

	<p style="text-align: center;">Executive 18 July 2011</p> <p style="text-align: center;">Report from the Director of Regeneration and Major Projects</p>
<p style="text-align: right;">Ward Affected: Dudden Hill</p>	
<p>Church End Car Park disposal and resolution to use CPO powers</p>	

Appendix1 which is *Not for publication ('below the line')

1.0 SUMMARY

- 1.1 This report seeks member approval to the disposal of the Council's remaining freehold interest in Church End Car Park to Catalyst Housing Group Limited (CHGL).
- 1.2 The report also seeks approval to initiate compulsory purchase of all interests (inclusive of freehold interests) other than that already owned by the housing association in this area.
- 1.3 Both these actions outlined in summary above will enable CHGL to bring forward the regeneration of this area in line with Council objectives

2.0 RECOMMENDATIONS

- 2.1 That the Executive approve the disposal of its freehold interest to Catalyst Housing Group Limited (CHGL) in accordance with the terms set out in this report and as outlined in the confidential appendix.
- 2.2 That the Executive also authorise:
 - (a) the making of compulsory purchase orders (the CPO's) to acquire all interests and rights in the properties listed in 3.5 and shown as the land hatched in black on the plan attached in the appendix 2 together with properties referred to in 3.7 (which properties are referred to hereafter as "the CPO Land") under section 226 (1)(a) of the Town and Country Planning Act 1990 and any new rights in the CPO Land which may be required under section 13 of the Local Government (Miscellaneous Provisions) Act 1976.

(b) the Director of Regeneration and Major Projects in consultation with the Director of Legal and Procurement to include in the Compulsory Purchase Order authorised by this Executive meeting such other additional interests and rights as are disclosed during the land referencing exercise which the Director of Regeneration and Major Projects in consultation with the Director of Legal and Procurement deem it necessary to facilitate the delivery of the Church End Growth Area.

(c) To include authority to the appropriation of land for planning purposes where applicable

2.3 That Members authorise the submissions of the CPOs, once made, to the Secretary of State for confirmation whilst at the same time seeking to acquire the land by private negotiated treaty on such terms as may be agreed by the Director of Regeneration and Major Projects

2.4 That Members authorise the:

2.4.1 Director of Regeneration and Major Projects 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 CPOs and including the offering back of any part of the CPO Land not required by the Council 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;

2.4.2 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;

2.4.3 Service 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;

2.4.4 to 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 alter the nature of the proposed acquisition from an acquisition of existing property interests to an acquisition of new rights (if so advised);

2.4.5 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;

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 DETAIL

- 3.1 The Council has been working closely with CHGL since 2001 to bring forward a comprehensive mixed use development in the Church End Growth Area. This proposed transaction and making of a CPO will enable the final phase of this regeneration to commence which will encapsulate the car park and surrounding area.
- 3.2 Terms have been provisionally agreed to sell the remaining freehold interest owned by the Council in this area. The terms are set out in the confidential appendix and are recommended for acceptance.
- 3.3 The area totals 2,990 sq m and comprises an open-air market, currently used 2 days per week, with the remainder comprising of public highway and open grassed verge type areas. The Council land is shown stippled and edged in black on the attached plan.
- 3.4 For this next phase of regeneration CHGL is looking to develop a scheme comprising 143 residential units, 1,526 sqm of mixed retail/commercial space and a 1255 sqm market square. It is important to note that this scheme will also make provision to replace the existing market. A planning application is anticipated to be submitted by December 2011.
- 3.5 CHGL has been acquiring properties in the area since 2001. However there remain a small number of properties that Catalyst has been unable to secure through negotiation and which are proving difficult to acquire. Therefore CHGL has requested the Council provide support through utilisation of it's compulsory purchase powers. The remaining properties in private ownership are shown on the following schedule:

213 Church Road – Butchers shop and 2 flats
217c Church road- Residential flat
217 Church Road- Mini cab office
219 Church Road- Barbers shop and flats
229 Church Road- Dentist-
231 Church Road- Dentist-
233 Church Road- Café

- 3.6 Under the Town and Country Planning Act 1990 (“the 1990 Act”) (as amended) the Council has the ability to resolve to make a Compulsory Purchase Order to acquire these units on behalf of CGHL so as to purchase compulsorily for development, redevelopment and improvement certain land in Church End . The land is shown edged in black and hatched on the plan annexed.
- 3.7 The Compulsory Purchase Order shall also include areas of public highway and other small areas of land which the Council has historically occupied but to which there is no clear title. It is likely that

title to such areas may be successfully registered at the Land Registry through the use of statutory declarations recording the Council's long term use and occupation, but in the event that this is unsuccessful the Compulsory Purchase Order will provide reassurance that control of these areas can be gained.

3.8 Section 226(1)(a) empowers local authorities on being authorised by the Secretary of State to acquire land compulsorily for the purposes of development, redevelopment or improvement where it is not certain that they will be able to acquire the land by agreement and where they believe that:

1. The acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to that land; and
2. The development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of their area.

3.9 CHGL is prepared to give the Council an indemnity to meet all compensation costs and expenses reasonably and properly incurred as a direct consequence in making and in connection with the making and implementation of a CPO and any highway stopping up orders. CHGL will continue with best endeavours to acquire outstanding interests and shall keep the Council fully informed of negotiations for the acquisition of any outstanding interest.

3.10 The use of CPO powers is required to ensure that individual landowners are not able to prevent the regeneration of this area proceeding and to ensure that the regeneration is not ransomed by owners seeking inflated levels of compensation.

4.0 Background

4.1 The Council has supported a number of initiatives to improve the environmental quality of the Church End area and its economic regeneration. In April 2005 the Council's Executive approved a non-statutory regeneration action plan which concentrated on five key sites, the Car Park being a key central site in the regeneration of the Church End area.

4.2 The car park area was and still remains an area prone to anti-social behaviour. The shops on Church Road are of varying quality and do not positively assist in raising the tone of the shopping street. The Market uses the car park twice a week but has potential to be significantly improved.

4.3 In 2006, the Council was successful in securing £2m Growth Area Fund resources from the government for a proposal to reduce the roundabout at the Neasden Lane- Church Road junction to enable transport improvements and to create an enlarged car park site that

would allow a mixed use development to take place on the car park site. The express purpose of the works was to create a development site that could accommodate an enclosed and secure development.

- 4.4 The Council completed public consultation at the end of 2006 and there was significant support for the proposals. The physical road and other works were completed in 2008 and the site is now expanded on its northern edge to allow the secure development proposal.
- 4.5 The Council also worked with CHGL to bring forward development proposals for new housing, shops and a new market square. CHGL then worked in acquiring premises by agreement in order to carry out the more comprehensive scheme.
- 4.6 CHGL is now attempting to purchase the remaining properties they need in order to complete the scheme. They are intending, by the end of this calendar year, to submit the planning application for the comprehensive development of the site. The CPO is therefore required to ensure the process can be successfully completed.
- 4.7 Specifically the Council's car park site will accommodate a larger food store in order to boost the attractiveness of the town centre. The proposal also contains a market square which will offer purpose built market facilities which should allow the continuation of the market. The new housing proposed for the site will be particularly oriented at new home buyers by providing homebuy (shared ownership units) but the proportion of deposit etc will encourage local home ownership. Church End has a high level of social rent housing and the proposal is to encourage a diversification of tenure that also brings in more local spending power to help invigorate the local shops.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The Council will receive a capital premium set out in the confidential appendix.
- 5.2 However the Council will, as a result of the disposal, forego current rental income from the market of £35,000 per annum exclusive. To avoid the Property budget inadvertently suffering from this loss an adjustment will be necessary to the base line to take account of this reduction in anticipated receipt.

6.0 LEGAL IMPLICATIONS

6.1 Compulsory Purchase Orders

- 6.1.1 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.

- 6.2 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.”

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

- 6.3 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 06/04 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...”

Members will note that there will be sufficient funds available to meet the compensation costs for the acquisition of the land.

Whilst planning permission has not been granted for the development, it is considered that there is no obvious reason why it might be withheld, taking into account the long term planning work and specific site allocation. Accordingly, it is considered that there are unlikely to be any impediments to implementation.

- 6.6 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 06/04.

6.7 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”

6.8 Consultation has already taken place with communities that will be affected by any orders made, and further consultation is proposed as set out in this report.

6.9 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.

6.10 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....”

6.11 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

6.12 Members need to ensure that there is a reasonable prospect of the Scheme underpinning the CPO proceeding. This is addressed in paragraph 3 above .

6.13 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.

6.14 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.

6.15 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.

- 6.16 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.
- 6.17 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.
- 6.18 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.
- 6.19 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...”.
- 6.20 Any dispute as to the amount of compensation to be paid is referred to the Lands Tribunal for determination.

Appropriation of land for planning purposes

- 6.21 Section 122 of the Local Government Act 1972 provides that a principal Council may appropriate for any purpose for which the Council are authorised to acquire by agreement land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation.
- 6.22 Section 237 of the Town and Country Planning Act 1990 provides where land has been appropriated for planning purposes any

easements such as rights of way which may exist for the benefit of third parties are overridden on erection, construction or carrying out of maintenance of any building and change of use in accordance with planning permission, subject to payment of any compensation. The practical effect is that any rights which may exist do not delay or obstruct the development. This provides effective assurance to the developer that he will have a good title to the land.

- 6.23 The land must no longer be required for the purpose for which it is held immediately before appropriation. This test will be satisfied by deferring the date of the appropriation to a time when it is clear that the scheme will proceed. Once the appropriation is effected, the appropriated land will be held for planning purposes.

7.0 DIVERSITY IMPLICATIONS

- 7.1 Impact Needs Resources assessment attached.

8.0 STAFFING/ACCOMMODATION IMPLICATIONS

- 8.1 There are no staff or accommodation issues arising from this report.

9.0 BACKGROUND PAPERS

Various papers held in Planning and Property and Asset Management

Contact Officers

James Young Property and Asset Management 0208 937 1398
James.young@brent.gov.uk

Dave Carroll Head of New Initiatives 0208 937 5202
Dave.carroll@brent.gov.uk

ANDREW DONALD
Director of Regeneration and Major Projects

APPENDIX 2





BRENT
COUNCIL

Church End Car Park Disposal and Resolution to Use CPO Powers.
"Area in Brent Occupation" - freehold and highway, shown
edged and stippled black and having an area of 0.299 Hectares.

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NORTH



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Plan to stated scale if printed at A4.