and renewal planning, link into our Southwark Stands Together commitments, and will take account of the inevitable economic impact of the crisis on the council itself.

There are a number of steps that have been taken since lockdown to assist businesses in particular:

1. Re-opening of the Southwark Works office and reviewing access to existing provision
2. Continued investment in Southwark Works and commissioned employment support / skills and training providers
3. Support to local businesses on workplace health, Good Work Standard and London Healthy Workplace Award to improve longer-term productivity
4. Business and employment themed listening events scheduled for July 2020 in order to better understand issues faced by BAME communities as businesses, employers and employees
5. Through the Start-ups in London Libraries (SiLL), there is ongoing advice and support for business start-ups
6. Administering awards of Government grants and rate relief for retail , hospitality and leisure sectors to eligible businesses
7. Administering grants and communications for businesses in receipt of small business rates relief
8. Responding to significant increase in Business Rates enquiries
9. Administration of mandatory and discretionary rate relief for charities
10. Temporary suspension of debt recovery action; monitoring of indebtedness to the council; development of mitigation strategies and approaches to the management of increased debt
11. Design, launch, processing and administration of a Southwark local scheme (Business Hardship Fund) to provide additional assistance to small local businesses missing out on Government Support
12. Repurposing of Southwark Pioneers Fund budget
13. Design, launch, processing and administration of the Government funded Local Discretionary Fund.