

Earls Court

Potential for use of Compulsory Purchase – Earls Court

August 2019

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Prepared By: Virginia Blackman

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For and on behalf of GVA Grimley Limited t/a Avison Young

1. Executive Summary

- 1.1 This report sets out the Council's strategy for delivery of its aspirations for the Earls Court Opportunity Area, including the use of its compulsory purchase powers if required. It includes a summary of the background and history of the site, and the existing landowners and interested parties within the area, including the TfL depot as well as the Earls Court Property Limited (ECPL) land. ECPL is a joint venture between TfL and CapCo, and the land within the JV spans both LB Hammersmith & Fulham and Royal Borough Kensington & Chelsea (RBKC).
- 1.2 The strategy assesses the issues involved in progressing an acquisition by agreement or a compulsory acquisition and subsequent development of an active TfL Depot, and recommends that the Council progresses prioritises the JV land for potential acquisition by agreement or compulsory acquisition, whilst continuing discussions with TfL in respect of the depot site.
- 1.3 The strategy sets out the legislative basis for use of compulsory purchase powers, and the approach to be pursued by the Council in order to justify use of these powers. It sets out two programme options for progressing with an intervention on this site, and recommends progressing with option 1, which will create an evidence base to allow making of a compulsory order within 12 months of Cabinet decision.
- 1.4 It then sets out the work required in respect of Option 1 to be completed over the next 12 months in order to demonstrate the benefits of a proposed scheme, as well as a delivery and funding structure for the scheme underpinning a proposed CPO.
- 1.5 The strategy then sets out a budget and programme for delivery of Option 1, broken down into appropriate stages of work, and including integration of negotiations by agreement with the JV. It then concludes and provides recommendations in detail for the next stage of work in order to deliver Option 1. It proposes that, following completion of this work, Cabinet will be asked to consider the further work undertaken prior to a decision being made on whether to proceed to make any compulsory purchase order.

2. Introduction & Background

- 2.1 CapCo prepared a masterplan covering most of the Earls Court (EC) opportunity area and this was consented by LBHF and RBKC in 2013. The scheme covered the exhibition centres, Lillie Bridge Depot and West Kensington and Gibbs Green estates.
- 2.2 CapCo stated that their masterplan would deliver 7,500 new homes, improvements to local tube stations and bus services plus investment in cycle hire hubs, parking spaces, new local amenities including a new primary school, community centre, leisure centre, health centre, cultural space and money towards a cultural fund for the area and the creation of 7.5 acres of green space including garden squares and communal gardens.

- 2.3 To date, no homes have been delivered within the masterplan area. Just over 200 homes have been delivered on the Seagrave Road site, none of which are affordable homes. The project has completely stalled over the last 6 years, with only demolition of the exhibition centres taking place.
- 2.4 In addition, a key piece of Land, the Empress State building, has been sold to the Mayor's Office for Policing and Crime, impacting significantly on both the number of homes which could be delivered (a reduction of over 400) within the masterplan area, and the flexibility of the land. Information about the sale of the scheme to developers, in the UK and around the globe, is regularly in the press, with CapCo recently publicising talks with Hong Kong developer CK Asset Holdings.
- 2.5 The Council wishes to unblock the stalemate, to accelerate the delivery of homes and increase the number of genuinely affordable homes in the borough, across the masterplan area.
- 2.6 On 20th February 2019 the Council released a press statement confirming it was considering acquiring two parcels of land forming part of the Earls Court Opportunity Area by making a Compulsory Purchase Order (CPO). The land parcels are the former Earls Court exhibition land (partly within LBHF and partly within RBKC) owned by a joint venture between CapCo and TfL (Earls Court Property Ltd 'ECPL') and the Lillie Bridge Depot site owned entirely by TfL. This area of land is known as 'the JV land'. Whilst CapCo and TfL are working together in respect of the JV land, neither CapCo nor the JV has any interest, current or future control over the Lillie Bridge Depot land.
- 2.7 On 29 April 2019 the Leader of the Council agreed within a Leaders Urgency Decision that Avison Young be instructed to provide advice on the strategy going forward in order that Cabinet be able to consider the most appropriate route.
- 2.8 The Council has now prepared a strategy to deliver its aspirations for the site, and this report sets out that strategy for consideration by Cabinet, together with recommendations and next steps.
- 2.9 The strategy focuses on options to acquire the JV land and Lillie Bridge Depot sites. The strategy includes:
- *The benefits of the use of compulsory purchase powers under s.226 of the Town & Country Planning Act 1990, including timing and control over delivery, together with the required statutory process including review of planning and other policy.*
 - *Potential to compulsorily acquire the JV land, TfL depot and/or land owned by third parties within the RBKC boundary, and the approach to these key landowners and sites. Given the operational TfL depot, this will require consideration of how the TfL operations can continue to be undertaken, and perhaps enhanced in the area, whilst also delivering the Council's objectives.*
 - *Potential and benefits for partnerships with or involvement from wider public sector, for example Homes England or GLA.*
 - *Proposed proactive delivery strategy following a CPO including potential delivery options such as working with a private sector or registered provider partner / self-delivery within the Council or onwards sale to a developer.*

- An indicative process cost and programme for this proactive strategy, including how negotiations with ECPL would fit within the programme, approach to negotiations and the best time to commence negotiations with ECPL.

3. Use of s.226 Town and County Planning Act 1990

- 3.1 The purpose for which an acquiring authority seeks to acquire land will determine the statutory power under which compulsory purchase powers are sought. This in turn will influence the factors which the confirming Minister or Inspector will take into account in deciding whether to confirm the compulsory purchase order.
- 3.2 Government guidance states that an acquiring authority should look to use the most suitable power available for the purpose in mind, and only use a general power when a specific power is not available. The authority should have regard to any guidance relating to the use of the power and adhere to any legislative requirements relating to its use.
- 3.3 Section 226 of the Town & Country Planning Act 1990 (TCPA 1990) is the most commonly used power by local authorities to deliver regeneration and development within their area. Guidance on the use of this power is set out in Tier 2 section 1 (para 94-106) of the February 2018 Ministry of Housing, Communities & Local Government Guidance on Compulsory Purchase Process and the Crichel Down Rules, (the 2018 Guidance).

Purpose of TCPA 1990 powers

- 3.4 We have summarised below the key purposes the powers may be used for:
- section 226(1)(a) enables acquiring authorities with planning powers to acquire land if they think that it will **facilitate the carrying out of development** (as defined in section 55 of Town and Country Planning Act 1990), **redevelopment or improvement on, or in relation to, the land** being acquired and it is not certain that they will be able to acquire it by agreement
 - section 226(1)(b) allows an authority, if authorised, to acquire land in their area which is required for a purpose which it is necessary to achieve in the interests of **the proper planning of an area in which the land is situated**. The potential scope of this power is broad. It is intended to be used primarily to acquire land which is not required for development, redevelopment or improvement, or as part of such a scheme
- 3.5 Given the proposed purpose for which the Council wish to acquire the land, it would seem that section 226(1)(a) would provide the most appropriate section of the TCPA 1990 powers. Section (1)(a) specifically requires the proposal to include development or improvement to be undertaken. Usually when this power is exercised there is a clear scheme of redevelopment, often with the benefit of planning permission and certainty over delivery. At this stage it may be difficult to clearly demonstrate that the development or improvement is occurring which meets the necessary tests, and we set out below (section 7) the options available to the Council for the further work which is likely to be required to demonstrate this.

- 3.6 The purpose for which the powers are proposed to be used is also tested against a number of other criteria.
- *There must be a compelling case in the public interest for the use of the powers which outweighs the private loss*
 - *The scheme should lead to the promotion or improvement of the economic well-being of their area, the social well-being of their area or the environmental well-being of their area.*
- 3.7 The benefit to be derived from exercising the power is not restricted to the area subject to the compulsory purchase order, as the concept is applied to the wellbeing of the whole (or any part) of the acquiring authority's area.

Justification of use of the powers

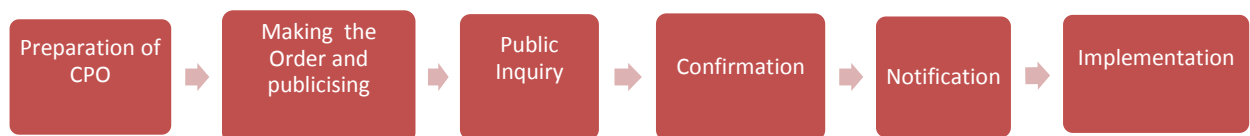
- 3.8 Para 104-106 of the 2018 Guidance provides further advice on the justification required to support an Order under these powers. This includes
- Adopted planning framework provides clear support and justification
 - Whether the purpose for which the land is to be acquired can be achieved by any other means
 - The potential financial viability of the Scheme for which the land is to be acquired, including general indication of funding intentions, commitments from third parties, any restrictions on timing of funding etc, in order to provide the Secretary of State with certainty that the Scheme will proceed
 - The extent to which the proposed Scheme will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area.
- 3.9 In addition, the Council will need to demonstrate that the only impediment to the Scheme proceeding is the inability to assemble land. The Council will therefore need to provide evidence that, in addition to financial viability and funding, matters such as planning or other consents and an experienced project team including specialist professionals, has been assembled and is ready to proceed.
- 3.10 Finally, the Council will also need to evidence that it has attempted to acquire the necessary land and rights by agreement.
- 3.11 Having considered the existing planning policy and aspirations for development at Earls Court, the ongoing need for housing across London and the lack of delivery of development on land within the JV, it appears that there is justification for use of the Council's powers under TCPA 1990, subject to further investigation (and in particular the gathering of evidence to satisfy the relevant tests in the 2019 Guidance) and the Council satisfying itself on the deliverability of its future plans for the site.
- 3.12 On 9 July 2019, Ministry of Housing, Communities and Local Government (MHCLG) published their decision in respect of the West Kensington & Gibbs Green right to transfer application. As part of this

decision, MHCLG has commissioned and relied upon a report by Peter Brett Associates ('PBA', titled 'Tenant Led Right to Transfer – Socioeconomic Evaluation' and dated February 2017.

- 3.13 In that report, PBA has concluded, in para 5.2 onwards, that concrete progress has been made with the Earls Court regeneration scheme as a whole, and lists at para 5.2.3-5.2.5 the actions which demonstrate this. The Council is not aware of any further positive progress which has been made since January 2017, the last action progressing the scheme which is identified in the report. In addition, as set out in para 1.4 above, the Empress State Building has been sold.
- 3.14 We have not checked all the matters set out in the report, but the key matter of interest is that the report is dated approximately 2.5 years ago, and no concrete progress has been made since. Therefore, whether or not the February 2017 report prepared by PBA is correct, the Council will need to consider the most recent and up to date position when justifying the potential use of CPO powers to deliver regeneration at Earls Court. Based on the information to date, including the MHCLG decision and supporting PBA report, we consider there is a good case to be made that no substantive progress has been made in progressing the scheme, and therefore Council action is justified to secure delivery.
- 3.15 However, we would emphasise the need for a thorough investigation of the position beyond simply relying on matters in the public domain (for example, enquiries should be made of the JV partners and their representatives). This will help to de-risk the process and ensure that decisions are better informed.

CPO Process

- 3.16 Once the Council has satisfied itself on the requirements above, it will then need to commence the compulsory purchase process. The process is set out in Acquisition of Land Act 1981, and contains the following key steps.



- 3.17 On average the CPO process from start to finish takes between 18-24 months but this depends on the number and extent of objections and whether there is a Public Inquiry into the CPO.

4. Potential alternative compulsory purchase powers

- 4.1 When making a decision on how to proceed, it would be sensible for the Council to consider whether any alternative compulsory purchase powers would be more suitable, including those held by other public sector bodies.

- 4.2 The Greater London Authority (GLA) has powers of compulsory acquisition under s333ZA of the Greater London Authority Act 1999, introduced by Localism Act 2011. These powers allow the GLA to use powers of compulsory acquisition to assemble land for the purposes of housing or regeneration. Part 1 of Schedule 2 of Housing & Regeneration Act 2008 (compulsory acquisition of land by Homes and Communities Agency) applies to this power, and further detail is set out below. To date, the GLA has only used its powers once, in 2014, to assemble land required for the Southall Gasworks scheme, and we are not aware of any proposed use in the short to medium term.
- 4.3 Homes England has compulsory purchase powers to acquire land and new rights over land under subsections (2) and (3) of section 9, Housing and Regeneration Act 2008, for the purposes of:
- Improving the supply and quality of housing in England
 - Securing the regeneration or development of land or infrastructure in England
 - To support in other ways the creation, regeneration or development of communities in England, or their continued wellbeing
 - To contribute to the achievement of sustainable development and good design in England.
- 4.4 Guidance on the use of these powers is set out at Tier 2 Section 3 (paras 118-124) of the 2018 Guidance. Homes England must demonstrate that the proposed acquisition is for the purposes set out above, in the public interest and consistent with the policies in the NPF and the relevant Local Plan. In addition, it should ensure it has resolved any major planning difficulties (where practicable) and demonstrate that there are no planning or other impediments to the scheme, and that it either has reasonably firm proposals in respect of the land, or a long term strategic need for the land.
- 4.5 In order to demonstrate this, Homes England will need to show that if it has a clearly defined and deliverable objective for the land, that the proposals for the land are more likely to be achieved following acquisition by Homes England, and whether any alternative proposals for the land are likely to be or are capable of being implemented.
- 4.6 If Homes England does not have a specific proposal for the land, it will need to show that there is a reasonable prospect of the land being brought into beneficial use within a reasonable timeframe and that the use of its compulsory purchase powers is clearly in the public interest.
- 4.7 Whilst we understand that Homes England is considering use of its compulsory purchase powers in respect of a number of sites across England, we are not aware of any compulsory purchase orders being made under these powers in the last few years. Homes England has historically preferred to support and assist other public sector bodies in the use of their powers of compulsory purchase, although given the change in approach by Homes England over the last 12 months, this may now change also.
- 4.8 It is also worth considering other benefits of working with either the GLA or Homes England in taking forward plans at Earls Court. These can be split into four main areas:-

- Funding – both the GLA and Homes England are able to access wider sources of funding, particularly for the delivery of housing, which may assist in delivery the Council's plans for Earls Court.
 - Expertise – GLA and Homes England have teams of planning, development delivery and funding professionals who have recent experience of large scale housing development delivery who may bring useful experience to the delivery of the Council's plans for Earls Court.
 - Existing delivery partners – both the GLA and Homes England have procured and currently run panels of developer partners who have pre-qualified to work with the public sector in delivering a variety of development. This may be useful to consider in respect of the delivery options for the site.
 - Presentation – provided the parties are cooperating well together, there is an advantage in presenting a case backed in by major public authorities such as these since it will add weight to the case. This may also assist in negotiations, particularly given the involvement of TfL in the JV.
- 4.9 We consider it would be helpful to discuss the Council's plans for Earls Court with both Homes England and GLA in order to assess whether there are benefits to working with these organisations in delivery of the Council's plans for Earls Court, whilst accepting that there may be disbenefits in terms of reaching agreement on the differing goals, aspirations and timescales of different organisations.
- 4.10 A further consideration is the involvement of TfL in the ECPL Joint Venture with CapCo. Whilst the JV is between TfL and CapCo, the GLA and TfL are both part of the 'mayoral family' of organisations, and there may be benefits in engaging with GLA to discuss the Council's plans.
- 4.11 However, whilst it is well worth considering the potential for involvement of other public sector bodies, the Council will need to weigh up the benefits of this against the loss of control and potential dilution of their objectives for the site. The strategy assumes that the Council will use its own powers, but this can be adjusted if further investigation and discussion with the GLA or Homes England identifies benefits in working more closely with either of these parties.

5. Particular types of land

- 5.1 In considering the potential for use of compulsory purchase powers by the Council as part of a proactive strategy to deliver their policy objectives for the site, it is helpful to consider the types of land and uses of that land involved. We set out below the main types and uses of land, and review any issues in the use of compulsory acquisition in respect of these land types.

Third Party land inside London Borough of Hammersmith & Fulham boundary

- 5.2 The majority of the JV land falls within the boundary of London Borough of Hammersmith & Fulham. The land is currently vacant and awaiting development.
- 5.3 We would recommend that the Council continue their discussions with ECPL regarding a purchase of the JV land, within the programme set out in section 7.

- 5.4 Having considered the existing planning policy and aspirations for development at Earls Court, the ongoing need for housing across London and the lack of delivery of development on land within the JV, it appears that there is no legal constraint and there is justification in principle for use of the Council's powers under TCPA 1990 in respect of this third party land, subject to further investigation (and in particular the gathering of evidence to satisfy the relevant tests in the 2019 Guidance) and the Council satisfying itself on the deliverability of its future plans for the site.
- 5.5 The remainder of the third party land within the borough boundary comprises the Lillie Bridge Depot and is discussed below.

TfL depot

- 5.6 The Lillie Bridge Depot site is within the masterplan area for Earls Court, but as set out in para 2.6 above, is not within the ECPL JV. We understand that TfL is the sole owner of the site, and occupies it for a train depot and railway (underground and Overground) uses.
- 5.7 We are not aware of any legal constraint on the Council in exercising its compulsory purchase powers against TfL in respect of the Lillie Bridge Depot to deliver its policy objectives for Earls Court, but it would be helpful for the legal position to be confirmed via specialist legal advice. However, we have significant concerns over the practicalities of demonstrating to an Inspector or the confirming Secretary of State that the Council can ensure continuous safe, secure usage by TfL of the depot site, and its associated transport services, following implementation of a confirmed compulsory purchase order for this part of the site.
- 5.8 If the depot site is included within any compulsory purchase order, TfL is likely to strongly object, and pursue its objection all the way to Inquiry and potential legal challenge, in order to protect its operational use, and associated safety and security, of the depot site.
- 5.9 Therefore, inclusion of this site within a compulsory purchase order is likely to lead to delay, legal challenge and a significantly decreased chance of success in obtaining confirmation and implementation of that order.
- 5.10 This would have a detrimental impact on the Council's policy objectives for the entire Earls Court site, and we therefore recommend that the Lillie Bridge Depot site is removed from any consideration of use of the Council's compulsory purchase powers.
- 5.11 We would recommend that the Council open discussions with TfL on their development plans for both the depot site, and the land within the ECPL JV to assess whether there are mutual objectives and benefits to be achieved, and therefore a memorandum of understanding or more formal heads of terms could be agreed in respect of this land.

Third party land outside LBHF boundary

- 5.12 Having reviewed the plans, we note that there is land within the ECPL JV which is outside the borough boundary of Hammersmith and Fulham, and within the boundary of Royal Borough of Kensington & Chelsea, (RBKC), albeit RBKC do not have any ownership interest in the land.

- 5.13 There may well be legal issues with a local authority attempting to CPO land outside or its area. In our experience of development and regeneration projects, it is not common practice. We therefore recommend that it would be helpful for the legal position to be confirmed via specialist legal advice. Understanding these risks will be important when considering the overall strategy for the CPO.
- 5.14 We would recommend that the Council open discussions with RBKC on their aspirations for the development at Earls Court, to assess whether there are mutual objectives and benefits to be achieved, and therefore a memorandum of understanding could be agreed in respect of this land.
- 5.15 This would de-risk inclusion of any third party land within RBKC boundary in a future CPO, and ensure support rather than any challenge from an adjacent authority with an interest in seeing development delivered on this site.

6. Deliverability of Scheme following CPO

- 6.1 As set out in para 3.8 & 3.9 above, the Council will need to demonstrate that it has clear and deliverable plans for the site in order to provide the best evidenced justification for making a compulsory purchase order. This falls into four key areas:-
- The Scheme and its benefits
 - Planning and other consents
 - Funding
 - Deliverability

The Scheme

- 6.2 This will be a critical part of the justification for the CPO given the ownership of the site by the JV and their likely objection based on the argument that they are best placed to secure regeneration of the site without the intervention of a CPO,
- 6.3 The Council will need to be able to clearly articulate and explain the proposed scheme and its benefits to the wider community. Whilst there is an existing masterplan scheme for the site, the Council should consider what it wishes to deliver on the site, in terms of housing type, density and tenure, community assets, employment space, and other factors. The Council will need to explain the benefits of this proposed scheme and the changes from the existing scheme.
- 6.4 In addition, as the site is owned by a developer led JV already, it will need to show how their scheme delivers more effectively the Council's policy objectives. This may include factors such as increased affordable housing and community assets, but the Council should also consider how they will demonstrate greater certainty and pace of delivery compared to the existing scheme.
- 6.5 If the Council chooses to work with a delivery partner, it would be sensible to involve that delivery partner in the scheme evolution and delivery as appropriate.

Planning and other consents

- 6.6 If the Council wishes to change the existing scheme, it will need to demonstrate that there are no planning or other impediments to the Scheme. In order to do this, the Council may consider updated or supplementary planning policy, consulting and adopting a masterplan, an outline or detailed planning application, or a combination of the above.
- 6.7 If the Council chooses to work with a delivery partner, it would be sensible to involve that delivery partner in the planning and other consenting process as appropriate.

Funding

- 6.8 The Council will need to demonstrate its funding sources and timescales to deliver the Scheme. This may include both public and private sources of finance, and the funding strategy may vary over the course of the scheme (see section 10 below).
- 6.9 If the Council chooses to work with a delivery partner, that delivery partner will provide a key part of evidencing the funding strategy for the Scheme.

Deliverability

- 6.10 Given the size and complexity of the proposed development, the Council will need to consider the practicalities of delivery of the Scheme, how it can best demonstrate the experience and resources required, and the benefits of working with a developer.

Full Council delivery

- 6.11 The first option to consider is for the Council to deliver the scheme directly itself. This may be agreeing a masterplan, providing infrastructure and selling serviced parcels, or delivering actual development.
- 6.12 In this case full cost and risk is borne by the Council, not shared with a partner, and as a result all the returns will also be received by the Council. The financial commitment will however be very significant, likely requiring a large amount of borrowing at significant risk. This would most likely necessitate the delivery actually being carried out by some form of wholly owned subsidiary.
- 6.13 This approach would afford the Council maximum control over development, with direct and unfettered decision making over all matters including design, programme, tenure, use mix etc. The cost of this is in financial resources as well as human resource commitment and the requirement for expertise in development matters, which could be brought in either through direct hires or as a development management service.

Working with a delivery partner

- 6.14 There are a variety of partners who could provide effective support to the Council in delivering its policy objectives for Earls Court, such as public sector funders (eg Homes England), private sector developers, financial institutions, housebuilders and registered providers, and the form of partnership can also vary widely.

- 6.15 Whichever form of delivery structure or delivery partner the Council chooses, it will in most circumstances need to engage in a form of procurement process to find a delivery partner. These range from use of existing panels such as the London Developer Panel to a full OJEU compliant competitive dialogue process, depending on what delivery structure is proposed. It is likely that the Council, with its partner or itself, would deliver all infrastructure and control delivery of the scheme, either through serviced land disposals or direct development.
- 6.16 The two main delivery structure options on this Council-led basis are described below:

Council-led partnership – Development Agreement

- 6.17 Development Agreements are contracts with a development partner for the delivery of a specific project. Typically they include a lot of detail regarding objectives and parameters for the development of a site, either with reference to a planning permission or (more commonly) with the intention that the partner will secure planning permission in accordance with the defined parameters.
- 6.18 The contract can be used to set delivery milestones, programme and place other restrictions on the operation of the delivery partner, for example with respect to procurement of supply chains. It can also include wider goals such as those related to sustainability or social value, though these can often be more difficult to define.

Council-led partnership – JV

- 6.19 Joint Venture is a formal partnership with another party based on joint decision-making and control over development. They can be contractual or corporate, i.e. formed as a distinct vehicle, with the benefits of each needing to be explored on a case by case basis.
- 6.20 Taking a corporate JV approach, a separate entity is formed in which the parties are shareholders. This is the entity which controls the development. Typically JVs take a '50/50' structure, where the parties have equal membership, decision-making rights and controls, commitments to investment and shares of profits.
- 6.21 Under this delivery option typically a Council would invest its land into the JV in order that the Council receives its share of profits. The Council's land is its equity investment. In a 50/50 structure this will be matched by the partner in the form of cash, as well land if the partner has any ownership, and the remaining funds required to deliver the development will be met by debt financing.
- 6.22 An alternative JV arrangement could see the Council seek an investment partner to establish a private land owning joint venture. An investment partner could be procured outside of a full OJEU procurement process and would bring forward funding to provide working capital, investment in land (explored further in section xx), expertise and resources to complement and enhance the Council's own resources. This investment JV would work up the masterplanning of the site and then have the option of putting the infrastructure in to develop service plots and the subsequent ability to undertake development across the site.

- 6.23 The Council will need to consider the benefits and risks attached to either self-delivery or working with a partner to deliver their policy objectives for Earls Court, and we would recommend that further work is undertaken on the costs, risks, benefits and resource requirements of each approach.
- 6.24 However, based on our experience of similar schemes elsewhere, it is difficult to see at this stage how the Council will be able to satisfy itself, and any Inspector or Secretary of State in respect of a future compulsory purchase order, that acting by itself it is adequately experienced, skilled, funded and resourced to deliver development at the scale and complexity envisaged at Earls Court.
- 6.25 On this basis, we have assumed for the purposes of this report and the future actions required that the Council will choose to work with a partner, in a delivery structure to be decided, in order to deliver its policy objectives for Earls Court.

7. Overall Programme

- 7.1 The overall programme to deliver the Council's policy objectives for Earls Court will need to integrate a number of work streams to achieve delivery. These include preparatory work, negotiations with third party interests, the CPO process and securing a delivery partner as well as scheme design and the planning process, and these would certainly overlap at a number of points.
- 7.2 We have assessed two options for the purpose of a draft programme – the first of which shows a route to making a CPO within the next 12 months, and the second shows a programme of the Council carrying out significant masterplanning, planning and other delivery work in advance of making the CPO. These alternative options are set out in the programme at Appendix 1.
- 7.3 The Council, together with its advisers, will need to consider the risks and benefits of each approach to the programme, and we set these out below to enable that decision on its preferred approach.

Option 1

- 7.4 Given the time which has elapsed since the masterplan for the Earls Court scheme was agreed, and the lack of progress in the last two and a half years, as well as the significant interest shown in CapCo's interest in the ECPL JV by third party developers and investors, the Council needs to consider what action it can take in the short to medium term to secure the delivery of Earls Court regeneration.
- 7.5 Whilst it is positive that there is market interest in ECPL land and opportunity, a change in ownership of the land alone is unlikely to deliver the control over the development which the Council requires, and so it will need to continue consideration of how best to achieve delivery of its objectives.
- 7.6 In order to create the best framework for the Council to make a CPO within 12 months, as a foundation to the Council securing the fastest possible delivery of the regeneration, we would propose the following initial programme:-

	Workstream	Timescale	Earliest Dates	Key Integrations
1	Initial Masterplanning / Scoping work	4-6 months	November 2019 – April 2020	Following Cabinet decision to further investigate
2	Initial Viability and deliverability work	3-4 months	Jan – April 2020	Following commencement of initial masterplanning work
3	Negotiations with ECPL	4 months	Feb – May 2020	
4	Soft market testing for delivery partner structure, funding	2 months	April – May 2020	Following above workstreams 1, 2 & 3

	and market interest			
5	CPO preparation	4 months	June-September 2020	Following above workstreams. Includes Cabinet decision to make CPO
6	Make CPO		September / October 2020	
7	CPO Inquiry		April 2021	Assume Public Inquiry required
8	Earliest VP of site		Q4 2021	Following CPO decision July 20201
9	Further work on design, delivery partner, planning etc		Summer 2020 –Q2 2022	In parallel with site assembly process

7.7 When considering the government guidance (see para 3.8 onwards above) it can be seen that a number of necessary workstreams are being carried out in parallel with the CPO process, and following a decision to confirm a CPO. Whilst this creates significant benefits in timescale and programme delivery, there will be additional risks to the process, given the more limited evidence of deliverability available compared to Option 2. In particular, by the time of making the CPO, and any necessary Public Inquiry, there will be

- Limited detailed information on the proposed scheme beyond a masterplan, and therefore constrained analysis of its benefits
- No planning permission or other consents for the scheme, only evidence of the likely ease of these being obtained
- Limited information or evidence on how the Council proposes to deliver the scheme, including likely funding.

7.8 However, it is important to note the strong planning and wider policy support for regeneration of this area, the lack of progress made by the ECPL JV, and the commitment of the Council to delivering the regeneration, including the wide variety of funding sources available to the Council, when weighing up the risks and benefits of this approach.

Option 2

7.9 For comparison, we set out below a suggested programme if the Council wished to carry out detailed work on the likely scheme and delivery structure in advance of making a CPO.

	Workstream	Overall	Earliest Dates	Key integrations
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		Timescale		
1	Preparatory work	4-8 months	Q4 2019/Q1 2020	Completed prior to any subsequent workstreams,
2	Negotiations with ECPL JV	4 months	Q2 2020	Commence once preparatory work (1) completed.
3	Partner selection	6-18 months	Q3 2020 – Q3 2021	Dependant on procedure used. Selection process and securing developer/investment partner will provide strong evidence of deliverability at CPO Inquiry
4	Scheme evolution and planning	12-24 months	Submit planning application Q1 2022, committee decision Q2 2022	Assuming no new planning policy required. Ensure no planning impediments by CPO Inquiry.
5	CPO Process	18-24 months	Q2 2022 – Q3 2023	Commencing once preparatory work (1) completed. Integrate with 2,4,5 to provide best evidenced justification for confirming CPO at Inquiry
6	Earliest Vacant possession of site		Q3 2023	Following CPO Inquiry Q4 2022, assuming no legal challenge to decision.

7.10 Using the government guidance set out in para 3.8 onwards above as a guide, it can be seen that the above option provides, by the time of a likely Public Inquiry,

- A settled scheme, and therefore analysis of its benefits
- Planning and other consents / approvals certainty
- Clear plan and evidence of deliverability of the scheme including funding

7.11 However, in order to provide this certainty, the programme is significantly longer than that under Option 1, with vacant possession of the site not being available until the second half of 2023, versus the end of 2021 for Option 1, a delay of c.2 years.

8. Budget for process

8.1 In considering its options to proactively deliver its policy objectives for the land at Earls Court, the Council will need to consider the costs (internal costs and external advisers) of the necessary

preparatory work, selection and securing of a delivery partner, compulsory purchase process and all associated specialist advice.

- 8.2 It is difficult at this early stage to give precise budgets for this process but we set out below an estimated summary based on Option 1 and Option 2, and some further detail on how this is broken down. You will see that the budget is broadly similar for either Option, but the timing of costs varies over the different options.

Option 1

Preparatory Work

- 8.3 As set out in above and section 10 below, the Council will need to undertake some initial preparatory work in respect of its plans for the site and how it intends to ensure delivery of these in order to justify the proposed acquisition. Whilst the principle of Council intervention, including use of compulsory purchase powers, appears justified, it is only once some initial work is carried out that the Council will be able to satisfy itself that the detailed justification for use of these powers can be evidenced to an Inspector or confirming Secretary of State.

- 8.4 Further details are set out in 10.6 below.

CPO Process

- 8.5 This section covers legal (solicitors and Counsel for an Inquiry), surveying and other specialist professionals to prepare, make, take through public inquiry, obtain confirmation and implement, as set out above in section 2.12 above, as well as costs such as an Inspector for a public inquiry.
- 8.6 We have assumed the majority of the work will be carried out by external specialist advisers, but if there are internal specialists at the Council who have available capacity, this budget may be reduced.
- 8.7 Using Option 1, there is a risk that the Inquiry will be longer and need to cover more areas in detail to provide sufficient information to an Inspector to make their report, and the budget should therefore be considered at the top end of the range.

Specialist support to CPO process

- 8.8 In order to provide evidenced justification for confirmation of a compulsory purchase order, the Council may need specialist support in respect of the proposed scheme and its deliverability. These specialists might include transport, planning, valuation, commercial advice, deliverability and viability.

Internal Council project management

- 8.9 Our experience of similar projects shows that, in addition to high level elected member and officer support for a scheme, it is vital that there is a dedicated 'client' within the Council who has relevant experience and skills and will drive forward this project. They will need to have capacity and

resources made available to them, as well as the ability to make decisions on day to day items as the project progresses.

- 8.10 This can be a reallocation of existing resource within the Council, employment of a new Council officer, (full time or contract basis) or external project management support seconded into or available to the Council. We have assumed that the project management would be required for the entire time period.

Selection of funding and/or delivery partner

- 8.11 If the Council decides that it requires a funding and/or delivery partner they will need a variety of support in order to select the appropriate delivery route, identify its key requirements, procure a partner, finalise the documentation and monitor subsequent delivery. The exact costs and process will depend on the delivery route selected, with use of an existing pre-qualified panel likely to be the cheapest option where a developer is procured, although less likely to be suitable for a site of this complexity, and a contractual joint venture being the most expensive.

Further design, technical and planning work

- 8.12 This will include working up further detailed masterplanning and scheme design and obtaining the planning consent. We have assumed that this work would be carried out in parallel with the CPO process under this option.
- 8.13 We have set out an estimated budget based on Option 1 below:-

	Workstream	Estimated Budget (£)	Comments
1	Preparatory Work	£150,000-200,000	Resident consultation, initial masterplan,, delivery structure, viability and legal support
2	CPO Process	£500,000-750,000	Legal and Surveyors Fees / Negotiations with affected parties and process. Assume public Inquiry required with objection pursued by ECPL. No objection from TfL / RBKC
3	Internal Council project management lead and support from October 2019	£360,000	Allocated project lead within the Council, assume full time cost for 3 years. Allow £10,000 per month – if external secondees, cost likely to rise.
4	Specialist technical advice to support CPO process	£100,000 – 150,000	Planning / Viability / Development viability / transport and traffic etc

5	Selection and securing delivery partner	£500,000-750,000	Legal/commercial/property/accountancy support – JV process likely to be more expensive than DA
6	Further design / planning / technical work	£1,000,000	Dependant on structure of delivery
	Total	£2,610,000 - £3,210,000	

Option 2

Preparatory Work

8.14 As set out above and section 10 below, the Council will need to undertake some initial preparatory work in respect of its plans for the site and how it intends to ensure delivery of these. Whilst the principle of Council intervention, including use of compulsory purchase powers, appears justified, it is only once this work is carried out that the Council will be able to satisfy itself that the detailed justification for use of these powers can be evidenced to an Inspector or confirming Secretary of State.

8.15 Further details are set out in section 10.6 below.

CPO Process

8.16 This section covers legal (solicitors and Counsel for an Inquiry), surveying and other specialist professionals to prepare, make, take through public inquiry, obtain confirmation and implement, as set out above in section 2.12 above, as well as costs such as an Inspector for a public inquiry.

8.17 We have assumed the majority of the work will be carried out by external specialist advisers, but if there are internal specialists at the Council who have available capacity, this budget may be reduced.

Specialist support to CPO process

8.18 In order to provide evidenced justification for confirmation of a compulsory purchase order, the Council may need specialist support in respect of the proposed scheme and its deliverability. These specialists might include transport, planning, valuation, commercial advice and viability.

Internal Council project management

8.19 Our experience of similar projects shows that, in addition to high level elected member and officer support for a scheme, it is vital that there is a dedicated 'client' within the Council who has relevant experience and skills and will drive forward this project. They will need to have capacity and

resources made available to them, as well as the ability to make decisions on day to day items as the project progresses.

- 8.20 This can be a reallocation of existing resource within the Council, employment of a new Council officer, or an external project management support seconded into or available to the Council.

Selection of delivery partner

- 8.21 If the Council decides that it requires a delivery partner they will need a variety of support in order to select the appropriate delivery route, identify its key requirements, procure a delivery partner, finalise the documentation and monitor subsequent delivery. The exact costs and process will depend on the delivery route selected, with use of an existing pre-qualified panel likely to be the cheapest option, although less likely to be suitable for a site of this complexity, and a contractual joint venture being the most expensive.

Further design, technical and planning work

- 8.22 This will include working up further detailed masterplanning and scheme design and obtaining the planning consent. We have assumed that this work would be carried out in parallel with the CPO process under this option.
- 8.23 We have set out an estimated budget based on Option 2 below

	Workstream	Estimated Budget (£)	Comments
1	Preparatory Work	£100- 150,000	Resident consultation, initial masterplan, delivery structure, viability and legal support
2	CPO Process	£500-750,000	Legal and Surveyors Fees / Negotiations with affected parties and process. Assume public Inquiry required with objection pursued by ECPL. No objection from TfL / RBKC
3	Internal Council project management lead and support from October 2019	£480,000	Allocated project lead within the Council, assume full time cost for 4 years.
4	Specialist technical advice to support CPO process	£75,000	Planning / Viability / Development viability / transport and traffic etc. Some of this work will have already been completed as part of further design/planning/technical work.

5	Further design / planning / technical work	£1,000,000	Dependant on structure of delivery
6	Selection and securing delivery partner	£500,000- £750,000	Legal/commercial/property/accountancy support – JV process likely to be more expensive than DA
	Total	£2,655,000- £3,205,000	

8.24 For ease, we set out below the budget associated with each programme stage for Option 1

Phase	Workstream	Timescale	Earliest Dates	Budget
1	Initial Masterplanning / Scoping work	4-6 months	November 2019 – April 2020	£200,000
	Initial Viability and deliverability work	3-4 months	Jan – April 2020	
	Negotiations with ECPL	4 months	Feb – May 2020	
	Soft market testing for delivery partner structure, funding and market interest	2 months	April – May 2020	
	CPO preparation	4 months	June-September 2020	£50,000
	Internal Council project management		Nov 2019 – September 2020	£110,000
	Subtotal Phase 1			£360,000
2	Make CPO		September / October 2020	£750,000
	CPO Inquiry		April 2021	
	Earliest VP of site		Q4 2021	
	Internal Council project		October 2020 – Dec	£150,000

	management		2021	
	Subtotal Phase 2			£900,000
3	Further work on design, delivery partner, planning etc		Summer 2020 –Q2 2022	£1,750,000
	Internal Council project management		See above	
	Subtotal Phase 3			1,750,000
	TOTAL			£3,010,000

8.25 The above budget will need to be regularly refined and updated as the Council progresses its plans, but does provide an initial estimate in order to assist the Cabinet in making its decisions on how to proceed.

8.26 It is also worth noting that the costs to the Council are incremental and can be managed on a phased basis via the usual Cabinet decision making process. The next stage of work, phase 1, has a budget including Council internal project management, of only £360,000 of the total. In order to commit to the next stage of action and therefore funding, a Cabinet decision would be required.

8.27 Depending on the selected delivery route, the Council may be able to obtain reimbursement of these early stage costs, either through direct reimbursement, or through land value uplift or profit created by the scheme.

9. Land Acquisition Budget

9.1 Avison Young's instructions relate to both the JV land and the Lillie Bridge Depot land. However, for the reasons set out in para [xxx] above, it is our recommendation that the Council do not seek to progress any compulsory purchase of the Lillie Bridge Depot at this stage. Therefore, we have focused our advice in this section on the JV land only.

9.2 For the purpose of this report we have assessed compensation on the assumption that compulsory purchase powers will be used to acquire all third party interests. The principles which govern the assessment of compulsory purchase compensation consist of statute and case law, collectively known as the 'Compensation or Compulsory Purchase Code'.

9.3 In accordance with this Code, if an interest is compulsorily acquired, the claimant is entitled to compensation with the objective of equivalence, to put them in the same position as they were in prior to the compulsory acquisition as far as money can.

9.4 In order to calculate this, the compensation payable is usually divided into the following headings:-

- Market Value of Land taken
- Reduction in value of any retained land
- Disturbance / reinvestment costs
- Basic/Occupiers Loss payment
- Reasonable professional fees.

9.5 As agreed, we have not undertaken a valuation of the land within the JV nor any of the adjoining land that is required for the delivery of the Masterplan (consented or enhanced). We do not hold sufficient information to be able to provide a valuation; in particular we do not have any current information on infrastructure and enabling costs. The following comments and points are based, therefore, on the information that has been made public by CapCo and an analysis of the Model that was made available to us by ECPL in 2017; we have signed a Non-Disclosure Agreement in respect of the information within the Model so our comments are framed to avoid the disclosure of information that would be in breach of the NDA.

9.6 CapCo has recently announced its interim results for the six months ending 30 June 2019, press release 25 July 2019. Its interest in the JV was valued for its accounts at £389m. This was a decrease of £72m (16%) from the value reported for the 31 December 2018, and a reduction of £255m (40%) over the last 2.5 years. In December 2015 CapCo's interest was valued at £803m, which is the highest it has been since the JV was formed.

9.7 CapCo holds a 63% controlling interest in the JV; TfL has the balance. We have assumed that the value reported in the accounts is a pro rata apportionment of the value of the land within the JV, and therefore that the value of the land can be derived by multiplying the reported figure by 1.587. This gives the following assessed market value for the JV land:

	Dec 2015	Dec 2016	Dec 2017	Dec 2018	March 2019	June 2019
CapCo Interest	£803m	£644m	£561m	£461m	£412m	£389m
MV of JV Land	£1,275m	£1,022m	£890m	£732m	£654m	£617m

9.8 It is noteworthy that the value has materially decreased over the last 3.5 years notwithstanding the completion of all demolition works in 2017 and works to bridge the District line to Wimbledon, which we believe have been finished.

9.9 The June 2019 valuation was undertaken by JLL on behalf of TfL for its accounts, whilst the others have been done by CBRE for CapCo's accounts.

- 9.10 We assume that the valuation in all cases follows that adopted by the Model. This assumes that the land will be prepared for development by the owner, the JV, and serviced land parcels will be sold to developers, which we presume can include CapCo, for actual development; in effect the JV is acting as Master Developer and makes a profit from undertaking the enabling works.
- 9.11 Of particular note are the comments of CapCo in its recent Press Release. It states:
- 9.12 There has been a broad range of interest in Earls Court and in assessing proposals from interested parties, the Board focuses on value and deliverability
- 9.13 Indicative pricing received is at a range of discounts to the balance sheet value and the proposals are subject to differing levels of further due diligence and a number of conditions, including third-party rights and there is no certainty that this will result in a sale transaction
- 9.14 Taken at face value these comments strongly suggest that the market value is less than £617m unless the comments are in respect of the value as at 31 December 2018, and the most recent valuation effectively reflects the market responses, hence the reduction of 16% in just 6 months.
- 9.15 Also of note is the comment about the imposition by prospective purchasers of conditions, including third party rights. Given that the consented Masterplan assumed that redevelopment would include land around the Empress State Building, which has been sold back to MOPAC, as well as the CLSA and Lillie Bridge Depot, it is not surprising that there may be material issues about how the extant consent can be delivered. We have no information as to whether other interests are required, but note that rights of light are also likely to be a significant issue.
- 9.16 Of greater concern to prospective purchasers is likely to be constraints imposed on purchasers by the JV agreement. We have not seen the documentation, but it is likely to contain a number of safeguards and procedural matters that purchasers, particularly foreign buyers, are likely to find problematic. If we are correct, the Agreement also limits the scope of involvement by the JV to that of Master Developer, and whilst there may be rights for CapCo or its successor to acquire serviced land, these are likely to be circumscribed in order to ensure best consideration and value for money for TfL. Advice will need to be taken on the extent to which the JV agreement is a factor to be taken into account on a rule 2 valuation, given that under the compensation code the seller is deemed to be a notional seller rather than the actual owner(s) of the land in question.
- 9.17 We would expect many of the prospective purchasers would ideally want to own the land outright (if not freehold then on a long lease at a peppercorn rent) and to be in total control of the development.
- 9.18 In theory a Market Value should take account of all these points and distil them into a single number. From the comments by CapCo it is perhaps questionable whether the current valuation, or any of its predecessors, manages to do this. We would need to read all the caveats, qualifications and special assumptions that have been applied to the valuation to be able to assess the extent to which either JLL or CBRE considers their respective figures to represent a true assessment of the Market Value.

- 9.19 We note that a Rule 2 Valuation will take into account the interest of special purchasers, and a proportion of additional value that they may be able to be secured achieve through a merger of interests. Both TfL and the Council come into this category. We would expect the JV Agreement to include a right of pre-emption in favour of TfL in the event that CapCo wishes to sell its interest. This might enable TfL to purchase the shareholding on a basis that is not directly related or linked to the underlying market value. The greater potential for marriage value in theory arises from its ownership of the Depot, which is effectively landlocked. However, as we discuss below, the Depot is likely to be of no current value, and indeed is a negative value.
- 9.20 It is also worth considering the Council's interest in the CLSA Land, which is covered by the CLSA contract on which the final payment is scheduled to be made in December 2019. Therefore, whilst the Council currently retains an interest in the CLSA land, this is subject to the CLSA and therefore we do not consider there would be any material marriage value to be taken into account if the JV land was compulsorily acquired.
- 9.21 Without access to the valuations our comments are speculative, but based on the assumptions detailed above we consider that the latest valuation reported by CapCo, £617m for the underlying land, remains the best evidence of the current market value of the JV land. We cannot see any reason at the present time to suggest that the value should be increased due to potential bids by either TfL or the Council as special purchasers. Indeed, the comments by CapCo would suggest that the true market value is at present less than the reported figure.
- 9.22 No assessment of the market value of Lille Bridge Depot, assuming development above the operational lines, has been made public as far as we are aware. The Model includes the rights to the land/airspace, and these are valued on the same basis as the remainder of the Masterplan area.
- 9.23 The assumptions, costs and values, applied to the Depot land give a large negative residual land value for the Master Developer. It shows a positive land value when serviced and ready for development, approximately 50% of the equivalent value for the JV land. However, this is offset by the large enabling and infrastructure costs, which are broadly of the same order as for the JV land (based on the costings which are now c 2+ years old).
- 9.24 The residual value of the JV land in the Model is materially less than the latest reported value. Some of this difference will arise because enabling costs have been incurred and therefore the current remaining cost of infrastructure works may be significantly less. We also suspect that there will have been value engineering of various aspects of the scheme on the JV land, and that the cost of infrastructure and enabling costs may be less. Whatever the reasons, it seems likely that the costs of developing the Depot remain very significant, and outstrip the potential value. We are of the opinion that the current value of the Depot land is negative or nil, based on the extant Masterplan.
- 9.25 If the Depot is relocated and there is no need to bridge over the operational lines then the cost value balance will change and it is likely that the Depot will then be a viable and valuable proposition.

9.26 Given that the depot and adjacent labor are held in separate ownership to the JV land, (TfL and LBHF subject to CLSA benefiting CapCo respectively) we have assumed for the purposes of this report that there would be no entitlement to a claim for severance and injurious affection from the JV.

9.27 In addition, the JV partners would be entitled to the other heads of claim set out above, and we summarise the estimates of these below:

Heading	Compensation Estimate (£)	Comments
Market Value	£617,000,000	Estimate JV land only based on assumptions above
Reduction in value of retained land	0	Nil – assume JV is claimant and no retained land
Disturbance	£32,859,500	£30,859,500 SDLT and £2,000,000 for professional fees (agent/legal/accountancy)
Basic/Occupiers Loss Payments	£100,000	Assume JV is single claimant, max Basic and Occupiers Loss payments
Professional Fees	£200,000	Surveyor and other fees in dealing with claim – including accountancy to reflect the JV ownership
Total	£650,159,500	

10. Funding Considerations

10.1 The ability to demonstrate the deliverability of any scheme progressed by the Council will in large part be dictated by the evidence that there is a coherent funding strategy in place to support the acquisition of the land and the subsequent masterplanning, infrastructure implementation and ultimately undertaking development.

Land Acquisition

10.2 The key challenge for the Council will be to demonstrate that funding for the CPO compensation is available. The estimated acquisition cost is c£650,000,000 and this is significant upfront cost to the Council. The following options are available to the Council to fund the land acquisition process:

- Prudential borrowing (PWLB) or other lenders
- Public Sector Funding

- Bond financing
- Investment Partner funding

Prudential Borrowing

- 10.3 On the assumption that the Councils cash reserves are limited, the most obvious source of Council funding will be via prudential borrowing through the public works loan board (PWLB). Local authorities currently have access to relatively cheap finance over long periods (up to 50 years) and the ability to lock in attractive rates would certainly be the easiest option for the Council. PWLB loans however will need to be serviced each year and the interest costs on the acquisition value will be significant. In the early years where the development has not commenced, there will not be any income generated from the scheme and therefore the Council are likely to incur interest costs which the general fund may not be able to support.
- 10.4 On top of the interest costs there is the requirement for the Council to recognise minimum revenue provision, which while a notional charge to the general fund; it is nevertheless an additional pressure on the general fund. Depending on the Councils minimum revenue policy, this may or not be a significant issue and this will need to be explored further when funding options are being developed.

Public Sector Funding

- 10.5 An alternative means of funding the land acquisition could be through public sector funding e.g. Homes England or GLA. This could come in the form of grant funding or more likely loan funding. The difference between PWLB funding, is that there is the potential for a more flexible approach to the lending terms specifically in relation to the interest payments. A more bespoke approach could be negotiated in line with the income generating potential of the scheme, which could relieve the early pressures on the general fund. Another possibility would be to procure equity investment from either organisation which could help minimise the upfront borrowing that the Council will need to take out.

Bond financing

- 10.6 Another flexible approach to borrowing could come in the form of a bond issuance. Bond financing could be structured in any number of ways and this option has the potential to provide the Council with a flexible means of funding the land acquisition. Bonds could be issued as part of a private placement and as such there is a degree of flexibility as to how the bond can be structured to meet the Council objectives and financial parameters. The key areas that could be accommodated in a bespoke structure include:
- Maturity date – The Council could set the maturity of the bond in line with the expected date of when the funds would be available from the development to repay the bond principal. This will need to be informed by detailed financial modelling of the entire scheme.

The Council could also include a 'call' option in the structure, which would enable the Council to redeem the bond at any point until the bond's maturity. Such a structure may be appropriate if time of the repayment is uncertain; a complex scheme such as this could benefit from this additional flexibility should developments generate earlier returns than expected.

- Coupon (Interest rate) – The Coupon rate is usually fixed however can be linked to an index, such as LIBOR or RPI. The Coupon will be determined by a number of factors including market interest, maturity date of the bond and security of the bond and the Council's perceived credit risk. It is likely that most local authorities will be able to attract an attractively low interest rate and therefore could be close to PWLB rates.

Another key flexibility of bond is the payment terms of the Coupon. While this is usually paid annually, it is possible for the coupon to structure over a different time horizon, e.g. 3 or 5 years. This would give the Council the time to develop the masterplan and start generating income from the scheme before having to make any interest payments.

Indeed a bond does not need to make any interest payments at all. These bonds are called zero coupon bonds and due to the fact that they don't pay interest, they are issued at a discount from the par value.

- Revolver Bonds – A revolver bond has a committed amount of cash which the issuer and holder agree can be drawn at any or certain times by the issuer. The coupon is only charged on the drawn amount and there is normally no coupon or fees on the undrawn amount. While this structure is most appropriate when all the cash is not required upfront (not the case here), should the terms of the bond be attractive then a facility for longer term financing requirements could be locked in by the Council.

10.7 Overall a bond could provide a flexible option for the Council to fund the acquisition.

Investment Partner

- 10.8 As set out in the delivery options, one route could be to procure an investment partner to provide funding in various forms to assist in the acquisition of the land. The simplest form of the investment would be through equity. The Council could split the costs of the land acquisition 50/50 (or another appropriate split) reducing the upfront borrowing requirement for the Council. Investment partners could range from private equity firms, family offices through to institutional funders (pension/insurance funds). The term and form of the equity will differ from each type of investor and depending on the specific requirements it could be that different investors are called upon during the lifecycle of the scheme.
- 10.9 As part of the investment partner funding route, there could be the possibility of combining different funding structures. For example, as well as providing equity to acquire the land, the partner could also be the single bond holder or conventional lender to the Council for their portion of the investment. Terms could be negotiated as described in the bond section to make sure that it is flexible and helps the Council's financial position by matching financing costs to when income is generated from the scheme.
- 10.10 Each of these avenues will need to be explored in greater detail once the Council's financial parameters and constraints have been developed alongside the proposition for the wider development of the site.

- 10.11 Market commentary suggests interest from a select group of developers in this project is high, and they have cash available for an immediate purchase. This might suggest that a 'back to back' compulsory acquisition and onward sale of the JV land would be feasible. However, before proceeding with this type of arrangement, the Council would need to satisfy itself both of the level of control over delivery of this project it could maintain using this process, and/or the suitability of these bidders to enter into a long term partnership with the Council.

Development and Infrastructure Funding

- 10.12 Having considered the potential for land acquisition funding, the Council will also need to demonstrate how the infrastructure and developments will be funded. Therefore a coherent, market facing funding strategy for the 'operational' phase of the scheme (post acquisition) will need to be demonstrated.

Infrastructure Funding

- 10.13 As with the acquisition funding, the Council could utilise PWLB borrowing to finance and costs they need to incur to get the parcels of land serviced and ready to develop. Depending on the delivery structure, this may require the Council to fund 100% of the upfront infrastructure or a portion of it should this be delivered in a form of joint venture. Once again, the Council will have to service the debt, however unlike the acquisition costs, it is unlikely that all of the infrastructure costs would be required at the start of the project. It is likely that there would be an initial tranche of infrastructure cost, and then plot by plot costs would be incurred immediately prior to serviced plots being sold. Therefore, phased correctly, the peak debt, time debt is held, and subsequent cost of borrowing on the general fund could be minimised.
- 10.14 Should the Council go down the route of self-delivery, 100% of the funding risk will sit with the Council and therefore the overall exposure of both the acquisition costs plus infrastructure funding is likely to be substantial. Should the Council choose to go down the route of a partnership then as set out for the land acquisition costs, the cost of the infrastructure could be shared between the two parties.
- 10.15 As mentioned under the acquisition funding section, the Council could consider a bond issue here also. Whether it be linked to the revolver bond set out early or subsequent infrastructure bonds this could again be structured in a way that suits the Council's financial parameters by creating a bespoke product rather than the usual PWLB route.
- 10.16 Another alternative to fund the infrastructure could be to procure a separate infrastructure partner (regardless of whether a JV has been formed with another partner for acquisition), who would fund the infrastructure, take a margin on the cost and take a priority return on the disposal of service plots. The Council (and JV partner) would then split the remaining land value to repay debt on the acquisition.
- 10.17 Indeed there is the option for the Council/JV partner to not implement any of the infrastructure and instead work up a broad masterplan and sell un-serviced plots where the value add would not be significant but an uplift from the acquisition price could be generated. This would require detailed

work to understand the potential of the site and modelling to ascertain the value of each individual plot. Of course, whilst this would have the benefit of removing the need for the Council to fund infrastructure, it would also mean the Council giving up control of the delivery of the site. For this reason, we have assumed that it is the least likely option for the Council.

Development & Investment Funding

10.18 Development and investment (post completion) funding in this context is the relatively simple part of the equation. For the purposes of this strategy, we have assumed the development funding would be c.£1.5bn dependant on the level of infrastructure work completed to date. Once the land has been acquired and infrastructure has been implemented, there are a range of development finance options. Assuming that the Council do go into a Joint Venture then the Council will look to inject their land as equity, (with minimal additional cash equity where the land value has sufficient value), with the partner match funding this with cash and 3rd party development finance procured as with any standard real estate transaction. Depending on the assets being developed and the tenure of those asset, the development and investment funding could be in the form of senior/mezzanine funding, forward funding arrangements, forward sale agreements, income strip (leveraging the Councils covenant) amongst many other options.

Summary

- 10.19 Funding the acquisition costs of the land could be a challenge for the Council given the large quantum involved, however there are a number of ways which can be explored to minimise the financial exposure and the impact on the general fund. Indeed the funding package that is put together will likely be a hybrid of the options highlighted above and will evolve over time as the scheme is developed and market conditions change.
- 10.20 The funding structures will be interlinked with the delivery structure and detailed upfront work to ensure that a strong market proposition is developed to give confidence to developers and funders that there is a commercial masterplan that can be developed and that the risks of a large scale development can be managed as this will help open up the funding options and drive down the cost of finance for the Council.

11. Conclusion and Recommendations

- 11.1 Having carried out the above analysis, we consider there is an 'in principle justification' for the use of compulsory purchase powers by the Council in order to ensure delivery of its policy objectives for the JV land at Earls Court, subject to the completion of the necessary preparatory work.
- 11.2 As set out in para 5.7 above, whilst we consider it is legally possible for the Council to include the Lillie Bridge Depot land within a compulsory purchase order to deliver its policy objectives for Earls Court, we have significant concerns over the practicalities of demonstrating that the Council can ensure continuous safe, secure usage by TfL of the depot site, and its associated transport services, following implementation of a confirmed compulsory purchase order for this part of the site.

- 11.3 Therefore, inclusion of this site within a compulsory purchase order is likely to lead to delay, legal challenge and a significantly decreased chance of success in obtaining confirmation and implementation of that order. This would have detrimental impacts on the Council's policy objectives for the entire Earls Court site, and we therefore recommend that the Lillie Bridge Depot site is removed from any consideration of use of the Council's compulsory purchase powers.
- 11.4 We would recommend pursuit of discussions / negotiations with TfL on their future plans for the site, and how the Council can work with them to deliver housing and other development on that site whilst maintaining the transport use.
- 11.5 We recommend that the Cabinet make the following resolutions to allow the next steps to be taken:-
- Agree to proceed with the next stage of the strategy based on Option 1 actions and programme including budget allocation of £360,000 for work to September 2020.
 - Delegate authority to Strategic Director for Economy to progress preparations to acquire the Joint Venture land at Earls Court, including consideration of the use of compulsory purchase powers
 - Remove the TfL depot land from the land to be acquired, and progress discussions with TfL in an effort to find agreement
 - Delegate authority to Strategic Director for Economy to progress discussions with RBK&C in relation to potential acquisition, including compulsory purchase, of third party owned land within their borough
 - Delegate authority to Strategic Director for Economy to secure appropriate project management support
 - Delegate authority to Strategic Director for Economy for appointment of a specialist professional team to work with senior officers to progress resident consultation, initial masterplanning, viability, delivery structure, specialist legal and soft market testing work
 - Approve commencement of negotiations by senior officers and professional team with Joint Venture as set out in para 7.6 above.
 - Delegate to Strategic Director for Economy authority to make all necessary preparations to prepare a compulsory purchase order in respect of the joint venture land and any other third party land and rights required

Contact Details

Enquiries

Virginia Blackman
020 7911 2583
Virginia.blackman@avisonyoung.com

Visit us online

avisonyoung.co.uk

Avison Young

65 Gresham Street, London EC2V 7NQ

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