



Report of: Executive Member for Housing and Development

Meeting of:	Date:	Ward:
Executive	7 February 2019	Bunhill

Delete as appropriate	Exempt	Non-exempt
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SUBJECT: Compulsory purchase order (CPO) in respect of commercial premises on The Triangle Estate

1. Synopsis

- 1.1 The council is committed to building more new, good quality council homes, to help Islington families tackle their housing needs and help with their cost of living. As part of building more homes we will create more jobs and training opportunities and make the borough a fairer place to live and work.
- 1.2 The proposed redevelopment is on the Triangle Estate and it includes existing commercial premises for which we will issue a CPO to enable the development. The housing proposal, will deliver 54 new high quality homes, including larger family sized homes for social rent and provision of new commercial premises. The proposals will also bring wider benefits including estate improvements and new employment opportunities for local people.
- 1.3 This report sets out the background to and seeks the approvals required to make a Compulsory Purchase Order (CPO) for the acquisition of the leasehold interests in one commercial property ("the Land") described in the table in 2.1 and associated third party rights to the Land which might be affected by the new build proposals. The Plan in **Appendix 1** indicates the location of the affected leasehold property. The CPO is required as a contingency measure to ensure the development can proceed should the Council fail to reach a negotiated settlement with the relevant affected parties.
- 1.4 The Council has powers under the Town and Country Planning Act 1990 (as amended) and ancillary legislation to undertake land assembly. The comprehensive redevelopment offered by this scheme provides an opportunity which is unlikely to proceed without the use of a CPO as vacant possession of the development site is required to enable demolition and redevelopment in relation to this project. Planning approval was obtained on 29 June 2017 Application No: P2016/4634/FUL attached in **Appendix 2**.

2. Recommendations

- 2.1 To authorise the Corporate Director for Resources, in consultation with the Executive member for Housing and Development and the Service Director for Housing Needs and Strategy, to take all necessary steps, including the making of a Compulsory Purchase Order (CPO) under section 226(1)(a) of the Town and Country Planning Act 1990 to ensure that the leasehold interests in the Land as described in the table below as well as any third party rights over the Land where attempts to negotiate a voluntary acquisition of the leasehold interest or third party rights in accordance with the development timetable have failed.

Table 2.1

Address of premises				Interest to be acquired
Number	Estate / Commercial	Street	Postcode	
135	Cafe	Goswell Road	EC1V 7JY	a. Commercial Head lease b. Commercial Sub-Lease c. Third party rights

- 2.2 That where the Corporate Director of Resources approves the making of a CPO, to authorise the Director of Law and Governance to take all necessary steps to secure the making, confirmation and implementation of the CPO including the approval of agreements with the owners and any objectors for the withdrawal of objections to the CPO, the acquisition of interests by use of General Vesting Declarations or notices to treat, the settling of compensation and the acquisition of all interests in the properties on terms recommended by the Corporate Director of Resources.
- 2.3 To authorise the Corporate Director of Resources, to acquire any interests in land within the area of the Land by agreement and the making of payments equivalent to statutory compensation (or payments as are deemed reasonable in the circumstances) and the provision of property or services in lieu of compensation, in contemplation of the Order being made.
- 2.4 That, if the CPO is confirmed, to authorise the Corporate Director of Resources to negotiate and agree the compensation amounts payable in compulsorily acquiring the interests.

3. Background

- 3.1 In identifying opportunities to build new homes we consider, where appropriate, the demolition of certain homes and property which are considered in poor condition and no longer meet the standard and requirements for our residents. We also consider if a demolition option would provide more and better quality homes. In all such cases we make clear how existing residents would benefit from the provision of the new homes as enshrined in our New Homes Residents Charter and every effort is made to accommodate the residents affected by the proposal.
- 3.2 Following consultation with residents and other key stakeholders a number of such proposals have received support and planning consent has now been obtained for the development on the Triangle Estate.
- 3.3 However, in most cases the Council needs to acquire ex-Right to Buy (RTB) homes from the current leaseholders and in some cases business premises from commercial tenants on terms acceptable to both parties and this represents one of the key delivery risks for any redevelopment scheme.

- 3.4 In each and every case a voluntary acquisition of a leasehold property is the preferred option but, where all reasonable efforts to reach a satisfactory outcome in the available timescale through negotiation with individual leaseholders have been exhausted, and by way of last resort, the council may make a Compulsory Purchase Order (CPO). It would, in these circumstances, be appropriate to underpin continuing negotiations for the purchase of the leasehold interests that would be required in order to implement the re-development schemes with a CPO.
- 3.5 The Executive is therefore asked to agree the use of the Council's powers of compulsory purchase to acquire the 2 leasehold interests, who are still in occupation at the date of this report as well as any other third party interests which exist.

4. Delivering approved redevelopment schemes

- 4.1 Previously the Council exercised its statutory powers to acquire the leasehold interest at Telfer House to facilitate a new build programme.
- 4.2 Approval is now being sort for The Triangle Estate to facilitate a new build scheme.
- 4.3 **Triangle Estate**
- 4.3.1 The proposal is to demolish 5 rented and 1 leasehold properties of the existing block comprising a mix of predominantly one and two bed homes on Compton Street along with 1 commercial unit on Goswell Road. New buildings will be constructed with a new commercial space on the ground floor and 54 new homes across the estate and wider improvements that will improve the amenity and security for the benefit of all residents on the Triangle Estate. Of the 54 homes, 27 will be for social rent, including family size and smaller homes for people living on the estate to downsize from a larger home. The development received planning consent in June 2017.
- 4.3.2 To date we have voluntarily acquired one residential leasehold unit. The only remaining lease to acquire is the head lease and sub-lease of the commercial unit together with any third party rights.
- 4.3.3 The existing commercial unit has a long lease of 999 years and is currently sub-let as a café. The intention is to purchase the long lease and if the sub leaseholder agrees, to relocate the sub-leaseholder to alternative premises in the EC1 area or compensate the sub-leaseholder for extinguishment of their lease. However, if a voluntary agreement cannot be reached we would need the necessary approvals in place to make an application for a CPO.

5. Acquiring leasehold properties: issues

- 5.1 With regard to the scheme outlined above negotiations have been ongoing with the affected leaseholders and commercial tenants since the scheme received approval for inclusion in the new build programme. In this case, we have had full regard to the legal rights of leaseholders and commercial tenants as set out in the Compulsory Purchase and Compensation Booklets: Business Owners and Occupiers (No 2) published by the Department and Communities and Local Government on their website.
- 5.2 As indicated above, the intention is to purchase the commercial head-lease and if the parties can reach agreement, to either re-locate the sub leaseholder to alternative premises in the EC1 area or agree compensation for extinguishment. The Council has instructed Currell to conduct negotiations with the head-leaseholder and sub-leaseholder in this regard and negotiations are currently ongoing.
- 5.3 In the circumstances outlined above it is considered reasonable for the council to apply for a CPO in respect of the leasehold interests in the commercial unit at the Triangle Estate.
- 5.4 It is also important by way of demonstration of our commitment to delivering approved redevelopment schemes as this will have a bearing on the success of other council-led regeneration proposals on our estates.

- 5.5 The CPO process can be both lengthy and costly but, on balance, these risks are outweighed by the financial and other implications of not being able to proceed with a redevelopment proposal. The intention would, however, be to continue the negotiation process alongside the CPO application process with a view to concluding a voluntary acquisition on a mutually acceptable basis without having to complete the full CPO process wherever possible.
- 5.6 Once homes or properties are acquired on a voluntary or compulsory basis, they can be used to provide much needed and temporary accommodation for homeless families within the borough to ensure that they would not remain empty pending the commencement of the development.

6. Other Third Party Rights

- 6.1 Another implication of the development of the housing block on the Land is the potential to reduce the light reaching windows of surrounding properties. This is an important consideration in the planning process where there are well-established methodologies for calculating daylight/sunlight penetration. There are instances where, even when a development has planning consent, there are adverse implications to some neighbouring homes and buildings.
- 6.2 Where there is significant impact upon right to light there may, in certain circumstances, be an entitlement to injunct against the proposed development. Any properties affected in this way would be outside the CPO red line area. However, one of the effects of enabling regeneration by compulsory purchase of land through the use of planning powers (s226 of the Town and Country Planning Act 1990) is to override third party rights including interference with any rights to light.
- 6.3 The effect of a CPO on such owners, where such rights exist, would not be to compulsorily purchase their property but rather to override any entitlement to injunction against the approved scheme and to automatically convert any such entitlement into a claim for compensation — rights to full statutory compensation, where they exist, would not be affected by a CPO. This will ensure there will be no impediment to the development which would result in risk of substantial delays to the scheme moving forward and additional costs.
- 6.4 The Council has commissioned a right of light report from Malcolm Hollis and early indications are a number of surrounding properties will have their light affected by the proposed development with some of the properties having a right to injunct. Further investigation is being made into the extent of those rights.

7. Implications

- 7.1 **Financial implications**
Costs covering the acquisition of the Café, other 3rd party rights plus associated CPO costs are included in the latest budgeted cost of this scheme as such this scheme (including the full CPO costs) is considered affordable.
- 7.2 **Legal Implications**
- 7.2.1 **Compulsory Purchase Order (CPO)**
- 7.2.1.1 This report proposes the making of a CPO for the acquisition of the 2 commercial leases as described in the table to Recommendation 2.1 and shown for illustrative purposes only on the plan(s) at **Appendix 1**.
- 7.2.1.2 The council has the power under section 226(1)(a) of the Town and Country Planning Act 1990 to acquire compulsorily any land in its area if it thinks that acquiring the land in question will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired, and if the council thinks that the development, re-development or improvement is likely to contribute to the promotion or improvement of the economic, social and environmental well-being of its area.

- 7.2.1.3 The acquisition of the properties in the table together with Third Party Rights is reasonably required so as to enable the proposed re-development scheme to proceed. Further, the redevelopment will contribute to the promotion and improvement of the economic, social and environmental well-being of the area and local residents by providing better quality and additional social housing and other benefits for local residents and the wider community, for example environmental improvements and/or new or improved community facilities.
- 7.2.1.4 A CPO should only be employed as an option of last resort, and only when all other opportunities to secure the redevelopment of the site have been fully explored and exhausted. However, the Secretary of State has recognised that it is appropriate in some situations to make a CPO at the same time as seeking to purchase by agreement given the amount of time needed to complete a compulsory purchase. Council officers have made strenuous efforts to acquire the properties by agreement and time is now running short in relation to the re-development timescales.
- 7.2.2 Human Rights**
- 7.2.2.1 A CPO should only be made where there is a compelling case in the public interest which justifies the overriding of private rights in the land sought to be acquired.
- 7.2.2.2 In respect of human rights, regard should be had in each case in particular to the provisions of Article 1, the right to peaceful enjoyment of your possessions, Article 6, the right to a fair and public hearing and Article 8, the right to respect for private and family life, of the First Protocol to the European Convention on Human Rights (“ECHR”).
- 7.2.2.3 In relation to Article 1 whilst owners will be deprived of their property or those with third party rights will have their rights extinguished, if the CPO is confirmed and implemented, this will be done in accordance with the law and they will receive appropriate compensation for their interests. Further, the right under Article 1 is qualified rather than absolute as it permits the deprivation of an individual’s possessions or rights where it is in the public interest.
- 7.2.2.4 Interference with the right to respect for private and family life under Article 8 is justified under the Protocol if this is in accordance with the law and “necessary in a democratic society” for, amongst other things, economic wellbeing. The interference here will be in accordance with UK law (the Town and Country Planning Act 1990). In considering whether the interference with the right is “necessary in a democratic society” it is necessary to consider whether the interference is proportionate. In this context proportionate means that the interference must be no more than necessary to achieve the identified legitimate aim. Here the legitimate aim is the redevelopment of the Triangle Estate and the requirements of s226 of the TCPA 1990 have been fulfilled, that is. the development, redevelopment or improvement will contribute to promotion or improvement of the economic social or environmental wellbeing of its area.
- 7.2.2.5 In relation to Article 6 those affected by the CPO will have the right to make representations to the Secretary of State and to be heard at any public inquiry.
- 7.2.2.6 Therefore, there must be a balancing exercise between the public interest and the individual’s rights whereby the Council must be able to show that the interference with an individual’s rights by the making of a CPO must be necessary and proportionate. The availability of compensation to those deprived of their property and rights is of relevance to the issue of proportionality.
- 7.2.2.7 The CPO should therefore only be made where there is a compelling case in the public interest which justifies the overriding of private rights in the land sought to be acquired and a method of last resort. While each case will need to be considered on its merits it is likely that redevelopment to provide better quality and additional social housing and other benefits for local residents and the wider community, for example environmental improvements and/or new or improved community facilities would demonstrate sufficient public interest to justify interfering with the private rights of those with an interest in the leasehold land.

7.3 **Environmental Implications**

7.3.1 There are no specific environmental implications associated with the Compulsory Purchase Order process beyond those associated with the office-based work being carried out. The significant implications associated with this project will occur at the time of the demolition/construction and beyond, and will be assessed in the report published prior to the appointment of contractors.

7.4 **Resident Impact Assessment**

7.4.1 The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

7.4.2 A potential negative impact on individual residential or commercial leaseholders has been identified but this is mitigated through the CPO process which ensures that the rights of affected owners and occupiers are protected and that they receive compensation in line with the relevant legislation and statutory guidance. The key principle is that owners/occupiers should not be any better or worse off as a result of a CPO.

7.4.3 All other impacts identified from current new build redevelopment proposals are positive as they are aimed at improving the lives and opportunities afforded to residents to access decent and genuinely affordable homes and increase jobs and training opportunities, helping make Islington a fairer place to live and work.

7.4.4 A copy of the RIA completed for the new build schemes for which approval is being sought to make an application for a CPO in respect of any remaining leasehold properties to be acquired can be obtained from the author of this report.

7.4.5 A Resident Impact Assessment was completed on 12/09/2016 and a copy is attached in Appendix 3 of this report.

For further assistance with RIAs please see: <http://izzi/council/aboutcouncil/performance-policy/equalities-fairness/eia/Pages/default.aspx>

8. **Reason for recommendations**

8.1 The ability to acquire the leasehold interests in the commercial premises located on the estate where proposals to build more high quality homes for local people, supported by local residents, have been approved, is critical to their successful delivery. Given the significant project delivery risks it is preferable to satisfactorily conclude negotiations with leaseholders as early as possible in the development process and voluntary acquisition is the preferred option in all cases.

8.2 Where it is not possible to voluntarily purchase leasehold interests in the commercial premises and, subject to the relevant grounds being established, the option to apply for a CPO should be authorised, subject to the necessary delegated internal approvals. The potential delays and costs associated with the CPO process are outweighed by the benefits to the wider community to be derived from the scheme and the significant investment already committed to bringing forward the proposals. It is therefore considered to be in the public interest for the Council to make a CPO to secure the redevelopments to provide better and more homes and to promote economic, social and environmental wellbeing and to contribute to sustainable development in Islington.

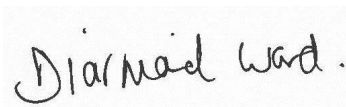
Appendices

- Appendix 1: Planning consent

- Appendix 2: Site location plan
- Appendix 3: Resident Impact Assessment

Final report clearance:

Signed by:

A handwritten signature in black ink that reads "Diarmuid Ward." The signature is written in a cursive style and is positioned above a light grey rectangular background.

Executive Member for Housing and Development

Date: 17/1/19

Report Author: Mathew Carvalho
Tel: 020 7527 8796
Email: Mathew.carvalho@islington.gov.uk

Financial Implications Author: Lydia Hajimichael
Tel: 020 7527 5160
Email: Lydia.Hajimichael@islington.gov.uk

Legal Implications Author: Mei Wang
Tel: 020 7527 3213
Email: Mei.Wang@islington.gov.uk