



Executive
23rd August 2006

**Report from the Director of
Environment and Culture**

For Action

Wards Affected:
Wembley Central

Compulsory Purchase - Land at Central Square, Wembley

Forward Plan Ref: E&C-06/07-007

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 at Central Square Wembley to support the implementation of a significant town centre development that will enhance the shopping centre and the environment fronting Wembley Central Station.

2.0 Recommendations

Subject to an agreement being put in place with the Developers of the Central Square site to ensure that the full costs of acquisition are borne by the Developers including the funding of all of the Council's legal surveyors and administrative costs plus an indemnity for payment of money under the statutory compensation code (including where the CPO is abandoned) and the blight provisions:-

- 2.1 The Executive approves the making of a Compulsory Purchase Order (CPO) to acquire any or all of the interests and rights in land at Wembley Central Square Wembley shown edged in black on the plan at Appendix 1 (save for the rights of Sowcrest Limited and Network Rail Infrastructure Limited) ("the CPO Land") under Section 226 (1)(a) and (Section 226 (3)(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004) for the purposes of securing the carrying out development redevelopment or improvement on or in relation to Central Square ("the Scheme");

- 2.2 The Executive authorises the submission of the CPO, once made, to the Secretary of State for confirmation;
- 2.3 The Executive authorises the:
- 2.3.1 Director of Environment and Culture to enter into agreements and make undertakings on behalf of the Council with the holders of interests in the CPO Land or parties otherwise affected by the Scheme setting out the terms for the withdrawal of their objections to the confirmation of the CPO and including the offering back of any part of the Order Land not required by the Developers after the completion of the development or the acquisition of rights over the CPO Land in place of freehold acquisition, where such agreements are appropriate:
- 2.3.2 Making of one or more 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 by the Secretary of State;
- 2.3.3 Service of all requisite notices on the holders of the CPO Land relating to the making and confirmation of the CPO;
- 2.3.4 Director of Environment and Culture to remove from the CPO any plot (or interest therein) not required to be acquired compulsorily for the scheme to proceed and to amend the interests scheduled in the CPO accordingly and to amend the interests to be acquired so as to include the acquisition of new rights (if so advised);
- 2.3.5 Director of Environment of Environment and Culture within the defined boundary of the CPO Land, to acquire land and/or new rights by agreement either in advance of the confirmation of compulsory purchase powers, if so advised, or following the confirmation of compulsory powers by the Secretary of State;
- 2.4 The Executive authorises the Borough Solicitor to instruct Counsel and experts to represent the Council and provide evidence at any inquiry into the confirmation of the CPO if necessary.
- 2.5 The Executive authorises the Director of Environment and Culture is, if so advised, to seek to acquire for the Council by agreement any interest in land wholly or partly within the limits of the CPO Land for which a blight notice has been validly served.

3.0 Financial Implications

- 3.1 The Council as the acquiring authority is liable to pay compensation to the affected persons but the Developer as the ultimate beneficiary of the CPO will bear the cost incurred by the Council. To that end the Developer has entered into an interim indemnity agreement with the Council to bear all the council's cost in preparing to make the CPO and a formal indemnity agreement which will supersede the interim arrangements is under negotiation]

4.0 STAFFING IMPLICATIONS

4.2 The CPO will be progressed principally by the Council's Borough Solicitor. Assistance may be required at the appropriate time from various elements of the Council's departments, principally Planning Services.

5.0 ENVIRONMENTAL IMPLICATIONS

5.1 The development of Central Square will provide enhanced shopping and new leisure facilities and a reconfigured square that will make Wembley Central Station visible from the High Road.

6.0 DIVERSITY IMPLICATIONS

6.1 Wembley Town Centre serves one of the most diverse communities in the Country and its redevelopment and enhancement by the introduction of new retail, leisure and residential development will have a direct benefit on those communities. Opportunities will exist in the scheme for local businesses, some of whom were displaced to allow the first part of the redevelopment to proceed.

7.0 LEGAL IMPLICATIONS

7.1 The Council has power on being authorised by the Secretary of State to make a compulsory purchase order under s. 226(1)(a) of the Town and Country Planning Act 1990 (as amended last year by the Planning and Compulsory Purchase Act 2004) "*if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land*". In order to exercise this power, the Council must also be satisfied that it considers

"that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects — (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; (c) the promotion or improvement of the environmental well-being of their area" (s. 226(1A)).

7.2 For the reasons explained in this report, it is considered that the statutory tests are clearly met. The acquisitions proposed will clearly facilitate the redevelopment or improvement of the land and in relation to it and it is likely to contribute to all of the objectives (a), (b) and (c) quoted above.

7.3 Compulsory purchase orders must only be made if the Council is satisfied that there is a compelling public interest to do so. Para. 17 of Part 1 of the Memorandum to ODPM Circular 06/04 states:

"A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of

Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention.”

7.4 For the reasons set out in this report, it is considered that there is such a compelling case and that the public interest requires that the orders be made in order to carry through the necessary redevelopment of the CPO Land.

7.5 Further, in making the order there should be no impediments to its eventual implementation. This does not mean that all the planning requirements must have been satisfied at the time the Council makes the draft order, but there must be a reasonable prospect that they will be satisfied in due course to allow implementation of the scheme which the orders will underpin. Para’s 22 and 23 of Part 1 of the Memorandum to ODPM Circular 06/04 advise (in part):

“22. In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show 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. These include the programming of any infrastructure accommodation works or remedial work which may be required, and any need for planning permission or other consent or license. Where planning permission will be required for the scheme, and has not been granted, there should be no obvious reason why it might be withheld...”

7.6 Officers consider that there is a reasonable prospect of the Scheme proceeding (indeed work has already commenced) planning permission has been granted for it, the scheme is in accordance with the development plan and there are unlikely to be any impediments to implementation.

7.7 The acquisition procedure is governed by the Acquisition of Land Act 1981, the Compulsory Purchase of Land Regulations 2004 and the Compulsory Purchase of Land (Vesting Declarations) Regulations 1990.

7.8 The CPO must be advertised locally and copies served on any owners, lessees, tenants (whatever the tenancy period), occupiers, and all persons interested in, or having power to sell and convey or release, the land subject to the CPO. In addition, the CPO must be served on persons whose land is not acquired under the CPO but nevertheless may have a claim for injurious affection under Section 10 of the Compulsory Purchase Act 1965, such as owners of rights of access to and from the public highway, easements and covenants that are affected by the CPO. Officers are currently preparing a detailed Statement of Reasons setting out the justification for compulsory acquisition. This statement will cover all the issues set out in this Report.

7.9 If any duly made objections are not withdrawn, the Secretary of State must hold an Inquiry and consider the conclusions and recommendations of the Inspector before confirming the Order.

7.10 Before and during the compulsory acquisition process, the Council is expected to continue the process of seeking to acquire the properties sought by negotiation and private agreement: see Part 1 of the Memorandum to Circular 06/04 paras 24 and 25. Para. 25 notes that “undertaking informal negotiations

in parallel with making preparations for a compulsory purchase order can help to build up a good working relationship with those whose interests are affected by showing that the authority is willing to be open and to treat their concerns with respect...”.

- 7.11 Any dispute as to the amount of compensation to be paid is referred to the Lands Tribunal for determination. A facility also exists for owners to obtain a certificate of appropriate alternative development to determine alternative planning uses for any property the subject of a CPO to assist with the determination of compensation whether or not the matter is referred to the Lands Tribunal to agree.

8.0 Human Rights

- 8.1 The Convention Rights applicable to the making of the Order are Articles, 6 and 8 and Articles 1 of the First Protocol. The position is summarised in para 17 of Part 1 of the Memorandum to ODPM Circular 06/04.

- 8.2 Article 6 provides that:

“In determining his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”

- 8.3 The proposals have been extensively publicised through the planning process and, wherever possible, consultations have taken place with all owners of the rights and interest to be acquired.

- 8.4 As stated earlier, all those affected by the Orders will be informed and will have the right to make representations to the Secretary of State and to be heard at a Public Inquiry. Those directly affected by the Order will also be entitled to compensation proportionate to any losses that they may incur as a result of the acquisition.

- 8.5 Article 8 states that:

“Everyone has the right to respect for his private and family life, his home and his correspondence....interference is justified however, if it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for its prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.”

- 8.6 Article 1 of the First Protocol states that:

“Every natural or legal person is entitled to peaceful enjoyment of his possessions” and “(n)o one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law....”

- 8.7 Whilst occupiers and owners will be deprived of their property if the Order is confirmed, this will be done in accordance with the law. It is being done in the public interest as required by Article 8 and Article 1 of the First Protocol. The reasons for this are set out in Sections 8.4 and 8.6 of this Report.
- 8.8 Members need to ensure that there is a reasonable prospect of the scheme underpinning the CPO proceeding. Relevant to this consideration is the financial status of the Developer and whether it has sufficient resources and experience to undertake the Scheme. Officers consider that St Modwens and its development partner Sowcrest (a subsidiary of Rotch Properties) satisfy this requirement.
- 8.9 St Modwens Properties Plc is a publicly quoted FTSE 250 property investment and development company with shareholder funds at 30 November 2005 of £330m and a market capitalisation of £550m. The current value of the investment portfolio under St Modwen's management is £833m. The estimated end value with the development portfolio is considerably in excess of £1bn. St. Modwens funds projects generally from its own resources. At November 2005, the company had total bank facilities of £309m of which £100m was uncommitted. St Modwens has an impressive track record in delivering complex mixed use development projects and is currently involved in 20 mixed use town centre regeneration schemes throughout the UK. Rotch Property Group Limited is a well established company involved in managing, developing and investing in commercial property. The groups latest published accounts show assets of £73.8m.
- 8.10 Another element where the resources of the Developer is relevant is the financial consequences which will result from the abandonment of the CPO.
- 8.11 The consequences of abandoning a confirmed CPO depends on:
- (a) whether a notice to treat or entry has been served on the owner of the land or not; and
 - (b) whether the Council has entered the land following the service of the notice or made a General Vesting Declaration in respect of the land. The position regarding blight is contained in Appendix 1 attached to this report.
- 8.12 Here notice to treat and entry have been served, and then not acted upon, the Council is under an obligation to inform the owner of the withdrawal of the notices or expiry as the case may be (as notice to treat has a life span of three years from date of service) and will be liable to pay compensation to the owner for all losses and expenses occasioned to him by the giving of the notice and its ceasing to have effect. The amount of compensation shall in default of agreement be assessed by the Land's Tribunal. Interest is payable on the Compensation.
- 8.13 It is too late for the Council to abandon the CPO where the Council has entered on the land following notices to treat and entry. The Council is obliged to pay compensation to the owner in this situation. The level of compensation payable

is determined in accordance with Section 5 Land Compensation Act 1961. This basically provides that the Council must pay the market value for the property or if special property the cost of equivalent reinstatement elsewhere. In addition to this the Claimant is entitled to compensation for disturbance and if applicable severance and injurious affection. This also applies where the Council has acquired the land following a General Vesting Declaration.

- 8.14 Clearly therefore the Council needs to bear in mind the financial consequences for it, if the CPO is abandoned. Whilst this is highly unlikely to occur in this case, since there is no reason to think that the Scheme will not proceed, the proposed indemnity agreement will require the Developer to meet this liability in any event.

9.0 Detail

- 9.1 The Replacement UDP supports the development of Central Square through Policy WEM 28(d). This states that the site will be promoted for uses appropriate to a town centre such as retail or leisure and that housing will be appropriate as part of a mixed use scheme. It also states that development should not prejudice provision for a set back of the High Road to provide a westbound bus lay-by, and should provide improved bus/train interchanges, facilities, replacement housing, improvements to the public realm and a shoppers short stay car park. Policy WEM11 seeks an upgrading of all 3 stations in Wembley including improved interchange facilities and pedestrian links.
- 9.2 The planning application submitted by the Sowcrest Limited owners of Central Square (“the Developer”), supported by St Modwen the property development partner of Sowcrest (subsidiary of Rotch Properties) was for a proposal that met these objectives by a mixed use development comprising the demolition of 469 to 491 High Road and Units 1-44 Central Square and redevelopment to provide retail, leisure, residential and office accommodation as well as the complete refurbishment of Central Square car park.
- 9.3 The application was approved by the Council’s Planning Committee on 27 June 2002 subject to a Section 106 agreement that included works to create a new square fronting the High Road. The approved Scheme also made provision for improvements to Wembley Central Station, by allowing for a new footbridge, providing alternative ‘event’ day access and opening up the frontage of the station to the High Road, thereby allowing further improvements to take place.
- 9.4 The Section 106 agreement is completed and planning permission issued. St Modwen are now discussing details of implementation with officers.
- 9.5 The proposed development will partly be on land not currently owned by the Developer being some of the units at the front of the site, where the new public square will be created). Officers and the Council’s representatives have met with most of the parties affected by the proposed land acquisition and the process of negotiation is ongoing.
- 9.6 For a number of parties, the extent of the land acquisition will be frontage areas

or sub-soil under existing highway. However, there are a number of parties more significantly affected.

- 9.7 On 16 January 2003 and 10 March 2003, the Executive authorised the compulsory purchase of 469-473 (Odd High Road) Wembley and 475-491 (odd) High Road Wembley subject to the Developer agreeing to pay the Council's cost of acquisition. The land shown hatched on the plan attached to this report at appendix 1 ("New Land") required for the Scheme was omitted from the reports made to the Executive on those dates. The Developer holds a long leasehold interest in that land and Network Rail owns the freehold. The Developer has made the appropriate agreements with Network Rail to allow the Scheme to go ahead. Whilst at this stage it would appear that the Developer has the necessary land interest in the New Land to proceed with the Scheme, it has indicated that it would be prudent to seek to acquire any other interests in the New Land through the CPO, to prevent their existence coming to light at a later stage and impeding the implementation of the development. Officers concur with this view and this report therefore seeks authorisation to acquire interests and rights in the New Land compulsorily as well as the land covered by the resolutions made on 16 January and 10 March 2003. Accordingly, if members concur with the recommendations in this report they would supersede the resolutions made on 16 January and 10 March 2003.
- 9.8 The government circular recommends that the 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 also encourages acquiring authorities to initiate formal CPO procedures in parallel with negotiations in order to facilitate those negotiations.
- 9.9 It is therefore the Developer's aspiration to acquire the CPO Land voluntarily but a CPO is sought in the event that the discussions are unsuccessful.
- 9.10 The acquisition of the CPO Land is critical to the implementation of the approved Central Square redevelopment, and to the wider Council regeneration objectives of securing improvements to all three Wembley Stations – the three stations strategy, and of ensuring that Wembley Central Station better accommodates major events traffic. The overall development will also greatly assist in designing out an existing crime hotspot and will assist in the regeneration of the town centre.
- 9.11 The Developers will meet the costs of acquisition (whether voluntary or compulsory) and will attempt to negotiate an agreement with interested parties where possible. The Council as the acquiring authority is liable to pay compensation to the affected persons but the Developer as the ultimate beneficiary of the CPO will bear the cost incurred by the Council in that regard. To that end the Developer has entered into a formal indemnity agreement with the Council in this regard.
- 9.12 Your officers believe that there is a compelling case in the public interest for pursuing a CPO in this instance, as a failure to act now may result in long delays to the Central Square Development and station/interchange improvements at Wembley Central where funding through the SRB is only

available until 2007, and where improvements to the station are required to meet the demands of an enlarged stadium. The Government are also advocating a greater use of Compulsory Purchase Powers by Local Authorities to promote regeneration through new developments, including improvements to transport.

Justifications for the Compulsory Purchase Order

- 9.13 Circular 06/2004 issued by the Deputy Prime Minister provides that an acquiring authority should only make a Compulsory Purchase Order where there is a compelling case in the public interest to do so.
- 9.14 The CPO is being made because there is a compelling case in the public interest for the reasons set out in this report. This sufficiently justifies interfering with the human rights of those with an interest in the land having regard in particular to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights. The Circular also states that the acquiring authority must be able to justify the CPO and there are no impediments to the Scheme.

Planning

- 9.15 Planning permission was issued by the Council on 13 October 2005 for the Scheme. The Scheme will therefore not be blocked by planning problems or impediments.

Resources

- 9.16 Reference has been made at para 7.9 to the financial standing and development expertise of Rotch Properties (the parent company of Sowcrest) and St. Modwens.
- 9.17 No impediments to Implementation
The Developer has entered into the necessary agreements with Network Rail to allow them to proceed with the development. The Section 106 agreement entered into with the Council on 13 October 2005 permits works as necessary to the public highway at the front of the site. Given these agreements there are no physical impediments to implement the scheme. It is also not envisaged that highway or road closure orders are necessary for the scheme

10.0 Conclusions

- 10.01 Your officers believe there is a compelling case in the public interest for compulsory purchase powers to acquire the lands required for the Scheme.
- 10.02 The Scheme cannot proceed without the acquisition of the CPO Land. It is therefore recommended that CPO powers are exercised in case voluntary acquisition is unsuccessful. The Developer has the resources allocated to allow the Scheme to proceed within a reasonable timescale.

Background Papers

Replacement UDP
Planning Permission for Central Square 01/1/14
Executive Report dated 16 January 2003 and 10 March 2003

Contact Officers

Any person wishing to inspect the above papers should contact:

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APPENDIX 2

Blight

1. Statutory blight notices may be served pursuant to the relevant provisions of the Town and Country Planning Act 1990 by business owners of the land if they are owner occupiers of a property and are unable to dispose of a property as a result of the effect of certain development and infrastructure proposals. The rateable value of the blighted property must be less than a fixed "annual value" as is explained below. In these circumstances notices may be served by owners to require a council to acquire their interest in the subject property at a price consistent with the unblighted value of the property.
2. A person may serve a blight notice if they are the holder of a qualifying interest in blighted land. A qualifying interest means that the annual value of the land i.e. the rateable value is below £29,200 per annum and the interest is that of an owner-occupier on the relevant date. The relevant date is the date of service of a Blight Notice on the Council. The claimant must have made reasonable endeavours to sell his interest and as a result of the blighting he has been unable so to do except for at a price substantially lower than which it might have been reasonably expected to have been sold for if it was not so blighted.
3. The relevant circumstances in which land becomes blighted include where highway proposals for the construction improvement or alteration of a highway are approved by a resolution of the Council. Blight Notices can be served once the compulsory purchase order is in force, and the Council is entitled to serve notice to treat. In effect, this means that the order must have been confirmed (following a public inquiry if necessary).
4. The Council will be able to tell from requisitions served on the interested parties more about individual occupation arrangements for the properties although at the moment such information is not complete. It is, however, possible to assess the current (2000) rating.

