

Cabinet 3 November 2015	 TOWER HAMLETS
Report of: Aman Dalvi, Corporate Director of Development and Renewal	Classification: Unrestricted
CPO Resolution: Burdett Estate, St Paul's Way Trust School (Poplar HARCA):	

Lead Member	Councillor Rachel Blake, Cabinet Member for Strategic Development
Originating Officer(s)	Jackie Odunoye – Service Head for Strategy Regeneration & Sustainability Niall McGowan – Housing Regeneration Manager Abad Uddin – Project Officer, Housing Regeneration
Wards affected	Mile End
Community Plan Theme	A Great Place to Live
Key Decision?	Yes

1. EXECUTIVE SUMMARY

- 1.1 This report seeks approval for delegated authority to make a Compulsory Purchase Order (CPO). This would include specific land interests that need to be acquired to enable the delivery of the approved partnership project between the council and Poplar HARCA on Burdett Estate, which will redevelop two existing housing blocks (Linton and Printon) to provide new homes for rent and sale, plus essential new accommodation to enlarge St Paul's Way Trust School, providing 450 primary places. The scheme has planning approval and is in line with the council's regeneration objectives.
- 1.2 The proposed CPO will progress the Council's regeneration aims by enabling a registered provider partner, Poplar HARCA, to undertake an important combined housing and school development project. Proposals for the Burdett redevelopment scheme have been jointly developed between Poplar HARCA and the Council's Directorates of Children's Services, and Development and Renewal. The scheme is being delivered in partnership with Poplar HARCA, which is the landowner of the proposed redevelopment site.
- 1.3 Council officers have been monitoring Poplar HARCA's decant and negotiations with the affected property owners for 12 months. Only 1 HARCA tenant remains in situ; 8 out of 19 leaseholders have sold their properties to HARCA and a further 7 have reached agreements. HARCA advises that it has not to date been able to reach settlements with 4 leaseholders and, in order to progress this project, the Council's assistance in the use of its compulsory purchase powers is required.

2. RECOMMENDATIONS

The Mayor in Cabinet is recommended to:-

- 2.1 Agree the making, confirming and implementation of a Compulsory Purchase Order (CPO) to include specific land interests that must be acquired to facilitate the redevelopment by Poplar HARCA of Burdett Estate, to provide new educational facilities, housing and estate regeneration.
- 2.2 Subject to the Council entering into the Indemnity Agreement as described at recommendation 2.5, delegate to the Corporate Director of Development and Renewal, after consultation with the Director of Law Probit and Governance (or their nominee), the power to effect the making, confirming and implementation of the CPO and to take all necessary steps to give effect to the CPO in respect of the land shown edged red on the plan at **Appendix 1** including, but not limited to, the following procedural steps:
 - 2.2.1 Acquiring all known interests in land and any additional interests identified through the land referencing process within the CPO boundary, as shown at **Appendix 1**, either by private agreement or compulsorily, including those specific interests listed in **Appendix 2**.
 - 2.2.2 Appointing land referencing agents, making the CPO, the publication and service of any press, site and individual notices and other correspondence for such making.
 - 2.2.3 Monitoring of negotiated agreements by Poplar HARCA with land owners or others as applicable, setting out the terms for withdrawal of any objections to the CPO, including where appropriate seeking exclusion of land or new rights from the CPO.
 - 2.2.4 Seeking confirmation of the CPO by the Secretary of State (or, if permitted, by the Council pursuant to Section 14A of the Acquisition of Land Act 1981), including the preparation and presentation of the Council's case at any Public Inquiry which may be necessary.
 - 2.2.5 Publication and service of notices of confirmation of the CPO and thereafter to execute and serve any General Vesting Declarations and/or notices to treat and notices of entry, and any other notices or correspondence to acquire those interests within the area.
 - 2.2.6 Issuing of General Vesting Declarations and/or Notices to Treat in respect of the land/interests within the area edged red on the plan at **Appendix 1** and those listed at **Appendix 2**.
 - 2.2.7 Referral and conduct of disputes, relating to compulsory purchase compensation, at the Upper Tribunal (Lands Chamber).
 - 2.2.8 Transfer of any land interests compulsorily acquired by the Council to Poplar HARCA, for nil consideration, within a timescale to be agreed with Poplar HARCA.

- 2.3 Determine that the use of CPO powers is exercised after balancing the rights of individual property owners with the requirement to obtain vacant possession of the site.
- 2.4 Determine that the interference with the human rights of the property owners affected by these proposals, and in particular their rights to a home and to the ownership of property, is proportionate, given the adequacy of their rights to object and to compensation, and the benefit to the economic, social and environmental well-being of the areas of Tower Hamlets affected by these proposals.
- 2.5 Delegate to the Corporate Director, Development and Renewal, following consultation with the Director of Law Probit and Governance (or their nominee), the power to agree the terms of and enter into an Indemnity Agreement with Poplar HARCA which provides a framework for the respective obligations of the Council and Poplar HARCA in the promotion and application of powers, including an obligation for the Council to transfer the land to Poplar HARCA for nil consideration, and the ability for the Council to recover its costs in conducting and managing the CPO (subject to 2.6 below), including compensation costs to be paid.
- 2.6 Note that costs incurred by the Council in managing the CPO will be underwritten by Poplar HARCA. However, an element of the scheme costs are attributable to the project costs of providing the school and will be included in the overall cost paid by the Council to Poplar HARCA as part of the separate agreement in respect of the provision of the school. This is to be funded as part of the Children's Services capital programme.

3. REASONS FOR THE DECISIONS

- 3.1 The proposed CPO was originally considered by the former Mayor in Cabinet on 23 July 2014 and was supported in principle. The CPO will progress the Mayor's regeneration aims by enabling the Council's registered provider partner, Poplar HARCA, to undertake an approved partnership project with the Council on Burdett Estate, which will redevelop two existing housing blocks and provide new homes and a much needed expansion of St Paul's Way Trust School, providing an additional 450 primary places.
- 3.2 Poplar HARCA has requested that the Council exercises its powers to make this CPO to safeguard land assembly across the proposed regeneration area, so that the scheme can be delivered in a timely and cost effective way, thus guaranteeing delivery of the school, new housing and other associated regeneration benefits for the community, whilst minimizing delays and the risk of additional costs.
- 3.3 The CPO process would run in tandem with Poplar HARCA's ongoing efforts to secure vacant possession voluntarily, helping to ensure that land interests can ultimately be acquired and that the redevelopment schemes can progress without indeterminate delays. The status of negotiations by HARCA with the affected land interests in each area is summarised later in this report. Negotiations will be reviewed regularly by Council officers, to ensure that HARCA continues to try to reach negotiated agreements with leaseholders and any other land interests, wherever possible.
- 3.4 As indicated in para. 3.1 the need for the CPO on Burdett Estate arises from a partnership between the Council, Poplar HARCA and St Paul's Way Trust School. This builds on existing local regeneration in which the partners have worked together. In September 2013 Cabinet agreed a recommendation to support the proposed

expansion of St Paul's Way Trust School and a capital estimate was adopted to include the project in the ESCW capital programme. (Cabinet 11 September 2013, Planning for School Places, 2013/14 Review; ESCW Capital Programme 2013/16). The capital estimate was adjusted to £9.73m following a recommendation to Cabinet on 2 April 2014. A further Executive Decision on 15 October 2015 amended the capital estimate to £13,406,675.

- 3.5 Poplar HARCA has agreed proposals for this regeneration scheme with the Council and with the school. Based on the need for additional school provision in the locality, a scheme has been developed which received planning approval in March 2015. The Council is funding the capital costs of the school-related elements of the overall scheme. This is funded from specific capital grant from the DfE for additional school places. Part of the Council's costs will include a proportion of costs attributable to site assembly, (e.g. decant of existing residents).
- 3.6 The proposal is for the demolition of existing flats in Printon and Linton Houses (HARCA-owned blocks) and a mixed-use redevelopment, to include accommodation for the school on the ground floor, with mixed tenure housing above. This form of development has been successfully implemented elsewhere. The site is approximately 200m from St Paul's Way Trust School. The scheme will also include nursery class provision.
- 3.7 There is a steeply rising need for more school places in Tower Hamlets. Over the next 10 years approximately 5,000 more primary school places will be required. The Council has a statutory duty to provide school places. In recent years the Council has created more capacity from within its own assets.
- 3.8 The St Paul's Way Trust School proposal allows a partnership approach to create additional capacity as well as provide new homes. The Council will fund the school elements of the capital costs of the redevelopment. The proposed development will allow the school to expand by adding 450 primary places. By this expansion the school will become an all-through school for 1,650 children aged 4-18 years. It allows the expansion of an outstanding and popular school to create places that the Council would not otherwise be able to create on the existing site of the school.
- 3.9 The school is in a priority area of the borough where there is considerable pressure on the available school places. The Council has limited options for expanding schools in the area. New residential developments have taken place and are proposed in this area of the borough. Where there are not enough local primary school places, children are not able to gain a place at their local school and will have to travel further to access a place. The school expanded from September 2014 and is using temporary accommodation in the Burdett Centre.
- 3.10 In the interim there has been extensive liaison with Poplar HARCA to review and monitor its negotiations with land interests, which have progressed well, and to prepare documentation for the CPO. It is now necessary to make the CPO to facilitate clearance of the site so that the permanent school provision can be constructed, with a view to starting on site as quickly as possible, subject to successful land assembly.
- 3.11 Any liabilities which the Council may assume in becoming the 'Acquiring Authority' by making the CPO will be indemnified by Poplar HARCA in an agreement which will set out the responsibilities and requirements of both parties and underwrite the Council's costs.

4. ALTERNATIVE OPTIONS

4.1 An alternative option is to NOT to agree to the proposed CPO. In this instance negotiations by Poplar HARCA with individual land interests would continue, but the absence of a back-up CPO process could potentially have negative impacts as follows:

- Risk to the land assembly, which cannot be guaranteed without resorting to compulsory purchase; thus development of the proposed new homes and the school extension would be jeopardised, or at the very least delayed. HARCA has stated that without a commitment from the council to use CPO powers to support the delivery of the land assembly, it may not be able to progress the scheme, as the cost risk will be too high.
- Potentially higher costs for HARCA, i.e. by necessitating acquisitions at a higher than market value, which in turn could reduce scheme funding or overall financial viability. A proportion of such additional costs would fall to the Council for the school-related element of the overall project.
- Uncertainty for tenants and leaseholders as to whether the scheme will progress, which will make it harder for them to make informed decisions about their future, or to get alternative accommodation which meets their requirements.
- Without a statutory CPO there would be no obligation on Poplar HARCA to reimburse leaseholders' costs for reaching voluntary settlements, such as surveying and legal fees.
- The proposed expansion of St Paul's Way Trust School has been identified as a key scheme to provide additional, high quality school capacity in this area of the borough to meet the needs of local residents.
- There would be a risk that the much-needed school places could not be provided on this site and there may be additional costs incurred due to programme delays arising from decant issues: the need for additional school places in Tower Hamlets is significant and will continue for the foreseeable future.
- Many schools have been expanded on their existing sites but the opportunities for more such expansions are now very limited due to the restricted sites of many inner city schools.

4.2 Other options include securing site allocations through the strategic planning process and other agreements with developers. However because of the scale of the need for additional places (5,000 primary school places over the next 10 years), the Council has to keep several options under review and in progress in order to keep pace with the projected number of pupils requiring a school place each year. This includes working with partners on the potential for mixed-use development, as in this case. However, this scheme is an ideal opportunity to address key regeneration aims to improve housing and school provision.

5. DETAILS OF REPORT

5.1 Meeting the Council's requirements to make a CPO

The Council has previously made CPOs to support its own, or its Registered Provider (RP) partners' regeneration projects. The need for this provision arises where acquisition of land interests (residential dwellings, shops, rights of way etc) is necessary to fulfil commitments to deliver new affordable homes and/or to achieve wider regeneration benefits, such as the provision of related infrastructure, community facilities or new school premises.

5.2 This report seeks the Mayor's approval to make the CPO now. For the reasons set out in Sections 3 and 4 of this report, it is important to commence the CPO processes for all the non-acquired land interests included in, or affected by the CPO land within the red-line boundary shown in Appendix 1. The report explains why the proposed CPO is needed to support the housing and wider regeneration work proposed on Burdett Estate, which will provide new homes and crucially a new school building to expand the nearby St Paul's Way Trust School.

5.3 Circular 06/04 provides the statutory guidance for making of a CPO. In accordance with the guidance, the Council needs to demonstrate that compulsory purchase is used as a measure of the last resort and, once made, is enforced after all efforts to acquire by agreement have been exhausted.

5.4 Before making a CPO, Council officers require that HARCA demonstrates that it is and will continue to be vigorously seeking voluntary negotiated settlements with all those whose interests will be acquired, offering the full market value applicable and compensation compatible with statutory requirements. This includes reimbursement by HARCA for independent valuation and legal support, payment of the full market value for their property interest, and a compensation package to meet statutory requirements.

5.5 Council officers will regularly meet Poplar HARCA's representatives to monitor progress in securing vacant possession through voluntary negotiation. Poplar HARCA's approach to voluntary negotiations with land interests is described in Section 7 below.

6. BURDETT ESTATE – REDEVELOPMENT FOR HOUSING AND SCHOOL ACCOMMODATION

6.1 Burdett Estate is located in Mile End ward – see **Appendix 1, location map**. This former council estate was transferred to Poplar HARCA in 1998. Substantial housing and environmental regeneration work has been carried out, prior to the scheme which is now proposed.

6.2 Poplar HARCA's new development will take place in a single phase and will include:

- A new housing development with school accommodation below, as part of St Paul's Way Trust School, fronting onto St Paul's Way – this will allow the school to expand by adding 450 new primary places.
- New multi-use games play space.
- New school playground.
- A new housing development, with the provision of 109 new flats of mixed tenure, based on the Mayor's London Housing Design Guide space standard.
- Design will comprise:

- 83 for private sale
- 12 for social rent
- 14 intermediate
- The split is 70% private: 30% social & intermediate by habitable rooms
- Replacement mosque building, for that which currently occupies the Burdett Centre.
- The design of the school accommodation and its recreation area will allow community use out of school hours. The school and Poplar HARCA are committed to working together on the use of the school accommodation by the community.

6.3 The scheme requires the demolition of Linton and Printon Houses and the relocation of the current residents. Poplar HARCA had previously commenced a tenant decant programme and has now started the dialogue with leaseholders, to endeavour to secure vacant possession of the various properties through voluntary acquisitions wherever possible.

6.4 The existing occupancy, after more than 12 months of active decant, is as follows:

6.4.1 Printon House has 30 flats in the block of which 0 are tenanted, 6 are leasehold and 24 are void. Current occupancy is:

0	Void/short life
0	Tenants
4	resident Leaseholders
2	non-resident Leaseholders

6.4.2 Linton House has 24 flats in the block of which 1 is tenanted, 5 are leasehold and 18 are void. Current occupancy is:

0	Void/short life
1	Tenants
3	resident Leaseholders
2	non-resident Leaseholders

6.5 **Rehousing Offer – Burdett Scheme**

Whilst development has started on the environmental works Poplar HARCA needs to complete its decant of the remaining occupied properties (the north block of the site) to enable the rest of the development to go ahead. As this is a relatively small, single phase project, delivering fewer replacement homes on-site, HARCA cannot offer a guaranteed option for existing tenants and resident owners to relocate within the redevelopment area.

6.6 Poplar HARCA has made the following commitment to its tenants, most of who have now satisfactorily relocated:

- Award of decant priority status
- Relocation to a suitable home
- Help with the cost of moving
- Home Loss payment
- Poplar HARCA is able to provide a qualified option to return to the new scheme as the number of new affordable homes to be built within the scheme will be less than the number of homes to be demolished.

- Stock transfer tenants will keep their protected rights such as Right to Buy if they transferred to another Poplar HARCA property.
- Post transfer tenants will keep their assured tenancy rights if they move within Poplar HARCA or to any other Housing Association, unless they choose to accept a non-secure tenancy with another Landlord.

6.7 Poplar HARCA has also made the following commitments to resident leaseholders in the affected blocks:

- Market value for property
- Home loss payment along with reasonable costs of relocation and conveyancing fees, SDLT etc
- For leaseholders that cannot afford an alternative home in the open market the following options are available
 - Shared ownership
 - Shared equity arrangement
 - Lease swap

6.8 Through its drop-in sessions and home visits, Poplar HARCA gathers information about the personal and financial circumstances of the resident leaseholders, to identify any hardship considerations and to develop options that fit with these leaseholders' financial circumstances. This information is being shared with Council officers monitoring the decant programme so that they can be assured that Poplar HARCA are providing robust options that meet the needs of the leaseholders.

6.9 Poplar HARCA is expected to be as flexible as possible in its efforts to negotiate with resident home-owners. However the CPO is necessary to ensure that the land earmarked for development is secured as quickly as possible, to enable the development to begin. On 11th March 2015, the Council's Development Committee made a resolution to grant planning permission. The Council and Poplar HARCA signed the S106 agreement on 31 March 2015.

6.10 **Purpose of the decant and acquisition of land interests on Burdett Estate**

HARCA's programme for the scheme entails:

- demolition and redevelopment of 54 properties at Linton House and Printon House.
- demolition of the current Burdett Centre community hall.
- demolition and re-provision of the Mosque, which currently occupies part of the Burdett Centre.

6.11 The purpose of decant and acquisition of land interests is to secure vacant possession of the site, ideally to enable demolition as soon as the site is cleared but ideally by mid-2016. This allows the phased redevelopment programme which should provide the new school provision in phases with final completion in early 2019.

6.12 Residents and local stakeholders were consulted by Poplar HARCA about the decant options and about the regeneration proposals. The support of the Council in progressing a CPO for the land interests identified in Appendices 1 and 2 will help deliver a successful conclusion to the decant and leasehold acquisitions programme. The CPO would run in tandem with Poplar HARCA's ongoing negotiations with remaining dwelling owners.

7. NEGOTIATING SETTLEMENTS

- 7.1 Poplar HARCA will be required to continue negotiations with the owners of the remaining land interests, to achieve a complete decant and acquire all interests by agreement wherever possible, without having to implement the CPO unless this is absolutely necessary. Approving the making of the CPO under delegated authority now, will not result in any reduction in efforts to continue negotiations to achieve vacant possession by voluntary agreement. The CPO is, however, an essential step to confirm the council's continued and formal support for the scheme, which together will provide significant new housing, community and educational benefits to the borough.

Residential acquisitions

- 7.2 Poplar HARCA is engaging to acquire leasehold premises and has so far been successful in discussions to communicate with the affected leaseholders and to offer settlements.
- 7.3 This process has been underway for more than 12 months. All but 1 tenant have been decanted. Some 8 leaseholders have been acquired to date and agreements reached with a further 7. Settlements have not been reached with 4 owners and HARCA advises that it requires the CPO to guarantee the remainder of the land assembly or the project will be put at risk as set out in para. 4.1.
- 7.4 Poplar HARCA will continue to liaise closely and negotiate with all the owners and occupiers during the parallel CPO process. The Council's Housing Regeneration Team is continuing to monitor the offers made by HARCA to ensure that this happens.
- 7.5 HARCA has adopted the CPO good practice approach used by the Council. When a property is to be purchased the owner is encouraged to seek independent valuation advice to assist in negotiations with Poplar HARCA, and reasonable costs for this are reimbursed. Owners are offered the full current market value of their property. Owners who occupy their properties as their 'principal' home (i.e. resident owners) receive an additional 10% of the final market value as a statutory Home Loss payment. Property Owners who do not occupy their properties (i.e. non-resident owners) are usually eligible for an additional 7.5% of the acquisition price as a "Basic Loss" payment, if the property has been well maintained.
- 7.6 To help displaced property owners move to their new homes, their reasonable moving costs are paid, including legal and professional valuation fees, the hire of removal companies, disconnection and reconnection of cookers, washing machines and all associated domestic costs of moving from one property to another, including an allowance for carpets and curtains etc. Where a property owner makes their own arrangements to acquire alternative premises, the Registered Provider meets the reasonable cost of stamp duty.
- 7.7 In addition to the standard options set out above, which reflect the Council's approach to resident property owner buybacks, Poplar HARCA is offering further options such as lease swaps, conversion to shared equity or shared ownership options where there is insufficient capital in the existing property to enable the displaced leaseholder to purchase a new replacement home at current market values.

Other Land Interests

7.8 There are likely to be other non-residential land interests and rights, which will need to be extinguished or acquired by each proposed CPO. These may include for example:

- Way-leaves
- Easements
- Rights of Way
- Third Party rights
- Over-sailing rights

7.9 All land interests will be established via land referencing, which is checked and finalised prior to making the CPO. Negotiated settlements are prioritised wherever achievable to allow the redevelopment to proceed unhindered.

Rights of Light

7.10 One of the implications of high-density development is the potential to reduce the light reaching windows of surrounding homes; this is an important consideration in the planning process, where there are well-established methodologies for calculating Daylight/Sunlight penetration. However there are increasing instances where, even when a development has planning consent, there are still adverse implications to some neighboring homes or other buildings.

7.11 Where there is a significant impact upon right to light there may, in certain circumstances, be an entitlement to injunct against the proposed development. Any properties affected in this way would be outside the red-line CPO area. However, one of the effects of enabling regeneration by compulsory purchase of land through the use of planning powers (s226 of the Town and Country Planning Act 1990) is to override private third party rights, including interference with any "rights to light".

7.12 "Rights to Light" only appears to impact on certain freehold or long leasehold interests and not on tenancies, where the interest is usually of limited duration.

7.13 The effect of a CPO on any such owners, where such rights exist, would not be to compulsorily purchase their property, but rather to override any entitlement to injunct against the approved scheme and to automatically convert any such entitlement into a claim for compensation - rights to full statutory compensation, where they exist, would not be affected by a CPO.

7.14 Poplar HARCA's scheme for the new housing and St Paul's Way School has detailed planning approval. HARCA commissioned a specialist Rights of Light surveyor to undertake a preliminary assessment of the scheme utilising a photogrammetric survey, site photographs and scheme drawings. The following properties and sites were considered, due to their proximity to the scheme, given the height, location and massing of the scheme:

- Bredel House, St Paul's Way
- Perkins House, Wallwood Street
- Kirkby Apartments, St Paul's Way
- Thorn Apartments, St Paul's Way
- 83 St Paul's Way
- St Paul's with St Luke's School
- Stebon Primary School

- 7.15 HARCA has confirmed that it is the owner of Bredel House, Perkins House, Thorn Apartments and Kirkby Apartments (unity of ownership with the development site) and, following its review of leases, that there are no flats within these buildings whose owners or tenants enjoy rights of light. The property at No 83 St Paul's Way was constructed since 2008, and therefore is not sufficiently old to have acquired prescriptive rights of light.
- 7.16 HARCA's study confirms that there appear to be no actionable rights of light injury to St Paul's with St Luke's School. In respect of Stebon School, on the basis of the layouts shown in the drawings, there is deemed to be no rights of light injury: in theory it is possible that one room in Stebon School could be subdivided to create a future technical injury, but this is not considered a reasonable claim. The Directorate of Children's Services has confirmed that since Stebon School is in the ownership of the Authority, and the scheme is delivering additional school places, there is no risk of a claim for rights of light injury being made on behalf of the neighbouring school.
- 7.17 On balance therefore the risk of there being any actionable rights of light injury claims is considered minimal and Poplar HARCA has confirmed to the council that it will not be necessary for it to take steps to extinguish any claims. In any event the use of compulsory purchase powers does not affect the absolute entitlement of any affected owners to compensation, should unforeseen claims emerge; it merely prevents the risk of injunctions to halt development.
- 7.18 If, contrary to the information provided by Poplar HARCA, any rights of light injury claims were to emerge, actionable rights would cease at the point the council vests the land interests. A claimant's entitlement to full compensation, payable by Poplar HARCA, would remain. In such a scenario the Council will request the following information to be provided by Poplar HARCA prior to vesting, as part of its general update on negotiations with all land interests, to ensure that HARCA is engaging appropriately with any such unforeseen claimants:
- disclosure of technical rights of light assessments, including actionable claims;
 - details of the estimated compensation schedule and HARCA's current offers (e.g. "book value" and the multiple being offered);
 - details of any covenants in leases which prohibit rights of light entitlements, i.e. in some right to buy / transferred council homes which would otherwise have been affected;
 - details of ongoing, robust negotiations with all those owners who have actionable rights of light claims, and evidence that injunction has been threatened and/or is a real risk;

8. COMPULSORY PURCHASE

- 8.1 Using compulsory purchase powers will facilitate the delivery of this regeneration project. The current known interests in the land are listed in Appendix 2, but other interests may emerge through land referencing across the red-line area for the proposed CPO.
- 8.2 Circular 06/2004 Paragraph 1 (Compulsory Purchase and the Crichel Down Rules) ("the Circular") sets out statutory guidance to acquiring authorities in England making CPOs.

- 8.3 The Circular states that “Ministers believe that compulsory purchase powers are an important tool for local authorities and other public bodies to use as a means of assembling the land needed to help deliver social and economic change. Used properly, they can contribute toward effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life. Bodies possessing compulsory purchase powers – whether at local, regional or national level – are therefore encouraged to consider using them pro-actively wherever appropriate to ensure real gains are brought to residents and the business community without delay.”
- 8.4 The Circular, para 24, sets out that “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.”
- 8.5 The Circular also sets out (para 24) that acquiring authorities “should plan a compulsory purchase timetable at the same time as conducting negotiations.” This is to reflect the amount of time that needs to be allowed to complete the compulsory purchase process. The guidance goes on to state “it may often be sensible for the acquiring authority to initiate the formal procedures in parallel with such negotiations. This will 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.”
- 8.6 Paragraph 17 of the Circular refers to the balance that has to be struck between ensuring a compelling case in the public interest and that the regeneration project sufficiently justifies interfering with the human rights of those with an interest in the land affected. It reads as follows:
- “A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected.”*
- 8.7 Paragraph 19 of Circular 06/04 states –
- “If an acquiring authority does not have a clear idea of how it intends to use the land which it is proposing to acquire, and cannot show that all the necessary resources are likely to be available to achieve that end within a reasonable time-scale it will be difficult to show conclusively that the compulsory acquisition of the land included in the order is justified in the public interest... Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss.”*
- 8.8 Consideration is given to the human rights implications of the decision to make a CPO in section 12 below.

9. WHEN COMPULSORY PURCHASE IS TO BE USED

9.1 An example of the circumstances in which CPO may be used by relevant authorities is summarised as follows:

- To unlock situations where a scheme is being blocked by an owner (or owners) unwilling to dispose of property either at all or only at a price considerably in excess of market value (a ransom situation).
- To ensure effective negotiations for land assembly where there is a multiplicity of ownerships and absent landlords.
- Where there are unknown owners.

9.2 The use of CPO in the case of Burdett Estate, accords with the first two of these circumstances.

10. COMMENTS OF THE CHIEF FINANCE OFFICER

10.1 This report updates Members on Poplar HARCA's progress on the acquisition of land and properties on the Burdett Estate, and seeks approval for Compulsory Purchase Order proceedings to be implemented should efforts to acquire all of the appropriate property interests by agreement fail. Arranging for these back-up procedures to be put in place now will reduce any subsequent delays in the regeneration programme that will arise if agreements cannot be reached with individual owners.

10.2 The report seeks approval to enter into a CPO Indemnity Agreement with Poplar HARCA (recommendation 2.5). Subject to this being approved, there are no financial implications for the Authority in terms of implementing the CPO because the costs of the purchases and associated compensation packages, including any Rights of Light claims, will be borne directly by Poplar HARCA, with the cost of Council officer time involved in the CPO process also being recharged to the organisation. As part of the indemnity arrangements it will be necessary for the financial standing of Poplar HARCA to be assessed, particularly in light of the recent Government announcement that rent reductions will be implemented within the social rented sector. The Council must ensure that the indemnity agreement fully protects its interests and mitigates against any potential risk that Poplar HARCA and its partners are not able to meet their contractual liabilities.

10.3 The costs of council officer time and legal fees to be met by Poplar HARCA will be dependent on whether or not the CPO is challenged at a public inquiry. In that case, the reimbursement for staff and legal costs incurred could exceed £50,000. The costs to be incurred by Poplar HARCA to acquire the remaining unacquired land interests are likely to exceed £4.3 million.

10.4 On completion of the CPO process, any properties that were not acquired via negotiation will ultimately be vested in the Council. At that stage it will be necessary to formally agree to transfer the interests of these properties to Poplar HARCA at nil consideration, in accordance with the terms of the proposed indemnity agreement.

10.5 Although not specifically linked to the recommendations in this report, it should be noted that in September 2013 Cabinet agreed to support the proposed expansion of St Paul's Way Trust School. Capital estimates have been adopted for the project, with the Council funding the capital costs of the school-related elements of the overall scheme through the specific capital grant that it receives from the DfE. The Council's capital expenditure will incorporate an element of costs attributable to the site assembly for the scheme, including the decanting of existing residents from Linton

and Printon Houses on the Burdett Estate. The Council and Poplar HARCA have agreed the pro-rata share for the site assembly costs, although it is recognised that the final costs for some elements, particularly the leaseholder buy-out costs, are not yet confirmed.

- 10.6 A Mayoral Executive Decision was approved on 15 October 2015 to authorise the Council entering into the Development Agreement and Agreement for Leases with Poplar HARCA and the Agreement for Sub-Leases with St Paul's Way Trust. The decision increased the Council's capital budget for the scheme as a whole to £13,406,675, to be funded from the Children's Services capital programme. The majority of this funding will be paid to Poplar HARCA for the capital costs of the construction of the school and the pro-rata share of the site assembly costs.

11. LEGAL COMMENTS

- 11.1 The Council is empowered under section 226(1)(a) of the Town and Country Planning Act 1990 ("TCPA") as amended, to acquire any land in its area if it is satisfied that the proposed acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land.
- 11.2 The Council may make a compulsory acquisition under section 226 of the TCPA (a) if it thinks the acquisition will facilitate the carrying out of development or redevelopment or improvement on or in relation to the land or (b) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated. In order to make an acquisition under (a), the Council must also consider that the development, redevelopment or improvement will contribute to the promotion or improvement of the economic social or environmental well-being of its area.
- 11.3 The Acquisition of Land Act 1981 ("**the 1981 Act**") governs the procedures which apply to such an acquisition, the Compulsory Purchase Act 1965 ("**the 1965 Act**") governs post-confirmation procedures and the Land Compensation Act 1961 ("**the 1961 Act**") governs the amount and assessment of compensation.
- 11.4 The Council may dispose of the land under section 233 of the TCPA for the purpose of bringing it forward for development or otherwise facilitating development. Any such disposal must be for the best consideration that can reasonably be obtained, unless the Secretary of State's consent is obtained. By a combination of sections 226 and 233 of the TCPA, it is open to the Council to compulsorily acquire land for planning purposes and then transfer it to a developer or Registered Provider partner.
- 11.5 The Council is a best value authority within the meaning of section 3 of the Local Government Act 1999 and is obliged to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". Although the Council's costs in implementing the CPO (including any compensation payable to property owners) are recoverable from Poplar HARCA and so no cost will be borne by the Council in this respect, officers should nevertheless keep under consideration whether the scheme as a whole is delivering best value for the Council.
- 11.6 The 1981 Act provides that the authorisation of a compulsory purchase is to be conferred by an order, called a compulsory purchase order ("**CPO**"). A CPO is required to be made in a prescribed form and must describe by reference to a map the land to which it applies. If the Council makes a CPO, it must submit the CPO to the Secretary of State for confirmation. Prior to submission to the Secretary of State,

the Council must publish notice of the making of the CPO specifying that the order has been made, describing the land and the purpose for which it is required, naming a place where the order and map may be inspected and specifying a time which (and the manner in which) objections may be made. The Council must also serve a notice in prescribed form on affected owners, lessees, tenants or occupiers of the land allowing them the opportunity to object. The procedure for confirmation is specified in the 1981 Act and may require the conduct of a public inquiry if there are objections.

- 11.7 As an acquisition will extinguish third party rights, the Council will need to take care that it does not contravene the rights of individuals under the European Convention on Human Rights (“**ECHR**”). Section 6 of the Human Rights Act 1998 makes it unlawful for the Council to act in any way which is incompatible with a right under the ECHR. Pursuant to Article 1 of the First Protocol to the ECHR, every person is entitled to the peaceful enjoyment of his or her possessions and no one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. In order to avoid contravening individual human rights by making a CPO, it must be demonstrated that the CPO is in the public interest and that it is necessary and proportionate to make the CPO. It is considered that, as the requirements of S226 (1) and (1a) have been fulfilled (i.e. the development, redevelopment or improvement will contribute to the promotion or improvement of the economic social or environmental well-being of its area), this will provide a very substantial basis upon which to make the case that the scheme is policy based and is consistent with statutory objectives.
- 11.8 The fact of the land being held or acquired (whether through private treaty or a CPO) for planning purposes is important because of the operation of s.237 of the TCPA. This provides that the erection, construction or carrying out or maintenance of any building or work on land which has been acquired or appropriated by a local authority for planning purposes (whether done by the local authority or by a person deriving title under them) is authorised if it is done in accordance with planning permission, notwithstanding that it involves—(a) interference with an interest or right to which this section applies, or (b) a breach of a restriction as to the user of land arising by virtue of a contract. The interests and rights to which this section applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support. Accordingly, any rights of light are included under this section. Having engaged Rights of Light surveyors to undertake an assessment of properties whose Rights of Lights are likely to be adversely impacted by the development, the Council considers (as set out at paras. 7.10 – 7.18 that there are unlikely to be any actionable claims in this regard.
- 11.9 As the cost of implementing the CPO is being underwritten by Poplar HARCA, an Indemnity Agreement between the Council and Poplar HARCA is to be entered into prior to making the CPO in order to protect the financial interests of the Council. Given that the proposed scheme will involve a transfer back of the land acquired at a nil consideration, which is provided for in the Indemnity Agreement, the consent of the Commissioners will be required to enter into the same.
- 11.10 The making of a CPO should be a last resort and should be preceded by vigorous attempts to buy the land by agreement. There should be evidence of intransigence on the part of owners such that the development is put at risk. It must be clear that the development offers public benefits, such as improved housing and amenities for the estate. The balance of interests between the protection of individual rights and the public benefits to be obtained must be considered and there should be a compelling case in the public interest for the CPO. In doing so it may be noted that

the impact on individual rights is lessened by the existence of rights of objection and a statutory compensation regime which includes payments above the market price to compensate for the involuntary nature of the process.

- 11.11 The Government Circular 06/2004, which was issued on 31 October 2004, provides guidance to acquiring authorities in England on the use of compulsory acquisition powers. The guidance has been referred to, as appropriate, in the preparation of this report.
- 11.12 Before making a CPO, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not. Some form of equality analysis will be required which is proportionate to the potential impact of the CPO on individuals or communities.
- 11.13 The making of a CPO is an executive function, by virtue of section 9D of the Local Government Act 2000 and the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Pursuant to section 9E(2) of the Local Government Act 2000, the Mayor may arrange for the discharge of an executive function by an officer of the authority.

12. HUMAN RIGHTS IMPLICATIONS

- 12.1. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights. Various convention rights are likely to be relevant to the Order, including:
- Entitlement to a fair and public hearing in the determination of a person's civil and political rights (Convention Article 6). This includes property rights and can include opportunities to be heard in the consultation process.
 - Peaceful enjoyment of possessions (First Protocol Article 1). This right includes the right to peaceful enjoyment of property and is subject to the State's right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.
 - Right to life, in respect of which the likely health impacts of the proposals will need to be taken into account in evaluating the scheme (Convention Article 2).
- 12.2 The European Court has recognised that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole". Both public and private interests are to be taken into account in the exercise of the Council's powers and duties as a local planning authority. Any interference with a Convention right must be necessary and proportionate.
- 12.3 The Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. The Council must carefully consider the balance to be struck between individual rights and the wider public interest. It is considered that any interference with the Convention rights caused by the CPO will be justified in order to secure the social, physical and environmental regeneration that the project will bring. Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the national Compensation Code.

13. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 13.1 The housing stock transferred from the Council to Poplar HARCA was designed to an environmental performance consistent with standards for build in place at the time the properties were built (mid 1900's). The performance standards will have been improved in the social; housing properties through investment to bring them to the Decent Homes standard, but these improvements will not have been applied to all of the leasehold properties.
- 13.2 The proposed new scheme will provide homes built to a far higher standard of environmental performance, which will mean they are far more cost effective to run, thereby reducing the potential for fuel poverty amongst low income households that are expected to occupy the new affordable homes within the scheme.
- 13.3 The overall development is subject to an energy and sustainability strategy included with the planning application. The development is to be constructed to current sustainability standards and includes a combined heat and power (CHP) source for all the development including the school, effective water and energy management and garden areas to support biodiversity. The school accommodation is designed to meet BREEAM excellent standard.

14. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 14.1 Poplar HARCA is working with the Crime Prevention Officer (Metropolitan Police) to achieve a Secured by Design Accreditation of level 2. Necessary conditions and informative would be secured accordingly. The general arrangement of the new scheme would vary considerably from the existing site and buildings layout. The aim of this proposal is to reinstate the existing edges and street frontages along St Paul's Way and Masjid Lane with urban forms of dwellings and active frontages which allow for natural surveillance helping to design out crime.
- 14.2 Overall and to conclude officers are confident that this scheme would properly take into account secured by design requirements, improve safety and security in the location of the site and elsewhere and would not introduce undue risk of crime to future occupiers and users of the community facilities as a result of detailed design.

15. EFFICIENCY STATEMENT

- 15.1 Expenditure to be incurred in managing and delivering the proposed CPO processes, including costs arising from work by the council's Legal and Housing Regeneration Teams, will be reimbursed by Poplar HARCA.

16. ONE TOWER HAMLETS CONSIDERATIONS

- 16.1 The council has a statutory duty to provide sufficient school places for local residents. Education is key to ensuring economic prosperity for the individual and for the community. The council has to plan for the overall social infrastructure to meet the needs of the rising local population. The proposal for the expansion of St Paul's Way Trust School supports these requirements.

17. RISK IMPLICATIONS

- 17.1 The risks associated with not agreeing the CPO resolution is set out in Section 4 of the report. Failure to acquire the land interests through negotiation could affect the Burdett regeneration proposals unless this risk is off-set by taking steps to make a precautionary CPO in each area, to acquire the land interests identified in this report.
- 17.2 The council is working with Poplar HARCA on the redevelopment proposal for the school. The programme bears some time risks, with associated cost risks to the Children's Services capital programme, due to the need to vacate Printon and Linton Houses. The programme is being monitored closely. The CPO resolution for Burdett will support the programme delivery if the need arises.
- 17.3 Recent Government legislation has placed severe pressures on the business plans of Registered Housing providers. The combination of the removal of the rent convergence mechanism from 2015-16, the 1% per annum rent reduction that must be implemented for each of the four years from 2016-17, and the extension of the Right to Buy to all social housing tenants means that providers are facing significant uncertainty in relation to future resources. The proposal in this report concerns the acquisition of leasehold interests at a cost that could exceed £4.3 million. Although these costs are the responsibility of Poplar HARCA, as the Council is the statutory authority in relation to the compulsory purchase order, the liability will fall on the Council should Poplar HARCA default on the financial arrangements. It is therefore essential that the Council's interests are protected as part of the indemnity agreement to ensure that any possible financial liabilities that may arise are underwritten by the external partners.

Linked Reports, Appendices and Background Documents

Linked Report

- None.

Appendices

- Appendix 1: Burdett Estate – CPO Land and location map
- Appendix 2: Schedule of leasehold interests to be purchased on Burdett Estate

Background Documents – Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012

- None.

**Appendix 2: Schedule of leasehold interests to be purchased on
Burdett Estate**

**Land Interests to be purchased: listed for inclusion in the proposed Compulsory
Purchase Order
Burdett Estate: Poplar HARCA**

Residential Properties

The leasehold properties known as:-

4 Linton House, St Pauls Way
6 Linton House, St Pauls Way
20 Linton House, St Pauls Way
21 Linton House, St Pauls Way
23 Linton House, St Pauls Way

7 Printon House, Wallwood Street
20 Printon House, Wallwood Street
26 Printon House, Wallwood Street
30 Printon House, Wallwood Street
50 Printon House, Wallwood Street
56 Printon House, Wallwood Street

The tenanted property known as:-

60 Printon House, Wallwood Street

Other Land Interests

Rights of way

Way-leaves

Telecommunication equipment

Other non residential interests to be identified during the land referencing within the red line boundary shown on the plan in Appendix 1.
