

Decision Pathway



PURPOSE: Key decision

MEETING: Cabinet

DATE: 28 April 2020

TITLE	Compulsory Purchase Order at Temple Gate, Bristol		
Ward(s)	<i>Central</i>		
Author:	Jan Reichel	Job title:	Senior Development Surveyor
Cabinet lead:	Cllr Cheney	Executive Director lead:	Stephen Peacock
Proposal origin: <i>BCC Staff</i>			
Decision maker: Cabinet Member Decision forum: <i>Cabinet</i>			
Purpose of Report: 1. To update the authority to acquire the land required for the Temple Gate (previously Temple Square) development by agreement and also to promote Compulsory Purchase Order(s) under S226 (1)(a) of the Town and Country Planning Act 1990 to acquire the required land, if agreement with the current owners is believed to not be possible within a reasonable timeframe. 2. To obtain authority to, as necessary, (a) apply to the Secretary of State for a Stopping Up Order to close highway areas included within the regeneration scheme area to enable development to be carried out, pursuant to S247 of the Town and Country Planning Act 1990, and (b) make an application to the Magistrates Court under s116 of the Highways Act 1980 to stop up or divert the highway.. 3. To use the Council's positive planning powers of compulsory purchase and appropriation to assemble the required land for the Temple Gate Scheme.			
Evidence Base: 1. The original Cabinet resolution authorising the use of a Compulsory Purchase Order (CPO) to secure site assembly at Temple Gate was made on 6 November 2018. 2. At that time it was reported there were approximately 100 Unilateral Notices against the freehold title of the Grosvenor Hotel (which lies within the proposed CPO boundary) and that those interests needed to be included in the CPO. 3. The Unilateral Notices were put on the title by parties who had placed deposits against apartments in a proposed development of the Grosvenor Hotel by a third party. That development has not proceeded and the companies involved have gone into liquidation. 4. Recent legal advice from specialist counsel concludes that the interests protected by the Unilateral Notices are no longer to be considered interests in land for the purposes of the Acquisition of Land Act 1981 and consequently it is no longer proposed to include the interests in the schedule to the CPO. It is proposed to write to the parties where possible, to explain the Council's position and inform them that a CPO has been made. 5. The change in the parties to be included in the CPO together with the amount of time that has elapsed since the original resolution mean that it is appropriate to seek a further approval from Cabinet to the making of the CPO and at the same time to seek specific authority for a Stopping Up Order for redundant highway that is included in the regeneration area covered by the CPO.			
Cabinet Member / Officer Recommendations: That the decision maker: Notes the intention to continue with the Compulsory Purchase Order as set out in this report and			

1. Authorises the Executive Director Growth and Regeneration, in consultation with the Deputy Mayor for Finance Governance & Performance to proceed with the Making of a Compulsory Purchase Order under S226(1) (a) of the Town and Country Planning Act 1990 as set out in the Cabinet decision of 6 November 2018 for any or all of the interests in the land included within the red line on the attached plan entitled "Draft Compulsory Purchase Order Plan", and numbered PROP-ARC-0067c, for the regeneration, development or improvement of that land.
2. Authorises the Executive Director Growth and Regeneration, in consultation with the Deputy Mayor for Finance Governance and Performance to take all necessary steps to prepare, and to make (a) an application to the Secretary of State for a Stopping Up Order pursuant to S247 of the Town and Country Planning Act 1990, and (b) an application to the Magistrates Court under s116 of the Highways Act 1980 to stop up or divert the highway for those areas of highway required to be stopped up within the area shown on plan PROP-ARC-0067c attached to the report to enable development to proceed, and to make the case for the proposed order at a public inquiry, if one is called.
3. Authorises the Executive Director Growth and Regeneration, in consultation with the Deputy Mayor for Finance Governance & Performance to appropriate to the Council's planning purposes any or all of the land included within the red line on the attached plan entitled "Draft Compulsory Purchase Order Plan", and numbered PROP-ARC-0067c, that is held by the Council to enable the regeneration, development or improvement of that land.

Corporate Strategy alignment:

The regeneration proposals for Temple Gate align with a number of corporate priorities, including:

- Develop a diverse economy that offers opportunity to all;
- Make progress towards being the UK's best digitally connected city, and;
- Reduce social and economic isolation and help connect people to people, people to jobs and people to opportunity.

The proposals will also support the Council in meeting key Enterprise Zone commitments, including around business rates income and jobs delivery. The Council is committed to delivering 17,000 jobs within the (original) Enterprise Zone area by 2037.

Phase 1 of the Temple Gate regeneration proposals include additional space for Engine Shed. Engine Shed has been named the best university business incubator in the world. The Bristol and Bath region is also the UK's only 'fast growing and globally significant tech cluster' by McKinsey and Co in 2015 and Engine Shed has been key in supporting this growth. Expanding the scale and scope of Engine Shed, as part of the wider regeneration that will be delivered in the Temple Quarter as part of the a joint development and land agreement, will deliver:

- growth of priority sectors including creative, digital, low carbon and cross cutting high tech industries, by providing incubation support and encouragement and space for collaboration within and between sectors;
- jobs and a high profile, high quality development focused on driving economic growth in the heart of the Temple Quarter, which is accessible and provides opportunity to all;
- ES2 will act as a multiplier for jobs and growth, attracting new occupiers wanting to locate nearby and provide a source of demand for space from businesses ready to leave the facility, because they have been incubated successfully and/or are moving to expand.

City Benefits:

Delivery of expansion space for Engine Shed (Engine Shed 2) and the redevelopment of Temple Gate will demonstrate progress in a key area of change and development within the city, supporting Council ambitions to promote the redevelopment of the wider Temple Meads and Temple Quarter areas.

Significant city benefits will be delivered as an outcome of the long term economic growth driven by the Engine Shed 2 (ES2) project alongside the wider regeneration achieved through a joint development and land agreement. The development will have the potential to achieve high sustainability outcomes, based on design proposals and the excellent accessibility of the developments at the heart of the Temple Quarter and near to Temple Meads Station.

The ES2 Project includes proposals for working with schools and universities to deliver a sustainable flow of talent into priority sectors, and to promote and support entry into the world of entrepreneurship by disadvantaged groups. Focus on incubators in Clean Energy and Social Innovation will help increase the gender diversity that we currently do not see within a purely high-tech environment.

Consultation Details:

- Executive Director Meeting – 5 February 2020
- Cabinet Member Briefing – 17 February 2020
- This regeneration project and Engine Shed 2 has been discussed with key partners including the West of England Combined Authority (WECA), Homes England, stakeholders involved in Engine Shed, University of Bristol, Government departments and elected members. There has been publicity of proposals through the Temple Quarter newsletter and additional consultation was conducted by Skanska in support of the planning application they submitted for Engine Shed 2 and the outline application for the proposed Temple Square development. The item has not been presented before the scrutiny panel to date.

Background Documents:

1. [Cabinet Report 6 November 2018](#)
2. [Planning Application 16/06828/P](#)

Revenue Cost	N/A	Source of Revenue Funding	
Capital Cost	£3.5m	Source of Capital Funding	Prudential borrowing against receipts from land sales
One off cost <input checked="" type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input type="checkbox"/>	Income generation proposal <input type="checkbox"/>

Required information to be completed by Financial/Legal/ICT/ HR partners:

1. Finance Advice:

The authority to progress the CPO of the Grosvenor Hotel site and adjacent land will complete the land assembly and enable disposal of the wider Temple Square site for redevelopment. The cost of the CPO is assumed to be offset, in the longer term, by the capital receipt. Pending the delivery of the capital receipt for the site, the cost of the CPO would need to be financed through prudential borrowing which has been included in the capital programme agreed by Cabinet in February 2020, with a budget for the CPO land assembly, including the Grosvenor Hotel, having previously received Cabinet approval in November 2018. At that time it was anticipated that overall, there will be a net receipt generated by the proposal, should land assembly be successful.

The scheme may be at risk due to the impact of both Brexit and the COVID 19 virus and their increasing impact on the economy which may cause a delay to the delivery or reprioritisation of the resources previously identified by both the Council and Skanska, and may affect the viability of the original planned development. There is a risk that although the scheme was initially anticipated to result in a net receipt for the Council that the current economic emergency situation and its longer term impact will change this. Hence the Council will need to undertake mitigating actions to ensure that it is not negatively impacted financially by undertaking this CPO and land assembly.

Finance Business Partner: Wendy Welsh, Finance Manager 25th March 2020

2. Legal Advice:

The Council will continue to rely upon the detailed recommendations for the progression of the Compulsory Purchase Orders included in Appendix A, Part 7, of the report to Cabinet of 6 November 2018. The information in the 2018 Report remains correct and applicable to this decision subject to an update in relation to Appendix A, section 6.3, of the 2018 Report.

As is detailed in the 2018 Report, the freehold owner of the former Grosvenor Hotel is Earcloud Limited. Since 2018 further discussions have taken place (and will continue) but the need to secure powers of land assembly by way of

compulsory purchase remain to enable the proposed development of the Temple Gate scheme being promoted by Skanska to continue.

In 2018 it was reported that a number of new interests had been created in the Order land and that the existence of these many interests made it more important that the Council has compulsory powers available.

Because of the complicated structure of the now aborted scheme for the Grosvenor Hotel to which those many unilateral notices that were registered on Earlcloud Limited's title related, the position is no longer that compulsory powers are in part justified by the proliferation of those interests. Because of events that have taken place since 2018, the Council sought advice from specialist property Counsel whether the unilateral notices still protected what could be considered to be interests in land for the purposes of the Acquisition of Land Act 1981. Counsel's advice is provided as an Appendix to these papers. As a result of Counsel's advice it is now legitimate for the Council to conclude that the unilateral notices registered on the freehold title do not protect interests in land for the purpose of the Acquisition of Land Act 1981 and the many interests that are noted on the title are not qualifying interests to be included in the compulsory purchase process.

The case for compulsory purchase remains compelling however as the interest of Earlcloud Limited and the existence of historic rights and covenants over the wider Order land justify a Compulsory Purchase Order being promoted.

Out of courtesy the Council will, where it is possible to provide notice, send a copy of the notice of making the Compulsory Purchase Order to the relevant holders of the interest to which the many unilateral notices apply. A number of the holders have addresses for service outside of the UK jurisdiction and may well have changed addresses since the unilateral notice was registered on the freehold title. Whilst officers and the Council's appointed consultants will use reasonable endeavours to notify the holders of the unilateral notices that the Compulsory Purchase Order has been made, it may not be possible to reach all such parties easily. Officers will also instruct the Council's consultants to post site notices and is required under the Acquisition of Land Act 1981 to place a notice in two successive weeks in a local newspaper.

The Compulsory Purchase Order Schedule will include rights to light over the CPO Land held by parties with interests falling outside of the CPO Land. Some of the CPO Land is in unknown ownership, and the Council will accordingly invoke the process under the Acquisition of Land Act 1981 to notify unknown owners including the posting of site notices.

- A. Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - iii) Foster good relations between persons who share a relevant protected characteristic and those who do

not share it. This involves having due regard, in particular, to the need to –

- tackle prejudice; and
- promote understanding.

The proposed compulsory purchase and stopping up of highways do not engage any of the protected characteristics raised above. Similarly no impacts in relation to protected characteristics are envisaged by the use of the Council's compulsory purchase and appropriation powers. [Whilst a number of the parties who would previously have appeared the Schedule in the Compulsory Purchase Order, but who are now regarded as not having an interest in land, are from countries other than the UK or may otherwise potentially have protected characteristics, the decision to exclude those parties from being treated as having an interest in land is taken for purely legal reasons and is not a decision that infringes on the provisions of the Equalities Act.]

B. Human Rights Considerations

- i. The Human Rights Act 1998 incorporated into UK domestic law the European Convention on Human Rights (the Convention). The HRA 1998 makes it lawful for a public body to act in contravention of the Convention.
- ii. The Convention includes provisions in the form of Articles, the aim of which is to protect the rights of individuals (including companies). In resolving to make a compulsory purchase order the Council has to consider the rights of those affected, principally property owners under the Convention. The relevant provisions are:
 - a. Article 1 of the First Protocol – this protects the rights of the owner and the peaceful enjoyment of possession – no-one can be deprived of possession except in the public interest and subject to relevant international and national law.
 - b. Article 8 – this protects the private and family life, home and correspondence. No public authority can interfere with these works except in accordance with the law or necessary in the interest of public security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime or for the protection of health or morals or the rights or freedom of others;
 - c. Article 6 – the right to a fair hearing;
 - d. Article 14 – the enjoyment of the rights of freedoms in the convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion – nor social origin, associated national minority, property, birth or other status.
- iii. In the case of each of the above Articles (and the convention in general) the Council must be conscious of the need to strike a balance between the rights of the individual and the interests of the public. In the light of the significant public benefit that will arise from the Project being taken forward it is considered appropriate to make the Order and seek compulsory acquisition powers. It is not considered that any unlawful interference with an individual's rights will occur as the interference will be in accordance with the law and, where property interests are affected directly, the Compulsory Purchase Compensation Code will apply.
- iv. Further representations will be possible before the Order can be confirmed. In addition, objections will be heard if necessary by an inspector appointed to recommend whether or not the Order as made by the Council should be confirmed by the Secretary of State. In addition, the fact that compensation will be available to parties whose interest in land is directly affected through acquisition of land or new rights mean that human rights will not be infringed as the Council and Secretary of State will be following a process prescribed by law and from which a right to compensation arises if land is taken.

In relation to those parties who will no longer be scheduled as parties with an interest in land, referred to above, this decision does not impact on those parties' human rights. Each of the persons that had registered a unilateral notice over the freehold interest at the Grosvenor Hotel are still able to object to the compulsory purchase of land and have the ability to apply to the Courts challenge this resolution of Council by way of judicial review and can challenge the Secretary of State's decision if that decision is to confirm the Order.

C. Stopping Up Order

An application for stopping up of highways under s247 of the Town & Country Planning Act 1990 can be made to the Secretary of State. The basis for the application must be that the stopping up is necessary in order to enable development to be carried out in accordance with planning permission.

An application can also be made to the Magistrates Court under s116 of the Highways Act 1980 to stop up or divert the highway provided that it can be demonstrated that the highway is no longer necessary or an alternative more commodious route can be supplied.

Since the Temple Gate highway works were completed in 2020, a large part of the former carriageway between the former Grosvenor Hotel and 100 Temple Street is no longer required for highway purposes. Skanska's planning application submission indicates that this area will be occupied by in part new buildings but also the new Temple Gate plaza area (see [include drawing reference number here]).

There are also other elements of the highway network within the red line, most notably the pavement areas outside 100 Temple Street and the Brunel Mile foot and cycle path, that will remain unaffected by Skanska's proposals. Whilst these highways are also included within the redline plan provided with this Report, officers do not intend to seek stopping up powers to close the whole of these public rights of way.

The detailed plan to be submitted with the application for stopping up will be agreed between officers, the Council's highways team and Skanska, but will principally include the former all-purpose carriageway and associated footways between 100 Temple Street and the Grosvenor Hotel. As this route is now effectively redundant, having been replaced by the recent Temple Gate highway works, no alternative highway is proposed as a replacement to this highway.

Officers are satisfied that Skanska's proposals make it necessary to close this highway and accordingly we will seek an Order from the Secretary of State accordingly.

D. Appropriation to the Council's planning purposes

As some of the land within the redline is held by the Council already, it may be that the Council decides to appropriate that land to its planning purposes rather than include all of the land in a General Vesting Declaration following the confirmation of compulsory purchase powers. The effect of the recommendation above is that members will be declaring that the land in the Council's ownership that is within the redline is no longer required for the purpose for which it is currently held and instead is required for the Council's planning purposes. This appropriation then allows the provisions of sections 203-205 of the Housing and Planning Act 2016 to apply to the appropriated land. In essence these statutory provisions allow the Council or its successor to proceed with activities on the relevant land even if existing rights or covenants in land would be breached by those activities, subject to the pre-requisite that the development benefits from planning permission.

The use of section 203-205 of the 2016 Act (which will apply both to land appropriated to planning purposes and land acquired under the Compulsory Purchase Order) means that Skanska will be able to develop the land without risk of injunction by the beneficiaries of the historic rights, and the beneficiaries' interests will be converted into a right to compensation.

It is to be noted that the Council will remain liable for the compensation that may arise as a result of either the appropriation or compulsory purchase, if compensation is not paid for the breach of the rights by Skanska.

Officers believe the power of appropriation is necessary to give Skanska and its successors in title comfort that injunction proceedings will not be pursued or, if pursued, will not be successful. The appropriation tool is frequently used by local planning authorities to enable developments such as the currently proposed scheme.

Legal Team Leader: Joanne Mansfield, Team Leader, Legal

3. Implications on IT:

No anticipated impact to IT Services		
IT Team Leader: Simon Oliver, Director - Digital Transformation, Resources - IT		
4. HR Advice: No HR implications are evident.		
HR Partner: Celia Williams, HR Business Partner – Growth and Regeneration		
EDM Sign-off	Stephen Peacock	12 February 2020
Cabinet Member sign-off	Cllr Craig Cheyne	17 February 2020
For Key Decisions - Mayor's Office sign-off	Mayor's Office	18 March 2020

Appendix A – Further essential background / detail on the proposal	YES
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	YES
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	YES
Appendix G – Financial Advice	NO
Appendix H – Legal Advice	NO
Appendix I – Exempt Information Exempt and not for publication by virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (Information relating to the financial or business affairs of any particular person (including the authority holding that information))	YES
Appendix J – HR advice	NO
Appendix K – ICT	NO
Appendix L – Procurement	NO
Appendix M – Plans	YES