

## Cabinet

Tuesday 24 March 2020

4.00 pm

Ground floor meeting room, 160 Tooley Street, London SE1 2QH

## Appendices Part 2

### List of Contents

Item No.	Title	Page No.
23.	<b>Elephant and Castle Shopping Centre Progress Report</b> To agree the allocation additional support for Elephant and Castle Local Independent Operators that are being displaced by the development of the shopping centre.	1 - 20
24.	<b>Elephant and Castle Centre Compulsory Purchase Order</b> To approve a compulsory purchase order ("CPO") under section 226(1)(a) of the Town and Country Planning Act 1990 and section 13 Local Government (Miscellaneous Provisions) Act 1976 (and in accordance with the procedures in the Acquisition of Land Act 1981).	21 - 55
25.	<b>Elephant and Castle Shopping Centre - Interference with Property Rights</b> To approve the council entering into an agreement with Elephant Three Properties Limited ("E3") and Elephant & Castle Properties Co. Limited ("EC") for the acquisition by agreement by the council of a leasehold interest from University of the Arts, London ("UAL") in the London College of Communication ("LCC") site shown and related recommendations.	56 - 71

### Contact

Virginia Wynn-Jones, Paula Thornton on 020 7525 4395/7055 or email: virginia.wynn-jones@southwark.gov.uk, paula.thornton@southwark.gov.uk; constitutional.team@southwark.gov.uk  
Webpage: southwark.gov.uk

Date: 16 March 2020

## List of Contents

<b>Item No.</b>	<b>Title</b>	<b>Page No.</b>
<b>26.</b>	<b>Draft Loneliness Strategy</b> To approve the draft strategy to tackle loneliness and social isolation in Southwark.	72 - 98
<b>31.</b>	<b>Draft Walworth Social Regeneration Charter</b> To approve the draft Social Regeneration Charter as the basis for further consultation.	99 - 126
<b>32.</b>	<b>Draft Social Regeneration Charter for Bermondsey &amp; The Blue</b> To agree the draft Bermondsey and the Blue Social Regeneration Charter (SRC) to go out for formal consultation and to agree the SRC geographies for the whole borough.	127 - 156
<b>33.</b>	<b>Gateway 1: Alternative Provision Procurement Strategy</b> To approve the recommendation to proceed with a procurement strategy that establishes a framework agreement for alternative provision in Southwark for a period of 4 years.	157 - 168

## ELEPHANT AND CASTLE SHOPPING CENTRE – PROGRESS REPORT

## New homes in Elephant and Castle Opportunity Area

Scheme	Total Units	For sale	Affordable			Intermediate
			Total	Social rent	Affordable rent	
Heygate Replacement Housing Sites						
Arch Street	52	0	52	18		34
Bolton Crescent*	103	0	103	88		15
Brandon Street	18	0	18	18		0
Comus Place	37	0	37	37		0
Library Street	40	0	40	21		19
Royal Road*	96	0	96	76		20
St George's Road	15	0	15	15		0
Stead Street	140	56	84	84		0
Symington House* (Harper Road)	72	0	72	50		22
Wansey Street	19	12	19	12		7

Notes

<b>Total Heygate Replacement</b>	<b>592</b>	<b>68</b>	<b>536</b>	<b>419</b>	<b>0</b>	<b>117</b>
----------------------------------	------------	-----------	------------	------------	----------	------------

<i>Market provision</i>						
360 Tower	457	278	179	79		100
Eileen House	355	270	65	0		65
Meadow Row	19	12	7	3		4
7 Munton Road	29	0	29	25		4
89-93 Newington Causeway	38	27	11	0		11
134 New Kent Road	21	0	21	10		11
O Central	182	138	44	18		26
Printworks	164	97	67	24		43
St George's Circus (128 -150 Blackfriars Road)	336	275	79	56		23
South Central	113	88	25	13		12
Strata Tower	408	310	98	0		98
1 The Elephant	284	284	0	0		0
Vantage Tower	68	48	20	0		20
237 Walworth Road	54	37	17	9		8
Elephant 1 [50 New Kent Road] **	373	373	0	0		0
5-9 Rockingham Street	30	20	10	4		6
2-16 Amelia Street	55	35	20	10		10
Manor Place	270	166	104	44		60
Chatelaine House	54	37	17	7		10
87 Newington Causeway	48	32	16	8		8
Trafalgar Place	235	181	54	26		28
E&C Shopping Centre [east & west sites]	979	649	330	116	214	
136-142 New Kent Road	81	59	22	12		10
111-123 Crampton Street	48	33	15	6		9

14/AP/3871

16/AP/4458 AR includes 53 LL

17/AP/3910

<b>Market Total</b>	<b>4701</b>	<b>3449</b>	<b>1250</b>	<b>470</b>	<b>214</b>	<b>566</b>
---------------------	-------------	-------------	-------------	------------	------------	------------

Scheme	Total Units	For sale	Affordable			Intermediate e
			Total	Social rent	Affordable rent	
<i>Elephant park [Lend Lease former Heygate]</i>						
MP1 [H6,10,13] ***	360	284	76	17	4	55
MP2 [H2,3] ***	595	472	123	26	39	58
MP3 [H4,]***	445	354	91	17	26	48
MP3 [H5] ***	384	309	75	9	32	34
MP4 [H11a/11b]	481	377	104	8	46	50
MP5 [H7]	421	340	81	23	18	40

subject to planning

<b>EP Built/Consented</b>	<b>2686</b>	<b>2136</b>	<b>550</b>	<b>100</b>	<b>165</b>	<b>285</b>
---------------------------	-------------	-------------	------------	------------	------------	------------

<b>TOTALS</b>	<b>7979</b>	<b>5653</b>	<b>2336</b>	<b>989</b>	<b>379</b>	<b>968</b>
---------------	-------------	-------------	-------------	------------	------------	------------

.R and 161 DMR

## APPENDIX B

### ELEPHANT AND CASTLE SHOPPING CENTRE – PROGRESS REPORT

#### LEND LEASE PLANNING OBLIGATIONS UPDATE SEPTEMBER 2019

Appendix B Lend Lease Planning Obligations Update September 2019				Additional delivery outside planning obligations
Topic	Commitment	Status	Notes	
Affordable housing	25% affordable housing (by habitable room)	25.75% (by habitable room)	Lendlease has slightly over-delivered on its obligations to provide 25% affordable housing by habitable room, including over delivery of social rented housing and 3 bed units	
	Indicative minimum figure of 71 social rent homes at OPP stage	92 social rent homes		
	Maximum Shared ownership to be no more than 50% by hab room	50.5% rented to 49.5% shared ownership by hab room		
	Minimum 3 bed provision 18% by hab room	Cumulative three bed provision is 23.2% by hab room		
Jobs	Jobs targets set phase by phase. Main target is to provide six months employment to previously unemployed Southwark residents	<p>Jobs targets exceeded on completed Elephant Park phases to date:</p> <p>South Gardens (MP1) – 54 jobs provided against target of 44</p> <p>West Grove (MP2) – 115 jobs provided against target of 83</p>	<p>Jobs targets have also been exceeded on Trafalgar Place and One The Elephant</p> <p>Trafalgar Place – 32 jobs provided against target of 29</p> <p>One The Elephant – 34 jobs provided against target of 33</p>	<p>As well as delivering on its S106 employment obligations to date, Lendlease is also supporting Southwark Council's wider skills and employment objectives.</p> <p>For example, Lendlease has partnered with Southwark Council to deliver the Southwark Construction Skills Centre. Similarly, interim use projects like Artworks Elephant have delivered jobs outcomes outside of Lendlease's S106 obligations</p>
Community	OPP required minimum of	1,550sqm has so far been permitted	Potential for this number to rise	

## APPENDIX B

### ELEPHANT AND CASTLE SHOPPING CENTRE – PROGRESS REPORT

#### LEND LEASE PLANNING OBLIGATIONS UPDATE SEPTEMBER 2019

space	1000sqm D1 community space to be delivered	including Council Library/heritage centre	as future plots are delivered	
Affordable retail	OPP requires a minimum of 10,000 sqm of retail space to be delivered (with 10% of this delivered as affordable retail)	Up to plot H7 Elephant Park will deliver 10,025sqm of retail, with at least 10% of this delivered as affordable retail	Quantum of retail in H1 still to be determined so figure could increase.	
Trees	Deliver a 5% increase in CAVAT value by 2025	<p>Lendlease is on track to deliver this through the below means:</p> <ul style="list-style-type: none"> <li>• 903 trees planted off-site</li> <li>• 400 trees planted on-site</li> <li>• 132 trees retained</li> </ul>	Ongoing monitoring is in place to ensure Lendlease's predictions are correct and more trees can be planted if required to meet the 5% target	
Park	0.8ha park to be delivered	0.83ha hectare park on track to be delivered by 2020	These figures subject to submission and approval of Park Phase 2 RMA)	Lendlease is also running a programme of events to help activate the park. So far over 50 events have been held since it opened in 2017, attracting thousands of visitors.
	0.4 hectares of park to be delivered early	This will be 1.04ha once complete. Phase 1 park delivered 2017 – this achieved the 0.4ha requirement		
Transport	Northern ticket hall – circa £13m (plus indexation)	To be paid on completion of Northern Line ticket hall improvements or long stop date of 2021	Circa £2.9m (dependent on indexation) also due from Trafalgar Place, which will be due to be paid at similar time to Elephant Park	

## APPENDIX B

### ELEPHANT AND CASTLE SHOPPING CENTRE – PROGRESS REPORT

#### LEND LEASE PLANNING OBLIGATIONS UPDATE SEPTEMBER 2019

	TfL bus contribution –£2.2m (plus indexation) towards upgrading bus routes	£2.2m contribution paid in five annual phased instalments, beginning in 2021		
	Cycle hire spaces – 90 to be delivered	48 delivered to date. Remaining 42 to be delivered with an agreed location in the process of being agreed in conjunction with TfL		
	Car club – up to 16 spaces	4 spaces to be provided across the site. This figure has been agreed with Zipcar (the car club operator) on the basis of take-up of memberships from Elephant Park residents and comprehensive Zipcar coverage in the local area.	Scope to increase this provision if required, but this has been led by Zipcar's own user requirements.  Note that original 16 car limit was set prior to Uber becoming a major market entrant into London's transportation network.	
	A series of public realm improvements required across Elephant Park	All s278 highway works associated with MP1 and MP2 have been completed, including the following: Heygate Street – resurfacing, relocation of bus stops from Walworth Road, installation of two new pedestrian crossings.  Repaving of footways to Walworth Road, Heygate Street and Wansey Street The creation of new pedestrian and cycle friendly streets – Sayer Street	Additionally, Lendlease has undertaken enhancements to Walworth Square on behalf of LB Southwark and works relating to the cycle route provision on Rodney Road / Rodney Place on behalf of TfL  Upgrades to follow along Rodney Place associated with MP4  Finally, enhancements to	

## APPENDIX B

### ELEPHANT AND CASTLE SHOPPING CENTRE – PROGRESS REPORT

#### LEND LEASE PLANNING OBLIGATIONS UPDATE SEPTEMBER 2019

		(south and central), O'Callaghan Way,  s278 works underway to New Kent Road to enhance the footway and cycle path, in line with the delivery of MP3.	Elephant Road and Walworth Road (north end) will be linked to the delivery of H1 and coordinated with the shopping centre redevelopment	
Parking	A maximum of 616 spaces allowed across Elephant Park, inclusive of 62 spaces on street	Parking predominantly at basement level only delivered on first two phases – 165 spaces provided to date. Only a further 21 spaces likely to be provided for MP3 – MP5, most of which will be disabled car parking.	Lendlease is delivering fewer parking spaces than it has permission to deliver.	
	Electric vehicle provision (20% active, 20% passive)	Policy compliant levels of active and passive EV provision have been provided.		
	Cycle parking – the OPP committed to delivering 1 space for each 1 & 2 bed unit, and 2 spaces for each 3 bed unit	1057 secure resident cycle parking spaces provided to date in MP1 and MP2 – not including visitor parking in the public realm.	This level of provision exceeds policy standards, and future plots will continue to do the same	
Energy	Requirement to deliver energy centre with enough capacity to provide heat and hot water to Elephant Park	Energy Centre delivered summer 2019, in line with planning obligations		Lendlease has agreed a partnership with the energy provider E.ON, whereby E.ON will offset carbon created by the



## APPENDIX B

### ELEPHANT AND CASTLE SHOPPING CENTRE – PROGRESS REPORT

#### LEND LEASE PLANNING OBLIGATIONS UPDATE SEPTEMBER 2019

	plus Trafalgar Place and capacity for further 1,000 homes			Energy Centre through a biomethane injection.
Education	Total of £1,436,840.26 to be paid on a per-phase basis	<p>Circa £570,000 (including indexation) paid to date in line with S106 requirements for MP1 and MP2.</p> <p>Circa £925,000 (PLUS indexation left to pay in line with occupation of future phases MP3-MP5)</p>		
Health	Total of £1,622,623.27 (excluding indexation; circa £2,000,000 including indexation) payable in stages commencing on the occupation of the 750 <sup>th</sup> unit and for each phase thereafter.	<p>£529,400 paid to date (inclusive of indexation), in line with S106 occupancy trigger of 750 units (mid-way through H2 occupancy)</p> <p>A further circa £1.5m (inclusive of indexation) payable split by phase moving forwards.</p>		
MUGA	£300,000 (plus indexation) towards the upgrade of Victory Place payable on occupancy of 1200 <sup>th</sup> unit	Likely to be payable at the end of 2020 based on current programme		

## APPENDIX C

### ELEPHANT AND CASTLE SHOPPING CENTRE – PROGRESS REPORT

#### PUBLIC BENEFITS THAT WILL ARISE FROM THE CONSENTED SHOPPING CENTRE PLANNING APPLICATION

##### A. *Transport*

1. The proposed development includes the construction of a station box which will become a new ticket hall for the Northern Line underground station. The Scheme provides a prominent new entrance to the new facility directly fronting on to the peninsula in Block E1 (“the UAL Building”). From here, the new ‘Station Route’ will extend into the centre of the site providing a direct surface pedestrian connection to the overground station. From the new entrance to the underground station, escalators will descend to a new ticket hall level where further escalators will link to platform level, allowing for the removal of the existing lifts and closure of the current ticket hall, which will in turn allow for redevelopment of that site, once acquired from London Underground.
2. The works proposed will increase the operational capacity, *efficiency and accessibility* of the station and greatly improve the transition from street to platform level. This represents a significant improvement in strategic transport infrastructure at Elephant and Castle and is a key part of unlocking the growth set out in the Elephant and Castle SPD.
3. The layout of the East Site has been planned to improve the transition between the national rail station, the tube station and the wider town centre, improving the efficiency of this location as a major transport interchange.
4. The removal of the existing basement ramp from Elephant Road allows for a new ground level access to be created between the shopping centre and the existing overground rail ticket hall (from which stairs go to the platforms above). The diagonal ‘Station Route’ forms an axis running from the peninsula to the heart of the site, providing a very direct link between the rail station and the Bakerloo/Northern line ticket halls and the wider town centre.
5. The proposal includes a substantial investment in cycling infrastructure within the buildings and the public realm amounting to 1,988 long-stay and 285 short-stay cycle parking spaces.
6. Cycle hire - The scheme will deliver an additional 60 cycle hire docking points, split between 2x new locations: one primarily serving the East Site and one the West.
7. Bus stop upgrades and real-time public transport information.
8. Car free development.

##### B. *Public Realm*

9. The scheme delivers significant public realm benefits in the form of a network of new routes through the site and completes the network of routes reknitting the centre to the surrounding neighbourhoods as required by the SPD.

10. On the east site railway arches 6/7 which front onto Elephant Road are to be knocked through to provide a pedestrian route which will directly connect the Shopping centre site to Elephant Park.
11. Within the east site itself two new routes (known as the station route and the park route) are to be formed. These will meet at a new space outside the overground station referred to in the application as “the Court”. This space is intended to be the main public / flexible event space for this part of the development.
12. A third route is also planned which would connect Walworth Road to the court along the western side of the rail viaduct.
13. On the west site the existing Pastor Street would be extended northwards to meet St George’s Road, effectively creating a new central street through the site, offering a through-route for pedestrians
14. In combination these connections – particularly the Park Route – greatly improve the permeability of the site and by improving connections with the wider town centre, fulfil a key ambition of the Elephant and Castle SPD.
15. Surveys undertaken as the proposals emerged identified that pedestrian flows reach around 3,000 pedestrians an hour on Elephant and Castle and just in excess of 2,000 pedestrians an hour on New Kent Road during the peaks and given the quantum of development proposed within this scheme and within the wider Opportunity Area, this is expected to increase.
16. The analysis has been used to inform the design of individual routes and pavement widths around both sites. Footways widths have generally increased throughout – with minimums of 5m on the East Site where activity is likely to be greatest and both the Station and Park Routes designed with a 9m width. The information presented demonstrates a significant improvement and that excellent pedestrian comfort levels will be achieved.

## **C** *Town Centre Uses*

17. The scheme will provide 68,188m<sup>2</sup> of new town centre uses comprising retail (A1-A4) and D class floorspace. The resulting uplift in town centre uses will be 15,760m<sup>2</sup>.

### **Retail**

18. The proposed development will provide 18,234m<sup>2</sup> of retail floorspace across both sites. This will result in between 3,102 m<sup>2</sup> and 5,908m<sup>2</sup> of additional retail floorspace within use classes A1-A4, depending on whether the flexible space is fully occupied by retail uses.
19. The scheme complies with the Council’s Supplementary Planning Guidance by providing 10% affordable retail space on the site (1,823.4m<sup>2</sup>). There will also be 2,806m<sup>2</sup> of flexible floorspace which can be used for retail and office purposes. If this were all used for retail this will add a further 281m<sup>2</sup> to the affordable retail requirement, taking the total to 2,104.4m<sup>2</sup>.
20. The majority of the retail and leisure floorspace will be located on the east site. As discussed in the public realm section this site will have excellent connections to Elephant Park and will therefore integrate with the retail coming forward as part of

this development including along Walworth Road where the retail frontage is being extended northwards towards the shopping centre east site to create a continuous retail high street.

21. The high quality retail space within the scheme provides an opportunity to claw back some of the comparison expenditure currently leaking out of the borough. The 2015 Southwark Retail Study) found that just under 50% of comparison goods spend is made outside the borough.
22. The Developer proposes to develop a vision for Pastor Street on the west site to provide a cluster of affordable retail and commercial spaces as part of the formal affordable retail offer. A Pastor Street advisory group will be set up to oversee this.
23. The Developer is required by condition to provide details of the public toilets to be made available as part of the scheme which will benefit the town centre as a whole.

Leisure class D1 and D2

24. At present there is 43,625m<sup>2</sup> (GIA) of D class floorspace on the site which will increase to 47,148m<sup>2</sup>; an increase of 3,523m<sup>2</sup>.

London College of Communication (LCC)

25. The Scheme will deliver a new campus on the east site to house the LCC which is to be relocated from it's existing location on the west site. The provision of this facility will help to secure the College's long-term future in the area and is a significant positive aspect of the scheme.
26. The College serves over 5,800 full and part-time students and 454 (full-time equivalent) staff at its current home on the west site and specialises in creative courses in fields such as journalism, publishing, film, television and sound, graphic communication and photography. It is an important asset to the opportunity area attracting large numbers of visitors in addition to the students and forms part of a hub for the creative clustering which is apparent in the Elephant and Castle area. The numbers of staff employed at the site may increase to approximately 900 as a result of the proposal (an increase of 446 jobs).
27. The brief for the building includes making it more open and accessible to the local community. The lower floors of the education building would be publically accessible and capable of delivering a cultural function for the area, with flexible space for exhibitions, events and the Stanley Kubrick archive.
28. There is sufficient space to accommodate UAL's core university service at the site including its international language centre, training, conference and student union facilities. The building will incorporate a 3-storey exhibition space for student work and archive collections, which can also be hired by the local community

Cinema

29. The scheme incorporates a multi-screen cinema which will help contribute to the development of the town centre. There is flexibility to bring forward other leisure uses if there is demand. The proposal could add a further 8 screens which will meet the identified demand and help to retain more cinema trips in the borough

Cultural venue

30. The second element of the new D class floorspace is the proposed cultural venue which will be located on the west site. This space has been designed to be a multi-functional space that will occupy a prominent position in the area, with a frontage to Elephant and Castle and facing the Peninsula. The ground floor will comprise a lobby with ticketing and reception desk, a 300 capacity event space and ancillary spaces which can be used as recording studios and rehearsal space. At first floor level there will be a foyer, bar and entrance to the main performance space which will have capacity for 500 people.
31. The plans incorporate music rehearsal and recording studios with the potential for events to be held every night to complement the creative uses at the LCC.

#### Bingo

32. The Planning Committee report noted that one of the main adverse equalities impacts of the scheme was the loss of the Bingo facility which has subsequently closed. In order to mitigate the loss of this facility the s106 agreement includes an obligation on the Developer to offer first refusal to a bingo operator, on commercial terms, to lease approximately 1,850m<sup>2</sup> of the leisure floorspace within the proposed development. This will be large enough to accommodate approximately 959 seats.

#### Office

33. The Scheme will include 2,860m<sup>2</sup> of flexible floorspace on the west site which can be used for A1-A4 and B1 purposes. The planning submission advises that it will be flexibly designed to support new business and potential spin out companies from the LCC. The Developer has advised that up to 10% of any new B class floorspace on this part of the site will be affordable.

#### Housing

34. The Scheme will provide 979 residential units in a highly accessible location, on a brownfield site at the heart of the opportunity area which is a focus for new development. 979 homes equates to 36% of the borough's annual housing target and 20% of the minimum target for the opportunity area; a significant contribution to the borough's housing stock.
35. The Scheme provides 35% affordable by habitable room in perpetuity. This equates to 330 affordable units of which 116 will be social rent (38% of the affordable,) 53 London Living Rent and 161 discount market rent. The social rent units are to be provided in three mansion type blocks on the west side. The s106 agreement includes a review mechanism to claw back additional Social Rent units if the Internal Rate of Return is above the 11% which has been agreed.
36. The Scheme will be policy compliant in terms of its unit mix, with 1.6% studio units, 66% 2+ bed units and 12% 3+ bed units.
37. The scheme complies with wheelchair policy which requires ninety percent of new housing to meet Building Regulation requirement M4 (2) 'accessible and adaptable dwellings' and ten per cent of new housing to meet Building Regulation requirement M4 (3) 'wheelchair user dwellings', i.e. designed to be wheelchair accessible or easily adaptable for residents who are wheelchair users.

38. The Scheme provides a good standard of accommodation in line with the Council's requirements set out in the Residential Design Standards SPD. The majority of units (60.3%) on the east site will be dual aspect. The majority of units (80.6%) on the west site will also be dual aspect. All of the units will comply with the minimum floor areas including for storage space.

#### D *Trees*

39. Whilst it is recognised that there will be some loss of existing trees as a result of the Scheme including 4 category B trees, the most valuable will be retained, with no category A trees requiring removal. 10 additional trees will be planted in the public realm across both sites, together with 94 new trees the communal gardens on the east site and 81 on the west site, resulting in a significant increase in the number of trees on the site.

#### E *Employment and Training*

40. The Scheme will create 1,230 construction jobs over the 10 year build programme.
41. The Scheme will generate between 1,813 and 1,990 gross new jobs, depending on the exact nature of the commercial uses which will ultimately come forward; this would be an increase of between 395 and 572.
42. Measures to secure jobs for unemployed borough residents are contained in the s106 agreement.

#### F *Environmental Assessment*

43. The EA identified the following scheme benefits;
- i. Improved population and labour market will provide a long-term benefit at both district and local level (effects ranging in significance between moderate to substantial beneficial);
  - ii. There will be an estimated overall net gain in the number of full-time equivalent jobs supported by the proposed development;
  - iii. The Scheme can generate additional household expenditure as a result of jobs created in association with the site, enhancing the local economy and supporting further direct and indirect employment;
  - iv. Increased sustainable travel as a result of the implementation of the sustainable travel patterns commitment. This includes improved pedestrian permeability, increased site wide cycle facilities and public realm improvements;

#### G *Economic*

44. The new residential population (approximately 1,850 people) has the potential to contribute an additional spend of £1.6m per annum in the opportunity area and £3.6m per annum in the borough.

45. The Scheme will deliver New Homes Bonus revenues of £9 million over 6 years, of which two thirds will go to the council and the remaining third to the GLA. It will also generate approximately £1.5m in Council Tax revenue per year.
46. The Scheme will generate a Mayoral CIL payment (pre-affordable housing relief) of £3,762,975 and a Southwark CIL payment of £15,804,382.

## **APPENDIX D**

### **ELEPHANT AND CASTLE SHOPPING CENTRE – PROGRESS REPORT**

#### **UPDATE ON DELIVERY OF BUSINESS RELOCATION AND MITIGATION**

##### *Delivery of Business Mitigation Package*

1. In May 2017, Cabinet agreed to require the Developer to implement a package of measures to support relocation and mitigate the impact of the closure of the shopping centre on local traders and residents. This package has been developed further through the planning process and significant progress has been made in delivering a comprehensive offer to traders. Progress is summarised below against the principles agreed by cabinet in 2017 and additional mitigations secured throughout the planning process are also discussed.

##### *Database of opportunities*

2. The Town Centre s106 agreement (16/AP/4458) requires the Developer to create a database of vacant retail units (including market pitches) within the Elephant and Castle Opportunity Area and to maintain the database for a period of one year following the cessation of trading in the Shopping Centre. This database went live in December 2018 and includes affordable retail units from nearby developments, high street units and market stall opportunities.
3. It includes both privately owned units and details of vacant retail units within the Council's ownership or control. This database is regularly updated and is available to all independent traders in the opportunity area. It can be accessed via a personal login issued to each trader and also at the Tree Shepherd office.

##### *Business support and relocation advisor*

4. The Town Centre s106 requires the Developer to fund a business support and relocation advisor to support traders. Tree Shepherd has been contracted by the Council to deliver this service since August 2017. Tree Shepherd is based in the Shopping Centre to provide confidential advice to independent traders on a 1:1 and group basis to support their business planning, search for relocation premises and preparations to move. As part of this process, the advisor has conducted a number of tours of alternative sites for the traders.
5. The Developer will continue to fully fund the advisor service during the closure period and for a year after the closure of the centre. During the period leading up to closure of the centre, the advisor will provide additional support as a priority to traders that are still looking to secure a relocation site for their business.
6. In addition to providing ongoing confidential advice, Tree Shepherd supported traders with their applications for the three affordable retail clusters at Elephant One, Castle Square and Elephant Arcade. The advisor has also supported with trader consultations on the administration of the relocation fund. The advisor will administer applications to the relocation fund, on behalf of the Council.

##### *Relocation fund*



7. A business relocation fund of £634,700 has been secured as part of the planning consent to support businesses with their costs of relocation.
8. The relocation fund is designed to be a contribution to eligible business's reasonable costs of relocation. The fund is not designed to be a form of compensation, nor will it replace any statutory compensation due.
9. The sum of £634,700 represents a minimum guaranteed fund. In addition, the Developer has made clear at all-trader meetings on 10 Sept 2019 and 14 January 2020 that it is open to considering meeting additional relocation costs where the fund does not extend to cover all needs and in the case of hardship. During the application process for the fund, traders will be supported to calculate their full costs of moving by the business advisor.
10. Businesses able to claim from the fund are defined in the Section 106 agreement. In that agreement, eligible businesses are called 'Local Independent Operators'.
11. 'Local Independent Operators' are defined as all existing, independently-owned, retail businesses, traders, kiosk holders restaurants, market stall holders and charitable organisations on the East Site in the redline of the E&C opportunity area that meet the three criteria below:
  - i. do not trade from more than 3 locations, and include restaurant operators, café operators and market stall holders;
  - ii. lawfully hold a lease or licence including so that any sub-letting or assignments have been with the approval of the developer or Network Rail (as appropriate);
  - iii. occupied any part of the East Site at the date of the resolution to grant Planning Permission (3 July 2018) and continued to occupy any part of the East Site at the date the Planning Permission was granted (10 January 2019).
12. Businesses can apply to the relocation fund for a period of one year following demolition of the Shopping Centre. Additionally, should the occupiers of the railway arches on the East Site remain in that location, the relocation fund shall continue to be available to them for a further six months.

*Affordable Retail Units under the Elephant and Castle Opportunity Area SPD*

13. The Elephant and Castle Opportunity Area SPD required local developments to set aside 10% of any retail units as affordable and for displaced traders within the opportunity area to have the first right to apply for those units.
14. The two principal sites with units available are the Lendlease development at Elephant Park and the development at 50 New Kent Road known as Elephant One or Elephant Central.
15. As of December 2019, 5 applications from businesses within the Town Centre development area were under consideration by Lendlease and one has so far entered into a lease agreement for an affordable unit.
16. The Developer's affordable units at Elephant One were allocated under the combined affordable unit process discussed under 22 - 25.

### *Additional Mitigations*

17. The offer to traders has been further developed through the planning process and consultation with affected traders;

### *Elephant Arcade*

18. The Council has invested in the conversion of the garages underneath Perronet House into a bespoke retail space named Elephant Arcade. The space will be managed through Meanwhile Space, a retail management specialist, to provide a permanent affordable location for displaced traders in the centre of Elephant and Castle. This site's units have been allocated under the combined affordable unit process discussed under 22-25.

### *Castle Square*

19. The Castle Square planning consent (AP/18/2108) requires the developer to construct a bespoke site for the relocation of traders from the shopping centre during the East Site construction period, for five years or until Practical Completion (which ever is longer). The Developer was required to secure planning permission for this site before implementing the main consent.
20. Consent was granted on 9 January 2019 and it will be available for occupation from June 2020. This site's units were also allocated under the combined affordable unit process discussed under 22 - 25.
21. Those traders moving to Castle Square will have access to a dedicated business support service for the site, in addition to ongoing advice from Tree Shepherd.

### *Relocation of traders to affordable unit clusters*

22. A single application process was conducted by the Council and Developer in March 2019 for the affordable units at Castle Square, Elephant One and Elephant Arcade.
23. There were 64 separate applications, with 36 successful applications and 28 unsuccessful applications. Successful applicants were asked to for an in-principle acceptance of the offer within 14 days, with the respective landlord#s following up after this period with a formal lease.
24. Owing to the absence of certainty over the closure of the centre between March 2019 and January 2020, landlords have been flexible in allowing potential tenants time to consider their options.
25. The distribution of businesses in each affordable cluster may change during the closure of the shopping centre, as businesses finalise their decisions on offers of units. Where units are not taken up, every effort will be made to find a new tenant from traders that have not yet secured a relocation site for their business.

### *Trader Panel*

26. The Developer has established the Trader Panel and its membership which has been approved by the Council as required by the Town Centre s106. The panel has met monthly since January 2019. The panel is comprised of representatives from the Developer and 12 representatives from businesses within the Application Site. The

advisor and Council officers attend by invitation. Ward councillors from North Walworth and St George's wards sit as chair and vice-chair.

27. The panel has held a consultative role as well as a representational role during the implementation of the relocation strategy. The panels have been well attended and have addressed a number of issues connected with the relocation of traders, including:
  - i. The affordable unit application process: Tree Shepherd ran four trader focus groups in August and September 2019 to get input into the criteria that should be used for assessing the applications, which was reported back to the panel and helped construct the process.
  - ii. The relocation fund: The panel members have helped the Council and Developer understand business's priorities for the application and administration process.
28. In addition, the panel holds an oversight and monitoring role during the implementation of the relocation strategy including to:
  - i. Receive regular updates from the Developer on a database of available vacant retail premises within the town centre area suitable for traders.
  - ii. Receive regular reports from the Council and the business support and relocation advisor on the distribution of payments from the relocation fund.
  - iii. Receive regular reports from the Council and the business support and relocation advisor on successful bids and consequent allocation of affordable retail units.
  - iv. Consult with the business support and relocation advisor, the Council and the Developer on relevant issues from the Scheme which affect traders.
29. The Trader Panel is anticipated to continue to meet monthly until three months after the closure of the Shopping Centre, and thereafter quarterly until 6 months following practical completion of the retail floorspace on the West Site.

#### *Rent Reduction for Shopping Centre traders*

30. At the July 2019 trader panel, the Developer confirmed giving a rent reduction for Shopping Centre traders of 50% from June 2019 and 80% from November 2019.
31. Urban Space Management (USM) is the contracted market operator for the developer at the Shopping Centre. The Developer agreed that USM will pay £0 in rent and service charge and have requested that USM to pass on the highest possible discount to the traders.

#### *Centre marketing initiatives*

32. The Developer has set up a staffed community space at the centre to show the history and progress of the development. This space is also available for events for local community groups.
33. The Developer has also produced a brochure in September 2018 called 'The Herd' which details the traders currently in the centre who will be moving locally. This was

most recently updated In December 2019 and distributed to 30,000 homes in the immediate area and provided to traders to give to customers.

34. In addition, the Developer has instituted a number of events around holidays to keep the centre attractive for both customers and traders, including a recent 'Twelve Days of Christmas' showpiece where shop fronts were dressed and decorated for the Christmas period.

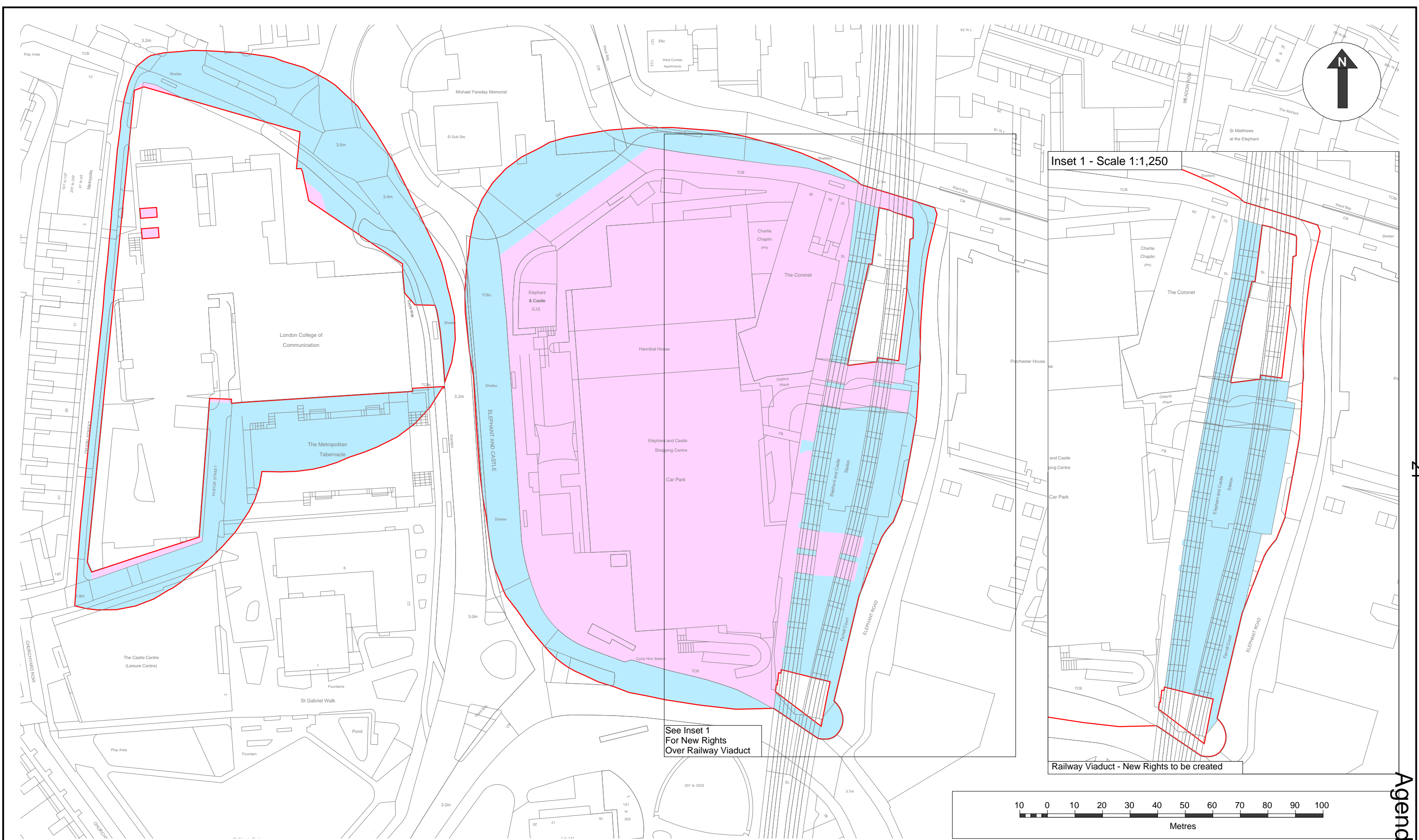
## **APPENDIX E**

### **ELEPHANT AND CASTLE SHOPPING CENTRE – PROGRESS REPORT**

#### **SUMMARY OF 2019 EQUALITIES IMPACT ASSESSMENT**

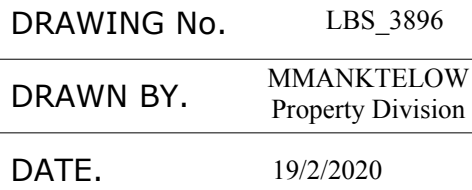
1. When businesses were asked in 2019 whether they had participated in any consultation activities over the last year organised by the developer 81% of respondents stated that they had taken part in consultation activities and 12% stated that they had not. This is a significant change when compared with 2016 when only 27% said they had taken part in consultation activities while 73% responded that they had not participated.
2. 91% of respondents plan to relocate their businesses within the E&C area. 64% of respondents in 2016 planned to do this in 2016.
3. Only 2% of respondents stated that they would close their businesses. 11% of respondents planned to close their business in 2016.
4. 67% of businesses respondents expressed a positive level of confidence as to whether they would be able to relocate within the planned new town centre or immediate area. In 2016 only 34% of respondents expressed positive confidence.
5. Only 17% of respondents stated that they are not confident about their ability to relocate their business. In 2016 55% of respondents responded in this way.
6. The analysis notes that the concentration of BAME businesses in the centre represents a cluster of outlets which provides services to a range of ethnic groups. Around 30% of all businesses surveyed agreed that their business serves the needs of those with a shared ethnic background. This figure was much higher from specific BAME business owners where it increased to 63% of Latin American business owners, 77% of black/black British and 77% of black African and Caribbean business owners.
7. Primary research with businesses showed that 77% of employees are from BAME groups with the majority of these from Asian/Asian British backgrounds followed by Latin American employees. The report states that BAME employees are currently over represented on site and therefore may be disproportionately adversely impacted the redevelopment. The report notes however that employees working for businesses relocating within the Elephant & Castle area should be able to retain employment with their current employer and that only 2% of businesses surveyed planned to close their business. It also notes that development will create jobs through construction and end use development and that the s106 includes obligations to ensure local and unemployed people can benefit from these opportunities.
8. The on street survey results suggests that customers within a number of BAME groups (Asian/Asian British, Black African and Caribbean, Latin American) are most likely to use culturally specific shops or services in the centre and at the market. These findings suggest that the redevelopment may potentially impact on BAME groups who benefit from the provision of specialist goods and services which are currently clustered at the site. The report notes however that “the local area has a diverse mix of shops that provide a wide range of similar goods and services”.

9. The report also found that support for the scheme amongst customers had dropped from 67% in 2016 to 42% today (while 14% opposed the scheme compared with 6% in 2016). One of the main reasons identified for the reduction in support was concerns about what will happen to businesses currently in the shopping centre. Aecom noted that to minimise the risk to businesses and customers the developer has produced the “follow the herd campaign” including a website to promote local businesses relocating in the area. They recommend that this campaign should be escalated during the six month period leading up to the closure of the centre.
10. The analysis also noted the many positive benefits of the scheme which will potentially benefit groups with protected characteristics. Positive outcomes from the scheme include 979 homes including 330 affordable units benefitting groups with high needs for access to housing with high representation amongst the local population including BAME groups, women, families with children (including single parent families) and young people. The scheme includes step free access as part of the new NLTH (with benefits for those with a disability, elderly people or families with young children), new public spaces and cultural offer.
11. The positive equalities benefits of retaining the LCC at the site should also be noted. In this regard, key LCC data is noted below;
  - LCC has 37.2% BAME students compared to an average of 20.9% for the Higher Education Institute (HEI).
  - LCC has 66.9% Female students compared to an average of 58.7% for the HEI sector.
  - LCC has 14.6% students with a declared disability compared with an average of 10.6% for the HEI sector.

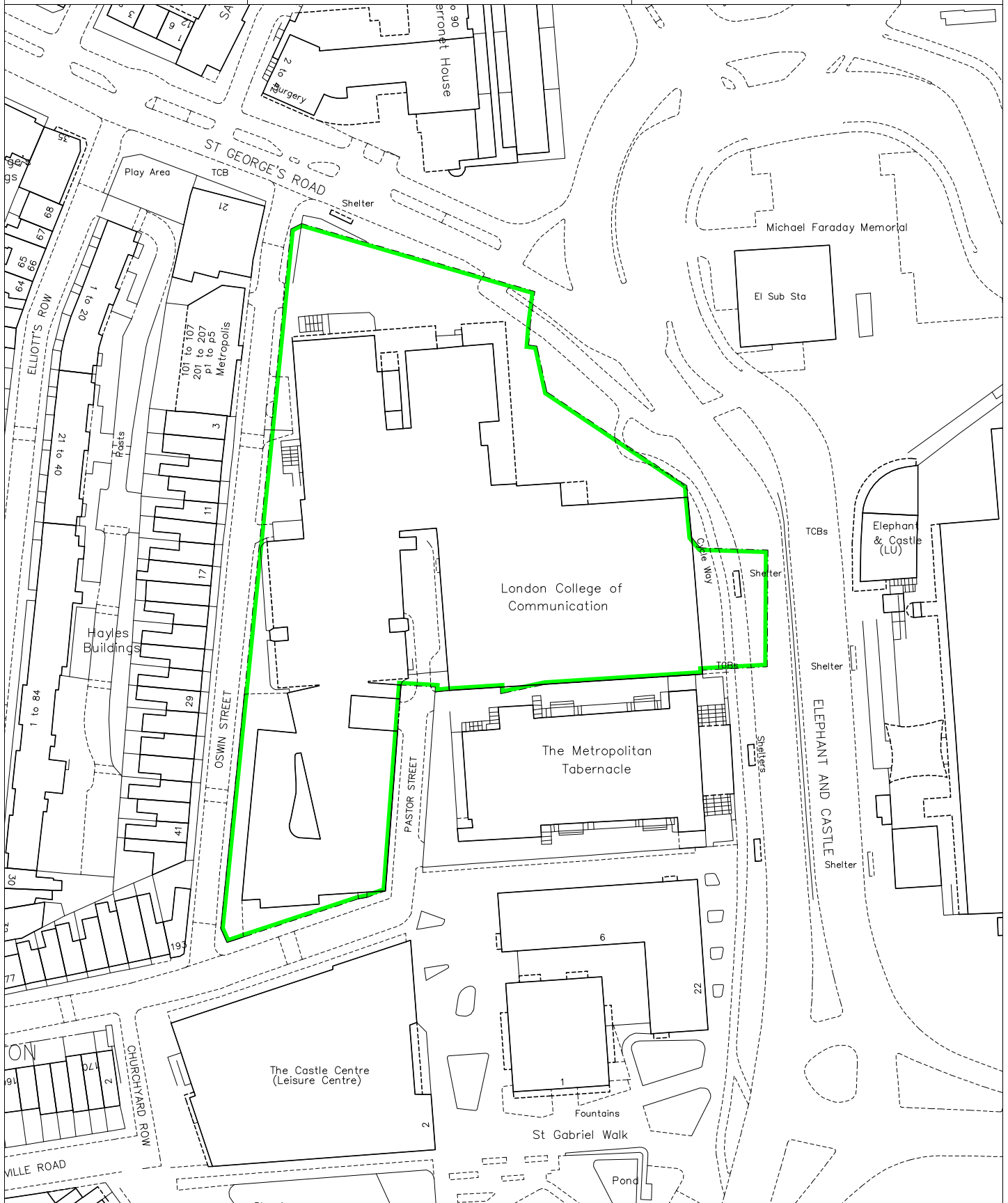


Inset 1 - Scale 1:1,250





**Original Scale - 1:1250**  
Subject to variation when reproduced  
from an Adobe pdf source





## APPENDIX C

### ELEPHANT AND CASTLE SHOPPING CENTRE - COMPULSORY PURCHASE ORDER

#### STATUS UPDATE SUMMARY ON DISCUSSIONS WITH THIRD PARTIES

##### (PROVIDED BY DEVELOPER)

1. This document provides a summary of the current status of agreements with the key third parties whose land interests need to be acquired or over whose land new rights are sought to facilitate the redevelopment.

##### *Occupiers of the Shopping Centre and Market*

2. Over the course of several years, agreements have been reached with the vast majority of the occupiers which will enable vacant possession of their units to be obtained. The market traders all have short term licences. Within the shopping centre, by agreement with many traders, short term leases with break clauses have been entered into to facilitate the redevelopment. Some longer lease interests without break clauses have also been surrendered/acquired. This process enabled the acquisition of the leasehold interests of e.g. the bingo and bowling operators and the Charlie Chaplin pub.

The tenants that remain within the shopping centre fall into the following three categories:

- a) Tenants that occupy premises at the shopping centre whose leases, by agreement, are contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954 (the "Act") and the leases are due to expire after 30 July 2020. 14 tenants fall within this category. All have been served with break notices to terminate their tenancies on 30 July 2020;
- b) Tenants who have a lease which expires in advance of 30 July 2020, and that lease is also contracted out of the Act by agreement. 64 tenants fall within this category. These tenants have all been offered short term renewal tenancies (excluded from the Act) to extend their occupation until 30 July 2020; and
- c) Tenants that have security of tenure under the Act. As at the date of this note, 11 tenants (7 national multiple retailers and 4 local retailers) fall within this category and they have been served with notices pursuant to the Act terminating their tenancies on or before 30 July 2020, with the landlord opposing the grant of a new tenancy based on ground (f) (redevelopment). 3 of the 4 local retailers are in the process of taking up offers of relocation in one of Perronet House, Castle Square or Elephant One and the fourth of those local retailers was offered a place at Castle Square but has decided to relocate nationally. Of the 7 national multiple retailers, 5 have confirmed they intend to vacate and this is in the process of being documented. Confirmation has not yet been received from the remaining 2 national multiple retailer tenants that they will vacate by 30 July 2020. For those, court proceedings to terminate their tenancies may be necessary, which poses a risk to the commencement of the development.

The developer continues to comply with its relocation obligations in the section 106 planning agreement as to the “East Site” occupants.

*University of the Arts, London*

3. Heads of Terms are agreed with this key commercial occupier for the new scheme. Commercial terms for the sale of their existing London College of Communication site and purchase of the new building are agreed. It is the developer’s intention that these documents will be agreed and exchanged by the end of Q1 2020.

*London Underground Limited*

4. The section 106 agreement requires the developer to enter into an agreement with LUL. Many of the commercial terms for this agreement, which incorporates infrastructure protection, have been agreed in principle for some time. Further discussions are taking place around the delivery of a larger, new station box, to future proof the Bakerloo line extension and upgrade. It is the developer’s intention that these documents will be agreed and exchanged by the end of Q1 2020.

*Transport for London*

5. Areas of land owned by TfL are required for the scheme. Discussions are ongoing as to the valuation of TfL’s interests. It is the developer’s intention that these documents will be agreed and exchanged by the end of Q1 2020.

*Network Rail*

*Asset Protection Agreement*

6. A draft Asset Protection Agreement has been provided by Network Rail. The terms have been reviewed and comments returned.

*Station Change*

7. The administrative process for removing the bridge link to the shopping centre has commenced. The station will operate satisfactorily without the bridge link and so the formal station change process is underway, with the developer’s intention to have the agreement concluded with Network Rail and the station operator, Govia Thameslink Rail, by the end of Q1 2020.

*Title matters*

8. The freehold title at the boundary of the Shopping Centre and railway viaduct is proposed to be rationalised and rights granted by Network Rail to facilitate the scheme. Again, the developer’s intention is to have the agreement concluded with Network Rail by the end of Q1 2020.

*The Arch Company*

9. The Arch Company was granted a long lease of all of the Elephant & Castle railway arch units by Network Rail. Discussions are ongoing regarding commercial and title terms with the Arch Company. It is hoped that agreement can be reached shortly, enabling legal agreements to be exchanged in Q1 2020. The development on the shopping centre site can commence without further agreement from Arch Company

or its occupational tenants but Units 6 and 7 Farrell Court (see below) within the arches would need to be acquired to create the proposed new pedestrian link from Castle Square and Elephant Road to the new town centre redevelopment. These two arches would need to be acquired within the next 3 years; it is hoped they can be acquired by private treaty during that period but CPO powers may need to be used. Greater title to the two access arches currently held long leasehold by the developer, to the immediate north of the train station, is also required to enable those units to be brought into beneficial use.

*Occupational tenancies in some of the railway arches on Elephant Road*

10. The scheme envisages the use of what are currently Unit 6 Farrell Court (Distriandina) and 7 Farrell Court (Beset International) as the new pedestrian link to Elephant Road. Discussions with both occupiers are ongoing in terms of their relocation to premises in the locality.
11. Land at the rear of arch units 113/122 is occupied by Lenos & Carbon. This rear area would need to be removed as part of the development and therefore the developer needs to acquire all interests in that area. The developer wrote to the tenant in February 2020 in respect of that rear area and will seek to minimise disruption arising from the removal of that rear area.

*30-32 New Kent Road*

12. The freehold interests in both of these properties (newsagent and dentist) have now been acquired. The acquisition of the leasehold interest in 30 New Kent Road is imminent.

*Two kiosks on New Kent Road*

13. These kiosks near the railway viaduct bridge, near 30-32 New Kent Road, are likely to need to be removed. It has been established that they are held by licences granted by the Council (with consent of TfL as the highway authority) and the licences are terminable by the Council on 21 days' notice.

*London Power Networks*

14. The current substations on the shopping centre and LCC sites will need to be relocated. Discussions have commenced in this regard with the electricity undertaker and it is not expected that there will be difficulty in agreeing the relocation of their apparatus, as is commonplace in redevelopment.

*Mobile phone operators (in respect of phone masts on buildings)*

15. There are four mobile operators, all of whom are now in agreement to vacate on or before the end of February 2020.

*New Rights to be acquired over land*

16. These include:
  - a) Metropolitan Tabernacle – the right to “de-couple” the immediately adjacent LCC building from one façade of the Tabernacle, to scaffold over part of the property during works and to oversail with a crane during construction.

- b) Right of access through the railway train station and through the railway arch units south of the railway station to facilitate boundary works on the western edge of the railway viaduct and to the western façade of the train station, and in the case of Units 4 & 5 Farrell Court (Corsica Studios) the right to undertake the sound mitigation works discussed with Corsica during the planning application process. Rights of access to affix cabling and wiring on the sides/underneath of the viaduct.
  - c) Right of access and to carry out works to railway arch units 113c and 122. As stated above, the occupied area at the rear of this unit would need to be acquired and then removed for the scheme; a right is sought to enable access to this unit to facilitate that work and any consequential works that may be required as a result.
  - d) Crane oversail rights over some highway areas and to a small extent over The Castle Centre and Perronet House.
17. In each case the acquisition of the proposed rights either forms part of wider discussions with stakeholders (such as Network Rail) as referred to above or the developer intends to write to the relevant parties by the end of February 2020, requesting those rights by agreement.

## APPENDIX D

### ELEPHANT AND CASTLE SHOPPING CENTRE - COMPULSORY PURCHASE ORDER

#### THE COUNCIL'S POWERS AND THE LEGAL AND POLICY GUIDANCE FRAMEWORK

1. It has been made clear repeatedly by the courts over the last few decades that special care needs to be undertaken when considering the justification for compulsory acquisition of land, given the draconian nature of the process of state appropriation of private property against the will of the owner. Compulsory purchase of land involves a serious invasion of the private proprietary rights of citizens. The power to dispossess a citizen of his land against his will is clearly not a power which should be exercised lightly and without good and sufficient cause. The use of statutory authority for the destruction of property rights in this way requires must be based on the right legal principles, adequate evidence and proper consideration. A CPO can only be confirmed when it is necessary in the public interest to do so and the public interest must demand the acquisition decisively. There must a clear case to justify depriving an owner of his land in the public interest.
  
2. Of central importance to the issue of whether CPO powers should be used are the provisions of Section 226(1)(a) of the 1990 Act, which give the Council power to acquire compulsorily any land in their area if the Council thinks that the acquisition will "facilitate the carrying out of development/re-development, or improvement on, or in relation to, the land". In exercising this power, the Council must have regard to Section 226(1A) of the 1990 Act and must not exercise the power unless it thinks that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects:
  - (a) The promotion of improvement of the economic well-being of the area;
  - (b) The promotion or improvement of the social well-being of the area;
  - (c) The promotion or improvement of the environmental well-being of the area.
  
3. Section 227 of the 1990 Act gives the Council the power to acquire by agreement any land which it requires for any purpose for which it may be authorised to acquire land under section 226.
  
4. Acquisitions of land under section 226 or 227 engage the provisions of sections 203-205 of the Housing and Planning Act 2016 ("the 2016 Act"). Section 203 enables third party rights over that land (such as easements, restrictive covenants and rights of light) to be overridden so that development may proceed (provided it is carried out in accordance with planning permission), with the third parties who hold the rights being entitled to compensation under section 204 of the 2016 Act, based on the diminution in value of their property once their rights have been infringed. These provisions prevent the third party who holds the rights from preventing development from proceeding, because their right to obtain an injunction is translated into a right to compensation only.
  
5. Section 203 enables a development to proceed in accordance with a planning permission even though in doing so rights over the development site which benefit adjacent properties may be infringed. The pre-conditions to the engagement of section 203 are (i) there is planning consent for the development, (ii) the land on which the development takes place has at any time on or after 13 July 2016 become vested in or acquired by the local authority for planning purposes, or been

appropriated to planning purposes, (iii) the authority could acquire the land compulsorily for the purposes of the development and (iv) the work is for purposes related to the purpose for which the land was vested, acquired or appropriated. The rights which the adjacent properties enjoy over the proposed development site are overridden under section 203 and under section 204, the holders of the rights are entitled to statutory compensation based on the loss in value of their land as a result of the infringement. The claim for compensation would be against the person who infringed the rights but under section 204 the acquiring local authority has a residual liability to pay that compensation.

6. Where rights are overridden, the right to compensation for interference with the rights does not occur until the right is actually interfered with, which (depending on the nature of the right) is usually at some point in the construction process and not when the acquisition is made by an acquiring authority.
7. This is a powerful tool in enabling developments as it means that third party holders of the rights cannot prevent the development proceeding (by way of an injunction) - their right to obtain an injunction is translated into a right to compensation only. It also provides certainty for a developer in estimating the basis upon which any compensation is due, as the compensation will be based on a loss in value basis of the property which has the benefit of the right, rather than on any other basis which might fall to be negotiated i.e. it stops the developer being held to ransom or having to pay a share of the development profits.
8. Section 13(1) of the Local Government (Miscellaneous Provisions) Act 1976 provides that a local authority which may be authorised by a Minister of the Crown, by means of a CPO, to purchase any land compulsorily for any purpose may be authorised by that Minister, by means of such a CPO, to purchase compulsorily for that purpose such new rights over the land as are specified in the CPO; and "new rights" means rights which are not in existence when the CPO specifying them is made.
9. Once land has been acquired by the Council for planning purposes under section 226 or 227 of the 1990 Act, the land may then be disposed of to a third party pursuant to section 233 of the 1990 Act. Section 233(1) permits the Council to dispose of the land to such persons, in such manner and subject to such conditions as appear to the Council to be expedient in order to:
  - (a) secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it (whether by the Council or by any other person), or
  - (b) secure the erection, construction or carrying out on it of any buildings or works appearing to the Council to be needed for the proper planning of its area.

In this case it is section 233(1)(a) that is relevant.

10. The consideration received by the Council for such disposals must be "the best consideration that can reasonably be obtained", unless the Secretary of State's consent is obtained to the contrary or unless the disposal is the grant of a lease of seven years or less or the assignment of a lease with seven years or less unexpired at the date of assignment. In judging what consideration can be achieved, account must be taken of the expediency as referred to in section 233(1).

11. The Council is required to exercise its powers of disposal under section 233 in a manner which, so far as practicable, secures that relevant occupiers of that land are provided with a suitable opportunity to obtain accommodation (section 233(5)). Relevant occupiers for these purposes means residents and those carrying on business on the land who wish to obtain accommodation on such land and are willing to comply with any requirements of the authority as to the development and use of such land (section 233(6)). A suitable opportunity for accommodation means, in relation to any person, an opportunity to obtain accommodation on the land in question which is suitable to his reasonable requirements, on terms settled with due regard to the price at which any such land has been acquired from him (section 233(7)).
12. As regards human rights, the Human Rights Act 1998 incorporates into domestic law the European Convention on Human Rights. Article 1 Protocol 1 Convention rights have to be considered: every natural or legal person is entitled to the peaceful enjoyment of his possessions. This can cover, for example, enjoyment of existing assets with economic value, such as the marketable goodwill of a business. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. This does not impair, however, in any way the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. In respect of this right under Article 1 of the Protocol, a fair balance must be struck between the public interest and private rights.
13. Article 8 Convention rights also apply and are engaged i.e. everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority with the exercise of this right except such as 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 the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. Any interference with this right must be proportionate. Article 8 covers family life and private social life enjoyed at a place of work or in professional, business or commercial activities. If children could be affected, then the best interests of the child shall be a primary consideration.
14. Article 6 Convention rights are also relevant: in the determination of 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.
15. Consideration may also need to be given as to whether other Articles of the Convention are engaged, for example: Article 9 (freedom of thought, conscience and religion; Article 11 (freedom of peaceful assembly and association) and Article 14 (freedom from discrimination).
16. Section 149 of the Equality Act 2010 imposes a general equality duty on public sector authorities ("the PSED"), in the exercise of their functions, to have due regard to the need to:
  - Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act.
  - Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it.

- Foster good relations between people who share a relevant protected characteristic and those who do not share it.
17. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
18. For the purpose of the PSED the following are "protected characteristics":
- Age
  - Civil partnership
  - Disability
  - Gender reassignment
  - Pregnancy and maternity
  - Race
  - Religion or belief
  - Sex and sexual orientation.
19. Case law has distilled a number of principles as regards the PSED. The duty is a continuing one.. "Due regard" in the context of the PSED means the regard that is appropriate in all the particular circumstances, including the importance of the areas of life of the members of the protected group that are affected and the extent of the effects and such countervailing factors as are relevant to the function which the decision maker is performing. The PSED is not a duty to take specific steps - indeed the courts have warned against micro management of the PSED process - nor is it a duty to achieve results. It is a duty to have regard to the need to achieve the various objectives referred to above. A public body needs to be satisfied that it has sufficient information available to it to make informed decisions. It must be clear precisely what the equality implications are; there must be conscious directing of its mind to the obligations in the PSED, which requires consideration of the specific goals in play and consideration of the relevant materials with those goals in mind; and the "due regard" duty requires a proper and conscientious focus on the statutory criteria, which is more than simply giving consideration to the issue.
20. Policy guidance on the use of compulsory purchase powers is set out in the Minister for Housing Communities and Local Government's July 2019 Guidance on Compulsory Purchase Process and The Crichel Down Rules ("the Guidance"). In the document's General Overview it provides the following:



- Compulsory purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental, and economical change;
  - Acquiring authorities should use compulsory purchase powers where it is expedient to do so;
  - However, a CPO should only be made where there is a compelling case in the public interest;
  - Compulsory purchase is intended as a last resort; but
  - It may be sensible for the acquiring authority to plan a compulsory purchase timetable as a contingency measure and initiate formal proceedings to mitigate loss of valuable time and to encourage those whose land is affected to enter into meaningful negotiations; and
  - When making a CPO acquiring authorities should be sure that the purposes for which the CPO is made justify interfering with the human rights of those affected.
  - In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.
21. The Guidance advises that the acquiring authority must be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought at this time and should have a clear idea of how it intends to use the land which it is proposing to acquire. It should be able to show that all necessary resources are likely to be available to achieve that end within a reasonable time-scale.
22. The Guidance also makes clear that an acquiring authority should provide substantive information about the sources of funding for acquiring any land and new rights and for implementing the scheme for which the land is required and that funding should be available now or early in the process.
23. The Guidance advises that acquiring authorities will need to demonstrate that the scheme for which a CPO is made is unlikely to be blocked by any physical or legal impediments. These include:
- the programming of any infrastructure accommodation works or remedial works which may be required; and
  - the need for planning permission for the scheme (or where planning permission has yet to be granted an acquiring authority should demonstrate that there are no obvious reasons why it might be withheld) or other consent or licence.
24. Paragraph 106 of the Guidance also gives an indication of those factors the Secretary of State can be expected to consider if the Council made a CPO and the Secretary of State was asked to confirm it. These include:

- whether the purpose for which the land is being acquired fits in with the adopted Local Plan for the area or, where no such up to date Local Plan exists, with the draft Local and the National Planning Policy Framework
- the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental wellbeing of the area
- whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired
- the potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be.

## **APPENDIX E**

### **ELEPHANT AND CASTLE SHOPPING CENTRE - COMPULSORY PURCHASE ORDER**

#### **Further detail on CPO process and compensation**

##### **Background**

1. The ability to make compulsory purchase orders is limited to predominantly public sector organisations. EC does not have these powers hence its approach to the Council to utilise its powers to enable the Scheme to happen.
2. Section 226(4) Town and Country Planning Act 1990 makes clear that it is a perfectly legitimate use of compulsory purchase powers for a local authority to make a CPO for planning purposes even though it is not the Council itself who is to undertake the development.
3. Since EC will be the beneficiary of the CPO it is therefore appropriate that it indemnifies the Council against all the costs arising from its making and subsequent execution.

##### **Interaction between the CPO and the Landlord and Tenant Act 1954 and the measure of compensation available to owners/occupiers**

4. As set out in the main body of the report, all the property interests in the Shopping Centre will be brought to an end using standard landlord and tenant procedures under the Landlord and Tenant Act 1954 ("the 1954 Act") or using the contractual break notices and the inclusion of these properties in the CPO is a protective measure in the event that there is any unexpected delay or problem in obtaining possession through that route.
5. Where there is no means of acquiring properties or rights through the landlord and tenant route then, in the absence of agreement with the relevant owners of the property interest, compulsory purchase will be the only available option. If compulsory purchase takes place the property or rights owner will be compensated on the basis of the statutory "land compensation code", which is a mixture of statute and case law based rules and principles for compensation in compulsory acquisition. This is different from the compensation regime under the 1954 Act set out above.
6. The statutory compensation code provides that commercial leaseholders are entitled to the following compensation following a compulsory acquisition:
  - a) The market value of the leasehold interest in the property;
  - b) Statutory loss payments based on a fixed percentage of market value and/or a formula based on the area of the property
  - c) Payment for loss of profits arising from the relocation or extinguishment of the business [as appropriate]

- d) a disturbance payment to cover the leaseholder's reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include relocation costs, legal fees and surveyors fees
  - e) where the lease is held as an investment rather than for occupation the reasonable costs of acquiring a replacement investment provided that is done within twelve months of the transfer of ownership of the asset
7. The freeholders of properties subject to statutory compensation are entitled to:
- a) The market value of the freehold interest in the property;
  - b) Statutory loss payments based on a fixed percentage of market value and/or a formula based on the area of the property
  - c) Payment for loss of profits arising from the relocation or extinguishment of the business if the premises are occupied by the freeholder
  - d) Where the freeholder is in occupation, a disturbance payment to cover the reasonable costs arising as a direct and natural result of the compulsory acquisition, this might include relocation costs, legal fees and surveyors fees
  - e) Where the property is held as an investment rather than for occupation the reasonable costs of acquiring a replacement investment provided that is done within twelve months of the transfer of ownership of the asset.

## **Outline of Compulsory Purchase Procedure**

### *Resolution*

8. The Cabinet passes a resolution to make a CPO. This is the purpose of this report.

### *Land Referencing*

9. Final details are assembled of all owners, tenants and occupiers that have land interests in the CPO land and of parties that may have rights over the CPO land. This is to both identify what interests need to be acquired and who is entitled to receive a notice of the publication of the CPO. These relevant interests will be set out in a Schedule that will be incorporated into the CPO. Formal requisitions for information have been served on all known owners and occupiers of each property to be subject to the CPO but with the Council having made very clear that this does not in any way pre-judge any decision by Cabinet as to the merits or otherwise of any CPO. It is important that the Council takes all reasonable steps to ensure that all interests are identified and included in the CPO. This stage will also enable the precise details of the CPO areas to be determined. The boundaries shown on the draft CPO map at Appendix A may need amendment in the light of this and it is recommended that the Director of Regeneration is delegated authority to set the extent of the CPO.

*Making the CPO*

10. The Council makes the CPO, to a defined format. A schedule goes with the CPO identifying ownership details of all land within it. A Statement of Reasons must also be prepared to accompany the CPO. This document sets out the Council's reasoning and justification for the CPO.

*Publication of the CPO*

11. The Council serves notice of making of the CPO on all freeholders, leaseholders, tenants and occupiers affected by it, which may include persons outside the CPO land who have (or potentially have) rights over the CPO land. A notice of the making of the CPO has to be published for two successive weeks in a local newspaper.
12. The notices will advise that any objections to it can be made to the relevant government minister and specify an address for this purpose. The CPO is then passed to the government minister for confirmation.

*Confirmation of the CPO*

13. The CPO does not become effective unless and until it is confirmed by the minister. Where there are objections to the CPO they must be considered before confirmation. This is usually done by way of a public inquiry but can sometimes be dealt with by written representations.
14. After considering the objections (if there has been a public inquiry there will be an Inspector's Report) the Secretary of State may confirm, modify or reject the CPO. If it is rejected that is the end of the process and E&C and the Council will need to revisit the Scheme, unless it is considered that the Secretary of State has erred in his decision in which case a statutory judicial review can be requested.
15. Following confirmation or if applicable, modification and confirmation, a notice advising that the CPO has been confirmed must be published in the local newspaper and served on all leaseholders, tenants and occupiers affected by the Order. A confirmed CPO can only be implemented within three years to retain its validity.

*Implementation of the CPO and taking Possession*

16. Implementation of the CPO can be achieved by either Notice to Treat/Notice of Entry or by using the General Vesting Declaration procedure. The latter is considered the most appropriate for the Shopping Centre as it transfers both the right to possession and title of the land to the Council. However, the creation of new rights under section 13 Local Government (Miscellaneous Provisions) Act 1976 can only be done using the notice to treat route.

**Indicative Timescale**

- |     |   |   |
|-----|---|---|
| 17. | <ul style="list-style-type: none"> <li>■ Resolution to make the CPO</li> <li>■ Making the Order to Publication</li> <li>■ Publication to Confirmation</li> <li>■ Confirmation to taking Possession</li> </ul> | <p>*</p> <p>6 weeks</p> <p>40 weeks</p> <p>18 weeks</p> |
|-----|---|---|

- \* will follow completion of prerequisite documentation including the indemnity agreement

18. It is therefore likely that it will take around a year and a half between making this resolving to making a compulsory purchase order and obtaining possession but if there are complications it could be longer. It is assumed for the purpose of this indicative timescale that there will be objections to the CPO and that these will require protracted negotiations and/or a public inquiry to resolve. If a public inquiry is needed this will be called for and arranged by the Minister, with an inspector presiding over the inquiry, so the Council has little control over this process. Resource availability at the Planning Inspectorate can cause this to be scheduled rather later than preferred and is a risk to be factored into project planning. If there are no objections or ones that are quickly resolved the period between publication and confirmation may be significantly reduced.

### **Property Acquisitions**

19. Should the recommended resolution be passed, EC will continue to endeavour to acquire all interests by agreement wherever reasonably practical. Once the CPO is confirmed the Council will have the ability to acquire properties by compulsion and any properties acquired compulsorily are vested in the Council. Again, these will be transferred to E&C or its group company. Once the land vests in the Council, it becomes responsible for the payment of compensation. Any compensation agreed or determined by the Upper Tribunal will be paid by the Council but funded by E&C pursuant to the indemnity agreement. In certain circumstances, affected owners of land included in the CPO may be able to claim that their land is “blighted” because of the CPO that has been made and serve a “blight notice” on the Council, requesting that the Council purchases their interest. It is likely to be of limited application in this instance but in any event the costs of acquiring a property pursuant to a blight notice because of the making of the CPO (if appropriate) will be covered in the CPO indemnity agreement.

## APPENDIX F

### ELEPHANT AND CASTLE SHOPPING CENTRE - COMPULSORY PURCHASE ORDER

#### ADVERSE EFFECTS SPECIFICALLY ARISING FROM PROPOSED CPO

1. The CPO process can be used to remove occupiers of the Shopping Centre with security of tenure under the Landlord and Tenant Act 1954 if they are successful in resisting court proceedings by EC UK to obtain vacant possession on the ground of redevelopment. There are only 11 such occupiers and the majority (seven) of them are national multiple retailers rather than local independent traders. Each of the independent traders have been offered relocation options in Castle Square, Elephant 1 and Elephant Arcade. It is expected that EC UK will be successful in those 1954 Act proceedings but the CPO can be used as a safeguard in this respect. Those occupiers may therefore be relinquished of their leasehold interests in the Shopping Centre against their will. For the national multiple retailers, this is not considered to be a serious detriment to their business as they have many stores. The consequences for the independent traders in that scenario are likely to be more consequential, though, and in a worst case scenario may possibly result in them ceasing trading altogether.
2. The use of CPO powers in relation to the two railway arches to which EC already has long leasehold title, so that control can be achieved to turn those two arches into retail or other A use class units, will deprive Network Rail and Arch Co of their respective freehold and long leasehold title to those arches. Similarly the acquisition by the Council under a CPO of Arches 6 and 127/133 will deprive the same parties of their freehold and long leasehold titles to those premises. Network Rail is a very large national undertaking and it is not considered that such acquisitions will have a serious detriment to it, particularly given the fact that it has in effect disposed of much of its railway arch premises investment portfolio to the Arch Co by virtue of the grant of a long lease. Arch Co is a large, commercial concern with many railway arch units across the country pursuant to that leasehold title. It is not considered that the acquisition of (potentially) 4 arches will cause serious detriment to it.
3. The occupiers of Arches 6 and 127/133 will be displaced if their interests were compulsorily acquired. In a worst case scenario, they might cease trading as a result of an acquisition by CPO. However, the Council and the developer will continue to work with them to seek alternative premises in the locality into which to relocate. Given they are not within the Shopping Centre itself, there is more time available for their relocation than those located within the Shopping Centre, as the "knock-through" of these arches does not need to occur immediately.
4. The implementation of the CPO will see the area at the rear of Arch units 113c/122 removed to make way for the redevelopment. This will result in some disruption to the occupiers of that unit, who are currently using that rear area as part of their business premises. The Council has assumed that the rear area is a legitimate part of the occupier's leasehold area. The level of disruption will depend on whether the remaining part of the unit can be used beneficially without that rear area. In a worst case scenario, the occupier may cease trading. However, the CPO envisages rights being acquired to carry out consequential works to the remainder of the unit to assist its re-use once the rear area has been removed.
5. Local independent traders on the East Site have access to the relocation funds made available in accordance with the section 106 agreement and the Council has

allocated a further fund of £200,000 as set out in the introductory progress report. Furthermore and independent of those relocation funds, any party that has their interest acquired pursuant to a CPO are be entitled to statutory compensation for the loss of their interest.

6. The CPO covers land owned by TfL and LUL as referred to in the report, the intention is to bring this land into the Scheme by agreement but the CPO will allow for its acquisition if necessary. It is not considered that the acquisition of the TfL paved areas immediately adjacent to the Shopping Centre and the LCC Site will give rise to any significant detriment to TfL's undertaking. Indeed, the acquisition will facilitate the revised highway boundary arrangements which were expressly agreed with TfL in the section 106 planning agreement. The acquisition of the current LUL Northern Line station against the wishes of LUL is clearly something that the Council will do only as a last resort and the Council would only do so in a manner which did not affect the smooth running of the Tube network. In practice this situation is very unlikely to occur as the developer is required by the terms of the section 106 agreement to reach agreement with LUL at an early stage of the Scheme. In each case, TfL and LUL are entitled to compensation for any land acquired.
7. The CPO would also see new rights created over the land shown shaded blue on the plan at Appendix A. The new rights of access that will be sought over the railway station and the arch units to the south of it (other than those being acquired), to facilitate the works to the western boundary of the viaduct, may have the adverse effect of disruption to the occupiers of those premises. However, it is not considered that any such disruption would be long-lasting or significant. The same is true of the rights sought over the viaduct structure for cabling and wiring works.
8. As pointed out in the Planning Committee report in the background papers, the Scheme would result in a reduction in the size of a smoking area at the rear of Corsica Studios. There are no standards in relation to the size of smoking areas, therefore this impact will need to be managed, to limit the number of people using the smaller area.
9. The rights being sought over the Tabernacle, to de-couple the current LCC building, will result in some inconvenience to the Tabernacle, by way of the proposed scaffolding but the Tabernacle itself will remain open to its congregation throughout the duration of any such works and it is considered that such an adverse effect is relatively minor.
10. The acquisition of crane oversail rights over various pieces of land is considered to be relatively minor in effect.
11. The owner of any land interest affected by the new rights will be entitled to statutory compensation in respect of those new rights.
12. The implementation of a CPO will have the effect of overriding any rights of light or other property rights that apply over the CPO site (to the extent they had not already been overridden by way of the overriding arrangements referred to elsewhere on the Agenda). This will be an adverse effect of the CPO. This aspect is dealt with in detail in the interfering with rights report elsewhere on the Agenda. There are 93 registered property interests at the Land Registry which have been identified in this respect (all as to rights of light) and other unregistered interests in those properties may also exist and be affected. Many of those interests will suffer a significant infringement of their rights of light ie without the use of the Council's powers they will potentially be able to apply for and obtain an injunction against the Scheme, or to



seek to hold the developer to ransom. The use of the Council's powers will remove that ability. Again, any party suffering interference with its rights will be entitled to statutory compensation which will be on a diminution in value basis (as required by legislation) rather than a ransom or share of the profits basis.

***Adverse effects of the Scheme generally***

13. It is considered the above adverse effects are relatively limited. Nevertheless, consideration has also been given to the position if all adverse impacts of the Scheme should be ascribed to the CPO and the Council's decision to pursue it. In that scenario, the adverse effects would be more numerous and more significant. As well as the adverse effects referred to above, the following adverse effects arise.
14. Despite the considerable efforts that the Council and the developer have gone to as to relocation of the traders, there are still a number of East Site traders that do not have either an allocated place in one of the three relocation premises being provided or a clear plan as to what they wish to do as regards the relocation of their business. The Council and the developer are committed to assisting these businesses, including the market traders, through the section 106 relocation arrangements and Tree Shepherd will continue to work with each of them to help them decide what they wish to do. The relocation funds will be available to assist them in relocating to other locations. Notwithstanding these points, the possibility remains that the worst case scenario is that a number of these businesses will cease to operate as a result of the Scheme generally. This would be detrimental to the business owners, their employees and customers.
15. Notwithstanding that the Council does not envisage needing to use CPO powers against the kiosks near the bridge on New Kent Road, adverse effects that may arise from the removal of those kiosks. Have been considered. Potentially this may result in the loss of those kiosk businesses but the Council is seeking to relocate those traders within the locality and they will have access to the relocation funds under the section 106 agreement and the Council's further relocation fund. The Council is seeking to relocate the kiosks onto the north side of New Kent Road, very close to where they are now.
16. Secondly, the tall buildings proposed as part of the Scheme will result in adverse day light and sunlight effects on a number of nearby properties, including residential properties, particularly those in Oswin Street, Hayles Buildings and Metro Central Heights. . Cabinet is referred to the Planning Committee report in the background papers - the Planning Committee considered light amenity and overshadowing in detail as part of the planning application process and it was considered that those adverse effects were outweighed by the benefits of the Scheme.
17. Thirdly, as set out in the Planning Committee report, there would be harm to the setting of the Metropolitan Tabernacle. Cabinet will note, though, that notwithstanding the substantial weight given to that harm, the Planning Committee concluded that such harm would be outweighed by the significant public benefits accruing from the Scheme.
18. Fourthly, there are likely to be some adverse equality impacts in relation to age and race as discussed in detail in the main body of this report and the progress report on the agenda. It is considered all that can reasonably expected to be done to mitigate impacts on traders/occupiers and the local community has been and is continuing to be done.

## APPENDIX G

### ELEPHANT AND CASTLE SHOPPING CENTRE - COMPULSORY PURCHASE ORDER

#### WHETHER THE USE OF THE COUNCIL'S POWERS IS JUSTIFIED

1. Firstly, sections 226(1)(a) and 226(1A) of the 1990 Act are considered.
2. The making of a CPO will facilitate the carrying out of development, re-development, or improvement on, or in relation to, the land. There is sufficient evidence that the Scheme is likely to proceed if CPO powers are utilised (together with the Council's other powers as envisaged by the linked reports). Notwithstanding that there will be some negative effects to those affected by the CPO, as referred to in this report and having taken those negative effects into account, the development, re-development or improvement is likely to contribute to the achievement of all of the well-being objects in section 226(1A) of the 1990 Act. The considerable economic, social and environmental benefits that are likely to arise from the Scheme are referred to earlier in this report. Accordingly the statutory tests in sections 226(1)(a) and 226(1A) are met. It has been considered whether this would be the case even if all of the adverse effects of the Scheme generally were ascribed to the CPO and have concluded that even in that scenario the significant benefits of the Scheme are compelling and outweigh those adverse effects.

3. The key paragraphs from the Guidance are now considered.

*Acquiring authorities should use compulsory purchase powers where it is expedient to do so –*

4. Given the benefits of the Scheme, it is clearly expedient to make a CPO to facilitate this very important development. The CPO is essential to the successful implementation of the Scheme.

*However, a CPO should only be made where there is a compelling case in the public interest*

5. having regard to the considerable contributions to the economic, social and environmental well-being of the area that are likely to accrue from the Scheme, which Will transform the town centre, there is a compelling case in the public interest for the use of CPO powers. The public benefits arising from the Scheme amount to sufficiently compelling reasons for powers to be sought and outweigh the loss, creation and overriding of property interests to individuals and businesses arising from the CPO. Without the use of CPO powers there is uncertainty that the necessary land assembly can be achieved in a reasonable timeframe. Accordingly it is necessary in the public interest for a CPO to be made.

6. The CPO covers land owned by TfL and LUL. As referred to in the main body of the report, the intention is to bring this land into the Scheme by agreement but the CPO allows for its acquisition if necessary. It is not considered that the acquisition of the TfL paved areas immediately adjacent to the Shopping Centre and the LCC Site will give rise to any significant detriment to TfL's undertaking. Indeed, the acquisition will facilitate the revised highway boundary arrangements which were expressly agreed with TfL in the section 106 planning agreement. The acquisition of the current LUL Northern Line station against the wishes of LUL is clearly something that the Council

would do only as a last resort and the Council would only do so in a manner which did not affect the smooth running of the Tube network. In practice this situation is very unlikely to occur as the developer is required by the terms of the section 106 agreement to reach agreement with LUL at an early stage of the Scheme. In each case TfL and LUL will be entitled to compensation for any land acquired.

*Compulsory purchase is intended as a last resort; however... it may often be sensible ... for the acquiring authority to plan a compulsory purchase timetable as a contingency measure and initiate formal procedures [to mitigate loss of valuable time];*

7. EC, acting in consultation with Council officers, has been making reasonable efforts to acquire outstanding land interests and new rights by agreement over a reasonable period of time. This is evidenced by the fact that it has concluded various acquisitions already. EC will be obliged to continue to negotiate for acquisitions by agreement under the CPO indemnity agreement. The Council will also take an active role, in collaboration with EC, to facilitate negotiations. The making of a CPO will assist in these negotiations as it will make all parties aware of the seriousness of the Council's intentions, as is recognised in the Guidance. The CPO is being used as a last resort to underpin the remaining negotiations that need to be concluded to enable the Scheme.
8. As regards adjacent properties which have the benefit of rights of light and other rights that would be overridden by the proposed CPO, EC has not negotiated with these parties to date. This is also explained in the linked report for interfering with rights elsewhere on the Agenda but given the sheer number of property interests which will need to be negotiated with in connection with the Scheme it will not be practicable or in any way realistic for releases to be negotiated in any sort of reasonable timeframe in this case. In addition, it will only take one of the interested parties to either not sign a release or not to engage and the entire Scheme would be jeopardised. The use of section 203 of the 2016 Act to override the rights is the only realistic way for this development to be able to proceed in any reasonable time frame and at a cost which can be identified. The holders of the rights will be compensated under section 204. In the particular circumstances of this case, it will be pointless to require EC to undertake such negotiations. There is no practical alternative to the use of statutory powers on this occasion, given the scale and complexity of the rights of light issue. The same is true of the rights sought over the viaduct structure for cabling and wiring works.

*When making ... [a CPO] acquiring authorities ... should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected.*

9. The Council's purpose in making the CPO is to facilitate the development, redevelopment or improvement of land. The Scheme represents a vital, comprehensive redevelopment of the town centre, providing substantial improvements in the town centre's retail and leisure offer, improvements to the town centre environment and new housing. The very considerable benefits that will arise from the Scheme have been summarised above these public benefits outweigh and justify interference with, human rights and such interference is proportionate to the large level of public benefits that would arise from the Scheme. The purpose to be achieved by the CPO justifies interference with human rights even if the interference was a lot wider or more severe than considered in this report, given the benefits of the Scheme. The public benefit of the Scheme outweighs the private losses.

*In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.*

10. Offers made to date by EC, are reasonable. This is evidenced by the fact that various acquisitions have taken place already. Reasonable steps have been taken to acquire the interests in land and rights by agreement. The Council has sought to engage constructively with those affected, as evidenced by Council officers addressing affected traders as to the proposals, the appointment of Tree Shepherd to assist affected parties with relocation advice and the other measures in the agreed relocation strategy under the section 106 agreement. Those relocation measure obligations are ongoing.

*The acquiring authority must be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought at this time... [the acquiring authority should] have a clear idea of how it intends to use the land which it is proposing to acquire and [should be able to] show that all necessary resources are likely to be available to achieve that end within a reasonable time-scale.*

11. The Council plans to use the CPO acquisitions and new rights to facilitate the Scheme and the benefits derived from the Scheme are sufficiently compelling to warrant seeking the powers now, so that valuable time is not lost as recognised in the Guidance. Resources are dealt with below.

*The acquiring authority should address (a) sources of funding ... available for both acquiring the land and implementing [the Scheme] ... and (b) the timing of that funding - funding should generally be available now or early in the process ... evidence should be ... provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.*

12. The Council will be entering into a CPO indemnity agreement (and other agreements) with EC whereby the Council will receive a complete indemnity in respect of all compensation to be paid pursuant to the CPO and/or through the operation of sections 203-205 of the 2016 Act and/or through blight notices under section 137 of the 1990 Act. All other costs associated with the CPO will be borne by EC too.

13. In addition, further details of funding have been provided by EC which has been reviewed and officers are satisfied that the funding is either already available or will be available on confirmation of the CPO and the use of the Council's powers to override rights are utilised to override third party rights (as recommended elsewhere on the agenda). As regards non-financial resources, EC has procured a professional team from all disciplines to advise in respect of the Scheme. It is advised by Delancey, an experienced property development and asset management company. The Triangle partners have developed large schemes before, as referred to earlier in this report. Officers are satisfied the developer has the expertise and the ability to attract the funding to deliver the Scheme. It has already demonstrated its commitment by at considerable expense securing a planning consent and acquiring much of the land needed to deliver the scheme. This is therefore not an impediment. There are no known external factors that may frustrate delivery of the scheme.

*Acquiring authorities will need to demonstrate that the scheme is unlikely to be blocked by any physical or legal impediments. These include:*

- (a) *the programming of any infrastructure accommodation works or remedial work which may be required*

14. It is considered there are no such impediments. As Cabinet is aware, as well as the proposals contained in the scheme, TfL/LUL is promoting the Bakerloo Extension line proposals. This was the subject of a paper to Cabinet on 21 January 2020. If the Bakerloo Line extension goes forward, it is likely to require a larger combined station box at Elephant & Castle than that presently proposed in the Scheme, which was designed for the Northern Line. The Council wishes to see both the Scheme and the Bakerloo Line extension progress and to that end Cabinet approved in January a contribution of £7.5 million (to be matched by TfL) towards the Bakerloo Line Extension at Elephant & Castle. Discussions are taking place between EC and LUL as to the provision by EC of a bigger new station box within the Scheme to incorporate the Bakerloo Line extension too. This will necessitate amendments to the Scheme in terms of the extent of the station box. It is also understood that LUL plans to submit a planning application shortly for connecting tunnel works, to ensure that the connecting tunnels to the new station box are as per its specific requirements. In both cases, although planning consent will be required for such changes, there is no obvious reason why such consent would not be forthcoming.

- (b) *any need for planning permission for the scheme or other consent or licence.*

15. As advised earlier, the Scheme has been granted planning permission. The judgment in the judicial review proceedings was the subject of an application for leave to appeal but this has been dismissed on all grounds by the High Court. The claimant may choose to pursue its application for leave to appeal to the Court of Appeal. Officers are satisfied that, now that the permission has the benefit of a High Court judgment in the Council's favour on all grounds, there is a low risk of that appeal succeeding. The Council is entitled to proceed on the basis, as found by the High Court, that it has acted entirely lawfully. In any event, even if the planning permission was quashed on appeal (which officers think is unlikely) there is no obvious reason why planning permission for the Scheme would not be forthcoming again, given its general fit with the development plan policy and the Council's long term policy aspirations for the Opportunity Area.

As stated above, the de-coupling works to the northern façade of the Metropolitan Tabernacle have the benefit of listed building consent. That consent has a time period of 3 years (expiring 10 January 2022) - if the works are not begun by then the consent will lapse. It is possible that those works will be begun by then, but it is fair to say that the envisaged programme of works envisages commencement on the West Site after January 2022, because the first phase of development will be on the East Site. This has been discussed with EC, who advise that they have instructed their planning consultants to prepare a further listed building consent application which will request a longer implementation date for those works. Again, there is no obvious reason why such consent would not be forthcoming, particularly in light of the current extant consent.

16. As explained earlier in the report, EC envisages that the two railway arches owned long leasehold by EC shall be brought into beneficial occupational use for A Use Classes. The current planning permission for the Scheme does not specifically

include a change of use to those purposes for those units. Again, EC advise that it has instructed planning consultants to formulate an application for such planning consent in respect of those arches. There is no obvious reason why such consent will not be forthcoming, subject to suitable conditions, as such uses will be in keeping with the current uses on Elephant Road and the planning policies for the Opportunity Area. The units would also represent a potential further relocation opportunity in the medium term.

17. The Scheme requires the stopping up of some highways. EC has made applications under section 247 of the 1990 Act to stop-up areas that are (or potentially could be) subject to highway rights. The applications were advertised in the local newspaper and London Gazette in January 2020 and interested parties had twenty-eight days in which to object. Any objections received will be for EC to endeavour to resolve. The Mayor of London has a power to dispense with a public inquiry into objections in certain circumstances but if that power is not utilised it will be necessary to arrange for a Public Inquiry. Should there be unresolved objections in respect of both the CPO and the stopping up of highways the Secretary of State may resolve that they both be considered at the same Public Inquiry. Stopping up orders are common in development scenarios and there is no obvious reason why such orders would not be made in respect of the Scheme.
18. One or more agreements under the Highways Act 1980 with TfL and the Council, as highway authorities, will be required for highway works. Agreement likely be reached on these, as they are, routinely, on many different types of development. The section 106 agreement imposes restrictions on certain milestones in the development programme until such agreements, and their respective works, are completed.
19. Licences will be required under the Highways Act 1980 for oversailing the highway, any scaffolding over the highway or hoarding affecting the highway. Again, though, such licences are routinely granted in all manner of developments.
20. There are no physical impediments which are known which will prevent the Scheme from proceeding.
21. The CPO legislation affords special protection to statutory undertakers' operational land. Statutory undertakers can make representations to their appropriate minister (i.e. the minister who is responsible for that undertaker) against the inclusion of their operational land, as well as objecting to the Secretary of State in the normal manner. If such a representation is made and not withdrawn, generally the Secretary of State will not confirm the CPO as regards that interest in land unless the appropriate minister gives a certificate that the land can be taken without serious detriment to the statutory undertaker.
22. There is some operational land of statutory undertakers within the CPO area, most notably the Northern Line tube station, TfL highway, the railway viaduct and the railway station. However, it is not the intention of EC or the Council to interfere with the operational running of e.g. the London Underground station nor the railway. Discussions are progressing between EC and London Underground and between EC and Network Rail in these respects and EC is confident that agreement shall be reached on all matters. EC has been keeping the Council apprised of progress and given confidence that agreements with these parties can be exchanged in a reasonable period, thereby bringing them into the Scheme by agreement. Nevertheless, the CPO is needed as a backstop.

23. There are also electricity sub-stations within the CPO area, held by London Power Networks. Again, this is operational land and EC envisages that agreement will be reached to bring the leases to an end but the CPO is needed as a backstop.
24. The CPO land also includes statutory undertaker and telecommunications operator apparatus and EC is already in discussions with the utility companies and the telecommunications operators to reach agreement with them.
25. There are no areas of land which attract special protection under section 19 Acquisition of Land Act 1981 (common land, open space or allotments).
26. Therefore, there are unlikely to be any impediments to the Scheme if a CPO is made (taken together with the utilisation of the Council's other planning powers as envisaged by the linked reports).

*Acquiring authorities are expected to evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted.*

27. This is addressed above.

*Whether the purpose for which the land is being acquired fits with the adopted Local Plan for the area or, where such no up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework.*

28. The Council's purpose in making the CPO is stated above. It fits with the adopted local plan, which supports the regeneration envisaged by the Scheme. The CPO is necessary to implement the Council's objectives as specified in the Local Plan and the SPD. It also fits in with the emerging development plan policies.

*The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area.*

29. By virtue of the very significant benefits that will arise from the Scheme as summarised earlier in this report, the Council's purpose in pursuing the CPO will contribute very significantly to all three of the well-being objects in Section 226(1A) of the 1990 Act. The Scheme will have regenerative benefits that will lead to the improvement of the economic well-being of the area. Additional jobs will be created, having social and economic benefits. Additional homes will be created, contributing to the social well-being of the area. New buildings, a new tube-station and new public realm areas will contribute to the environmental improvement of the area.

*Whether the purpose for which the acquiring authority is proposing to acquire the land would be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose of which the land is being acquired.*

30. The prospects of acquiring all the relevant land interests by agreement to enable the comprehensive redevelopment within a reasonable timescale are unlikely. It will be entirely dependent on the owners and occupiers of the outstanding land interests. Consideration has been given to whether the Council's objectives might be achieved by individual landowners within the land separately carrying out development of their land. This would be likely to result in poorly co-ordinated redevelopment of parts of the CPO land, in a piecemeal fashion, which will contrast badly with the

comprehensive vision of the Scheme. It is very doubtful if any alternative, credible redevelopment proposals are likely to come forward.

31. Consideration has been given to if the Council's objectives in making a CPO can be achieved at a different location. The scope for any alternative location in the context of the particular objectives here is very limited. There are no other sites within the town centre which can realistically achieve the objectives of the CPO.
32. A delay in the Council supporting the Scheme through a CPO and its other planning powers may give rise to the following adverse implications:
  - Significant delay to delivering the new town centre or risk it may not be delivered at all, due to the lack of certainty for EC's investors and funders;
  - Continuation of Elephant and Castle Northern Line operating at over capacity with increased overcrowding and temporary closures likely to increase;
  - A protracted period of a demolished site (on the Shopping Centre site); and
  - The risk of EC selling the Shopping Centre site to another investor that may not have the appetite for the risk involved in the current comprehensive Scheme.
33. None of the above implications is desirable. Neither is the maintenance of the status quo of the current buildings on the Scheme site - this will not deliver the vision for the town centre envisaged by development plan policy and in any event is not a realistic option as regards the Shopping Centre and the external market area within it as the developer has already decided to close it. The making of a CPO is essential to guard against the risk of the regeneration project being delayed or frustrated. EC will, however, continue to try to acquire the outstanding land interests in the CPO land by agreement.

*The potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be.*

34. Funding intentions are dealt with above. As regards the potential viability of the Scheme, discussion took place during the planning application process as to what the appropriate level of developer profit should be to reflect the risk and complexity of the Scheme. The relevant expression of profit level for a developer for a build to rent housing scheme is the internal rate of return ("IRR"). EC's target rate of return is 11%. Viability assessment work was carried out during the planning application process in the context of the maximum amount of affordable housing that can reasonably be supported by the Scheme. The viability experts appointed by EC concluded that the then current IRR was 7.51% but both they and the experts appointed by the Council nevertheless both agreed, as part of the viability work for the planning application, that a full target return of 11% is achievable over the lifetime of the development, having regard to market forecasts which have been adopted from residential and commercial agents, as well as costs advice from cost advisors. The advice from GVA, advising the Council, was that all current forecasts at that time suggested that this growth in IRR over the construction period is achievable and possibly conservative.



35. Some time has passed since the planning permission was granted. Accordingly, the viability position has been the subject of further expert work by DS2 (for EC) and Avison Young (for the Council). DS2 conclude that the viability position remains largely unchanged from what was previously agreed with Avison Young as part of the planning application process, but that for various reasons (including increasingly positive property market sentiment following the general election and long term trends in rental growth) the target rate of return is achievable. Avison Young advise the viability of the project has not deteriorated since the planning stage. Whilst the viability position may be challenging, EC is proceeding with the Scheme on the basis of the agreed expert advice that the target rate of return is achievable over the lifetime of the development. The Guidance points out that a CPO can still be confirmed if there is uncertainty over financial viability if the case for it is very compelling. In this case the confirmation of the CPO will still be justified because the case for the CPO is so very compelling.

## APPENDIX H

### ELEPHANT AND CASTLE SHOPPING CENTRE - COMPULSORY PURCHASE ORDER

#### Planning Policy

##### *Background*

1. The development plan comprises the London Plan, the Core Strategy, and the Saved Southwark Plan. In 2013, The Council resolved to 'save' all of the policies in the Southwark Plan 2007 unless they had been updated by the Core Strategy with the exception of Policy 1.8 (location of retail outside town centres). Paragraph 213 of the National Planning Policy Framework ("NPPF") states that existing policies should not be considered out of date simply because they were adopted or made prior to publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework.
2. Relevant policies from the Saved Southwark Plan and other Development Plan documents (which have been the subject of public consultation and are informed by evidence bases that can be viewed on the Council's website) are listed in the notes at the end of this Appendix. While a New Southwark Plan and London Plan are in the process of being brought forward for adoption these continue to have limited weight at this point in time.

##### *Site allocation*

3. The site is located within Elephant and Castle Opportunity Area, Central Activity Zone and is identified as being part of the Elephant and Castle Major Town Centre. The east site is part of proposal Site 39P 'Elephant and Castle Core Area' which is a large area at the centre of Elephant and Castle identified as being suitable for comprehensive, mixed-use redevelopment. In terms of Housing policy the site is in area where a minimum of 35% affordable and 35% private housing is required.
4. The site sits within zone 1 and has a Public Transport Accessibility Level (PTAL) of 6b (excellent). Elephant and Castle sits in the background of townscape view 23A.1 looking from the Serpentine Bridge in Hyde Park to Westminster (London View Management Framework 2012).

##### *NPPF*

5. The NPPF sets out the Government's strong commitment to delivering sustainable development. It advises that there are three elements to sustainable development; economic, social and environmental. Sustainable development is the principal theme underpinning both London-wide and Southwark plan policies, where the regeneration of areas such as the Elephant and Castle is of high priority.

##### *Elephant & Castle Opportunity Area*

6. The site is within the Elephant and Castle Opportunity Area and the London Plan considers Opportunity Areas to be *"the capital's major reservoir of brownfield land with significant capacity to accommodate new housing, commercial and other developments linked to existing or potential improvements to public transport accessibility. Typically they can accommodate at least 5,000 jobs or 2,500 new*

*homes or a combination of the two, along with other supporting facilities and infrastructure” (paragraph 2.58).*

#### *London Plan*

7. Policy 2.13 of the London Plan states that opportunity areas should seek to optimise residential and non-residential out-put and densities, provide necessary social and other infrastructure to sustain growth, and where appropriate, contain a mix of uses. Table A1.1 (Annex 1) of the London Plan gives an indicative employment capacity of 5,000 jobs and a minimum of 5,000 new homes to be delivered in the Elephant and Castle Opportunity Area over the plan period and table A1.1 further notes that:

*“The Area is undergoing major transformation with significant investment in housing and potential for new retail provision integrated with a more efficient and attractive transport interchange. There is scope to create a series of connected public open spaces complemented by environmental and traffic management improvements. Resolution of these and rail related issues are crucial to the successful redevelopment of this southern gateway to central London.”*

8. The site also sits within the central activities zone (CAZ), the strategic priorities and functions for which are set out in policies 2.10 and 2.11 of the London Plan; this includes enhancing and promoting the roles of the CAZ based on a rich mix of local and strategic uses.

#### *Core Strategy*

9. At borough level, the Core Strategy identifies the Elephant and Castle Opportunity Area as one of the Southwark’s growth areas where development will be prioritised. Strategic Targets Policy 2 seeks to deliver 4,000 net new homes and 5,000 net new jobs in the opportunity area and around 45,000m<sup>2</sup> of additional shopping and leisure space. The Council’s vision for the opportunity area is set out in the Core Strategy, and the first paragraph of the vision reads as follows:

*“Elephant and Castle has potential for redevelopment into an attractive central London destination. We will facilitate regeneration of the Elephant and Castle into a more desirable place for both existing and new residents. There will be excellent shopping, leisure facilities and cultural activities. London South Bank University and London University of the Arts will develop further as important centres of learning. Elephant and Castle will continue to be highly accessible from other places in Southwark and London...”*

#### *Saved Southwark Plan*

10. The saved Southwark Plan pre-dates the Core Strategy and was adopted in 2007. It identifies a number of proposal sites including 39P which includes the east site but not the west. It sets out a broad range of town centre uses which are required, including a range of D class uses, new homes, new retail, B1 floorspace and a highly efficient transport hub.

#### *Elephant and Castle Supplementary Planning Document (“SPD”)*

11. The SPD expands upon the Core Strategy and provides a framework to guide development over the next 15 years (until 2027). The opportunity area is divided into

character areas and as stated the site forms part of the central character area. The strategy for this area is to:

- Use development opportunities to redevelop or remodel the shopping centre and expand its appeal to a larger catchment.
- Provide a range of unit sizes and affordable retail units which are made available to existing occupiers displaced by development from across the opportunity area.
- Provide a range of arts, cultural, leisure and entertainment uses, including food and drink uses which make a positive contribution to the evening economy.
- Support the growth of the London College of Communication.
- Strengthen links between the shopping centre and Walworth Road ensuring that it becomes a key shopping axis.
- Require developments to be mixed use and introduce active uses at ground level wherever possible.
- Ensure that development opportunities provide opportunities for existing and future small and medium sized businesses.
- Transform leisure opportunities by building a new leisure centre.
- Make significant improvements to the interchange between buses, tube and rail and increase capacity in the Northern Line station.
- Replace subways with surface level crossings.
- Improve east-west pedestrian connections by providing direct links through the shopping centre site and railway viaduct.
- Take opportunities to activate and soften key public spaces around the central area and provide a new civic space at the front of the shopping centre.
- Ensure all development and public realm enhancements are of the highest quality to provide a positive perception of the area.
- Use tall buildings to signal the regeneration of the area, help define gateways into the central area and create an interesting skyline.
- Potential sites for tall buildings include the shopping centre and leisure centre sites. However, they must not detract from heritage assets, including the view of the Palace of Westminster from the Serpentine Bridge.
- Provide the potential to link key sites, including the shopping centre and leisure centre, within a district CHP/communal heating network.

12. With regard to land use, guidance note SPD21 advises that a redevelopment/remodelling of the shopping centre will be supported. Proposals for the shopping centre site should:

- Support the objective of consolidating the Elephant and Castle as a major town centre.
- Improve the retail offer by providing a range of types of retail, including comparison goods floorspace.
- Provide a range of unit sizes and affordable retail units which are made available to existing occupiers displaced by development.
- Increase the number of employment opportunities on the site and ensure that there is no net loss of non-residential floorspace.
- Provide a range of arts, cultural, leisure and entertainment uses, including food and drink uses which make a positive contribution to the evening economy.
- Introduce residential use as part of mixed-use development where feasible.
- Provide space for an increase in the capacity of the Northern Line ticket hall.

*Refurbishment or Redevelopment*

13. Responses to public consultation on the application suggest that the existing shopping centre could be refurbished rather than demolished and the site redeveloped. The Planning Committee report addressed this issue and concluded as follows:

*“In reality however, refurbishment would be less likely to deliver the significant public realm improvements which the SPD requires in and around the site, or connections through it. Moreover, the existing shopping centre is dated and of a poor quality. There has been little investment in it in recent years, owing to the long term intention of the current and previous owners for a wholesale redevelopment of the site. The SPD anticipates significant regeneration as the best solution to the site”*

*New Southwark Plan*

14. Work is under way to prepare a New Southwark Plan (“NSP”) that will replace the saved policies of the 2007 Southwark plan and the 2011 Core Strategy. The draft plan is now at the Submission Version Stage and no more consultation on the plan will be undertaken. An Examination in Public (“EIP”) is scheduled for later this year. As the NSP is in draft form it can only be attributed limited weight in determining planning applications.
15. Draft proposal site designation NSP47 within the NSP encompasses the east site, all of the railway arches along Elephant Road and the LCC site. The site vision requires employment uses (identified as A1, A2, A3, A4, B1 and D1) – to at least the existing level of provision, at least the same amount of education space as is currently on the site, new homes, civic space, public realm enhancements including along the railway viaduct, a new tube station entrance, and high quality active frontages. The draft site

designation also advises that a new community health hub may be provided.

16. Design and accessibility guidance provided in NSP47 includes that it is anticipated that the existing shopping centre will be demolished to facilitate a restructuring of the area's layout, walking and cycle routes should be enhanced and comprehensive, mixed-use redevelopment of the site can include taller buildings subject to consideration of impacts on existing character, heritage and townscape.

#### *New London Plan*

17. Following an EIP in 2019 the Mayor for London has recently announced the intention to publish the plan following consideration of the Panel of Inspectors recommendations. Elephant & Castle continues to be identified in the London Plan as a strategic area for regeneration with the capacity for 5,000 new homes and 10,000 jobs. The Elephant & Castle is identified as having medium commercial growth potential and high residential development potential. The plan states that the Mayor is proposing to extend the Bakerloo Line from Elephant to Lewisham which will improve the route's connectivity and capacity supporting new homes in the Old Kent Road and elsewhere in South-East London.

#### *Conclusion*

18. In conclusion, the development plan policy framework for the site summarised sets out the strong support for a high density, mixed-used development on this large brownfield site at all levels of planning policy. Across both parts of the site there will be an increase in retail floorspace in accordance with the London Plan, the Core Strategy, the Saved Southwark Plan and the SPD. The proposed development will fully accord with the principle of accommodating large-scale development within opportunity areas and will deliver many of the key objectives set out in the SPD for the central character area.

## **Notes**

### *The London Plan 2016 –relevant policies*

- Policy 2.9 – Inner London
- Policy 2.10 - Central Activities Zone – Strategic Priorities
- Policy 2.11 - Central Activities Zone – Strategic Functions
- Policy 2.12 - Central Activities Zone – Predominantly Local Activities
- Policy 2.13 - Opportunity Areas and Intensification Areas
- Policy 2.15 - Town Centres
- Policy 3.1 - Ensuring Equal Life Chances For All
- Policy 3.3 - Increasing housing supply
- Policy 3.5 - Quality and design of housing developments
- Policy 3.6 - Children and young people's play and informal recreation facilities
- Policy 3.7 - Large residential developments
- Policy 3.8 - Housing choice
- Policy 3.9 - Mixed and balanced communities
- Policy 3.10 - Definition of affordable housing
- Policy 3.11 - Affordable housing targets
- Policy 3.12 - Negotiating affordable housing on individual private residential and mixed use schemes
- Policy 3.13 - Affordable housing thresholds
- Policy 3.16 - Protection and enhancement of social infrastructure
- Policy 4.2 - Offices

- Policy 4.3 - Mixed use development and offices
- Policy 4.4 - Managing industrial land and premises
- Policy 4.6 - Support for and enhancement of arts, culture, sport and entertainment provision
- Policy 4.7 - Retail and Town Centre Development
- Policy 4.8 - Supporting a Successful and Diverse Retail Sector
- Policy 4.9 - Small shops
- Policy 4.12 - Improving Opportunities for All
- Policy 5.1 - Climate Change Mitigation
- Policy 5.2 - Minimising Carbon Dioxide Emissions
- Policy 5.3 - Sustainable Design and Construction
- Policy 5.5 - Decentralised Energy Networks
- Policy 5.6 - Decentralised Energy in Development Proposals
- Policy 5.7 - Renewable energy
- Policy 5.8 - Innovative energy technologies
- Policy 5.9 - Overheating and Cooling
- Policy 5.10 - Urban Greening
- Policy 5.11 - Green roofs and development site environs
- Policy 5.12 - Flood risk management
- Policy 5.13 - Sustainable drainage
- Policy 5.14 - Water Quality and Wastewater Infrastructure
- Policy 5.15 - Water Use and Supplies
- Policy 5.21 - Contaminated land
- Policy 6.9 - Cycling
- Policy 6.10 - Walking
- Policy 6.13 - Parking
- Policy 7.1 - Building London's Neighbourhoods and Communities
- Policy 7.2 - An inclusive environment
- Policy 7.3 - Designing out crime
- Policy 7.4 - Local character
- Policy 7.5 - Public Realm
- Policy 7.6 - Architecture
- Policy 7.7 - Location and design of tall and large buildings
- Policy 7.8 - Heritage assets and archaeology
- Policy 7.11 - London view management framework
- Policy 7.12 - Implementing the London view management framework
- Policy 7.14 - Improving Air Quality
- Policy 7.15 - Reducing and managing noise, improving and enhancing the acoustic environment and promoting appropriate soundscapes
- Policy 7.19 - Biodiversity and Access to Nature
- Policy 7.21 - Trees and woodlands
- Policy 8.2 - Planning obligations
- Policy 8.3 - Community infrastructure levy

*Relevant GLA Supplementary Planning Guidance (SPG)*

Culture and Night Time Economy (November 2017)  
 Affordable Housing and Viability (August 2017)  
 Housing SPG (March 2016)  
 Central Activities Zone (March 2016)  
 Social Infrastructure (May 2015)  
 Town Centres (July 2014)  
 Sustainable Design and Construction SPG (April 2014)  
 Play and Informal Recreation (September 2012)  
 London View Management Framework SPG (2012)

## Planning for Equality and Diversity in London (October 2007)

### *Relevant Core Strategy Policies 2011*

- Strategic policy 1 - Sustainable development
- Strategic policy 2 - Sustainable transport
- Strategic policy 3 - Shopping, leisure and entertainment
- Strategic policy 4 - Places for learning, enjoyment and healthy lifestyles
- Strategic policy 5 - Providing new homes
- Strategic policy 6 - Homes for people on different incomes
- Strategic policy 7 - Family homes
- Strategic policy 9 - Student homes
- Strategic policy 10 - Jobs and businesses
- Strategic policy 11 - Open spaces and wildlife
- Strategic policy 12 - Design and conservation
- Strategic policy 13 - High environmental standards
- Strategic policy 14 - Implementation and delivery

### *Relevant Southwark Plan 2007 (July) - saved policies*

- 1.1 - Access to employment opportunities
- 1.4 - Employment sites outside the preferred office locations and preferred industrial locations
- 1.5 - Small businesses
- 1.7 - Development within town and local centres
- 1.11 - Arts, culture and tourism uses
- 2.1 - Enhancement of community facilities
- 2.2 - Provision of new community facilities
- 2.3 - Enhancement of educational facilities
- 2.4 - Educational deficiency - provision of educational establishments
- 2.5 - Planning obligations
- 3.2 - Protection of amenity
- 3.3 - Sustainability assessment
- 3.4 - Energy efficiency
- 3.6 - Air quality
- 3.7 - Waste reduction
- 3.9 - Water
- 3.11 - Efficient use of land
- 3.12 - Quality in design
- 3.13 - Urban design
- 3.14 - Designing out crime
- 3.15 - Conservation of the historic environment
- 3.16 - Conservation areas
- 3.17 - Listed buildings
- 3.18 - Setting of listed buildings, conservation areas and world heritage sites
- 3.19 - Archaeology
- 3.20 - Tall buildings
- 3.21 - Strategic views
- 3.28 - Biodiversity
- 4.2 - Quality of residential accommodation
- 4.3 - Mix of dwellings
- 4.4 - Affordable housing
- 4.5 - Wheelchair affordable housing
- 4.7 - Non self contained housing for identified user groups
- 5.1 - Locating developments



- 5.2 - Transport impacts
- 5.3 - Walking and cycling
- 5.4 - Public transport improvements
- 5.6 - Car parking
- 5.7 - Parking standards for disabled people and the mobility impaired

*Relevant Supplementary Planning Documents (SPDs)*

Development Viability SPD (2016)  
Technical Update to the Residential Design Standards SPD (2015)  
Section 106 Planning Obligations/CIL SPD (2015)  
Elephant and Castle Opportunity Area Planning Framework/SPD (2012)  
Affordable housing SPD (2008 - Adopted and 2011 - Draft)  
Residential Design Standards SPD (2011)  
Sustainable Transport SPD (2010)  
Sustainable design and construction SPD (2009)  
Sustainability assessments SPD (2009)  
Statement of Community Involvement (2008)



TITLE.

Elephant & Castle Shopping Centre -  
Interference with property rights.  
APPENDIX A.

DRAWING No.

LBS\_3893

DRAWN BY.

MMANKTELOW  
Property Division

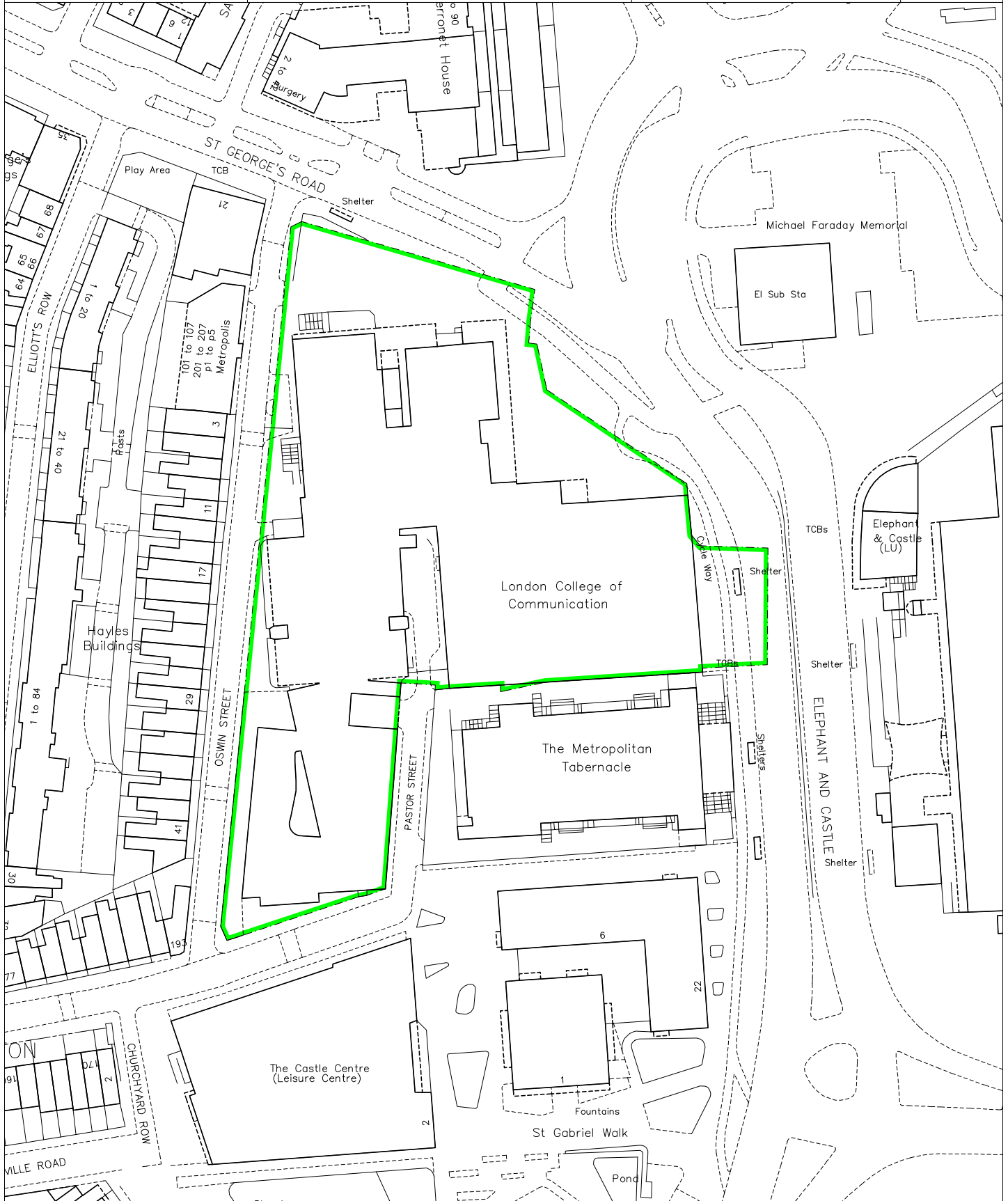
DATE.

19/2/2020

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. (London Borough of Southwark / Licence No. LA086541).

**Original Scale - 1:1250**

Subject to variation when reproduced from an Adobe pdf source





TITLE.

Elephant & Castle Shopping Centre -  
Interference with property rights.  
APPENDIX B.

DRAWING No.

LBS\_3895

DRAWN BY.

MMANKTELOW  
Property Division

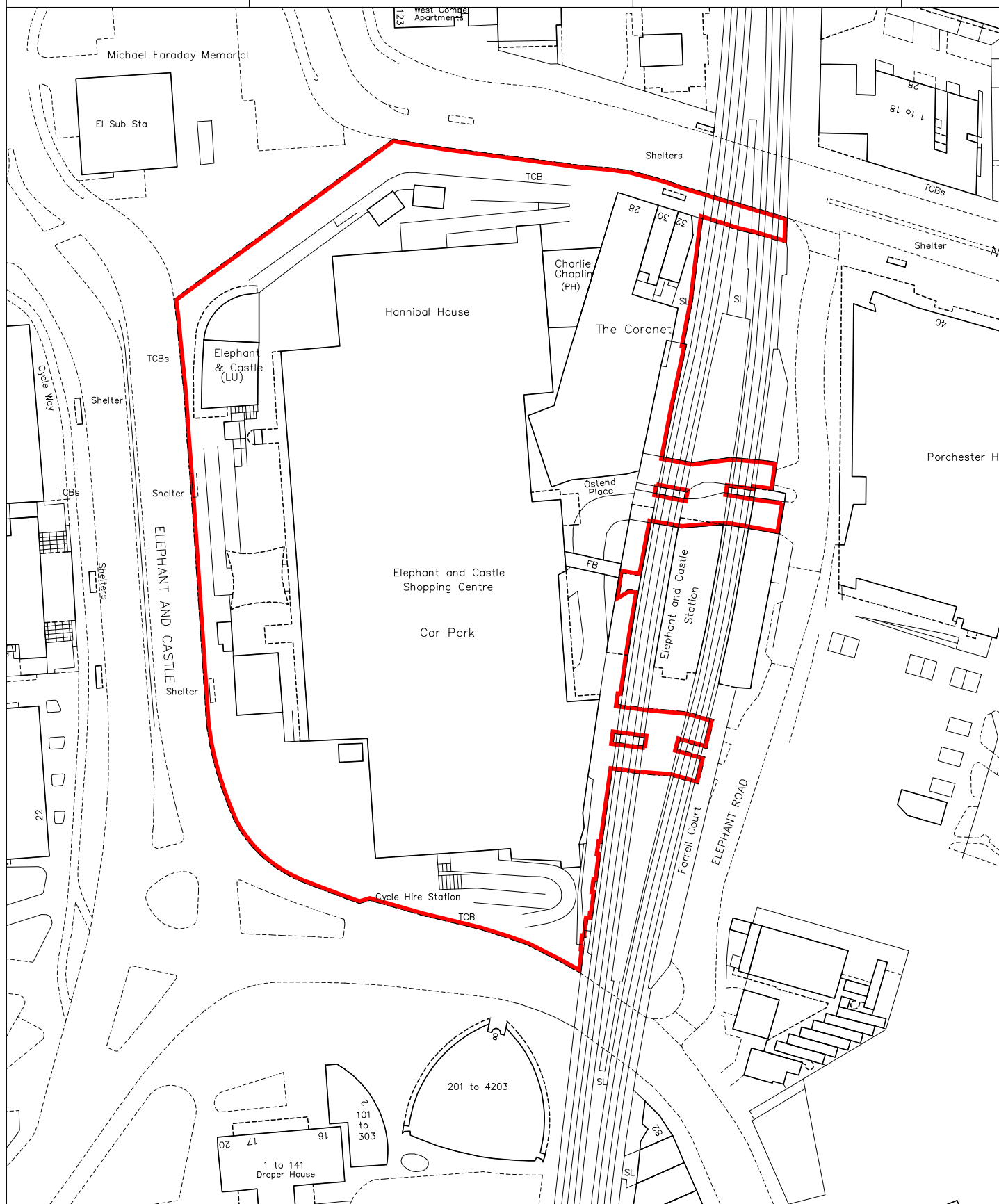
DATE.

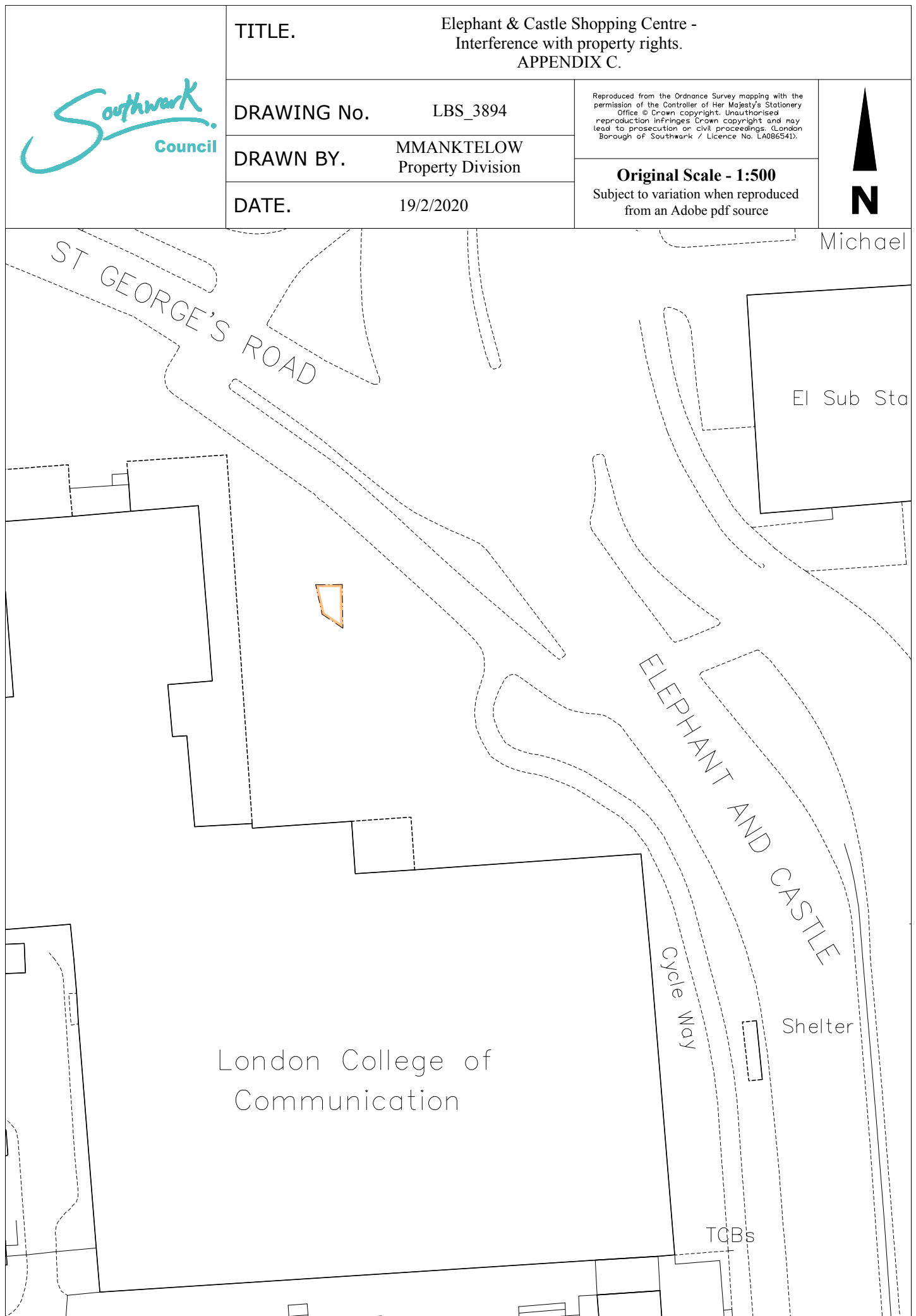
19/2/2020

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. (London Borough of Southwark / Licence No. LA086541).

**Original Scale - 1:1250**

Subject to variation when reproduced  
from an Adobe pdf source





## ELEPHANT AND CASTLE SHOPPING CENTRE INTERFERENCE WITH PROPERTY RIGHTS

### APPENDIX D

#### THE LEGAL AND POLICY FRAMEWORK IN RESPECT OF OVERRIDING PROPERTY RIGHTS

1. Section 226(1)(a) of the 1990 Act gives the Council power to acquire compulsorily any land in its area if the Council thinks that the acquisition will "facilitate the carrying out of development/re-development, or improvement on, or in relation to, the land". In exercising this power the Council must have regard to Section 226(1A) of the 1990 Act and must not exercise the power unless it thinks that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects:
  - 1.1 The promotion of improvement of the economic well-being of the area;
  - 1.2 The promotion or improvement of the social well-being of the area;
  - 1.3 The promotion or improvement of the environmental well-being of the area.
2. Section 227 of the 1990 Act gives the Council the power to acquire by agreement any land which it requires for any purpose for which it may be authorised to acquire land under section 226. The Council can therefore acquire land interests by agreement under section 227 if it is satisfied that the tests in sections 226(1)(a) and 226(1A) are met.
3. Acquisitions of land under section 226 or 227 engage the provisions of sections 203-205 of the 2016 Act.
4. Section 203 of the 2016 Act enables building or maintenance work to proceed in accordance with a planning permission even though in doing so rights over the development site which benefit adjacent properties (such as easements, restrictive covenants or rights of light) may be interfered with.
5. The pre-conditions to the engagement of section 203 are:
  - 5.1 there is planning consent for the building or maintenance work,
  - 5.2 the land on which the work takes place has at any time on or after 13 July 2016 become vested in or acquired by the local authority, or been appropriated to planning purposes,
  - 5.3 the authority could acquire the land compulsorily for the purposes of the work and
  - 5.4 the work is for purposes related to the purpose for which the land was vested, acquired or appropriated.
6. Where property rights are overridden in this way, beneficiaries are entitled to compensation based on comparing the value of their property on the assessment day assuming no interference has taken place with its value after the interference. Compensation is the difference in value, if any, after the comparison (diminution in value). The compensation is only due when an interference of rights takes place. When this happens the claim for compensation is against the person that interfered

with the rights but under section 204 the local authority that implements the overriding provisions is liable if the infringer does not pay that compensation.

7. This is a powerful tool in enabling developments as it means that third party holders of the rights cannot prevent the development proceeding (by way of an injunction) - their right to obtain an injunction is translated into a right to compensation only. It also provides certainty for a developer in estimating the basis upon which any compensation is due, as the compensation will be based on a loss in value basis of the property which has the benefit of the right, rather than on any other basis which might fall to be negotiated i.e. it stops the developer being held to ransom or having to pay a share of the development profits.
8. From a legal perspective, the following aspects should be considered by Cabinet in whether to use acquisitions under section 227, to engage section 203 of the 2016 Act to override rights in respect of the Scheme:
  - (a) Whether the land should be acquired for planning purposes - e.g. does the Council think that the use of the powers will facilitate the carrying out of development, redevelopment or improvement on or in relation to land?  
  
As part of this, Cabinet should consider whether planning permission has been granted or if not, whether this is likely to be forthcoming, and what are the prospects of the Scheme proceeding?
  - (b) Whether it thinks the Scheme will contribute to the achievement of one or more of the objects set out in section 226(1A) of the 1990 Act: the promotion or improvement of the economic well-being of the area; the promotion or improvement of the social well-being of the area; or the promotion or improvement of the environmental well-being of the area.
  - (c) Whether third party rights capable of being overridden by section 203 of the 2016 Act exist and whether they will be interfered with by the Scheme.
  - (d) Whether interference with those rights is necessary to achieve the benefits of the Scheme, e.g. could the Scheme realistically be adjusted to avoid interference with the rights? Will agreement to release those rights be likely to be achievable if planning powers were not used? And is overriding the rights necessary to allow the Scheme to proceed?
  - (e) Whether there is a compelling case in the public interest for the interference with the rights.
  - (f) Will there be interference with rights protected under the Human Rights Act 1998 and under the European Convention on Human Rights? Is the public interest to be achieved proportionate to, and does it justify, the infringement of the rights through the operation of section 203? Human rights are discussed further below.
  - (g) Will the exercise of the powers be consistent with the public sector equality duty ("PSED") under section 149 of the Equality Act 2010? The PSED is discussed further below.
9. Also material as regards the use of the Council's powers to acquire by agreement under section 227 of the 1990 Act to engage section 203 of the 2016 Act, in June 2016 Cabinet adopted a policy on the use of the forerunner to sections 203-205 of

the 2016 Act, section 237 of the 1990 Act. Although section 237 has since been repealed, sections 203-205 are similar in terms, so much of the information and commentary in the June 2016 Cabinet report is still relevant. That report set out principles the Council will have regard to in considering applications to utilise its powers to override third party rights. These are:

- (a) Each application to be determined on its own merits but the criteria will guide both applicants and the Council.
  - (b) There should be a planning consent that is immune from challenge.
  - (c) Is there a reasonable alternative way of developing the site to achieve the outputs of the consented scheme whilst interfering with third party rights? If there is, the Council will normally expect that option to be followed.
  - (d) The exercise of these powers should be a last resort when genuine negotiation with affected persons has failed.
  - (e)-(g) The Council to be indemnified against all costs arising as a result of the exercise of its powers, including all professional fees and any compensation to third parties.
  - (h) There must be no breach of the Council's duty to act in accordance with section 233 of the 1990 Act, i.e. any disposal must be at the best consideration that can reasonably be obtained.
  - (i) The Council must be satisfied that in exercising section 227 powers there is no breach of the PSED.
  - (j) Proportionality - taking all relevant considerations into account does the development scheme benefit the wider community to such an extent that it is reasonable to deprive beneficiaries of the rights of the ability to seek through the courts an order to stop that development?
10. In this case Cabinet must consider whether to depart from principles (b) and (d) of the policy:
- (b) *Whilst there is planning consent for the Scheme, it has been the subject of a judicial review that was dismissed but an application was made for leave to appeal that decision. The High Court refused the application for leave to appeal on all grounds but this may be the subject of a further application for leave to appeal to the Court of Appeal. This means the planning consent is not immune from challenge.*
  - (d) *The developer has not endeavoured to negotiate agreements with persons that will be affected by the overriding of rights.*
11. As regards principle (b) of the policy, it is considered appropriate to depart from that aspect of the policy and to ask Cabinet to use its powers to override rights in this instance notwithstanding the ongoing proceedings in respect of the planning permission, in order to mitigate risk and delay to the Scheme. The Scheme is an especially important scheme for the borough which should proceed as soon as possible in the public interest. The Council also has the assurance that the High Court found in its favour on all grounds. One of the reasons for the policy position was to ensure that there was sufficient certainty around any redevelopment scheme

to enable the number and nature of potentially affected rights to be ascertained. As planning permission has been granted (albeit subject to ongoing proceedings) there is that certainty. It is important to note that a decision by the Cabinet to exercise powers to override third party rights does not have any detrimental effects to those third parties unless and until rights are interfered with as a result of development taking place in accordance with planning permission. At the time the works are done, there will need to be planning permission.

12. As regards principle (d) of the policy there are so many people affected by the proposed overriding of rights that it will be unreasonable to expect agreement to be reached with them all. Delay will also defer completion of the new LCC premises and its delivery fitting in with the academic year. Without the Council's intervention, each rights holder will need to release their rights to enable the Scheme to proceed. To insist on the developer seeking to secure individual releases by agreement in this case will be to insist on a procedure that will almost certainly prove impracticable and fruitless. Having regard to the very considerable public benefits of the Scheme it is considered that there is good reason for the Council departing from principle (d) of its policy in this particular case.
13. As noted in the main body of this report, the potential departure from principles (b) and (d) of the policy has been notified to property owners and occupiers in the locality that may be adversely affected and representations were invited from them. This was done by way of a covering letter with a detailed briefing note. This was sent to around 1,600 properties.
14. Recipients of the letter were given a period of three weeks within which to make representations and discussion of them is in the main body of the report. A summary of the responses is at Appendix E.
15. All the responses received to the potential variation in policy have been given careful consideration and it is concluded none of them contain sufficient reasons not to proceed with the recommendations.
16. Once land has been acquired by the Council for planning purposes under section 226 or 227 of the 1990 Act, the land may then be disposed of to a third party pursuant to section 233 of the 1990 Act. Section 233(1) permits the Council to dispose of the land to such persons, in such manner and subject to such conditions as appear to the Council to be expedient in order to:
  - (a) secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it (whether by the Council or by any other person), or
  - (b) secure the erection, construction or carrying out on it of any buildings or works appearing to the Council to be needed for the proper planning of its area.

In this case it is section 233(1)(a) that is relevant.

17. The consideration received by the Council for such disposals must be "the best consideration that can reasonably be obtained", unless the Secretary of State's consent is obtained to the contrary or unless the disposal is the grant of a lease of seven years or less or the assignment of a lease with seven years or less unexpired at the date of assignment. In judging what consideration can be achieved, account must be taken of the expediency as referred to in section 233(1).



18. The Council is required to exercise its powers of disposal under section 233 in a manner which, so far as practicable, secures that relevant occupiers of that land are provided with a suitable opportunity to obtain accommodation (section 233(5)). Relevant occupiers for these purposes means residents and those carrying on business on the land who wish to obtain accommodation on such land and are willing to comply with any requirements of the authority as to the development and use of such land (section 233(6)). A suitable opportunity for accommodation means, in relation to any person, an opportunity to obtain accommodation on the land in question which is suitable to his reasonable requirements, on terms settled with due regard to the price at which any such land has been acquired from him (section 233(7)).
19. As regards human rights, the Human Rights Act 1998 incorporates into domestic law the European Convention on Human Rights. Article 1 Protocol 1 Convention rights have to be considered: every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. This does not impair, however, the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. In respect of this right under Article 1 of the Protocol, a fair balance must be struck between the public interest and private rights.
20. Article Convention 8 rights also apply and are engaged i.e. everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority with the exercise of this right except such as 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 the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. Any interference with this right must be proportionate. Article 8 covers family life and private social life enjoyed at a place of work or in professional, business or commercial activities. If children could be affected, then the best interest of the child shall be a primary consideration.
21. Article 6 Convention rights are also relevant: in the determination of 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.
22. Cabinet should also consider whether any of the following Convention rights are engaged: Article 9 (freedom of thought, conscience and religion); Article 11 (freedom of peaceful assembly and association); and Article 14 (freedom from discrimination).
23. Section 149 of the Equality Act 2010 imposes a general equality duty on public sector authorities ("the PSED"), in the exercise of their functions, to have due regard to the need to:
  - Eliminate discrimination, harassment and victimisation and any other conduct that is prohibited by or under the Act.
  - Advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it.
  - Foster good relations between people who share a relevant protected characteristic and those who do not share it.

24. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
25. For the purpose of the PSED the following are "protected characteristics":
- Age
  - Civil partnership
  - Disability
  - Gender reassignment
  - Pregnancy and maternity
  - Race
  - Religion or belief
  - Sex and sexual orientation.
26. Case law has distilled a number of principles as regards the PSED. "Due regard" in the context of the PSED means the regard that is appropriate in all the particular circumstances, including the importance of the areas of life of the members of the protected group that are affected and the extent of the effects and such countervailing factors as are relevant to the function which the decision maker is performing. The PSED is not a duty to take specific steps - indeed the courts have warned against micro management of the PSED process - nor is it a duty to achieve results. It is a duty to have regard to the need to achieve the various objectives referred to above.

**ELEPHANT AND CASTLE SHOPPING CENTRE  
INTERFERENCE WITH PROPERTY RIGHTS**

**APPENDIX E**

**SUMMARY OF RESPONSES MADE TO NOTIFICATION OF POTENTIAL DEPARTURE  
TO OVERRIDING PROPERTY RIGHTS POLICY.**

Respondent	Response Summary	Comment
Resident of Hayles Street	Wants the scheme to go ahead but be compensated if rights are compromised	Proposed variation enables scheme to proceed and provides for financial compensation if rights are compromised
Southwark Law Centre	Requested accompanying briefing to notification letter	Supplied
Two residents of St Gabriel Walk	Imperative for the Council to progress this project. Fully support the Council in progressing via use of its powers.	
Resident of Gaywood Street	In the public interest to complete the project quickly but present proposal ill-conceived. A smaller building similar to existing shopping centre should be built instead and will be completed faster. Will claim compensation if lighting infringed	The consented scheme is the subject of some controversy but it has been through an exhaustive planning process, with the Council undertaking consultation on the planning application over a prolonged period of time. The report addresses compensation.
Management Company for flats in St George's Road	Requested access to scheme details as it may impact on neighbouring properties	Directed to documents accompanying planning application.

The following comments have been received but after the closing date for responses.

Respondent	Response Summary	Comment
Resident of Princess Street	Objects to proposed policy change. If it is, there will be detriment to people, in terms of quality of life and property value terms. If the policy is changed, adequate compensation is expected.	Detriments from proposed change recognised but weighed against significant benefits arising from Scheme. Compensation will be payable for if a loss in property value arises.
Resident of Elliots Row	Concerned proposed policy change will result in reduced lighting and loss of value to home particularly in relation to the saleability of the property	Detriments from proposed change recognised but weighed against significant benefits arising from Scheme. Compensation will be payable for if a loss in property value arises.

Resident of Metro Central Heights	Concerned about impact of construction works in the vicinity	These are addressed in the planning consent's s106 agreement.
Resident of Hayles Street	Considers proposal an abuse of power. The proposed development is too high and detrimental to Elliotts Row conservation area. Open sky line essential to quality of life for residents. Scheme is too dense and should be restricted in height and create more green space.	The report sets out legal basis for Council's intervention and is not an abuse of powers. The height, density of development and impact on lighting arising was addressed in report to Planning Committee as was its impact on conservation areas.
Resident of St Gabriel Walk	Lighting will be affected from scheme and outlook on to a construction site is a concern. Resident unaware of this when dwelling purchased.	St Gabriel Walk is too modern to have acquired rights of light and lighting impact was considered in the Planning Committee report. Construction work is covered in s106 agreement.

## ELEPHANT AND CASTLE SHOPPING CENTRE INTERFERENCE WITH PROPERTY RIGHTS

### APPENDIX F

#### WHETHER THE USE OF THE COUNCIL'S POWERS IS JUSTIFIED

1. Firstly, sections 226(1)(a) and 226(1A) of the 1990 Act are considered.
2. The utilisation of the Council's powers to override rights will facilitate the carrying out of development, re-development or improvement on, or in relation to the land. There is sufficient evidence that the Scheme is likely to proceed if these powers are utilised together with CPO powers as envisaged by agenda item 24. Notwithstanding that there will be some negative effects to those affected by the powers, as referred to in this report, and having taken those negative effects into account, it is considered the development, re-development or improvement is likely to contribute to the achievement of all of the well-being objects in section 226(1A) of the 1990 Act. The considerable economic, social and environmental benefits that are likely to arise from the Scheme are referred to in Appendix C of agenda Item 23. Accordingly the statutory tests in sections 226(1)(a) and 226(1A) are met.
3. *Consideration (1) - whether land should be acquired for planning purposes* e.g. does the Council think that the use of the powers will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land?
  - 3.1 Given the significant level of investment that is planned, EC has made it clear that it will not be able to construct the new buildings in the Scheme whilst there remains a risk of injunction as regards the rights of light in respect of any part of the Scheme site. This is a reasonable position for EC (or any developer) to take. EC also considers that funding and investment in the Scheme will be adversely affected, and improbable, whilst such a risk exists. Again, this is agreed. Whilst any infringement with the other rights referred to in this report is not clear, the fact remains that such rights exist and a large number of properties in the locality benefit from the title reservation which affects part of the LCC Site. The existence of that right and the number of rights holders in respect of it are again factors likely to adversely affect funding and investment in the Scheme.
  - 3.2 It is recognised in this particular case, without the use of the Council's powers under section 227, there is a very real and significant risk of an injunction being sought to prevent the Scheme from proceeding and the use of the Council's powers is the only way in which that risk can be removed in practice having regard to the numbers of claimants who will need to be negotiated with.
  - 3.3 The use of the powers to acquire by agreement under section 227 of the 1990 Act in respect of the LCC Site will remove the issue of rights of light injunction(s) over an integral and large part of the Scheme and will thereby facilitate the considerable benefits that development of that site will bring. It will also remove the concerns that exist in respect of the title reservation over part of the LCC Site. In addition, EC's representatives have confirmed in discussions that EC, reasonably, requires that certainty before it embarks on the first phase of developing the East Site.

- 3.4 The exercise of the powers over the LCC Site is integral to the Scheme as a whole, and will thereby facilitate the carrying out of the entire Scheme and the benefits it will bring. The entry into the leasehold acquisitions at this stage will bring certainty that this impediment is dealt with at the outset. The use of those powers in respect of the East Site and the Nib Site will give EC the comfort that rights of light will not prevent the delivery of those sites in the event that EC, in tandem with the Council, acquired all the necessary land interests in the Scheme site without recourse to implementing a confirmed CPO. The use of the powers in this instance is reasonable and necessary having regard to the need to ensure that all eventualities are covered to facilitate the Scheme.
- 3.5 EC's development team advise the developer's funders may defer the detailed design work for the construction of new buildings, costing many millions of pounds, until it has certainty that the injunction risk has been removed. This in turn will create further delay for UAL, pushing back the delivery of their new LCC premises and its fitting in with the academic year. There is a real risk that the Shopping Centre site, a prominent site in the borough, will be left unused for significantly longer than will otherwise be the case.
- 3.6 It is highly unlikely that the considerable benefits of the Scheme will be delivered while the risk of an injunction remains. The existence of the LCC title reservation is also a factor mitigating against the funding and investment in the Scheme. The proposed acquisitions of land for planning purposes will facilitate the implementation of the Scheme and the consequent and related public benefits it will bring. As long as the rights are overridden and the CPO is made and pursued as envisaged by this report, there is sufficient evidence of the likelihood of the Scheme proceeding (to justify a decision by the Council to acquire leasehold interests in the LCC Site, the East Site and the Nib Site for planning purposes, to engage section 203 of the 2016 Act.
4. *Consideration (2) the Scheme will contribute to the provision or improvement of the economic, social or environmental well-being of the area:*
  - 4.1 The well-being objects in section 226(1A) of the 1990 Act are all considered to be met by way of the very significant benefits arising from the Scheme as outlined in the report for agenda Item 23. The benefits that will accrue from each part of the Scheme have been considered which will be covered by the acquisitions and these in themselves confer considerable benefits that will contribute to all of the well-being objects.
  - 4.2 The public benefits of the Scheme are very significant and will outweigh the impacts on the rights of those parties who hold the rights, and any other adverse impacts arising from the Scheme and that the Scheme is in the public interest.
5. *Consideration (3) (whether rights exist which are capable of being overridden) -* this is met as rights of light and the other rights and covenants referred to in this report are capable of being overridden pursuant to section 203. The work which has been done indicates that there will be infringements of rights of light and potentially other rights and restrictions too.
6. *Consideration (4) (necessity of interference with the rights):*

- 6.1 In terms of rights of light EC has made it clear that it is not possible to amend the Scheme in such a manner so that no infringements of rights occur.
  - 6.2 The only way of ensuring no interference with the rights of light will be to limit the Scheme to the heights and massing of the existing buildings on the site, which will not deliver the quantity of much needed housing and other uses that the Council wishes to see on the site.
  - 6.3 Such a "cutback" will essentially result in an entirely new development. EC has been clear that it will not proceed with such a smaller, compromised design, as it will not be worth its while financially to do so.
  - 6.4 Even if a financially attractive alternative scheme did exist which did not infringe any rights of light which EC or another developer was willing to proceed with (which is very unlikely), such a scheme will require a totally new, full planning application to be submitted for the whole application site, creating further risks and delays for the delivery of the public benefits associated with the Scheme. Such a scheme will also not deliver the benefits sought by the development plan policy for the site.
  - 6.5 Given the number of parties who will need to be negotiated with it will not be practicable or realistic for releases to be negotiated in any sort of reasonable timeframe, or realistic to expect that in this particular case at all. This is true of both the rights of light and the LCC title reservation. Also, it will only take one of the interested parties to either not sign a release or not to engage and the entire Scheme will be frustrated. In respect of some of the historical rights and covenants affecting the Scheme site, the properties with the benefit of those rights cannot be identified, so the developer is unable to negotiate with the relevant parties in those respects. The use of section 203 to override the rights is the only way for the development to be able to proceed in practice and certainly in any reasonable time frame and at a cost which can be reasonably estimated. In these particular circumstances, it is reasonable not to require the developer to undertake such negotiations.
7. *Consideration (5) (compelling case in the public interest)*
    - 7.1 This is dealt with above. There is a compelling case in the public interest for the overriding of rights on the basis of the very significant benefits that will accrue from the Scheme.
  8. *Consideration (6) (human rights)*
    - 8.1 Human rights are discussed in their own section in the main body of the report.
    - 8.2 In determining the level of permissible interference with the enjoyment of the rights, the courts have held that any interference must strike a fair balance between the public benefits associated with development 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.

- 8.3 Cabinet must therefore balance the impacts on human rights of the affected adjacent property owners against the overall benefits to the community which the Scheme will bring and consider whether the interference is necessary and proportionate.
- 8.4 The public benefits that will stem from the Scheme are set out in Appendix C of agenda Item 23.
- 8.5 The right of affected owners to claim compensation for the infringement of their rights is relevant to an assessment of the proportionality of the infringement. Whilst the level of compensation will not be on a ransom or development profits basis, it is nevertheless at the level which Parliament has specified as appropriate.
- 8.6 For the reasons given above, in this particular case it is not considered a realistic or practicable option for releases of the rights to be secured in any sort of reasonable timeframe and that the only realistic option to remove the risk of injunction in this case is to use the Council's powers to override rights.
9. *Consideration (7) (PSED)* is considered to be met for the reasons set out in the main body of the report.
10. As regards the principles set out in the June 2016 Cabinet policy for intervention under section 227 of the 1990 Act to enable development to proceed as referred to earlier in this report:
  - (a) *Each application to the Council to be determined on its own merits but the criteria will guide applicants and the Council* - as the policy makes clear each case is to be determined on its merits. The benefits of the Scheme and the particular circumstances of this case, do warrant departing from some aspects of the policy, as explained in this report.
  - (b) *Planning consent should exist and be free of challenge* - this point has not been met yet but is discussed in Appendix D and the main body of this report. Although ideally the planning permission should already be immune from further challenge, this is not a legal requirement and the importance of the Scheme and the benefits it brings justifies the Council in seeking to facilitate it now, so that valuable time is not lost. The Scheme is an especially important scheme for the borough which should proceed as soon as possible in the public interest. To the extent that entering into the proposed arrangements is a departure from principle (b) of the June 2016 policy, it is considered the circumstances justify such a departure.
  - (c) *Is there a reasonable alternative mechanism for bringing about the development without interfering with the rights?* In this particular case, no - see the conclusion on consideration (4) above.
  - (d) *Use as a last resort - Have negotiations taken place with the relevant rights holders to release the rights by agreement?* No, but see the conclusion on consideration (4) above. .



- (e)-(g) *Indemnity* - the Council will only proceed when it has received a full indemnity in each case. This principle will therefore be satisfied.
  - (h) *No breach of section 233 duty to dispose of land at the best consideration that can be reasonably be obtained* - For the reasons set out in paragraph 35 of the report The Council will achieve the best consideration that can reasonably be obtained in respect of the underleases (including any break rights therein).
  - (i) *Public Sector Equalities Duty* - the application of this duty is discussed in the main body of the report and has been complied with.
  - (j) *Proportionality* - this is dealt with in the context of human rights and is met.
11. Accordingly, the principles of the June 2016 policy are either met or the particular circumstances of this case justify a departure from certain principles of the policy.