

REPORT TO:	CABINET 15th SEPTEMBER 2014
AGENDA ITEM:	7
SUBJECT:	Strategic Metropolitan Centre - Update
LEAD OFFICER:	Jo Negrini Executive Director
CABINET MEMBER:	<i>Councillor Alison Butler – Deputy Leader (Statutory) and Cabinet Member for Homes and Regeneration</i> <i>Councillor Toni Letts – Cabinet Member for Economic Development</i>
WARDS:	All Wards
<p>CORPORATE PRIORITY/POLICY CONTEXT:</p> <p>Croydon's Sustainable Community Strategy 2013 - 2018 This sets out the Council's priorities for developing and maintaining Croydon as an attractive place in which to live, work, visit and socialise. The regeneration of the Whitgift Centre and surrounding land and addresses the following priorities:</p> <ul style="list-style-type: none"> • An Enterprising City • A Connected City • A Sustainable City <p>Goal One: A better borough Priority One – A great place to invest, work and live Improve Croydon's town centre by:</p> <ul style="list-style-type: none"> • Development of the retail realm to ensure a mixed economy; • Encouraging stronger town centre offer and developing a mixed night-time economy <p>Priority Two – More educational opportunities, skills and jobs Goal Two: Protect vulnerable people</p> <p>Priority Three – Ensure a choice of housing</p>	

FINANCIAL IMPACT

The Council is indemnified by the developer in respect of costs and compensation associated with the compulsory purchase order and the developer is also funding the planning judicial review costs of the Council.

KEY DECISION REFERENCE NO.: Not a key decision

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below:

1. RECOMMENDATIONS

- 1.1 That Cabinet notes the progress of the compulsory purchase order which was made by the Council on 15 April 2014 in respect of redevelopment of the Whitgift Centre and surrounding land.
- 1.2 That Cabinet notes the current position regarding the judicial review proceedings in respect of the outline planning permission and conservation area consent.

2. EXECUTIVE SUMMARY

- 2.1 The redevelopment of the Whitgift shopping centre and surrounding area ("the scheme") by the Croydon Limited Partnership ("CLP"), a joint venture between Westfield and Hammerson, two of the world's leading retail developers, is the highest profile regeneration scheme currently being promoted in Croydon. The scheme involves investment in excess of £1 billion to the heart of Croydon and provides the opportunity to transform Croydon's retail and leisure offer and provide significant further housing in Croydon town centre, helping to transform Croydon's image. The redevelopment will also act as a catalyst for wider regeneration in Croydon's town centre and has already resulted in significant further interest from developers and investors in pursuing opportunities in Croydon.
- 2.2 This report outlines progress and events since the decision of Cabinet on 7 April 2014 to support the scheme by making a compulsory purchase order. It includes an update on the claim for judicial review made on behalf of the Whitgift Trust which was reported to Cabinet on 7 April 2014.

3. BACKGROUND

- 3.1 For many years Croydon has not been fulfilling its function as a Metropolitan Centre. In order to address this, Croydon needs in particular to revitalise its retail and leisure offer including recapturing shoppers lost to other centres, by improving its qualitative offer and range of retailers and greatly improving the physical shopping and wider town centre environment, including the

surrounding public realm and connectivity. Additional housing would also help foster a vibrant town centre. These objectives are reinforced through the Council's planning policies including the Local Plan and Croydon's Opportunity Area Planning Framework adopted in 2013 ("OAPF").

- 3.2 On 25 November 2013, Strategic Planning Committee resolved to grant outline planning permission and conservation area consent to Westfield Shoppingtowns Limited and Hammerson UK Properties Plc for a comprehensive redevelopment scheme for the Whitgift Centre and surrounding land, including the former Alders store. The approved scheme provides for a step-change in Croydon's retail offer including a new anchor store, new retail stores, an improved leisure offer, up to 600 new town centre homes and significant works to the public realm and improved town centre permeability, in accordance with the objectives of the OAPF. Following the Committee's decision, outline planning permission and conservation area consent were issued by the Council on 5 February 2014 following completion of an agreement under section 106 of the Town and Country Planning Act 1990 which includes provision for public transport, highways and public realm improvements, affordable housing and employment and training opportunities.
- 3.3 On 7 April 2014 Cabinet considered a detailed report on the need for, implications of and justification for a compulsory purchase order to assist with land assembly to facilitate implementation of the proposals. The report informed Cabinet that on 19 March 2014, solicitors acting for (1) Equiom (Isle of Man) Limited (2) Almark Limited (3) Whitgift One Limited and (4) Whitgift Two Limited ("Whitgift Trust") had filed a claim for judicial review in respect of the grant of outline planning permission and conservation area consent. The Whitgift Trust holds long leasehold interests in the Whitgift Centre. It is the immediate landlord of most of the occupational tenants and has management control of the Whitgift Centre. The Whitgift Trust had objected to the planning permission and is now objecting to the CPO.
- 3.4 The report to Cabinet included a summary of the judicial review claim and copies of the relevant correspondence up to the time of the report and explained that the claim for judicial review was being robustly defended. At that stage, the Whitgift Trust had not yet obtained permission from the Court to proceed with the claim. Nonetheless, Cabinet was asked to consider carefully whether it wished to proceed to make a CPO in view of this claim, including consideration of the position which would apply if the claim were to be successful and the outline planning permission and conservation area consent quashed.
- 3.5 On 7 April 2014 Cabinet resolved unanimously to make a compulsory purchase order to enable the delivery of the scheme, subject to completion of contractual arrangements between the Council, CLP and its related entities contained in a CPO Indemnity and Land Transfer Agreement ("ILTA").

4. **PROGRESS OF THE CPO**

- 4.1 On 15 April 2014, following the completion of the ILTA, the compulsory

purchase order was made , entitled: "The London Borough Of Croydon (Whitgift Centre and surrounding land bounded by and including parts of Poplar Walk, Wellesley Road, George Street And North End) Compulsory Purchase Order 2014" ("the CPO").

- 4.2 Public and individual notices of the making of the CPO were given and served and the CPO was then submitted to the Secretary of State for confirmation on 19 May 2014.
- 4.3 Over 130 objections to the CPO have been submitted to the Secretary of State. Although this is a significant number, it is not unusual for a CPO of this size and complexity. Council officers and the Council's external advisers (together with CLP and its advisers) are working to resolve as many objections as possible prior to the public inquiry into the confirmation of the CPO. Negotiations for acquisition of interests and rights by agreement with affected parties are continuing, and will continue up to and beyond the inquiry. Those negotiations include efforts to reach agreement with the Whitgift Trust.
- 4.4 Notification has recently been received from the Secretary of State's National Planning Casework Unit of the "relevant date" which is 22 July 2014, and which triggers the timescales for the procedures leading up to the public inquiry. Members will be updated further with regard to the implications of this at the Cabinet meeting.
- 4.5 In the meantime, preparations for a public inquiry are proceeding including consideration of the objections, the preparation of the Council's evidence in support of the CPO, identifying a venue for a public inquiry and appointing a programme officer. The Planning Inspectorate will be asked to arrange for a pre-inquiry meeting to be held in order to best organise the procedure and evidence for the inquiry. A website is to be established to host inquiry documents and provide further information on the CPO, in addition to the Council's web pages.

5. **PLANNING JUDICIAL REVIEW**

- 5.1 On the 27 May 2014 a Judge of the High Court, Mr Justice Ouseley, considered the papers and granted permission to the Whitgift Trust to apply for judicial review. The test for permission is whether there is at least an arguable case. The grant of permission means that the case will proceed to a hearing. The case has been set down for hearing in the High Court on 7 and 8 October 2014.
- 5.2 In summary, the Whitgift Trust alleges the following four grounds for its claim for judicial review:
 1. unfairness in not disclosing confidential viability information prior to determination of the planning application;
 2. failure to take account of viability information as a material consideration;
 3. failure to take into account Affordable Housing Review Policy; and

4. errors in the committee report significantly misled members, the two principal errors being:
 - i) not undertaking a Sequential Test and Town Centre Usage Test; and
 - ii) the approach the Council took in relation to the interpretation of the OAPF.
- 5.3 On 10 July 2014 both the Council and CLP and its related entities (who are named as "interested parties" to the proceedings) filed detailed grounds of defence with supporting evidence contesting in full each ground of the claim. On 31 July 2014 the Whitgift Trust issued their reply.
- 5.4 If judgment is reserved following the October hearing it is possible that the outcome would not be known by the commencement of the public inquiry. If the Council is successful in its defence of the proceedings in October it is possible that the Whitgift Trust may seek to appeal the judgment. Conversely, the Council may appeal if the High Court were to give judgment against the Council and decide to quash the planning permission and conservation area consent.
- 5.5 As set out in the report of 7 April 2014, Cabinet is advised that the CPO is not tied to a specific planning permission and nor is the ILTA so limited. There is no requirement in law or policy that planning permission should have been granted before a compulsory purchase order is made or confirmed. What is important is whether the scheme for which the CPO is being made fits with the adopted planning framework and that there is no obvious impediment to planning permission being granted to authorise the purposes of the CPO, namely to enable a comprehensive retail-led mixed use redevelopment scheme to be carried out on the CPO land. Members are advised that their officers consider that there are no such obvious impediments to such planning permission and that the grounds for the judicial review claim, even if successful, would not represent such an impediment.
- 5.6 Members will be updated as appropriate on the progress of the CPO and the judicial review proceedings.

6. CONSULTATION

- 6.1 The planning and conservation area consent applications underpinning the redevelopment of the Whitgift shopping centre were subject to statutory consultation as set out in the report to Strategic Planning Committee on 25 November 2013. A subsequent planning application for an entrance to the scheme at Chapel Walk was validated by the Council's planning department on 3 July 2014 which is also subject to statutory consultation. Residents, businesses and other affect parties will be updated on the progress of the CPO, and the outcome of the planning judicial review.

7. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

1 Revenue and Capital consequences of report recommendations

Provision for the costs of defence of the judicial review claim has been included in the current Whitgift budget which is being paid by CLP. As such, there should be no direct financial implications to the Council.

2 Risks

Key risks include:

- the uncertainty created by the judicial review proceedings might appear to affected parties to place doubt on whether the scheme can proceed. However, as set out earlier in this report even if the judicial review were to be successful, this would not in itself represent an impediment to the CPO, ;
- the judicial review proceedings could become more complex and protracted, leading to an escalation in costs. Whilst the costs are the subject to funding from CLP, this is an issue which both Council officers and CLP are keeping under close review;
- the Council could fail to secure the delivery of the redevelopment of the Whitgift Centre.

3 Future savings/efficiencies

It should be noted that the delivery of the £1 billion Whitgift redevelopment scheme will bring significant investment in to the Croydon Metropolitan Centre.

(Approved by: Dianne Ellender, Head of Finance and Deputy Section 151 Officer on behalf of the Council Director of Finance and Assets and S151 Officer)

8. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

8.1 The Council Solicitor comments that the legal considerations are embodied in this report.

(Approved by Sean Murphy, Principal Corporate Solicitor (Regeneration), on behalf of the Council Solicitor & Director of Democratic & Legal Services)

9. HUMAN RESOURCES IMPACT

9.1 There are no human resources impacts arising from this decision.

Approved by Adrian Prescod, HR Business Partner, for and on behalf of Interim Director of Human Resources, Chief Executive Department.

10. EQUALITIES IMPACT

10.1 The equality impacts of making the CPO were considered by Cabinet on 7 April 2014. There are no further or different equalities impacts arising from this report. The Equality Impact Analysis (EqIA) will be updated at appropriate time periods during the process as set out in the original analysis.

11. ENVIRONMENTAL IMPACT

11.1 The environmental impacts of the scheme have been fully assessed in connection with the planning decision. There are no additional environmental impacts arising from this report.

12. CRIME AND DISORDER REDUCTION IMPACT

12.1 The report to Cabinet of 7 April 2014 noted that the scheme was considered to provide a safe and secure environment. There are no additional crime and disorder impacts arising from this report.

13. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

13.1 To update Members on the judicial review proceedings and progress with regards to the CPO.

14. OPTIONS CONSIDERED AND REJECTED

14.1 The options considered by officers as an alternative to the proposals set out in this report were examined in detail in the report to Cabinet dated 7 April 2014 (specifically paragraphs 11.33 – 11.37). It was concluded in the report that there was no credible alternative which was likely to deliver a comprehensive scheme which meets the planning policy objectives within a reasonable timeframe. This position has not changed.

CONTACT OFFICER: Janet Davies, Senior Regeneration Manager, Extn 61539

BACKGROUND PAPERS - LOCAL GOVERNMENT ACT 1972

Previous reports available on the Council website:

<http://www.croydon.gov.uk/democracy/dande/minutes/>

Report to Strategic Planning Committee 25 November 2013

Report to Cabinet 7 April 2014