

MAYOR AND CABINET		
Report Title	Response to Call-in of Mayor and Cabinet Decision – New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order	
Key Decision	Yes	Item No.
Ward	All	
Contributors	Executive Director for Resources and Regeneration, Head of Planning, Head of Law	
Class	Part 1	Date: 11 January 2017

1. Summary

1.1 This report reports on matters which led to the reconsideration of the decision by the Cabinet on 15 December 2016 being deferred. It also responds to the comments made by the Overview and Scrutiny Business Panel on 13 December 2016.

1.2 The report which was due to be considered by the Cabinet at the meeting on 15 December 2016 and which:

1.2.1 informed the Cabinet of the response to the call-in and associated comments agreed by the Overview and Scrutiny Business Panel on 20 September 2016 in accordance with Paragraph 14 of the Overview and Scrutiny Procedure Rules and asked the Cabinet to confirm the decision made on “New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order” on 7 September 2016; and

1.2.2 reported back to the Cabinet on the matters which led to a deferral of the reconsideration of the decision on 28 September 2016

is attached to this report as Appendix 1 and should be considered by the Cabinet along with this report.

2. Purpose of the Report

2.1 To inform the Cabinet of the response of Officers to the call-in agreed by the Overview and Scrutiny Business Panel on 20 September 2016 and the subsequent comments made by the Overview and Scrutiny Business Panel on 13 December 2016 and to ask the Cabinet to confirm the decision made on “New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order” on 7 September 2016.

- 2.2 To report back to the Cabinet on the matters which led to the deferrals of the re-consideration of the decision on 28 September 2016 and 15 December 2016 respectively.

3. Recommendation

The Cabinet is requested to confirm the decision made on “New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order” on 7 September 2016.

4. Background

- 4.1 At a meeting of Mayor and Cabinet held on 7 September 2016, the Cabinet considered a report entitled “New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order” and their decision was to agree the recommendations in that report. In accordance with the Constitution, this decision was notified to all members of the Business Panel within 2 days of being made.
- 4.2 The decision was considered at a meeting of the Overview and Scrutiny Business Panel on 20 September 2016 and their decision was to refer the matter back to Mayor and Cabinet for reconsideration.
- 4.3 The decision was due to be reconsidered at the meeting of Mayor and Cabinet on 28 September 2016, but the matter was deferred for the reasons set out in paragraph 7.1 of the report attached at Appendix 1.
- 4.4 The decision was then due to be reconsidered at the meeting of Mayor and Cabinet on 15 December 2016. On 13 December 2016 the Overview and Scrutiny Business Panel were given the opportunity to make comments on the report to the Mayor and Cabinet for consideration by the Mayor and Cabinet when it met to reconsider its decision. Overview and Scrutiny Business Panel’s comments following consideration of the report are set out at paragraph 5.1 below.
- 4.5 At the meeting of Mayor and Cabinet on 15 December 2016, Cabinet deferred re-consideration of the decision. Councillor Alan Smith, Chair of Cabinet, made the following statement:

“In all of its deliberations about the proposed compulsory purchase order at New Bermondsey, the Council has been, and remains, firmly committed to the continued operation of the Millwall Football Club. We recognise that its continued operation must be at the heart of any proposed redevelopment. To achieve this, the Council has throughout put in place measures to protect the Club and the Millwall Community Scheme, including through the imposition of planning obligations to secure the use of the new improved sporting facilities that would be provided if the redevelopment proceeds.

For the first time, despite years of contact between the Council and the Club, on 13 December 2016, the Chief Executive of Millwall Football Club in his spoken

submission to the Council raised an issue which the Club has never before brought to our attention. The issue which is clearly important to the Club concerns the Category 2 status of the Millwall Football Club Youth Academy. The Club's Chief Executive told the Council on 13 December that such status may be put in jeopardy by the current proposals for the use of the new sporting facilities to replace the Lions Centre, should the redevelopment proceed. We do not believe this to be the case.

However, this is clearly a significant issue for the Club and, despite the fact that it has only been brought to the attention of the Council at this very late stage, it is an issue which the Council takes seriously. Since the issue was first raised, Council officers have been gathering information about the current arrangements between the Academy and the Millwall Community Scheme for use of the facilities at the Lions Centre. We need to get to the bottom of the existing arrangements so that we can understand what future protection would be needed.

We believe that sufficient protections are in place already, but we want to be confident that if the compulsory purchase order proceeds, appropriate protections are in place to protect the Category 2 status. For this reason we are making further enquiries, including writing to the Club and the Millwall Community Scheme to set out for us in writing details of their current arrangements and to let us have information concerning the Category 2 status of the Academy.

To allow members to consider the new information and its impact, I am proposing that the reconsideration of the decision made by the Cabinet on 7 September 2016 to make a compulsory purchase order in respect of the New Bermondsey site be deferred to our next meeting on 11 January 2017. That will allow us to give this particular matter further consideration."

4.6 Accordingly, on 16 December 2016 the Chief Executive wrote to Steven Kavanagh, Chief Executive of Millwall Football Club and to Peter Walsh, Chair of Millwall Community Scheme. Responses were received and further letters have been sent out. Copies of the correspondence and the responses received to date are attached as Appendix 3 to this report.

4.7 The officer response to the further comments made by the Overview and Scrutiny Business Panel on 13 December 2016 is set out at Section 5 of this report.

5. Overview and Scrutiny Business Panel – Further Comments made on 13 December 2016

5.1 On 13 December 2016 the Overview and Scrutiny Business Panel considered the report due to be considered by the Cabinet on 15 December 2016. Following discussion at the Overview and Scrutiny Business Panel, Members agreed to make the following additional comments and requests to the Cabinet in support of their existing Call-in:

- i. Correspondence received from Eversheds and Shoosmiths be referred to the Cabinet and officers be asked to prepare a response.
- ii. the Cabinet be requested to ask officers to ensure that all Housing Action Zone bid documents are made available to Scrutiny Members, and a redacted copy made available to the public.
- iii. the Memorandum of Understanding should be signed before a CPO is approved.
- iv. the Cabinet be requested to ask PwC to give their professional advice to members on assurances made by Renewal in respect of the Bermondsey CPO arrangements.
- v. the Cabinet be requested to ask officers to ensure that the Section 106 agreement is reviewed by the Strategic Planning Committee.
- vi. the Cabinet be requested to ask officers to resolve issues raised on the Academy and the Community Trust before the CPO is approved.
- vii. Business Panel raised concerns about Renewal's CPO signage. The Cabinet is requested to consider whether they would want to do business with a company, which despite an apology, had taken such a heavy handed approach with local residents and businesses.
- viii. the Lambeth Smith Hampton narrative seemed to be incomplete, and the Cabinet is requested to ensure that documents and correspondence relating to the CPO be made available in a timely manner

6. Officer Response to Comments:

6.1 Point i.

- 6.1.1 On 13 December 2016, Eversheds acting on behalf of their client Millwall Football Club Limited wrote to Councillor Alan Hall. A copy of that letter is attached to this report at Appendix 4. Officers' response to the issues raised in that letter are as follows, using the same headings used in the letter:

Appointment of Renewal as Developer

Taking each bullet point under this heading in turn:

Bullet point 1

It is acknowledged that Renewal does not have a track record in schemes of this scale and nature. However, as confirmed by PwC, the Master Delivery Strategy and the use of specialist sub-developers and the attendant transfer of construction and residential market risks helps address concerns about Renewal's lack of track record.

On a point of accuracy, it is not correct to say that the Council has 'appointed' Renewal. Renewal are bringing the scheme forward of their own accord and have assembled the majority of the land interests in the site and secured planning permission for the Scheme. Members are being asked to consider whether to support completion of the land assembly required for the Scheme through the use of CPO powers.

Bullet point 2

This appears to be a statement of fact and it is not clear what is being suggested. The former leader is assumed to be a reference to David Sullivan, the former Mayor of Lewisham. He left the Council in 2002 before Renewal commenced its land assembly exercise in the area and long before any decisions relating to the scheme came to be made by the Council. Renewal have provided information to show that David Sullivan had sold all his shares in the UK registered companies by 19 June 2006 and that he ceased to be a Director of the UK registered companies on 31 August 2007.

Information provided to the Council's external lawyers Bond Dickinson confirms David Sullivan has not at any time had any involvement in the IoM companies.

The former senior officer is a reference to Mushtaq Malik. He left the Council in 1995 before the Renewal companies were established and before the project began.

Bullet point 3

It is made clear in the Mayor and Cabinet report of 7 September 2016 that the shareholders in Renewal are incorporated overseas. In relation to the comment about 'tax havens', as is made clear in the Mayor and Cabinet report of 15 December 2016 (paragraph 6.2.1) the profits from the scheme will be liable to UK tax. This is provided for in the Finance Act 2016.

The beneficial owners are not anonymous. This information is contained in the PwC report and was therefore known to Council officers and available to Members. The ultimate owners of Renewal are:

- (1) Independent Advisors Incorporated (IAI), which is ultimately owned and controlled by the Malik family trust established solely for the benefit of Mushtaq Malik and his dependents.
- (2) Incorporated Holdings Limited (IHL), which is ultimately owned and controlled by a charitable trust, for which the principal beneficiary is the Jack Petchey Foundation, a UK registered charity.

A letter from IHL confirming their ownership is attached to this report at Appendix 6. The documentation relating to the Malik family trust has been reviewed and verified by the Council's external lawyers Bond Dickinson, who have also confirmed that the documentation they have seen shows that all of the shares in IAI are held on trust for the benefit of the Malik family and are not held on trust for any other third party or entity.

Bullet point 4

The due diligence carried out has been extensive. The issues regarding deliverability of the Scheme are addressed at length in the Mayor and Cabinet report of 7 September 2016 (paragraphs 7.47 – 7.74) which in turn set out the conclusions of the PwC and GL Hearn Reports.

Bullet point 5

Renewal are bringing the Scheme forward of their own accord and have assembled the majority of the land interests in the site and secured planning permission for the Scheme. As is acknowledged in the Mayor and Cabinet report of 7 September 2016 (paragraph 7.60), the Council does not have a directly enforceable obligation from Renewal to deliver the whole of the scheme, but any such obligation would not in any event guarantee delivery. Officers remain of the opinion that the necessary resources will be available and that the Scheme will provide a sufficient return to Renewal (or another developer/developers), such that the Council can be confident that if the CPO is confirmed, Renewal will wish to proceed with the Scheme (for the reasons given above), and the Scheme will be delivered.

Bullet point 6

Viability information was in fact provided through the planning application process which commenced in 2011 and long before the Mayor and Cabinet meeting of 13 September 2013. That aside, the report to Mayor and Cabinet on 13 September 2013 was not considering the viability of the Scheme. As is made clear in Part 2 of the report to Mayor and Cabinet on 13 September 2013, a redacted copy of which has been provided to MFC: "The Mayor will not be asked to consider using compulsory purchase powers unless and until full financial due diligence has been undertaken and officers are satisfied that Renewal Group Limited has a viable

business plan and funding strategy to deliver the scheme.” The GL Hearn viability report referred to was commissioned as part of this exercise and the information provided has been further updated and additional information provided since that time.

In all the circumstances, the suggestion that the matter should be treated with “deep scepticism” or that this is somehow a “wholly extraordinary approach” is not accepted.

LSH Brochure

We do not know how the LSH Brochure found its way to the Guardian newspaper journalist (Barney Ronay) and no evidence has been provided to demonstrate how it came to be in his possession.

In response to specific questions, the CEO of LSH has stated “LSH were not instructed to produce the document by IHL or any member of the Renewal Group. As I have indicated, a copy of this document was not seen or approved by IHL or Renewal.”

This accords with Renewal and IHL’s statements that they had not instructed, seen or approved the LSH Brochure.

The claim it is highly improbable the LSH Brochure was prepared without the client’s knowledge or approval does not accord with the statements received from those involved. We have not received any evidence to suggest those statements are not correct.

The Council has verified the terms of LSH’s engagement. The correspondence passing between IHL and LSH remains confidential, but it has been made available for inspection by Members under the relevant provisions of the Local Government Act 1972.

It is important to note that it is not disputed that LSH were engaged by IHL and that information would have been provided to LSH by IHL. However, LSH have confirmed that they were not instructed to produce the LSH Brochure.

The position on the LSH Brochure is set out in detail in section 7 of the Mayor and Cabinet report of 15 December 2016.

The inability of the Club to bid for the freehold of the land they leased

This issue has already been fully addressed in the Mayor and Cabinet report of 15 December 2016 (paragraph 6.4.2 (a) Point 1). It is simply not accepted that ‘it was impossible for CBRE to advise the Club to make a bid’. It was always open to MFC to make a bid, but they chose not to.

Threat to future of MCT and Youth Academy

This is dealt with at paragraph 6.6 (point iv) below.

Misleading statements about extent of land owned or controlled by Renewal

The position on the land and rights to be included in the CPO is set out correctly and in full at section 6 of the Mayor and Cabinet report of 7 September 2016. The land owned/controlled by Renewal is shown on the plan attached as Appendix 5 to that report and the position has therefore been accurately and correctly presented to Members. The freehold and leasehold interests proposed to be included in the CPO are set out in full in the Table attached as Appendix 6 to that report. The position regarding the conditional Land Sale Agreement is also clearly set out in that report.

- 6.1.2 On 9 December 2016, Shoosmiths also wrote to the Mayor and Members of the Cabinet on behalf of certain occupiers within the Site. A copy of Shoosmiths' letter is also included at Appendix 4. A number of the points made by Shoosmiths have been made before in previous correspondence and have been addressed in the previous reports (see paragraphs 7.38 to 7.44, 7.75//7.76, Sections 11 and 12 of the Mayor and Cabinet Report of 7 September 2016 and relevant Appendices).

With regard to engagement with the owner/occupiers, it is common in CPO cases for negotiations to be progressed by the developer, as is the case here. As is explained at paragraph 6.7 below, the CPO Indemnity Agreement includes provisions regarding negotiations with landowners, including the Council's involvement in negotiations generally and where any conflict arises if GL Hearn continue to act in a given case. As has been made clear in previous reports, the Council has been in contact with owners and occupiers on a number of occasions and has made it quite clear that it remains willing and available to negotiate with owners/occupiers in the event they do not wish to deal with Renewal.

The position as at 7 September 2016 regarding negotiations with the parties represented by Shoosmiths was set out in the Mayor and Cabinet report of that date (paragraph 7.10). Since then, in October a Council officer met with Mr Sylvanus Onipede of Sylvanus Woodcraft (Unit 35 Bolina Industrial Estate) and Mr Van Nguyen (who owns Units 31/32 Bolina Industrial Estate together with Van Thi Ngoc Huynh). Following the meeting, both Mr Onipede and Mr Nguyen have jointly appointed a local agent (Hindwoods) to act on their behalf in the search for an alternative location and in progressing negotiations. GL Hearn and Hindwoods are actively engaged in discussions and the search for suitable alternative locations for both Units 35 and 31/32 Bolina Industrial Estate. Officers are monitoring the situation and will become involved in those negotiations if appropriate.

With regard to Ms Winston, as Members are aware she is an artist/sculptor with premises at Unit 17 Excelsior Works. The position regarding engagement remains as stated in the Mayor and Cabinet report of 7 September 2016. Ms Winston has complained of stress caused by the situation and has also stated that she does not want to be disturbed whilst preparing for an important show this year. Whilst Renewal and officers remain available and keen to progress matters with Ms Winston, they are conscious of her circumstances.

6.2 Point ii.

The Housing Action Zone bid documents are available for inspection by all Members in the offices of Legal Services. A redacted copy of the bid documents will be appended to the Mayor and Cabinet report and will therefore be available for public inspection.

6.3 Point iii.

It is not necessary for the Memorandum of Understanding (MoU) to be signed before the CPO is approved. The GLA has stated that it will enter into the MoU with the Council once Mayor and Cabinet have approved it and following the CPO resolution becoming effective. The Memorandum of Understanding is the subject of a separate report which appears elsewhere on the Agenda of the meeting at which this report is due to be considered.

6.4 Point iv.

The assurances made by Mushtaq Malik, Chief Executive on behalf of Renewal on 12 December 2016 are attached to this report as Appendix 6.

The position regarding verification of the comments on Ownership is dealt with at paragraph 6.1 above.

The comments on Millwall Community Trust can only be taken at face value at this point. However, they provide reassurance regarding the relocation package to be offered and the way in which the relocation will work. It is also important to note that the Section 106 Agreement protects the Trust in the following ways:

- there is no obligation upon MCS to vacate the Lions Centre until the new facilities at Energize are completed;
- the replacement facility is to be provided to a detailed specification approved by the Council which must be at least of the same quality and nature as the existing facilities offered by the MCS;
- a Lions Centre Relocation Strategy will be agreed which sets out the future needs of MCS; how the accommodation needs of MCS will be met; how the

MCS will be accommodated and operational prior to demolition of the Lions Centre; a detailed specification for the replacement facility and programme of works; and a detailed statement of how the replacement facility will be occupied by MFS including written confirmation that MFS approve of the proposals.

- the Lions Centre Relocation Strategy will be based on liaison between the trustees of MCS, Millwall, the FA and Sports England with evidence of the liaison and agreement with MCS forming part of the strategy.
- the developer is to submit the Lions Centre Relocation Strategy to the Council for approval prior to the commencement of phase 2 or any D2 use (whichever is the earlier). No commencement of phase 2 and/or D2 space (whichever is the earlier) can take place until that strategy is approved.
- the Replacement Facility must be open for use by the public in accordance with the approved strategy prior to the demolition of the existing facility;
- no material operation can take place that would prevent the Lions Centre remaining operational in its current facility until the replacement facility is finished and open to the public;
- Phases 2, 3, 4, 5 and 5A cannot be occupied unless in accordance with the approved Lions Centre Relocation Strategy.

It will be noted that in his e-mail of 12 December 2016, Mr Malik also includes comments (under the heading 'Relationship with the Council') about the previous involvement of Dave Sullivan in Renewal. Additional information on this point is also included above under the heading *Bullet point 2*. So far as member and officer interests are concerned, the Chief Executive has confirmed that no current member or Council officer has declared any involvement, financial or otherwise, with Renewal or either of its shareholders. The position of the Mayor is as stated.

PwC have been asked to comment on the assurances and their response is awaited.

6.5 **Point v.**

The Council Scheme of Delegation sets out the delegation to officers in relation to non-executive planning matters and those matters that are reserved to Strategic Planning Committee. Whilst the comment of the Overview and Scrutiny Business Panel is noted, as these are non-executive functions, it is not appropriate for the Cabinet to determine how decisions relating to those functions are made or to make any request in this respect.

6.6 **Point vi.**

The current position is as set out at paragraph 4.6 of this report and copies of the correspondence are attached at Appendix 3. At the time of publishing this report, responses were still awaited from the Club and the Millwall Community Scheme and officers will therefore confirm the position regarding these issues at the meeting where this report is considered.

6.7 Point vii.

As stated, Renewal have apologised for the signage referred to and this was an error of judgement on their part. The negotiations with landowners are being carried out by GL Hearn under a joint appointment with the Council and Renewal. This means that GL Hearn owe an equal duty of care to the Council and Renewal. Council officers are involved in these negotiations and, as has been made clear on a number of occasions, are available and willing to engage directly with landowners where landowners request this. Under the terms of the CPO Indemnity Agreement, if at any point the Council considers it should take over the negotiations, then there is a process for that to happen. Further, if the Council considers that there is a conflict of interest if GL Hearn continues to act under the joint appointment, it may following discussion with Renewal request the appointment of its own surveyor in place of GL Hearn to undertake the handling of all further negotiations. The Council's decision on this is final. As such, Members should be reassured as to how negotiations with the remaining landowners will be undertaken, the Council's role in overseeing this process and the protections that are in place under the CPO Indemnity Agreement.

6.8 Point viii.

The position on Lambert Smith Hampton is set out in detail in section 7 of the Mayor and Cabinet report of 15 December 2016. Further comments are contained at paragraph 6.1 above under the heading 'LSH Brochure'. As already stated, the correspondence passing between IHL and LSH remains confidential, but it has been made available for inspection by Members under the relevant provisions of the Local Government Act 1972. This also applies and will continue to apply to all documents and correspondence relating to the CPO where these are not publicly available due to their containing exempt information.

7. Financial Implications:

7.1 There are no direct financial implications arising from this report.

8. Legal Implications:

8.1 Members' attention is drawn to the legal implications in the Report attached at Appendix 1 (and the Report attached at Appendix 1 to that Report) and should also note that the Constitutional position is referred to in the body of that report.

9. Crime and Disorder Implications:

9.1 There are no direct crime and disorder implications arising from this response.

10. Equalities Implications:

10.1 There are no direct equalities implications arising from this response.

11. Environmental Implications:

11.1 There are no environmental implications arising from this response.

12. Conclusion

12.1 In all the circumstances, having regard to the matters raised by Overview and Scrutiny Business Panel and the other matters addressed in this report, Officers remain of the view that there is a compelling case in the public interest for the compulsory acquisition of the remaining land interests to enable the scheme to proceed. Officers therefore recommend that the Cabinet agrees the recommendation in this report.

List of Appendices

Appendix 1: Mayor & Cabinet Report dated 15 December 2016 “Response to Call-in of Mayor and Cabinet Decision – New Bermondsey (Formerly Surrey Canal Triangle) Proposed Compulsory Purchase Order” and all Appendices to that report

Appendix 2: Overview & Scrutiny Business Panel report dated 13 December 2016 “New Bermondsey (formerly Surrey Canal Triangle) proposed CPO”

Appendix 3: Correspondence with Millwall Football Club and Millwall Community Trust

Appendix 4: Eversheds letter dated 13 December 2016 and Shoosmiths letter dated 9 December 2016

Appendix 5: Correspondence received from Richard Slack and Shirley Kehoe

Appendix 6: Assurances given by the Chief Executive of Renewal on 12 December 2016

BACKGROUND PAPERS

None

If you have any queries on this report, please contact Kplom Lotsu, SGM Capital Programme Delivery 0208 3149283