



**Executive**  
11 March 2013

**Report from the Director of  
Regeneration and Major Projects**

Wards affected:  
Dudden Hill  
Harlesden

**Church-End Car Park Redevelopment**

**1. Summary**

- 1.1. This report concerns the proposed redevelopment of the Church-End car park and seeks approval for officers to develop and consult publicly on proposals for a new mixed-use development on the Council owned part of the site, which will also include the provision of a new market square. The council's intention is to secure planning permission and seek a developer partner to develop the site.
- 1.2. There are a number of property issues that need to be resolved in order to assemble the land required to deliver the development in its current form. Approval is therefore sought to begin taking the necessary actions, including, where required, the use of the Council's Compulsory Purchase Powers, in order to assemble the site.
- 1.3. Subject to the approval of planning permission, the site would be disposed of to a developer partner. The disposal would be subject to the appropriate tender process and would be subject to a Development Agreement, safeguarding the delivery of a quality development on the site.

**2. Recommendations**

That the Executive,

- 2.1. Note the background to the Council's proposals to bring forward the redevelopment of the Council owned car-park in Church End and to agree to develop these proposals further, including the undertaking of public consultation and the submission of a full planning application.
- 2.2. Instruct officers to seek agreement on and complete a land swap with Catalyst Housing Group involving the parcels of land indicated in Appendix 1.
- 2.3. Agree to the making of a Compulsory Purchase Order (CPO) to acquire freehold interest and other relevant legal interests of the land and structure to the rear of 203 Church Road, which for identification purposes is shown edged in red on the plan attached to this report at Appendix 2 ("the CPO Land") under Section 226(1)(a) of the Town and Country Planning Act 1990, to facilitate the carrying out of the redevelopment scheme ("the Scheme") and any new rights in the CPO Land which may be required under section 13 of the Local Government (Miscellaneous Provisions) Act 1976.
- 2.4. Submit the CPO, once made, to the Secretary of State for confirmation, whilst the Council at the same time seek to acquire the land by private negotiated treaty, funded either through development proceeds or from S106 funds where appropriate.
- 2.5. Agree to the making of one or more general vesting declaration or service of Notice to Treat and Notice 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 Regeneration & Major Projects on the advice of the Director of Legal & Procurement Services, as necessary in order to implement the CPO.
- 2.6. Executive are asked to delegate authority to the Director of Regeneration & Major Projects to undertake the following:
  - 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, where such agreements are appropriate; and
  - Serve of all requisite notices on the holders of the CPO Land including rights in the CPO Land relating to the making and confirmation of the CPO; and
  - Remove from the CPO any plot (or interest therein) no longer required to be acquired compulsorily for the scheme to proceed and to amend the interests scheduled in the CPO (if so advised; and

- 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
  - 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.
- 2.7. To authorise Officers to undertake the process of ‘stopping-up’ of Eric Road which currently provides access to the existing car-park but which will be used to form part of the Market Square in the future.
- 2.8. Subject to the approval of planning permission, to authorise the disposal of the Council owned Church End car-park to a developer partner.
- 2.9. To give approval to officers to invite tenders for a developer partner for the site described in paragraph 2.8
- 2.10. To delegate to the Director of Regeneration and Major Projects in consultation with the Director of Legal and Procurement authority to set the pre-tender considerations and criteria to be used to evaluate tenders for a developer partner as set out in Contract Standing Order 89.

### **3. Background**

- 3.1.1. The redevelopment of the Church-End car-park and the wider local centre has been a long term planning and regeneration objective of the Council. The area is identified, in general, in the Council’s Local Development Framework (LDF) Core Strategy as one of the five borough Growth Areas and as a Priority Neighbourhood in the Council’s Regeneration Strategy.
- 3.1.2. More specifically, the car-park and the adjacent local parade have been designated in the LDF Site Specific Allocations (SSA) Development Plan Document as a site that should be prioritised for redevelopment (Appendix 3). In broad terms the SSA sets out that the area should be redeveloped to provide a mixed-use development comprising of residential, retail and other uses and that the development should provide a new public square to be used by the existing market on its days of operation. The SSA also sets out that the Council will be prepared to use its CPO powers, where necessary, to bring forward the redevelopment of the site.
- 3.1.3. In 2008 Fortunategate Community Housing (part of the Catalyst Housing Group) began acquiring property and land interests in the area in an attempt to assemble a comprehensive development site. However, due to the economic downturn and the burden of these acquisitions the viability of a comprehensive development has suffered and to date Catalyst Housing Group have been unable to bring forward proposals for a comprehensive redevelopment of the area.

- 3.1.4. Officers are now looking at options to kick start the regeneration of the Church End local centre by developing proposals to bring forward a more rationalised development on the Council owned land within the car-park. Although the proposals would deliver fewer homes than a comprehensive redevelopment of the area the scheme would still involve the provision of a new public square which would provide a permanent home for the Church End market. The scheme would effectively deliver the first phase of a regenerated Church End local centre and could help encourage further sites to come forward in the future, from Catalyst in particular.

### **3.2. Redevelopment Proposals**

- 3.2.1. In September 2012, Officers appointed Mae LLP Architects to undertake a design feasibility study which was intended to examine the redevelopment potential of Council's land in isolation from the wider site. The brief for this study was to identify options for the provision of a new mixed-used development, comprising of new residential accommodation and commercial floor-space, and the redevelopment of a new market square.
- 3.2.2. The study returned potential options for the site (Appendix 4), each comprising of between 3-5 storeys delivering between 31-34 new homes, approximately 200sqm of commercial/community floor-space and a new market square of approximately 1400sqm which would be sufficient to accommodate all 60 existing market pitches.
- 3.2.3. Officers appointed consultants BNP Paribas Real Estate to consider the viability of these development options. The work undertaken by BNP concluded that the options developed would be likely to be viable in financial terms, even when including the costs associated with assembling the site and the provision of a new market square.

### **3.3. Site Assembly**

- 3.3.1. In order to bring forward the new development and market square in the form proposed in the options developed it will be necessary for the Council to take steps to assemble the land and property interests required to deliver the project. Primarily this will involve the following agreements.
- Agreeing a land swap with Catalyst Housing Group.
  - Approving the stopping-up of Eric Road
  - Acquiring the building and land to the rear of 203 Church Road
- 3.3.2. At present the Council's site includes an elliptical shaped area of the verge which was formed when works were undertaken to reduce the roundabout at the junction of High Road and Neasden Lane. Much of this land is surplus to the Council's requirements in terms of delivering the proposed development and market square. However, should Catalyst wish to progress proposals for their own site then acquiring this land would be an attractive proposition as without it their proposals are likely to be severely compromised.

3.3.3. In order to provide a new market square with a sufficient area to accommodate all of the existing traders it has been identified that the development would need to include a small strip of land currently under the ownership of Catalyst. The strip currently comprises of 205 Church Road, a vacant and derelict building which has been earmarked for demolition, and a strip of the existing Catalyst car-park. Officers are seeking approval to enter into negotiation with Catalyst to acquire this land in exchange for the surplus Council land. If the Council are unable to acquire this land then this would reduce the area available for the re-provision of the market, and the subsequent number of pitches available. If this were to be the case consideration would need to be given to alternative options such as moving part of the market onto Church Road.

3.3.4. The proposals would see part of the new market square located on the remaining section of Eric Road which is currently used to provide access to both car-parks. In order to achieve this Eric Road would need to be stopped-up preventing the unrestricted movement of vehicles over the market square. Arrangements would be sought with Catalyst to ensure that they were still able to gain access to their car-park in advance of any redevelopment of their site.

3.3.5. To the rear of 203 Church Road stands a 2/3 storey structure. At ground floor level the structure provides a rear storage area for the existing convenience store at 203 Church Road. The upper floors of this structure appear to be in use as a separate storage unit accessed from the flat roof of 203 Church Road. The structure is in extremely poor condition, physically, with visual signs of movement in the exterior walls. The run down appearance of the structure causes significant harm to the visual amenity of the surrounding area and compromises the Council's ability to bring forward the redevelopment of the car-park.

3.3.6. Officers consider that leaving this building in-situ and developing around it would significantly undermine the value of the scheme, and bring into serious question the viability of the proposals and its attractiveness as a development opportunity. As such, it is recommended that all efforts be made to acquire this building for inclusion within the scheme, through a negotiated treaty if possible, but otherwise through the use of the Council's CPO powers.

### **3.4. Case for Compulsory Purchase Order (CPO)**

3.4.1. Circular 06/2004 issued by the Office of The Deputy Prime Minister states that a CPO 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 CPO 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.

3.4.2. Officers propose a CPO be made to acquire the freehold interest and all other relevant legal interests for the structure and land to the rear of 203 Church Road, NW10, under Section 226(1)(a) of the Town and Country

Planning Act 1990 on the basis that redevelopment of the scheme will substantially improve the economic, social and environmental well being of the area.

3.4.3. As outlined above, the quality of the existing building on the site is extremely poor, both in terms of its physical and aesthetic qualities. The external walls show some signs of movement and it appears that significant remedial works or renovation would be required to bring the structure up to modern standards. The building does not contain any conventional elevations with a number of ad-hoc window openings of varying shapes and sizes having been installed. As such, the appearance of the building epitomises the urban decay that currently blights the Church End area and contributes to the poor physical environment that exists. As discussed above, the presence of the structure in close proximity would significantly harm the desirability and value of the residential accommodation proposed, bringing into question the viability of the scheme which is required to kick-start the regeneration of the wider Church End local centre.

3.4.4. Incorporating the building into a wider redevelopment offers both a more rational design and a better value for money solution, and is considered the best approach to addressing the problems in Church End, particularly around the car-park and the local centre. There are significant issues with anti-social behaviour and fly-tipping within the car-park which can be addressed through the redevelopment. The redevelopment will not only provide housing that meets current standards, but will also provide the high quality spaces, both internally and externally, required to support the economic and social regeneration of Church End. The scheme, if permitted, would deliver new homes creating better housing choice, commercial floor-space designed to be used in support of the local economy and a better public realm environment for all to enjoy.

3.4.5. The acquisition would not have to extinguish the existing retail business operating from 203 Church Road, instead reducing the overall floor-space at the rear of the unit which is currently used for storage. As discussed, the upper floors appear to be used as a separate storage unit. At present this structure does not appear to provide any positive contribution towards reversing the decline in the Church End area and it certainly does not in any way come close to providing the benefits that would be delivered by the new development and market square. These benefits will improve the social, environmental and economic well being of the area and is considered sufficient justification for interfering with the human rights of those with an interest in the CPO Land.

3.4.6. Circular 06/2004 also states that before embarking on compulsory purchase, and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. Subject to approval, officer intend to exhaust all possible avenues of negotiation before embarking on a CPO process as acquisition through negotiation would be beneficial to the project programme. Compulsory purchase is seen very much as a last resort, and will

be used only if and when all reasonable endeavours to reach an agreement with the freeholder, and any other interested parties, have failed.

3.4.7. Circular 06/2004 also requires acquiring authorities, in demonstrating that there is a reasonable prospect of the scheme going ahead, to show that the scheme is unlikely to be blocked by any impediments to implementation. Officers take the view that by the time the CPO process is set in motion this will be the case in Church End:

- The Council have a clear programme of delivering a planning application for the proposals to the LPA by the end of April 2013. A decision on the planning application would therefore be due by the end of July 2013. Officers would ensure that planning permission was in place before proceeding with a CPO.
- Initial viability appraisals of the scheme have been undertaken by BNP Paribas Real Estates which show that the scheme can deliver a positive residual value for the site. This shows that the proposals are likely to be viable. Officers will appoint an independent costs advisor to monitor the design team and ensure that the proposals remain viable as the scheme is progressed. The appraisals undertaken so far assume that no external grant, or other, funding would be required to deliver the project.
- Through a Development Agreement the Council can make provisions to ensure that any developer partner must proceed to deliver the scheme in a timely manner.

### **3.5. Disposal Strategy**

3.5.1. Once planning permission is obtained for the redevelopment of the site, Officer propose to dispose of the site on a long (999 year) lease to a developer partner who will deliver the redevelopment. The disposal will be subject to a Development Agreement which will ensure that the Council retain control over the quality of the design of the building and public and private spaces.

3.5.2. Officers have undertaken some soft market testing of the feasibility options and we feel there would be interest in the site from both developing Registered Providers and private developers. At this stage it is estimated that the Gross Development Value (GDV) of the scheme would be between £3.8 and £4M and therefore the disposal of the site would not trigger the need for OJEU procurement. However, the value of the contract would be such that the procurement procedures for High Value Contracts would need to be adhered too.

3.5.3. In order to ensure that the project is delivered to programme, authority is sought at this stage to tender for a developer partner for the site. It is also recommended that authority be delegated to the Director of Regeneration and Major Projects to agree the pre-tender considerations and evaluation criteria as set out in Contract Standing Order 89. Once a preferred developer partner has been identified, the matter will be reported back to the Council's Executive

to seek approval to complete the disposal of the site to the preferred developer partner.

#### **4. Financial Implications**

- 4.1. The upfront funding of the project, in terms of the initial development costs associated with design and planning stage, will be in the first instance be met internally through existing departmental budget allocations. An allocation for the funding of the design team and progressing the proposals through to a planning application stage has been included within the New Initiatives Team budget for the current financial year and a similar allocation has been agreed for the financial year 2013/14. Overall, in total, it is expected that the delivery of the proposals through planning to disposal will cost approximately £150k. Whilst the project will require this upfront commitment, it is required that these initial development costs be recouped through a condition on disposal that these costs will be met by the appointed developer partner. On these terms, advice from BNP Paribas suggests that a developer would be able to cover the upfront design and planning costs of the Council and may still be able to return to the Council a capital land receipt of approximately £200k, giving the site a total value of £350k. However clearly any land value will be dependent upon market views as to such factors as build costs and sales values in the Church End area.
- 4.2. Should it be required, officers may seek to utilise historic s106 contributions from nearby developments to assist with the delivery of the project, particularly around the delivery of the new market square. As this space will provide an enhanced public realm within the Church End local centre it is considered that it this would be an appropriate project for the use of s106 contributions identified for delivering this type of infrastructure. At present, our appraisals for the scheme indicate that it may be possible for the new market square to be funded wholly through the development and the use of s106 contributions will only be required if this situation changes.
- 4.3. It is also recommended that if officers negotiate the acquisition of the structure to the rear of 203 Church Road, in advance of appointing a developer partner, that s106 contributions, secured on other developments in lieu of on-site affordable housing provision, could be utilised to provide the capital expenditure to complete the acquisition. This would be justified on the basis that the development would deliver some level of affordable housing at the end of the project. Officers estimate that the capital cost of the CPO would be in the range of £100-150k although this is subject to a formal valuation of the property and land in question. It is important that officers are able to secure any opportunity to acquire this site by negotiation in order to avoid the costs that would be associated with a CPO process.
- 4.4. At present the market operates across both the Council site and land owned by Catalyst. Accordingly the rental income generated by the market is split evenly between Catalyst and the Council. The project would provide the Council with an opportunity to increase the revenue generated from the site both through the existing market and other activities.



- 4.5. This site is currently included within the Council's Capital Disposals Programme for 2014/15, and as such the reinvestment of any receipt arising back into this scheme will have a detrimental impact on the funding of the Council's overall Capital Programme in that year. The use of Capital Receipts in the funding of the Capital Programme restricts the level of unsupported borrowing required to fund capital schemes and accordingly the level of associated debt charges falling upon the revenue account. Movement against the forecast levels of capital receipts could require reduced/additional levels of unsupported borrowing or changes to the approved Capital Programme.
- 4.6. Costs arising directly from the sale of the site will be met from the derived capital receipt in line with accounting guidelines.
- 4.7. Approval for residential use on the site would provide the council with additional resources from the New Homes Bonus over a period of six years. The level of funding would be determined by the council tax band and whether it related to affordable housing. The New Homes Bonus provides councils with additional resources to meet the costs of services arising from increased development in an area.

## **5. Legal Implications**

- 5.1. The Council has power to make a compulsory purchase order under section 226(1)(a) of the Town and Country Planning Act 1990 if it thinks that the acquisition will "facilitate the carrying out of development, redevelopment or improvement or in relation to the land". Under section 226(1)(a) the Council must not exercise the power under sub paragraph (a) unless it thinks 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 wellbeing of their area; (b) the promotion or improvement of the social wellbeing of their area; (c) the promotion or improvement of the environmental wellbeing of their area.
- 5.2. Compulsory purchase orders must only be made if the Council is satisfied that there is a compelling public interest to do so. The Government Circular states that 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
- 5.3. Officers have considered this proposed Compulsory Purchase Order in the light of the relevant provisions of the Human Rights Act 1998, Article 1 (no one should be deprived of his possessions except in the public interest), and Article 8 (right to respect for private and family life, home and correspondence – the right to full and proper compensation) of the Human Rights Act 1998.
- 5.4. For the reasons set out in this report it is considered that there is such a compelling case for properties and that the public interest requires that the order be made in order to carry through the necessary redevelopment of the CPO Land.

- 5.5. Further, in making the order there should be no impediments to its eventual implementation. Para's 22 and 23 of Part 1 of the Memorandum to ODPM Circular 06/2004 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..."*

- 5.6. Members will note that the Officers do not intend to progress with a CPO until such time that planning permission has been granted.
- 5.7. It is necessary to consider the human rights implications of making CPOs. The Convention Rights applicable to the making of any CPO orders 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 06/2004

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"*

- 5.8. 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 for any losses that they may incur as a result of the acquisition.

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...."*

- 5.9. Whilst occupiers and owners will be deprived of their property if an Order is confirmed, this will be done in accordance with the law. It is being done in the public interest as required by Article 1 of the First Protocol. The reasons for this are set out in this Report.

- 5.10. Members need to ensure that there is a reasonable prospect of the Scheme underpinning the CPO proceeding. This is addressed in paragraph 6.7 above
- 5.11. 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.
- 5.12. The passing of a resolution to make a CPO does not trigger the right to serve a blight notice. However, residential occupiers could claim blight after a CPO has been submitted to the Secretary of State for confirmation and notices have been served on owners and occupiers.
- 5.13. If the CPO is not acted upon at all, then no compensation is payable. Where 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 Lands Tribunal. Interest is payable on the compensation.
- 5.14. 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.
- 5.15. The CPO must be advertised locally and copies served on any owners, lessees, tenants (whatever the tenancy period), occupiers, 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 will prepare a detailed Statement of Reasons setting out the justification for compulsory acquisition. This statement will cover all the issues set out in this Report.
- 5.16. 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.
- 5.17. Before and during the compulsory acquisition process, officers will continue the process of seeking to acquire the property sought by negotiation and private agreement: see Part 1 of the Memorandum to Circular 06/2004 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...”.

- 5.18. Any dispute as to the amount of compensation to be paid is referred to the Lands Tribunal for determination.

## **6. Diversity Implications**

- 6.1. The proposed redevelopment of Church End will provide homes which are designed to meet Lifetime Homes, allowing adaptability for future needs, and include at least 10% of the homes being easily adaptable to full wheelchair use. The new market square will be designed to be publicly accessible to all.

## **7. Staffing/Accommodation Implications (if appropriate)**

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

## **Background Papers**

Viability Report by BNP Paribas Report (this item is exempt from publication under Schedule 12A of the Local Government Act 1972 as it includes Information relating to the financial or business affairs of the Council)

Appendix 1 – Potential land-swap with Catalyst

Appendix 2 – CPO land

Appendix 3 – SSA DPD Extract

Appendix 4 – Feasibility option

## **Contact Officers**

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