

Leicester  
City Council

**WARDS AFFECTED:  
CASTLE & ABBEY WARDS**

**CABINET**

**26 APRIL 2004**

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## **USE OF COMPULSORY PURCHASE POWERS – SHIRES WEST**

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### **Report of the Corporate Director, Resources, Access and Diversity**

#### **1. Purpose of Report**

- 1.1 The declaration of Compulsory Purchase Orders (CPO's) is reserved to Cabinet and this report seeks approval to declare and make a CPO to compulsorily acquire the land required for the proposed Shires West extension to the Shires Shopping Centre.

#### **2. Summary**

- 2.1 The City Council has entered into various agreements with the Shires Limited Partnership acting by its general partner Shires (GP) Limited, a joint venture partnership owned by Hammerson and Hermes (the Developer) to facilitate the Shires West extension of the Shires Shopping Centre. These also include requirements to respond to any request from the Developer for the Council to assist in site assembly, by way of compulsory purchase. The Developer is currently negotiating to acquire all the property interests by agreement. However, in order to meet the development timetable of a start on site in 2005 and opening in Autumn 2007, which is necessary to secure the anchor tenant, John Lewis Partnership, the Developer has now informally requested the City Council to start the compulsory purchase process and run it in parallel with the negotiations by agreement. This report is recommending that the Council resolves to declare and subsequently make a CPO in respect of Shires West providing a satisfactory formal request is made prior to Cabinet.
- 2.2 The property purchases will effectively be funded by the Developer with the additional security of guarantees from Hammerson UK Properties PLC and Britel Fund Trustees Limited under the CPO Indemnity Agreement which will be entered into between the City Council in accordance with previously agreed terms. Any land purchased by the Council will be immediately transferred to the Developer.

- 2.3 The scheme is subject to obtaining planning consent and an application has been made which is programmed for consideration at the Development Control Committee on 20<sup>th</sup> April. It is not intended to formally make the CPO until there is a resolution to grant outline planning permission, the Council being satisfied that there are no planning problems.
- 2.4 The financial recommendations and other confidential information relating to this report are contained in the supplementary report on the 'B' Agenda.

### **3. Recommendations**

It is recommended that:-

- 3.1 The City Council to declare and subsequently make a Compulsory Purchase Order pursuant to Section 226(1) (a) of the Town and Country Planning Act 1990 for the purpose of acquiring the land identified in Appendix 1, which is required for the carrying out of development, redevelopment or improvement of the land in order to secure the successful carrying out of the Shires West scheme. The formal making of the Order will be subject to:
- 3.1.1 The Council resolving to grant outline planning permission for the Shires West Scheme.
- 3.1.2 Completion of the CPO Indemnity Agreement.
- 3.1.3 The Council being satisfied that all reasonable steps have been taken by the Developer to acquire the required interests in the land by agreement.
- 3.2 The Director of Resources, Access and Diversity be authorised to advertise the making of the Order referred to in 3.1 above and to take all relevant action thereon to promote the confirmation of the Order.
- 3.3 The Director of Resources, Access and Diversity (in consultation with the Cabinet Link Member for Resources, Access and Diversity, where the purchase of the property interest with regard to (i) below or the decision in (ii) below would normally be reserved to Cabinet), be authorised:-
- (i) To agree terms to acquire the necessary interests within the CPO land, including those, if any, determined by the Lands Tribunal.
- (ii) In the event that further decisions are required during and relevant to the CPO, to make those decisions.
- 3.4 Any property interests purchased under this CPO are transferred to the Developer in accordance with the terms set out in the CPO Indemnity Agreement.

- 3.5 The Head of Legal Services is authorised to prepare and execute all the necessary documentation required throughout the CPO process including the transfer of the various property interests acquired by the City Council to the Developer.

#### **4. Financial and legal Implications**

##### Financial Implications

The financial implications contain exempt information as defined in Part 1 of Schedule 12A of the Local Government Act 1972 and therefore, are included in the supplementary report on the 'B' Agenda.

##### Legal Implications

The Council needs to be able to satisfy the Secretary of State that there is compelling case in the public interest for the proposed compulsory acquisition. The more comprehensive the justification that an authority can present, the stronger its case is likely to be. In demonstrating its justification, the acquiring authority should provide as much information as possible about the resource implications both of acquiring the land and implementing the scheme for which the land is required, as well as having to demonstrate that there is a reasonable prospect of the scheme going ahead and that it is unlikely to be blocked by any impediments to implementation (such as the grant of planning permission).

Although the compulsory purchase process is intended as a last resort, once attempts to acquire by agreement fail, an acquiring authority should consider when the land it is seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. It is essential that the acquiring authority keeps any delay to a minimum by completing the statutory process as quickly as possible and that the authority should be in a position to make, advertise and submit a fully documented order at the earliest possible date after having resolved to make it. The authority should also take every care to ensure that the Order is made correctly and under the terms of the most appropriate enabling power.

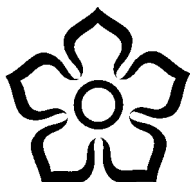
The Secretary of State has to be satisfied that the statutory procedures have been followed correctly. This means that he has to check that no-one has been or will be substantially prejudiced as a result of a defect in the Order, or by a failure to follow the correct procedures. Authorities are therefore urged to take every possible care in preparing compulsory purchase orders. The Council will continue to take advice to ensure that it complies with the statutory procedures and guidance associated with the promotion of the compulsory purchase orders.

Any costs the Council incurs when undertaking the CPO will be covered by the CPO Indemnity Agreement.

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**5. Officer to contact:**

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## **USE OF COMPULSORY PURCHASE POWERS – SHIRES WEST**

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**Report of the Corporate Director, Resources, Access and Diversity**

### **SUPPORTING INFORMATION**

#### **1. Report**

##### **1.1 Progress since last report**

- 1.1.1 In the previous Cabinet report on the Shires West on 4<sup>th</sup> August 2003, authority was granted for the City Council to enter into various Agreements with the Shires Limited Partnership (the Developer). At the time of writing, it is a requirement that a Compulsory Purchase Indemnity Agreement is entered into prior to Cabinet.
- 1.1.2 These agreements effectively initiated the development process and the Developer subsequently submitted an Outline Planning Application (for a development which includes the following floor spaces:- 53,754 sq. metres of retail, 3,005 sq. metres of food and drink and 3,070 sq. metres of leisure along with 118 residential units and a maximum of 3,000 car parking spaces) and an Application for Conservation Area Consent for the Shires West Scheme. It is anticipated that the Planning Application will be considered by the Development Control Committee on 20<sup>th</sup> April 2004, whilst the Conservation Area Consent has already been successfully determined.
- 1.1.3 Providing outline planning consent is obtained, the proposed timetable for the development will be very tight with the anticipated start on site date of June 2005, which will allow for an Autumn 2007 opening of the completed scheme.
- 1.1.4 The Developer has conditionally secured the John Lewis Partnership as the anchor tenant for the Shires West Scheme. This should provide an excellent base on which to secure further high profile lettings to successful retailers, hopefully ensuring the success of the scheme when completed.

1.1.5 The John Lewis Partnership has stipulated that its occupation of the Shires West Scheme is conditional upon an Autumn 2007 opening. For this reason it is imperative that construction begins on site in June 2005 as the development has a 27 month build period. Any delays in the development programme could jeopardise this very tight timetable with the possible consequence of losing John Lewis as the anchor tenant.

## **1.2 Request for use of CPO Powers**

1.2.1 The Developer has contacted all the known landowners and occupiers affected in this scheme in an attempt to purchase the various interests required by agreement. The Developer is regularly keeping the Director of Resources, Access and Diversity (Property Services) updated on the progress of these negotiations.

1.2.2 Although negotiations are ongoing between the Developer and the landowners/occupiers, it is highly unlikely that all will reach a successful conclusion. The only way to ensure certainty in securing all the property interests required for a comprehensive development of this size is to undertake a CPO, which can be used as a last resort to acquire outstanding interests. The use of a successful CPO should enable the proposed development to proceed within the appropriate timescale. It should also be noted that the confirmation of a CPO can also add impetus to secure negotiated settlements, as it brings certainty to the acquiring process. Please see Appendix 2 for a brief description of the CPO process.

1.2.3 The development programme requires the Developer to be able to acquire the freehold interests of all the land with vacant possession by June 2005, the proposed start on site date. Consequently, the Developer has formally requested the City Council, in accordance with the terms of the Development Agreement entered into with the City Council, to use compulsory purchase powers under Section 226 subsection 1 (a) of the Town and Country Planning Act 1990. (At the time of writing, only an informal request has been received. A formal request is expected to be received prior to this meeting of Cabinet). These powers enable the City Council to acquire land compulsorily, which is suitable for the carrying out of development, re-development or improvement. A copy of the document from the Developer asking for the Council to use CPO powers is available on request from the author. The use of these powers will allow the City Council to purchase the various ownerships and obtain vacant possession of the site. The sites will then be transferred to the Developer in accordance with the terms set out in the CPO Indemnity Agreement.

## **3 The Corporate Plan**

1.3.1 The adopted Leicester City Council Corporate Plan for the period 2003/2006 states the Council's corporate direction by defining its strategic objectives through key priorities, values and style.

1.3.2 The successful delivery of the Shires West Scheme will successfully achieve the key strategic objective: "To improve our environment to make local neighbourhoods and the City Centre places for people to be proud of".

1.3.3 The successful delivery of this scheme helps achieve many of the Corporate Plan's objectives and targets, for example, improving the quality of the environment. More specifically in section G1 of the Corporate Plan, the Council has a key priority to: "Regenerate the City". The successful development of the Shires West Scheme will achieve the stated outcomes of promoting economic growth and increasing employment and training.

#### **1.4 Consultation**

1.4.1 The scheme proposals by the Developer have had a great deal of publicity both through displays in the Shires and reports in the local media. Title searches have been undertaken to identify as far as possible those parties with legal interests in the area of the proposed Order and notices requesting details of ownership and occupation have been sent out to all relevant addresses. From this preliminary work statutory notices to owners and occupiers will be served (and associated rights to object will arise) when the CPO is made.

1.4.2 It is therefore very unlikely that any relevant parties are totally unaware of the proposed scheme and the likely use of CPO powers. Further the proposed Shires West Scheme has been the subject of wide consultation, both through the Replacement City of Leicester Local Plan (2<sup>nd</sup> deposit) 2003 and the outline planning application.

#### **1.5 Consequences on current owners and occupiers and the City Council**

1.5.1 At present the City Council is not involved in the negotiations to purchase interests within the CPO land. These negotiations are currently between individual owners and occupiers and the developer's agent, Donaldsons. Until the CPO order is confirmed, the Council has no formal requirement to become involved.

1.5.2 The Council will be responsible for ensuring negotiations continue after the confirmation of CPO. Because compulsory purchase is an act of last resort, evidence is required prior to the confirmation of a CPO order that all reasonable efforts have been made to achieve negotiated settlements. Therefore it will be the responsibility of the Director of Resources, Access and Diversity (Property Services) to ensure that all reasonable steps are taken by the Developer to acquire the outstanding interests.

1.5.3 The City Council will also endeavour to assist all affected business's to relocate within the City so as to retain the jobs and other economic benefits these businesses create.

1.5.4 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR). Various Convention rights may be engaged in the process of making and considering the compulsory purchase orders, including under Articles 2, 6, 8 and Article 1 of the First Protocol.

1.5.5 The European Court of Human Rights has recognised in the context of Article 1 of the First Protocol that “regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole”, i.e. compulsory purchase must be proportionate. Both public and private interests are to be taken into account in the exercise of the Council’s powers and duties as a local planning authority. Similarly, any interference with Article 8 rights must be “necessary in a democratic society” i.e. proportionate. In pursuing the compulsory purchase orders, the Council has to carefully consider the balance to be struck between individual rights and the wider public interest. Interference with Convention rights, if there is any, is considered to be justified in order to secure the economic regeneration and public benefits which the Shires West Scheme will bring and to secure compliance with regional planning policy. It is considered that the Shires West Scheme and the proposed compulsory purchase orders will not infringe rights under the ECHR.

## **1.6 Concurrent/Associated procedures**

1.6.1 In tandem with the Shires West CPO, an application will be submitted by the Developer to the Government Office for the East Midlands for an Order to be made pursuant to Section 247 of the Town & Country Planning Act 1990 for the stopping up, diversion and creation of new highways, in order to facilitate the carrying out of the Shires West Scheme.

1.6.2 It is likely that the Developer will request the Council formally supports any Section 247 Order. This will probably include assisting the Developer to promote the Order at a Public Inquiry (if required).

1.6.3 The Council will be required to make Traffic Regulation Orders in some of the streets around the shopping centre as a direct consequence of the development of the Shires West Scheme. These will be usually identified as part of the planning process.

1.6.4 The making of Traffic Regulation Orders and the supporting of Section 247 applications are both authorised by delegated authority.

## **1.7 Conclusions**

1.7.1 Subject to the provisos in paragraphs 3.1.1 and 3.1.2 and 3.1.3 of the recommendations in this report, it is considered that the use of compulsory purchase powers is necessary to facilitate the assembly of the site required for the Shires West proposal.

1.7.2 The use of these powers, subject to the CPO being confirmed by the Secretary of State, will secure the land necessary for the carrying out of the development, whilst also promoting regeneration as well as sustainable and economic development.



- 1.7.3 Without the use of compulsory purchase powers, it is highly unlikely that this comprehensive development, which will greatly benefit the City of Leicester, can be achieved within a reasonable timescale, if at all.
- 1.7.4 At all times prior to this report, and subsequently if the recommendations are approved, the Council will adhere to recent government policy as outlined in Office Deputy Prime Minister Circular 02/03. The Circular states the use of a CPO is a last resort and all reasonable steps should be taken to acquire by negotiation. The Council will ensure the Developer carries on properly pursuing negotiations. The Council will also ensure there is a reasonable prospect of the scheme proceeding by confirming there are no impediments such as planning, legal or the physical environment.
- 1.7.5 A further requirement of the aforementioned Circular is to ensure the scheme is financially viable. The Council has considered the recent financial appraisals to ensure this is the case. Further evidence of financial viability is the time and resources the Developer (which is a joint venture between 2 of UK's most successful property related companies) is committing to the scheme.
- 1.7.6 Finally, the complex nature of this scheme may give rise to issues which require further decisions and I am therefore seeking delegated authority, in consultation with the Cabinet Link Member for Resources, Access and Diversity, where appropriate, to make these decisions.

## FINANCIAL, LEGAL AND OTHER IMPLICATIONS

### 1. Financial Implications

The financial implications contain exempt information as defined in part 1 of Schedule 12A of the Local Government Act 1972 and therefore, are included in the supplementary report on the 'B' Agenda.

### 2. Legal Implications

See Appendix 3.

### 3. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	}	This major scheme requires all these issues to be addressed as part of the development programme.	
Policy	}		
Sustainable and Environmental	YES		
Crime and Disorder	}		
Human Rights Act	}		
Elderly/People on Low Income	}		

### 4. Background Papers – Local Government Act 1972

None, other than those referred to in the report (except for those referred to which are subject to either confidentiality provisions or data protection).

### 5. Consultations

Nick Booth – Financial Strategy  
 John McIvor - Legal Services Property & Development Team 1  
 Andrew Ward – Development Control (Planners)

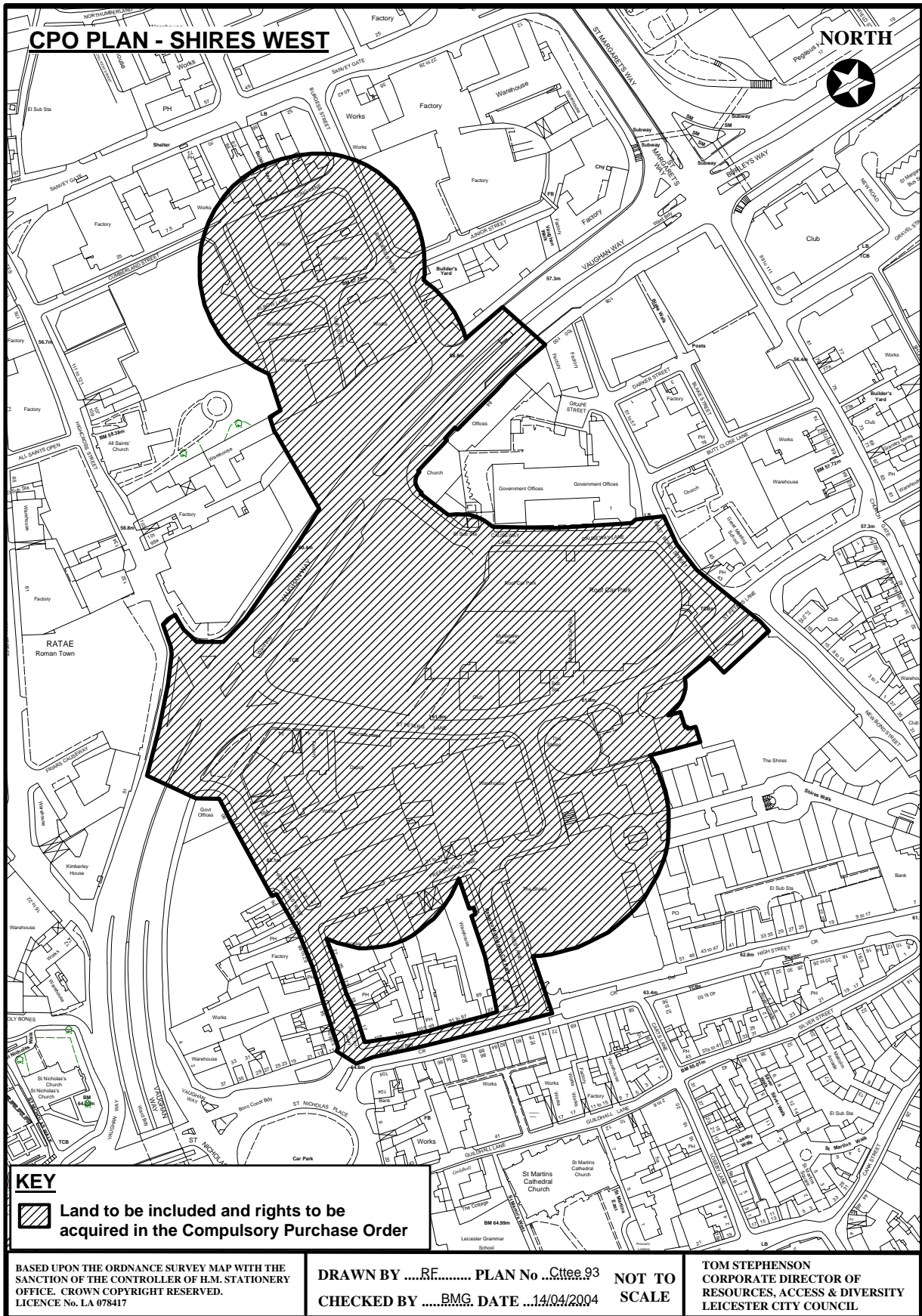
### 5. Risk Assessment Analysis

See Appendix 4.

### 6. Report Author

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**Tom Stephenson**  
**Corporate Director of Resources, Access and Diversity**



**THE CPO PROCESS**

This appendix provides a very brief and simplified description of the Compulsory Purchase procedure. The process outlined below is dependent on the initial investigations (e.g. agreement of the extent of the site and full title investigations) being successfully undertaken. It should also be noted that every effort should be made to acquire by agreement and CPO is really used as a last resort.

Once the above initial investigations have been carried out, the process for this scheme is briefly outlined below:-

- a) Cabinet resolution to declare and make a CPO.
- b) Preparation of statement of reasons – justification on why the CPO is required.
- c) Making the Order and notifying known owners and occupiers then submitting the Order to the Office of the Deputy Prime Minister – this includes the Statement of Reasons. The making of the Order is advertised and is available for general inspection.
- d) If no objections are received and the Minister is satisfied proper procedures have been followed, he can confirm the order without modification, subject to modification (e.g. certain properties are excluded from the Order) or reject it.
- e) If objections are received, it is usual for a public inquiry to be held usually within approximately 6 months from making the Order. The Council will have to provide a full statement of case for the inquiry.
- f) The Inspector heading the public inquiry provides a written report for the confirming Minister with his recommendations and the confirming Minister then either confirms, modifies or rejects the Order.
- g) 2 months after the CPO confirmation (providing proper procedure is followed and relevant notices served) a General Vesting Declaration can be executed which transfers all the land into the City Council's ownership, with the compensation payable to the owners and occupiers to be agreed later, if not already agreed at the time.
- h) In the event that compensation cannot be agreed between the Council and the claimant, then the compensation will be determined by the Lands Tribunal.

**NOTE:** This is a very simplified version of the CPO procedure which should not be used as a definitive guide.

**Legal Implications**

1. Where the Council embarks upon the compulsory purchase procedure, the liability to acquire statutorily blighted properties could arise immediately. These costs are covered by the CPO Indemnity Agreement.
2. The CPO Indemnity Agreement provides that the Council and the Developer have the discretion to purchase any of the CPO land at any time. The Developer will reimburse the Council in respect of these costs. This may enable the Council to deal with cases of genuine hardship where the statutory blight provisions do not apply.
3. The Council, as the acquiring authority, needs to be able to satisfy the Secretary of State that there is a compelling case in the public interest for the proposed compulsory acquisition. The Secretary of State has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those whose land is to be expropriated. The more comprehensive the justification which an authority can present, the stronger its case is likely to be.
4. In demonstrating its justification, the acquiring authority should provide as much information as possible about the resource implications both for acquiring the land and implementing a scheme which for the land is required. The acquiring authority is also required to demonstrate that there is a reasonable prospect of the scheme going ahead and that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account, including the programming of any infrastructure accommodation works or remedial work which might be required, and any need for planning permission or other consent or licence. Where planning permission will be required for the scheme, and has not already been granted, there should be no obvious reasons why it might be withheld.
5. Before embarking on the compulsory purchase, the Developer should seek to acquire land by negotiation wherever practicable. However, although the compulsory purchase process is intended as a last resort, once attempts to acquire by agreement fail, an acquiring authority should consider when the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations.

6. As compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land, it is essential that the acquiring authority keeps any delay to a minimum by completing the statutory process as quickly as possible (as directed by Government guidance). This means that the authority should be in a position to make, advertise and submit a fully documented Order at the earliest possible date after having resolved to make it. The authority should also take every care to ensure that the Order is made correctly and under its terms of the most appropriate enabling power.
7. The Secretary of State has to be satisfied that the statutory procedures have been followed correctly, even in respect of an unopposed Order. This means that the Secretary of State has to check that no-one has been or will be substantially prejudiced as a result of a defect in the order, or by a failure to follow the correct procedures with regard to such matters as a service of additional or amended personal notices. Authorities are therefore urged to take every possible care in preparing compulsory purchase orders, including recording the names and addresses of those with an interest in the land to be acquired.
8. The Council will continue to seek advice from the Council's external advisors to ensure that all appropriate steps are adhered to in the compulsory purchase process. The Council will continue to take advice to ensure that it complies with the statutory procedures and guidance associated with the promotion of the compulsory purchase orders.

**John McIvor**  
**Extn. 7035**

<b>RISK</b>	<b>LIKELIHOOD</b>	<b>SEVERITY</b>	<b>CONTROL ACTIONS</b>
1. Developer ceases trading.	L	L	The Council will recover all of its costs in pursuing the CPO as the Indemnity Agreement is guaranteed by Britel Fund Trustees Limited and Hammerson UK Properties PLC. If this guarantee is assigned to another company, they will have to provide a bond for the costs of acquisition in addition to the strength of their own assets.
2. Property recession.	L	L	The Scheme may not be viable, however the Council will still recover all its costs in pursuing the CPO through the Indemnity Agreement. The Council could retain its landholdings required by the Scheme as the recession could stop the Scheme prior to the Council's land transferring to the Developer.
3. CPO not confirmed.	L	L	The Scheme is unlikely to proceed as Site assembly will be frustrated due to lack of compulsion. The Council would retain its land holdings required by the Scheme.
4. Substantial increase in acquisition costs.	L	L	The Scheme may not be viable, however the Council will still recover all its costs in pursuing the CPO through the Indemnity Agreement. The Council could retain its landholdings required by the Scheme as the increased acquisition costs could stop the Scheme prior to the Council's land transferring to the Developer.

**The severity relates to the impact on the Council's financial position and not the impact on the delivery of the scheme.**