

LONDON BOROUGH OF BRENT

Executive - 20 June 2005

Report from Director of Housing

For action

Wards affected:
Harlesden

Report Title: Church End Compulsory Purchase Order

Forward Plan Ref: HSG-05-06/44

1.0 Summary

- 1.1 This report seeks authorisation for the council to exercise its statutory powers under the Town and Country Planning Act 1990 for the compulsory purchase of lands.

2.0 Recommendations

- 2.1 The Executive notes the progress made on the redevelopment of the Church End Resiform Estate.
- 2.2 The Executive approves the making of a Compulsory Purchase Order (CPO) to acquire all of the land (or rights over that land) known as 94 Reade Walk London NW10 9EU, 82 Reade Walk London NW10 9EU and 26 Bishops Way London NW10 9EY and shown on the plan attached to this report at Appendix 1 ("the CPO Land") under Section 226 of the Town and Country Planning Act 1990 to facilitate the carrying out of development or redevelopment or improvement on or in relation to the Church End Resiform Estate Redevelopment ("the Scheme").
- 2.3 The Executive authorises the submission of the CPO, once made, to the Secretary of State for confirmation.
- 2.4 The Executive approves the making of general vesting declarations or service of Notices to Treat and Notices of Entry (as appropriate) pursuant to the Compulsory Purchase (Vesting Declarations) Act 1981 and the Compulsory Purchase Act 1965 respectively should the CPO be confirmed if determined

by the Director of Housing on the advice of the Borough Solicitor as necessary in order to implement the CPO.

- 2.5 The Executive authorises the acquisition (either pursuant to the CPO or voluntarily) of any or all the CPO lands by the council from their respective owners once the CPO has been confirmed, subject to all costs in connection therewith being paid by Fortunegate.
- 2.6 The Executive authorises the disposal of the CPO lands to Fortunegate for nil consideration once the council has acquired the CPO lands and all costs in connection therewith having been paid by Fortunegate.

3.0 Detail

- 3.1 The Church End Resiform Estate was transferred to Fortunegate Community Housing (Fortunegate) on 30th March 1998. On the same date the council entered into a development agreement, a property agreement and various other supporting agreements with Fortunegate for the redevelopment of the Estate. Under the main property agreement the council undertook upon request by Fortunegate to exercise its compulsory purchase powers in respect of any interest within the Estate necessary to ensure the redevelopment took place. By the same agreement, Fortunegate undertook to indemnify the council fully against all costs arising from any CPO.
- 3.2 The council on 15th December 1990 made the London Borough of Brent (Church End and Roundwood) Compulsory Purchase Order 1999 pursuant to the main property agreement.
- 3.3 However that compulsory purchase order did not include the CPO lands as they were sold to their current owners under the preserved right to buy after that compulsory purchase order.
- 3.4 Fortunegate have now requested the council to exercise its compulsory purchase powers in respect of the CPO lands
- 3.5 Fortunegate has been trying to acquire the properties by agreement, using professional advisers to value the properties and negotiate with the owners. So far these attempts have failed to reach agreement, either because the owners have an unrealistic expectation as to the value of their property or they are not co-operating with the negotiation process and are difficult to contact. Fortunegate has now reached the position where failure to gain possession threatens to delay the demolition contract, with potentially serious financial implications.
- 3.6 The acquisition of the CPO lands is critical to the redevelopment of the estate. The CPO lands are within the 'Resiform' or 'White Flats' part of the Church End estate, which is all designated for demolition, as voted for by the majority of residents, agreed with the council and given consent by the Secretary of State. Fortunegate has confirmed in writing that it will meet all costs incurred

by the council in acquiring the properties and negotiating with affected parties, in accordance with the main property agreement.

- 3.7 Fortunegate still intends to purchase the CPO lands voluntarily, if at all possible, but a CPO is sought in the event that negotiations prove ultimately unsuccessful.
- 3.8 As the redevelopment cannot proceed without the acquisition of the CPO lands your officers believe there is a compelling case in the public interest for the council to exercise its compulsory powers.

Justifications for the Compulsory Purchase Order

- 3.9 Circular 06/2004 issued by the Deputy Prime Minister provides that an acquiring authority should only make a Compulsory Purchase Order where there are compelling reasons to do so. It also provides that acquiring authority should attempt to purchase land by negotiation wherever practicable before making a CPO. While it makes it clear that the CPO should be a last resort it encourages acquiring authorities to initiate formal CPO procedures in parallel with negotiations just in case negotiations fail
- 3.10 There are compelling reasons for making this CPO in that the CPO lands are required in order to facilitate the redevelopment of the Church End Resiform estate. The re-development is likely to contribute to the promotion or improvement of the social and environmental well being of the area, in that: it secures the redevelopment of the 'White Flats' built of the defective Resiform building system; it replaces these with newly-built affordable housing; and the scheme provides other benefits, including the refurbishment of traditionally built homes, promotes training, employment and educational programmes and other community regeneration initiatives. This sufficiently justifies interfering with the human rights of those with an interest in the CPO lands having regard in particular the provisions of Article 1 of the First Protocol to the European Convention on Human Rights
- 3.11 The circular provides that Acquiring Authorities must be able to justify the CPO and there are no impediments to the proposed scheme. Your officers believe that that this is the case for the following reasons:
- Planning
Planning permission (ref 03/2869) was issued by the council on 29th December 2003 for the Scheme. The Scheme will therefore not be blocked by planning problems.
 - Resource
Fortunegate obtained Estates Renewal Challenge Fund for the scheme in addition to private finance raised on the security of the rental income. Phases 1 and 2 are already completed and occupied and phase 3 is under construction, with the first handovers expected this month. The CPO lands are in phase 4 and Fortunegate confirms it has the funds to implement this phase of the redevelopment.

- No Impediments to Implementation
There are reasonable prospects of the Scheme going ahead as Fortunegate already has planning permission and the financial resources to proceed with the redevelopment.
- Period for Completing Development
Fortunegate under the development agreement are required to complete the redevelopment by March 2006. They have already completed phases 1 and 2 with phase 3 nearing completion. They have confirmed that they will carry out the redevelopment of the phase which the CPO Land affects within 3 years of the date acquisition of those properties as required by the Government.

3.12 The council is obliged under the main property agreement to transfer the CPO lands to Fortunegate once they have been acquired by the council.

4.0 Financial Implications

4.1 Fortunegate agreed in the main property document to be responsible for all the council's cost in connection with the CPO and transfer of the properties to Fortunegate. The transactions will therefore be cost neutral to the council.

4.2 Under regulation 12(1) of the Local Authorities (Capital Finance and Accounting) (England) Regulations 2003 [S.I. 2003/3146] there is an imposed pooling requirement on receipts from sales of "housing land", which regulation 1(5) defines as any land, house or other building which was held within the Housing Revenue Account immediately before its disposal. This includes attributing a nominal value where the receipt is nil or less than best consideration. The pooling rate for the sale of other HRA assets (land) has been set at 50%.

4.3 Receipts from "qualifying disposals" are excluded from the pooling requirements. Regulation 12(1)(a) and regulation 1(5) define this term as "a disposal of an interest in housing which is a qualifying disposal for the purposes of section 135 or 136 of the Leasehold Reform, Housing and Urban Development Act 1993", which refers to large and small scale voluntary transfers of housing to registered landlords (including the authority's share of receipts from sales under the preserved rights to buy arising as part of the transfer agreement).

4.4 The disposals dealt with in this report meet the definition of "qualifying disposals", and as such are excluded from the pooling requirement.

5.0 Legal Implications

5.1 Section 226 of the Town and Country Planning Act 1990 provides that the council on being authorised by the Secretary of State shall have power to acquire compulsorily any land in the Borough which is the authority thinks will facilitate the carrying out of development/redevelopment or improvement on or in relation to the CPO Land. The authority can only exercise this power if it

thinks that the development redevelopment or improvement is likely to contribute to the promotion or improvement of the economic social or environmental well being of the area.

- 5.2 The council will need to comply with the procedure for making and confirming compulsory purchase orders set out in the Acquisition of Land Act 1981, if the council acquires the land under its compulsory purchase powers.
- 5.3 The effect of the procedure is that, once the CPO is made, it must be notified to relevant persons and publicised, following which it will be submitted to the Secretary of State for confirmation. Any person may object to a CPO and, if an objection is made by a person with a legal interest in the land and not withdrawn, a public local inquiry will be held or in certain circumstances, written representations may be made by an aggrieved person. Any public inquiry or written representations will be conducted by an Inspector appointed by the Secretary of State who will hear evidence from any persons objecting to the CPO and from the council. The Inspector would then submit a report on the public inquiry and his/her recommendations to the Secretary of State who would then decide whether or not to confirm the CPO. Before confirming the CPO the Secretary of State would have to be satisfied that there are no planning or financial obstacles to the implementation of the scheme and there is a compelling case for the CPO in the public interest.
- 5.4 Thus a CPO cannot be acted upon until sufficient notice has been given to the owner of the land and it has been confirmed by the Secretary of State. Therefore the council will not actually be in a position to acquire the requisite land until the compulsory purchase order has been confirmed by the Secretary of State.
- 5.5 Members must bear the implication of the Human Rights Act 1998 in mind when making their decision. The Act came into force on 2 October 2000. The Act effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making their decisions Members therefore need to have regard to the Convention. The rights which are of most relevance to local authorities in dealing with Compulsory acquisition are summarised below.

Article 8 - The right to respect for private and family life, home and correspondence

Article 1 of Protocol 1 - The right to peaceful enjoyment of possessions and protection of property.

- 5.6 The right that is of particular significance to Members' decision in this matter is that contained in Article 1 of Protocol 1 (peaceful enjoyment of possessions). Article 1 of Protocol 1 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.

- 5.7 In determining the level of permissible interference with enjoyment, the courts have held that any interference must achieve a fair balance between the general interests 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. In reaching their decision, Members need to consider the extent to which the decision may impact upon the Human Rights of affected occupiers and to balance these against the overall benefits to the community which the overall Scheme would bring. Members will wish to be satisfied that interference with the right under 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.
- 5.8 It is relevant to the consideration of this issue that, should the CPO proceed, affected occupiers will be entitled to receive compensation and, in most cases, reimbursement of certain professional fees incurred in the negotiation of compensation. Also the benefits the scheme will bring to the local community must be taken into account.
- 5.9 Section 227 of the Town & Country Planning Act 1990 allows the council to acquire voluntarily any land it may acquire compulsorily under Section 226 of the same Act.
- 5.10 Further, Section 233 of the Town & Country Planning Act 1990 allows the council to dispose of any land held for planning purpose. Thus the council has the power to transfer the properties back to Fortunegate. Where the council is not getting best consideration, it must obtain the consent of the Secretary of State. As Fortunegate is actually paying for the CPO lands (the council is only an intermediary) the view is that the council would be receiving best consideration and it would be unnecessary to obtain the Secretary of State's consent for any disposal.

6.0 Diversity Implications

- 6.1 There are no specific diversity implications arising from this report.

7.0 Staffing Implications

- 7.1 There are no specific staffing implications arising from this report.

8.0 Background Information

Details of Documents:

1. Various legal agreements and annexes thereto in connection with the stock transfer of Church End and Roundwood estates to Fortunegate C. H.

2. Church End file.

Any person wishing to inspect the above papers should contact:
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