



Cabinet

15 OCTOBER 2012

LEADER

*Councillor Nicholas
Botterill*

**SHEPHERDS BUSH MARKET
REGENERATION – COMPULSORY
PURCHASE ORDER**

**Ward:
Shepherds
Bush Green**

This report sets out progress to date on land assembly to facilitate a comprehensive Shepherds Bush Market regeneration scheme and sets out grounds for Cabinet approval to seek Compulsory Purchase Powers for the acquisition of all relevant interests required to support the implementation of the market regeneration scheme.

A separate report on the exempt part of the Cabinet agenda relates to exempt information in connection with the acquisition of Lime Grove Hostel.

CONTRIBUTORS

HRD
EDFCS
DoL

HAS A EIA BEEN COMPLETED? YES
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Recommendations:

- 1. That Cabinet agrees that the four conditions set out in the report considered by Cabinet on 14 October 2010 have now been met.**
- 2. That Cabinet considers that the proposed scheme for the regeneration of the Shepherds Bush Market area will contribute to the achievement of the economic, social and environmental wellbeing of the area.**
- 3. That a compulsory purchase order be made and thereafter that confirmation be sought from the Secretary of State for the use of compulsory purchase powers for the acquisition of all relevant property interests (as set out in Section 2 of this report) required to facilitate the implementation of the**

proposed scheme of development and regeneration at Shepherds Bush Market.

- 4. That approval be given to enter into a CPO Indemnity Agreement with Orion Shepherds Bush group of companies generally in the terms set out in this report and Appendix B.**
- 5. To note that Orion Shepherds Bush group of companies will continue to negotiate to acquire all necessary land and rights by agreement pending the formal confirmation of compulsory purchase powers.**
- 6. That the Leader, in conjunction with the Executive Director of Housing and Regeneration, the Executive Director of Finance and Corporate Governance and the Director of Law finalises the Statement of Reasons and settles the final form of the indemnity agreement, and takes all necessary and procedural steps to seek confirmation and implementation of the CPO and to negotiate implementation arrangements to mitigate effects on persons affected by the CPO and makes a General Vesting Declaration to implement the CPO if confirmed by the Secretary of State.**

1. BACKGROUND

1.1 Introduction

- 1.1.1 Shepherds Bush Market (SBM or the 'Market') is identified in the Core Strategy and the White City Opportunity Area Planning Framework (OAPF) as a priority location for town centre regeneration. The Market is currently in the ownership of London Underground Limited (LUL) and is managed by Transport for London (TfL). It has been in decline for a number of reasons, but principally as a result of a lack of investment in its upkeep, promotion and improvement over many years.
- 1.1.2 The Council has encouraged a scheme to be brought forward through the assembly of adjoining land at Market Lane (being land owned by Peabody and Broadway Homelessness) and land to the rear of Pennard Road (now owned by the Council, and acquired by it as part of its aspiration to regenerate the area), as well as other land, including certain shop units on the Goldhawk Road, that will form a viable comprehensive development to catalyse the regeneration of the Market. Full details of this approach are set out in the report 'Shepherds Bush Market Regeneration' that was considered and approved by Cabinet on 14th October 2010.
- 1.1.3 This report provides an update on progress since that report and sets out the case for and terms of a resolution by Cabinet to make a Compulsory Purchase Order.

1.2 Update

- 1.2.1 The October 2010 Cabinet report identified the key property interests required to assemble a developable site in the area bounded by the Market to the west, the rear of the Pennard Road houses to the east, Shepherds Bush Library (now the Bush Theatre) to the north and Goldhawk Road to the south. Cabinet approved a 'Preferred Route' that included authority to proceed with a land option in favour of Orion Shepherds Bush Limited (OSBL) and an acknowledgement that the use of Compulsory Purchase Powers might be required.
- 1.2.2 OSBL, (which we use to include Orion Shepherds Bush (no.2) Limited and Orion Shepherds Bush (no.3) Limited) whose details are as set out in the previous report, has now assembled Agreements in relation to three of the principal land interests (as detailed in section 1.4 of this report). However, it is apparent from its' contact with owners of other parts of the site that assembly of the remainder of the site by agreement is unlikely in the foreseeable future.
- 1.2.3 Following the entering into of a section 106 agreement (s106) with the Council an outline planning permission was granted on 30th March 2012, for a scheme of development that contains 212 new residential

units and sets out a fully committed S106 programme of repairs and improvements to the Market together with business support and funding, and investment in affordable housing at Lime Grove. A summary of the S106 Agreement is set out in section 1.3 of this report.

- 1.2.4 The grant of the planning permission followed more than two years of public consultation by OSBL, including extensive engagement with Market traders' to prepare a Design Guide for Market upgrades and to agree business protection arrangements. The consultation programme also extended to residents in Pennard Road and Lime Grove, shopkeepers on Goldhawk Road and residents and representatives from the wider community.
- 1.2.5 The next steps are for OSBL to facilitate the refurbishment of the hostel owned by Notting Hill Housing Trust (NHHT) in Lime Grove ('the Lime Grove Hostel') (see paragraph 1.4.1(c)(e) for further details on this property) and submit for approval of Reserved Matters.
- 1.2.6 However, in order to facilitate the full assembly of the site it is appropriate for the Council, underwritten by OSBL as explained below, to make a Compulsory Purchase Order in order to ensure that all land interests necessary to implement the planning permission and delivery of the regeneration of the Market can be brought into a single ownership.
- 1.2.7 The Planning Applications Committee report of 8th February 2012 identified the OSBL application as meeting the Council's major regeneration objectives for the location. In particular, that it will enhance and strengthen the town centre at Shepherds Bush and make a significant contribution to the economic revitalisation of the area. The improvement of local well-being is a significant objective of the Council's policies in this location. Despite the success of Westfield, local shops and facilities have been seen to continue to decline and the Shepherds Bush Market project – together with improvements to the Green, is expected to have a catalytic effect by stemming decline and increasing activity, confidence and investment - with consequent benefits for local services; the protection and attraction of small businesses; and the improvement of local employment prospects. The Market is viewed by the Council as central to these ambitions, and the assembly of the land necessary for the implementation of the consented scheme is the basis and justification for the proposed CPO.
- 1.2.8 The draft Statement of Reasons (see Appendix A) sets out more fully the reasons the Cabinet is recommended to proceed with the CPO and Cabinet is requested to endorse that appendix.
- 1.2.9 Therefore the Cabinet is being asked to consider and, if considered appropriate, to resolve that it will allow the compulsory purchase process to commence by making the Order.

1.3 Planning

1.3.1 On 8th February 2012 the Planning Applications Committee resolved to grant consent for an outline scheme of development submitted by OSBL. In summary, that scheme contained the following components:

- 212 residential units including 194 flats, 5 live/work units and 13 mews houses.
- 14,052 m² of non-residential floorspace comprising 6,000m² of Class A1 uses, 4,000m² of Classes A3/A5 uses and 4,052m² of Market servicing and ancillary facilities.
- Market regeneration (including, Market expansion; additional units; improved safety, lighting and street furniture; new landscaped spaces; improved stalls; etc) through a committed programme of S106 obligated funding.
- New shops along the Goldhawk Road frontage with first options in favour of displaced Goldhawk Road businesses.

1.3.2 In addition to the physical works, the S106 captures a detailed series of obligations made in favour of protecting continuity of trade within the Market during the period that works are undertaken. These include rent assurances, Business Continuity Support (for which £500,000 has been committed by OSBL) and offers to Goldhawk Road shopkeepers of first calls on the new units on the Goldhawk Road if they wish to return to trading positions in that location.

1.3.3 The S106 also obligates OSBL to part fund the refurbishment of Lime Grove Hostel, which will allow the relocation of homeless support services from the Peabody London facilities at Market Lane.

1.3.4 The grant of the planning permission for OSBL's scheme is currently the subject of an application for Judicial Review. Leading Counsel's advice has been taken on whether this should be an impediment to progressing the compulsory purchase procedures. Counsel's advice is that it should not. The CPO process requires the Council to establish that there are no obvious reasons why planning permission should be withheld, and does not require there to be a particular planning permission in existence.

1.4 Land Assembly

1.4.1 The October 2010 Cabinet report set out details of each of the land interests that are required to assemble the full regeneration site. The updated position for each is as follows:

a. The Market – London Underground Limited ('LUL')

Officers have been advised by OSBL and TfL that they have now agreed principal heads of terms on price and the ownership

structure for OSBL to acquire a controlling interest in the Market. This will comprise a long leasehold (125-year) interest in the air rights in the viaduct arches and 3-metre strips either side of the structure and the freehold of all remaining land and premises either side of this area. They are targeting December 2012 to exchange contracts. However in the absence of a contract with LUL it will be necessary to include this land in the proposed CPO. Unless the LUL land is included in the CPO the Council will not be able to show its ability to assemble the whole site to achieve the regeneration objectives.

Furthermore without the certainty that a CPO gives there may be interests in the CPO land that could delay or frustrate the project if the only powers available are those that OSBL would have after acquiring the land by agreement from LUL. The inclusion of the LUL land will mean that the interests of the traders are subject to the CPO.

b. The Broadway London Day Centre – Broadway Homelessness and Support

Officers are advised that OSBL has entered into an option agreement with Broadway to acquire the Day Centre premises at Market Lane. This facility currently provides service to the adjoining Peabody residents and to a wider client base, many of whom are able to access the Day Centre on a 'drop-in' basis.

The option agreement allows for Broadway's departure from the site to be coordinated with the relocation of accommodation from Peabody's buildings and forms part of a wider review of homeless services that disperse provision to a number of new locations.

As with the LUL land this site will be included in the CPO to secure the Council's ability to assemble the whole regeneration site.

c. Peabody Residential Buildings at Market Lane – The Governors of the Peabody Trust

OSBL has informed the Council that it has exchanged conditional contracts with Peabody to purchase the Peabody site and buildings immediately to the north of the Day Centre. There are two buildings on site; one a hostel containing 15 bed spaces, and the other a block of 12 small flatlets.

The purchase is conditional upon Peabody acquiring the consent of the Tenant Services Authority to the sale which has apparently been given, and vacant possession being obtained.

Vacant possession will be achieved through the relocation of residents and services to the Lime Grove Hostel, which will be

refurbished by NHHT with circa £1.2m of funding from OSBL (via s106) and £228k from the Council (from the Supporting People programme) or refurbished by the Council using the same funding should terms fail to be agreed with NHHT resulting in the property being acquired by the Council under the CPO. It is expected that Broadway will manage this facility under its Supporting People contract (currently extended by 3 years to November 2015) with some of its services to its wider homeless client group being relocated to new premises elsewhere in the borough.

As with the LUL land this site will be included in the CPO to secure the Council's ability to assemble the whole regeneration site.

d. The former Laundry Site on Pennard Road – London Borough of Hammersmith & Fulham

OSBL has also entered into an option agreement with the Council to acquire the former laundry site, subject to planning permission being obtained, which has now been granted. The council acquired this site in 2010 from Octavia Housing after the Westfield Affordable Housing obligation was allocated to an alternative site.

As with the LUL land this site will be included in the CPO to secure the Council's ability to assemble the whole regeneration site and extinguish any interests which could frustrate the project.

e. Lime Grove Hostel

Negotiations with NHHT have yet to secure a formal agreement for the proposed refurbishment of the hostel to relocate the Broadway facility. Officers have not been able to identify any other potential relocation site for the facility. The availability of the Lime Grove Hostel is therefore seen as an important element of the overall regeneration project in particular to the social well being of the present and potential future residents of that facility. It is considered necessary to include this site in the CPO to secure the Council's ability to assemble the whole regeneration site.

f. Third Party Lands

As set out in the October 2010 Cabinet report there are further interests within and outwith the regeneration site boundary that it is necessary to acquire in order to fully assemble the regeneration site, including the 12 units on Goldhawk Road, the service road to the rear of that parade and a group of private units at the northern end of the Market. In addition there are certain other interests (e.g. substations) and incorporeal rights (e.g. easements, restrictive covenants and rights to light) that need to be acquired or extinguished to secure the Council's ability to assemble the whole

regeneration site. These interests are the subject of the Compulsory Purchase proposals set out in this report.

- 1.4.2 In addition to these sites a number of further interests outside the potential CPO boundary and one, the former Library, which straddles the boundary were referred to in the October 2010 report. Council acquisition of these two sites is not considered essential to the regeneration project and not included in the CPO. The updated positions for these are as follows:

g. Old Shepherds Bush Library

The Council successfully negotiated terms with the Church Commissioners to release certain restrictions on user that had prevented non-library use of the building. Subsequently a tenancy was granted to the Bush Theatre who fundraised to carry out a refurbishment allowing them to move the entire operation from its former base on Shepherds Bush Green. The move is widely seen as a great success and has improved the profile of the Bush Theatre and added to the cultural offering of Shepherds Bush.

The former garden to the west of the library building has been retained by the council in order to allow a more generous public space to be created on the Uxbridge Road as a setting for the Bush Theatre and an announcement of the entrance to the Market. These works will form part of OSBL's implementation of the planning permission.

h. New Shepherds Bush Market ('NSBM')

The owners of NSBM, which adjoins SBM have expressed an interest in redeveloping their market but the viability of this has yet to be established. OSBL has continued to keep the owners informed of progress of the regeneration proposals for the Market and they have raised no objections at any point.

Improvement of NSBM remains a general objective for the Council and this is likely to be encouraged through implementation of the consented scheme at SBM.

2. COMPULSORY PURCHASE

2.1 Order Land

- 2.1.1 The Order Lands include the LUL property comprising the main market, the terrace of freehold Market units, numbered 9 to 20 Shepherds Bush Market, located on the eastern boundary of the Market, the LBHF, Peabody and Broadway ownerships, the parade of shops with basements and upper parts at nos 30-52 (even) Goldhawk Road and

the service road to the rear of the parade as well as the electricity substations and Lime Grove Hostel. See Appendix C for the draft CPO Plans.

- 2.1.2 In order to obtain the most accurate schedule possible of the lands, interests and rights to be acquired, the Council has carried out a full land referencing exercise including issuing requests for information to all parties known to have interests in, or whom it is considered may have interests in or likely to be affected by, the CPO area.

2.2. Process

- 2.2.1 The purpose of a Compulsory Purchase Order is to secure powers that will enable the Council to progress the assembly of land and third party rights so that the comprehensive scheme of regeneration envisaged by the outline planning consent may be fully implemented.

- 2.2.2 In order to achieve this, the Council must follow a prescribed process. This requires the Council to set out details of its reasons for making a CPO and a Schedule of the interests required. The process allows full opportunity for objectors to set out their grounds for opposition, including making representations to an independent Inspector at a public inquiry who will report to the Secretary of State for Communities and Local Government with whom a final decision as to whether the CPO should be confirmed rests.

- 2.2.3 The Council's costs in this matter – including future payments for all land compulsorily acquired (other than Lime Grove Hostel) and disturbance compensation to claimants will be fully indemnified by OSBL in return for the Council's undertaking to transfer the land so acquired to OSBL. This indemnity will be given in substantially the form described below and as appended to this report (See Appendix B). OSBL's development partner Development Securities PLC (DevSec) will be guaranteeing OSBL's liabilities under this agreement. DevSec are a major developer and investor of international standing and are considered to be a secure guarantor for this purpose.

It is hoped that the arrangement previously agreed with NHHT (but not yet legally contracted) will deliver the Lime Grove Hostel as relocation for Broadway, but if it proves necessary for the Council to acquire that land funding has been identified from within the Decent Neighbourhoods Fund to meet those costs.

- 2.2.4 The October 2010 Cabinet report set out four conditions in relation to a formal Resolution by the Council, as follows:

a. 'The developer providing a cost undertaking agreement under which the developer shall undertake to pay on demand all costs incurred by the Council (including compensation disbursements payments loss payments legal and surveyors costs whether internal or external) and

such indemnity agreement to be backed up by way of bank guarantee and/or parent company guarantee.'

These requirements are now contained in the draft CPO Cost Indemnity Agreement attached at Appendix B. This Agreement obliges OSBL to indemnify the Council in relation to the conduct of the CPO process up to and including a public inquiry should this prove to be necessary. This level of cover is initially in the sum of £500,000, which will be kept under review and can be increased if necessary.

OSBL has confirmed that it is in a position to make and protect a full indemnity for all of the costs associated with running the CPO process and for all of the acquisition costs (excluding Lime Grove Hostel) that would flow from full implementation of a confirmed Order. This will be achieved through the Council requiring a Corporate Guarantee to be put in place by DevSec, underwriting OSBL's obligation to meet all compensation costs including underwriting CPO liabilities arising from the service of any valid Blight Notices following the Order being made.

b. 'The developer being obliged under contract to acquire immediately from the Council any land compulsorily acquired or acquired following service of a blight notice.'

This obligation now forms part of the CPO Cost Indemnity Agreement (Appendix B) and requires the developer to take immediate ownership of land acquired under the exercise of Compulsory Purchase powers (except Lime Grove Hostel). This mirrors the developer's obligation to meet in full the costs of such acquisitions.

c. 'The Council's approval of the development scheme'.

This approval was given by the Planning Applications Committee on 8th February 2012 and the planning permission was issued when the S106 Agreement was completed on 30th March 2012.

d. 'There being in the Council's opinion a realistic prospect of any such Compulsory Purchase Order being confirmed by the Secretary of State.'

The Council does not have an automatic entitlement to the use of Compulsory Purchase powers; they must be confirmed by the Secretary of State. The case for such powers must be established in each individual circumstance. However, there are guiding principles and precedents, which assist a judgment of the strength of the case in any given situation.

In general terms there must be a compelling case in the public interest and the Council must be satisfied that the purposes justify interfering with the human rights of those with an interest in the land affected.

In this case there is a clearly defined scheme and boundary, as set out in the planning consent. The main freehold interests in the land required have already been secured through agreement and the CPO represents the balance needed to implement the consent.

OSBL has been making efforts, and will continue to make such efforts, to reach agreement through negotiation wherever possible. Each property owner and tenant has been formally approached by OSBL in person and in writing on a number of occasions and invited to enter voluntary negotiations to sell their interests. OSBL has indicated that it has so far provisionally agreed terms for the acquisition by agreement of one of the freehold premises on Goldhawk Road and is in negotiation with a number of other interests in the parade. However, it does not appear that any concluded agreement has been reached as yet.

OSBL has also made formal approaches to owners and tenants in the private units at the northern end of the Market and will continue to do so whilst the CPO process proceeds.

Preliminary advice has been sought from David Elvin QC on the procedures being adopted by the Council which has been incorporated in this report.

2.2.5 The Council will need to satisfy the Secretary of State that the scheme warrants the use of statutory powers, having taken into account the views of objectors.

2.2.6 The CPO process follows a series of stages as set out below:

- a. *Formulation*. This is the determination of an area of land for a relevant purpose – in this case the regeneration of Shepherds Bush Market and its immediate surroundings. This process has followed the October 2010 Cabinet decision.
- b. *Resolution*. This is the purpose of this report and is the formal decision of the authority to make and thereafter seek the confirmation of CPO by the Secretary of State.
- c. *CPO Indemnity Agreement*. As referred to earlier, OSBL as developer is undertaking the development and will therefore be meeting the costs of the CPO process and the acquisitions. This agreement will be entered into prior to any of the following elements of the process being undertaken.
- d. *Land Referencing*. This is the process of preparing a detailed Schedule of all land and rights that are to be acquired under the Order. A provisional Schedule has been produced which will be fully updated through the use of 'Requisitions for Information', which letters have been sent to owners and occupiers requiring details of

all interests. Many of the premises on Goldhawk Road, for instance are owned by an individual or company and let to tenants who, in turn, have granted sub-tenancies of parts of the properties. An accurate Schedule is essential in order to establish all of the interests to be acquired and all of the parties who may be entitled to compensation. Information gained from those requisitions has informed the EQIA and Human Rights advice in this report.

- e. *The Draft Order.* This is a composite document containing a number of elements as follows.
- *The Order.* This will set out the name and date of the CPO and the statutory basis for its preparation, which in this case will be (The Planning & Compulsory Purchase Act 2004).
 - *CPO Schedule.* This will comprise a list of all known interests.
 - *CPO Plan.* This illustrates the land included within the CPO.
 - *Statement of Reasons.* This is a formal statement of the Council's reasons for seeking powers to make the acquisitions listed in the Schedule. The draft Statement is attached as Appendix A.
- f. *Public Notices.* Prior to submission of the Order the Council is required to publish a public notice in prescribed form for two successive weeks in one or more newspapers circulating in the local area. In addition public notices must be fixed on or near to the land that is the subject of the Order.
- g. *Individual Notices.* The Council as acquiring authority must also serve notices on every 'qualifying person'. This means every person or company with a qualifying interest in, or who holds rights in, the land covered by the Order.
- h. *Objections.* Objections received in writing must be formally noted and efforts will be made to address the basis of objection through negotiation where this can be accommodated. Where objections are not withdrawn the Secretary of State will arrange for these to be formally addressed either through a public inquiry. If there are no objections the Secretary of State may authorise the Council to confirm the Order itself.
- i. *Decision.* After the process has been completed, the Secretary of State will decide whether to confirm, modify or reject the CPO. The duration of the entire process will depend upon a number of factors including the number of objections to be dealt with and whether written representations or a public inquiry is needed. Generally the process will take between 9 and 18 months.

- j. *Implementation.* There are a number of ways in which the CPO, once confirmed, may be put into effect. Normally this is done by one or other – or a combination – of services of Notices to Treat and execution of a General Vesting Declaration. The most likely approach in this case would be a General Vesting Declaration. This requires service of requisite notices resulting in the vesting of all land in the acquiring authority. The timing of implementation of the confirmed Order would be agreed with OSBL following Secretary of State confirmation. The authority may then take possession of the various Order lands and all previous interests are effectively converted to rights to receive compensation calculated in accordance with the statutory provisions. However, as noted elsewhere in this report, this is very much a last resort and would apply only to those interests that had not been acquired through the continuing process of negotiation over the course of the formal procedure.

3. RISK MANAGEMENT

- 3.1 There are risks associated with compulsory purchase process and the potential of delays in implementation should objections be filed. The process also raises a risk of Secretary of State's involvement through the objection and confirmation process. Section 2.6.6 of the report sets out the likely CPO process and potential timeframe of up to 18 months.

4. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE AND CORPORATE GOVERNANCE

- 4.1 With regard to the Council seeking Compulsory Purchase Powers for the acquisition of all relevant property interests required to support the implementation of the proposed scheme of development and regeneration at Shepherds Bush Market, OSBL is proposing to indemnify the Council for the following in return for the Council's undertaking to transfer the land acquired to OSBL:

- in relation to the conduct of the CPO process up to and including a public inquiry should this prove to be necessary to an initial sum of £500k or such higher reasonable sum as the Council may reasonably specify from time to time.
- for all of the costs associated with running the CPO process (disturbance compensation to claimants, loss payments legal and surveyors costs whether internal or external) and for all of the acquisition costs that would flow from full implementation of a confirmed Order.

- 4.2 The indemnity agreement (see Appendix B for the full text) would be secured through a Corporate Guarantee to be put in place by Development Securities PLC, underwriting OSBL's obligation to meet all compensation costs including underwriting CPO liabilities arising from the serving of any valid Blight Notices following the Order being made.
- 4.3 Development Securities PLC, the provider of the Corporate Guarantee is listed on the London stock exchange. The group balance sheet included within the audited financial statements for the 14 months to 29th February 2012 shows net assets of £313m. Although the group reported a loss before income tax of £10.2m for the period this was mainly due to finance costs, retained earnings as at 29th February 2012 were £106m.
- 4.4 Vacant possession of the part of the site owned by Peabody will be achieved through the relocation of residents and services to the Lime Grove Hostel, which will, should agreement be reached, be refurbished by NHHT with circa £1.2m of funding from OSBL and a budgeted £228k from the Council. The £228k contribution from the Council will be funded from the supporting people programme and is in addition and separate from the costs indemnified. Should the timing of the works at Lime Grove slip it will be possible to carry forward this budget. As noted in the main report it is expected that Broadway will manage this facility under its Supporting People contract (currently extended by 3 years to November 2015).
- 4.5 Further comments are in the exempt report.

5. COMMENTS OF THE DIRECTOR OF LAW

- 5.1 The legal powers to be used by the Council for the compulsory acquisition of land are contained within section 226 (1) Town and Country Planning Act 1990 and section 13, Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land 1981 for the making of the compulsory purchase order. Compensation payments made for the acquisition of interests in land and for the acquisition of new rights in land within the compulsory purchase order or acquired outside the compulsory purchase order area to give effect to and/or implement the order are made in accordance with the compulsory purchase compensation code pursuant to the Land Compensation Acts 1961 and 1973, the Compulsory Purchase Act 1965 and case law.
- 5.2 Section 226(1), Town and Country Planning Act 1990 (as amended) enables the Council (on being authorised by the Secretary of State) to acquire by compulsory purchase any land needed to facilitate the carrying out of the development, redevelopment or improvement on or in relation to land. The Council must also consider that the specified

development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well being of the area. In deciding whether to make a CPO using planning powers, the Council would be required to demonstrate that there is sufficient justification for acquiring the land compulsorily and that there is a compelling case for CPO. The procedural requirements of the Acquisition of Land Act 1981 will then apply to the compulsory acquisition.

- 5.3 In addition, the relevant government guidance (Circular 06/2004) states that any programme of land assembly must be set within a clear strategic framework. The framework will need to be founded on an appropriate evidence base. Furthermore, Cabinet when making the CPO will be required to have regard in particular to whether the purpose for which the land is being acquired fits within the adopted planning framework for the area.
- 5.4 Whenever a compulsory purchase order is made, it is necessary to carry out a “balancing exercise” to judge whether there is a compelling case in the public interest to make a CPO in view of the interference to the Human Rights of the individual. The Secretary of State will need to be satisfied that there is comprehensive justification in the benefit to the well being of the community gained by the scheme. The impact of any harm is lessened by the rights of objection and a statutory compensation regime which includes payments to compensate for the involuntary nature of the process.
- 5.5 The acquisition of land designed to facilitate a development that will promote the economic, social or environmental; well-being of an area is an acceptable use of compulsory purchase powers under the planning legislation

Human Rights Act 1998 implications

- 5.6 The Act effectively incorporates the European Convention of Human Rights into UK law and requires all public authorities to have regard to the rights contained within the Convention. When making the decision, Members must therefore have regard to the Convention. The rights that are of particular significance are those contained in Article 8 (right to home life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions)
- 5.7 Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society, in the interest of the economic well being of the country, protection of health and protection of the rights and freedoms of others. Article 1 of the 1st Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to

enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.

- 5.8 As set out in paragraphs 17 and 18 of the CPO Circular, in determining the level of permissible interference with enjoyment, the courts have held that any interference must achieve a fair balance between the general interest of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation to affected persons is relevant in assessing whether a fair balance has been struck.
- 5.9 The Developer has committed through the S106 agreement to provide accommodation in the development suitable to relocate any of the businesses displaced by the CPO who wish to remain on site or to assist those who do not wish to take a new lease to relocate to suitable premises elsewhere. Whilst it cannot be guaranteed that displaced business will take up these offers the availability of premises will serve to reduce the impact on many of the displaced businesses.
- 5.10 If any of the premises are occupied by individuals as their homes, then the rehousing provisions of the Land Compensation Act will apply where no suitable alternative accommodation is available to them.
- 5.11 In deciding whether to proceed with the recommendations, Cabinet needs to consider the extent to which the decision may impact upon the Human Rights of the landowners and residents and to balance these against the overall benefits to the community which the redevelopment would bring. Members will need to be satisfied that any interference with the rights under Article 8 and Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.

6. EQUALITIES IMPACT ASSESSMENT

- 6.1 The Council's statutory duty under the Equality Act 2010 applies to decision-making as set out in this report. The protected characteristics to which the Public Sector Equality Duty ("PSED") applies now include age as well as the characteristics covered by the previous equalities legislation applicable to public bodies (i.e. disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, sexual orientation, religion or belief and sex).
- 6.2 The PSED is set out in section 149 of the Equality Act 2010 ("the Act") provides (so far as relevant) as follows:

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

6.3 Case law has established the following principles relevant to compliance with the PSED which the Cabinet will need to consider:

(i) Compliance with the general equality duties is a matter of substance not form.

(ii) The duty to have "due regard" to the various identified "needs" in the relevant sections does not impose a duty to achieve results. It is a duty to have "due regard" to the "need" to achieve the identified goals.

(iii) Due regard is regard that is appropriate in all the circumstances, including the importance of the area of life of people affected by the decision and such countervailing factors as are relevant to the function that the decision maker is performing.

(iv) The weight to be given to the countervailing factors is in principle a matter for the authority. However in the event of a legal challenge it is for the court to determine whether an authority has given "due regard" to the "needs" listed in s149. This will include the court assessing for itself whether in the circumstances appropriate weight has been given by the authority to those "needs" and not simply deciding whether the authority's decision is a rational or reasonable one.

(v) The duty to have "due regard" to disability equality is particularly important where the decision will have a direct impact on disabled people. The same goes for other protected groups where they will be particularly and directly affected by a decision.

(vi) The PSED does not impose a duty on public authorities to carry out a formal equalities impact assessment in all cases when carrying out their functions, but where a significant part of the lives of any protected group will be directly affected by a decision, a formal equalities impact assessment ("EQIA") is likely to be required by the courts as part of the duty to have 'due regard'. The EQIA is attached and will need to be

read and taken into account in reaching a decision on the recommendations in the report. Additionally, the equality implications are summarised at paragraph 6.5 of the report.

(vii) The duty to have “due regard” will normally involve considering whether taking the particular decision would itself be compatible with the equality duty i.e. whether it will eliminate discrimination, promote equality of opportunity and foster good relations. Consideration must also be given to whether, if the decision is made to go ahead, it will be possible to mitigate any adverse impact on any particular protected group, or to take steps to promote equality of opportunity by, for example, treating a particular affected group more favourably.

- 6.4 An Equality Impact Assessment (EIA) has been prepared and is attached to this report (Appendix D).
- 6.5 There are negative impacts on age, disability, pregnancy and maternity and those with small children which are likely to result from the construction works associated with this scheme. There are negative impacts through the scenario of relocation or loss of the hostel service on age, race, disability and sex (gender). There are negative impacts on businesses and stall owners on age, race, disability, sex (gender) and religion/belief through the building and disruption and the potential serving of the CPO.
- 6.6 Whilst these impacts on businesses and stall owners would not advance equality of opportunity or foster good relations, they are not unlawful. The Statement of Intent and the Policy of Relocation attached to the draft Statement of Reasons provides a level of mitigation of the impact on businesses and stall owners.
- 6.7 There are negative impacts on freeholders, leaseholders and social and private rented tenants living in the area from the construction works and the potential serving of the CPO. There are identified potential negative impacts on worshippers at the mosque due to the construction work which affects religion/belief. The Section 106 agreements sets out a number of measures that the developer will need to take to mitigate these negative impacts during the construction period.
- 6.8 It is considered that in the long term the development facilitated by the CPO would have a positive impact on those with protected characteristics, delivering benefits in terms of improved public realm, improved business premises and housing.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
1.	Planning Permission and s106 PUBLISHED	Matt Butler x3493	Environment, Planning
2.	Cabinet report – October 2010 PUBLISHED	Matin Miah x3480	HRD
CONTACT OFFICER:		NAME: Matin Miah EXT. 3480	