

For General Release

ADDENDUM REPORT TO:	CABINET 7 April 2014
AGENDA ITEM:	6 Addendum
SUBJECT:	Whitgift Centre and surrounding land – Proposed compulsory purchase order
LEAD OFFICER:	Jo Negrini, Executive Director of Development & Environment
CABINET MEMBER:	Councillor Jason Perry Cabinet Member for Planning, Regeneration and Transport
WARDS:	All Wards
CORPORATE PRIORITY/POLICY CONTEXT: See item 6 on Part A of the agenda for this meeting (the "Main Report")	

FINANCIAL IMPACT:

See Main Report

KEY DECISION REFERENCE NO.: 1282

This is a Key Decision as defined in the Council's Constitution. The decision may be implemented from 1300 hours on the 5th working day after it is made unless the decision is referred to the Scrutiny & Overview Committee by the requisite number of Councillors.

1. RECOMMENDATION

That Members consider the contents of this report and the related exempt report on Part B of the agenda for this meeting before reaching their decision on the recommendations in the Main Report.

2. EXECUTIVE SUMMARY

2.1 This addendum report provides additional information and advice on representations received by the Council since the publication of the Main Report.

- 2.2 Time will be allowed at the meeting to enable Members to consider the contents of this report and the attachments.

3. REPRESENTATIONS ON BEHALF OF THE WHITGIFT TRUST

- 3.1 Since publication of the Main Report, the Council has received a letter from solicitors acting on behalf of Equiom (Isle of Man) Limited and Almark Limited, the trustees of the Whitgift Trust ("**WT**"), and Whitgift One Limited and Whitgift Two Limited, nominee companies of WT. The two nominee companies are the legal owners of long leasehold interests in the Whitgift Centre and hold freehold interests in some surrounding properties within the proposed Order Land. As noted in the Main Report, WT has issued a claim for judicial review, challenging the grant of the outline planning permission and conservation area consent for the Scheme. A copy of their solicitor's letter dated 4 April 2014 is attached to this addendum report, to which Members are referred for its full terms. Each of the representations they have made is summarised below.

Objection to resolution to make a CPO

- 3.2 WT objects to Cabinet resolving to make a compulsory purchase order (the "**Order**") and contends that there is not "a compelling case in the public interest" for compulsory acquisition of its interests. No details of the grounds for the objection are given.

Judicial review

- 3.3 In respect of the claim for judicial review of the outline planning permission and conservation area consent it is stated on behalf of WT that, as a landowner and potential recipient of the Order (if made), it has "the clearest possible interest in challenging the proposals". WT considers that paragraph 11.32 of the Main Report is "incorrect and misleading" in stating that "it cannot be ruled out" that WT is seeking to cause delay and disruption to the compulsory purchase process in order to seek to improve its negotiating position in the event that an Order is made.

Efforts to acquire by negotiation

- 3.4 It is asserted on behalf of WT that it is "misleading and inaccurate" to state that CLP has adhered to the CPO Circular guidance in relation to WT as CLP has not engaged in any meaningful discussions in relation to the proposed Order.
- 3.5 Members are advised that since August 2013 CLP has been in discussions with representatives acting on behalf of WT, having met with them and a flow of email correspondence and exchange of information. Although discussions have been proceeding, they have not yet reached a conclusion. This is a complex commercial situation and there has been a temporary pause in negotiations with WT's advisors whilst CLP have been investigating the debt position in respect of WT's interests. In addition, WT requires CLP to enter

into a confidentially agreement before further information needed to value WT's interests is supplied, which agreement is currently being negotiated.

3.6 Paragraph 24 of the CPO Circular states:

Before embarking on compulsory purchase and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire by agreement fail. Acquiring authorities should nevertheless consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Given the amount of time which needs to be allowed to complete the compulsory purchase process, it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations. This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

- 3.7 The CPO policy guidance acknowledges that it is often sensible for procedures for compulsory purchase to proceed in parallel with efforts to acquire by agreement. If an Order is made, it is intended that efforts to negotiate should continue, with the aim of reaching an agreed settlement between CLP and WT (and their chargee).

Request for information

- 3.8 WT also objects to information relating to the determination of whether or not powers of compulsory purchase should be used being kept confidential. It has requested copies of documents to be considered as exempt business at the Cabinet meeting (with confidential elements redacted as necessary), as well as copies of the ILTA and the agreement between Westfield and the Whitgift Foundation.
- 3.9 This request will be dealt with in accordance with the requirements of the Freedom of Information Act 2000.

4. REPRESENTATIONS ON BEHALF OF THE WHITGIFT FOUNDATION

- 4.1 The Council has also received a letter on behalf the Whitgift Foundation, the freehold owner of the major part of the proposed Order Land. The Whitgift Foundation's letter refers to its long held objective of securing the regeneration of the Whitgift Centre and the surrounding land and the contractual arrangements it has entered into with Westfield to facilitate that objective. The letter states the Whitgift Foundation's support for the purposes of the proposed Order.
- 4.2 A copy of their letter dated 7 April 2014 is attached to which Members are referred.

5. CONCLUSIONS

- 5.1 Members are asked to give consideration to the representations attached to this report. However, in officers' view they do not affect the recommendations in the Main Report



THE
WHITGIFT
FOUNDATION

London Borough of Croydon
Bernard Weatherill House
8 Mint Walk
Croydon
CRO 1EA

For the attention of the Executive Director of Development and Environment

7 April 2014

Dear Sirs

Proposed Compulsory Purchase Order - Whitgift Centre and Surrounding Area

As the Council is aware, The Whitgift Foundation is the freehold owner of the majority of land comprised within the proposed CPO area.

Over the last couple of decades our objective has been to regenerate and revitalise the Whitgift Centre and surrounding area. As a consequence, we sought to secure a development partner capable of bringing that objective to fruition; this culminated in the Foundation entering into a contractual arrangement with Westfield to facilitate such redevelopment.

The Foundation understands a CPO is proposed to facilitate the redevelopment of this area and supports the general purpose of the making of the CPO.

Yours faithfully

Martin Corney
Chief Executive

CMS Cameron McKenna LLP

Mitre House
160 Aldersgate Street
London EC1A 4DD

DX 135316 BARBICAN 2

T +44 20 7367 3000
F +44 20 7367 2000

www.cms-cmck.com

Direct +44 20 7367 3562
E ashley.damiral@cms-cmck.com

4 April 2014

By Post and Email

London Borough of Croydon
Bernard Weatherill House
8 Mint Walk
Croydon CR0 1EA
For the attention of Jim Simpson, Democratic Services Manager

Your ref
Our ref PATH/ASDM/135143.00001

Dear Sir

**Whitgift Centre and surrounding land - proposed Compulsory Purchase Order
Cabinet Meeting on 7 April 2014**

CMS Cameron McKenna LLP acts for the trustees and the nominee companies of the Whitgift Trust (“the Trust”). The Trust has the main operating interest in the land that will be subject to the proposed CPO, primarily through long leasehold interests in the Whitgift Centre. On 19 March 2014, the Trust filed a claim for the judicial review of planning permissions reference 12/02542/P and 12/02453/CA at the Administrative Court.

Objection to resolution to make a CPO

The Trust objects to the Cabinet resolving to make a CPO. There is not a compelling case in the public interest for compulsory acquisition of the Trust’s interests and the Trust considers that the Secretary of State, when assessing the CPO against case law and Government policy, will not confirm the Order. The Cabinet should not make the resolution. We do not seek to go into the full grounds of our objection in this letter.

Judicial Review

Paragraph 11.32 of the report to Cabinet states that it cannot be ruled out that the Trust “*are seeking to cause delay and disruption to the compulsory purchase process in order to seek to improve their negotiating position in the event that an Order is made*”. This is incorrect and misleading. As described in the Statement of Facts and Grounds that accompanied the claim form for the judicial review, the Trust

UK - 82821552.1

CMS Cameron McKenna LLP is a limited liability partnership registered in England and Wales with registration number OC310335. It is a body corporate which uses the word “partner” to refer to a member, or an employee or consultant with equivalent standing and qualifications. It is authorised and regulated by the Solicitors Regulation Authority of England and Wales with SRA number 423370. A list of members and their professional qualifications is open to inspection at the registered office, Mitre House, 160 Aldersgate Street, London EC1A 4DD. Members are either solicitors or registered foreign lawyers. VAT registration number: 974 899 925. Further information about the firm can be found at www.cms-cmck.com

CMS Cameron McKenna LLP is a member of CMS Legal Services EEIG (CMS EEIG), a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG’s member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name “CMS” and the term “firm” are used to refer to some or all of the member firms or their offices. Further information can be found at www.cmslegal.com

Notice: the firm does not accept service by e-mail of court proceedings, other processes or formal notices of any kind without specific prior written agreement.

has the clearest possible interest in the challenged proposals as both the owner of the land and the potential recipient of a CPO based on the grant of permissions impugned by the claim.

Efforts to acquire by negotiation

The report to Cabinet states that Deloitte has concluded, on behalf of the Council, that CLP's efforts to acquire the land by negotiation are satisfactory in the context of the CPO circular guidance. The Trust objects to the compulsory acquisition of its interests and to the continued threat of acquisition. However, it is misleading and inaccurate to state that CLP has adhered to the CPO circular guidance in relation to the Trust as they have not engaged with the Trust in any meaningful discussions in relation to the proposed CPO, and did not in relation to the planning permissions that are now the subject of a judicial review claim. It cannot be said that the CPO process is being undertaken as a last resort, as required by the circular.

Request for information

The Trust also objects to critical information to the determination of whether or not to exercise powers of compulsory purchase in relation to its interests being kept confidential. The Trust requests copies (with confidential elements redacted if necessary) of:

1. the Report by Deloitte to the Cabinet (referred to at paragraph 11.16 of the report to Cabinet as an exempt report under item B1 of Part B of the agenda);
2. any other document provided to the Cabinet under item B1 of Part B of the agenda;
3. the Indemnity and Land Transfer Agreement (the draft as reported to Cabinet and once completed); and
4. the legal agreement between Westfield (via group companies) and the Whitgift Foundation referred to at paragraph 6.13 of the report to Cabinet

Yours faithfully



CMS Cameron McKenna LLP

cc Julie Belvir, London Borough of Croydon (by email)
cc Jo Negrini, London Borough of Croydon (by email)
cc Janet Davies, London Borough of Croydon (by email)