


<b>Cabinet</b>  22 May 2019	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Ann Sutcliffe, Corporate Director of Place	<b>Classification:</b> Unrestricted
<b>Chrisp Street Regeneration Scheme – Land Transfer Matters</b>	

<b>Lead Member</b>	Councillor Rachel Blake, Deputy Mayor and Cabinet Member for Regeneration and Air Quality
<b>Originating Officer(s)</b>	Mark Baigent – Divisional Director for Strategy Regeneration & Sustainability Niall McGowan – Housing Regeneration Manager Aaron Cahill – Project Manager Monju Ali – Housing Regeneration Project Officer
<b>Wards affected</b>	Lansbury
<b>Key Decision?</b>	No
<b>Forward Plan Notice Published</b>	24 April 2019
<b>Community Plan Theme</b>	A borough that our residents are proud of and love to live in

## **1 EXECUTIVE SUMMARY**

### **Introduction**

- 1.1 On 26 September 2018 Cabinet agreed a number of recommendations to bring forward the regeneration of Chrisp Street Market site in Lansbury Ward. The report recommended the making of a Compulsory Purchase Order (CPO); the addressing of a range of land assembly issues; and addressing of future street market management issues.
- 1.2 The Council's Strategic Development Committee resolved to grant planning approval for the scheme on 24 July 2018. Following the Mayor of London's direction on 11 February 2019 to Tower Hamlets to determine the decision itself, the Council's Planning Department issued its Decision Notice letter dated 25 March 2019.
- 1.3 This Cabinet Report updates the Mayor on actions set out in this report to allow the scheme to start on site in 2019 as outlined in the 26 September 2018 Cabinet report.

- 1.4 This report seeks to bring forward the use of section 203 powers to expedite the scheme. This is considered a change of approach set out by officers in the 26 September 2018 Cabinet Report, requiring noting of the engagement of the powers from the Mayor in Cabinet.

## **2. RECOMMENDATIONS**

In relation to the regeneration of Chrisp Street, the Mayor in Cabinet is recommended to:

- 2.1 Authorise the Corporate Director Place to trigger the Borough's powers under s203 of the Housing and Planning Act 2016 in relation to the Chrisp Street site, as part of the ongoing Chrisp Street Regeneration Scheme prior to the confirmation of a full Compulsory Purchase Order.
- 2.2 Authorise the Corporate Director, Place in consultation with the Corporate Director Governance to enter into any ancillary agreements necessary to give effect to this decision
- 2.3 Authorise the Corporate Director Place to allocate compensation if necessary resulting from the use of the Borough's powers under s.203 subject to the agreement to pay such compensation by the developer.
- 2.4 Authorise the Corporate Director Place to enter into any documentation required to transfer and effect the transfer of any land interests as referred to at 3.19 -3.20 below.
- 2.5 Authorise the Corporate Director Place to make any other decisions ancillary to and required to facilitate recommendations 2.1 to 2.4

## **3. REASONS FOR RECOMMENDATIONS**

- 3.1 Since the Cabinet report was agreed, the development partnership – Chrisp Street Developments Ltd (owned by Telford Homes PLC) (“CSDL”) and Poplar HARCA (“HARCA”) - have continued their negotiations with residential and commercial stakeholders who have a land interest on the site. Acquisition or agreements in relation to property interests and variations to commercial leases necessary to progress Phase 1 of the development are nearly complete and Assured Tenants of Poplar HARCA of that phase have been decanted.
- 3.2 As part of the pre-CPO engagement process, the Council has been meeting with affected stakeholders (including residential leaseholders, tenants, shopkeepers and kiosk licensees) and CSDL/HARCA from November 2018 up to the present to discuss concerns people have; reviewing engagement and negotiations by the developer to date; explaining the CPO process and its implications in more detail; and seeking to ameliorate and remedy concerns where possible; and setting out a proposed course of action, for example, a Poplar HARCA tenant in Phase 2 wishing to be rehoused in newly built

affordable housing in Phase 1 (i.e., exercising their right to remain). These meetings have been followed up with a letter summarising what was discussed which may need to be referred to if a CPO Inquiry is required.

- 3.3 In tandem, the developer has been preparing to begin Phase 1 (of 2) of the development of the site in September 2019 (as set out in Table 6 of the 26 September 2018 Cabinet Report). The early elements of the development work will begin in the northern section of the site requiring demolition work and new housing and retail development in its place. To ensure that the development can begin in accordance with the programme CSDL/HARCA have requested that the Council acquires their land interests and disposes of them back to CSDL so that section 203 of the Housing and Planning Act 2016 is engaged during the carrying out of Phase 1 of the development.
- 3.4 It is important to note that the proposed transfer of land only relates to freehold interests owned by CSDL/HARCA. Any residential or commercial leases that need to be acquired or varied by negotiation will be subject to the CPO process if such negotiations fail.

### **The Council's Statutory Powers**

- 3.5 Paragraphs 3.1 to 3.13 of the 26 September 2018 Cabinet Report set out the Council's powers of compulsory acquisition and summarised the relevant Government Guidance in this regard.
- 3.6 The report explained that section 226(1) of the Town and Country Planning Act 1990 (as amended, the "TCPA") enables the Council (if authorised by the Secretary of State) to acquire land in its area compulsorily:
- a) if it thinks that the acquisition will facilitate the carrying out of development or redevelopment or improvement on or in relation to the land; or
  - b) if it is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area in which the land is situated.
- 3.7 The report also explained that section 226(1A) TCPA requires that an order to acquire land compulsorily under limb (a) above must not be made unless the Council also thinks that the development, redevelopment or improvements is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of the area.
- 3.8 Section 12 of the 26 September 2018 Cabinet report explained the Council's powers under section 203 of the Housing and Planning Act 2016 ("HPA"). Paragraph 12.4 noted that "the fact that the Order Land is proposed to be vested in or acquired by the Council (whether through private treaty or CPO) prior to its transfer to CSDL is important because it will trigger the operation of section 203 of the Housing and Planning Act 2016, the effect of which is to permit the carrying out of building or maintenance work even if it involves (a) interfering with a relevant right or interest, or (b) breaching a restriction as to the user of land arising by virtue of a contract". Paragraph 12.5 noted that

such interference with third party rights can give rise to a potential claim for compensation.

- 3.9 Much of the remainder of the September Cabinet report explained the proposed regeneration scheme, its economic, social and environmental benefits in order to justify the proposed recommendation to make secure confirmation of and subsequently implement a CPO. Cabinet Members resolved in favour of the proposed recommendations.
- 3.10 The following paragraphs of this report supplement the September 2018 report by making clear the basis on which the Council will acquire CSDL and Poplar Harca interests in the Order Land:
- Section 227 TCPA provides that the Council may acquire by agreement any land which it requires for any purpose for which it may be authorised to acquire land compulsorily under section 226 TCPA.
  - Section 246 TCPA states that any reference to acquisition of land for "planning purposes" is a reference to its acquisition under section 226 or 227 TCPA.
- 3.11 In this case and as summarised above, the application of section 226 and section 226(1A) TCPA to the entirety of the Order Land (including CSDL and Poplar Harca interests) was set out fully in the September 2018 report and is therefore not repeated here. The tests would continue to be met in the event that the Council acquires CSDL's and Poplar HARCA's interests by agreement pursuant to section 227 TCPA.
- 3.12 Section 233 TCPA contains obligations for the disposal of land held for planning purposes by the Council. In this case the Council will be relying on section 233(1)(a), which permits the disposal of land in such manner and subject to such conditions as appears expedient to the Council in order to secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it (whether by itself or another person). Applied to the facts, having acquired CSDL's and Poplar HARCA's interests in the Order Land, the Council would dispose of it to CSDL in order to facilitate the delivery of the Chrisp Street Regeneration scheme pursuant to planning permission 16/01612/FULL, which officers consider is the best use of the land and site as a whole.
- 3.13 Section 203 HPA provides that a person may carry out building or maintenance works even if it involves (a) interfering with a relevant right of interest, or (b) breaching a restriction as to the user of land arising by virtue of a contract. Four tests must be met for section 203 to apply, namely:
1. there is planning permission for the works;
  2. the works are carried out on land vested in or acquired by the authority or on land which has been appropriated for planning purposes;

3. the authority could acquire the land compulsorily for the purposes of the proposed works; and
4. the works are for purposes related to the purpose for which the land was vested, acquired or appropriated.

3.14 The above tests will be met in respect of the CSDL and Poplar HARCA interests in the Order Land when the Chrisp Street Regeneration scheme is carried out because:

1. the Order Land now benefits from Planning Permission 16/01612/FULL for the Chrisp Street Regeneration scheme;
2. the Council will have acquired CSDL and Poplar Harca interests for planning purposes pursuant to section 227 TCPA;
3. the Council could have acquired those interests compulsorily for the purposes of the proposed works because it will be making, and anticipates that the Secretary of State will confirm, The London Borough of Tower Hamlets (Chrisp Street) Compulsory Purchase Order 2019;
4. the works that CSDL will be carrying out will be facilitating the Chrisp Street Regeneration scheme.

3.15 In addition, section 204 HPA enables a person whose rights are infringed to claim compensation. This issue was addressed in the September 2018 Cabinet Report as well as the Indemnity Agreement subsequently entered into by the Council.

### **Third-Party Property Rights**

3.16 The Chrisp Street Regeneration Scheme through being a mixed use development of housing; shops; street market; Idea Store; and other facilities makes it, in urban planning terms, a scheme that optimises the land on which it is on. The added challenge is that there are a number of business and residential uses that already exist in the market area, the majority of which will continue throughout the life of the project. These issues combined mean that various rights that existing owners of property interests have such as rights of way; rights of access to their business and homes; easements; rights of light are likely to be impacted. Whilst such rights will be altered and no longer injunctable, they will not be lost. The overall aim is to maintain access to ensure that businesses are able to operate in a viable trading environment and for residents to have continued access to their homes. These are largely property issues which can have an impact on resale value and also Human Rights Act implications.

3.17 Officers acknowledged these potential impacts in Section 12 of the 26 September 2018 Cabinet Report. Such rights would ordinarily be 'cleansed' from the title through the power available under the s203 of the Housing and Planning Act 2016 as a consequence of the site being transferred to the

Council and then transferred back to the developer for development. The implication of the Cabinet Report was that such a power would only be used once the CPO was confirmed (i.e., successful) by the Secretary of State.

- 3.18 The developer has requested that the Council acquires for planning purposes the CSDL/HARCA owned land prior to confirmation of the CPO so that the Council's s203 powers are engaged at the beginning of the scheme. The Council would use its s203 powers to remove the risk of a legal challenge that could delay the scheme programme. The developer is entitled to make this request under the Indemnity Agreement (Clause 7.2) which it has entered into with the Council. The Council is only required to make suitable arrangements for such interest to be acquired for planning purposes and any associated costs shall be CPO costs. A procedure to assess compensation claims will be agreed between the Council and CSDL/HARCA.
- 3.19 The proposed action is in effect bringing forward the land transfer process earlier than originally envisaged which can be requested by the developer under the Indemnity Agreement which will in turn enable the scheme to commence in 2019 in order to achieve the programme set out in Table 6 of the 26 September 2018 Cabinet Report.
- 3.20 Therefore taking this course of action may be considered beyond the specific authorisations detailed in the 26 September 2018 Cabinet Report, but within the broad authority to expedite the project as set out in 1.2 (b) of the 26 September Cabinet Report which grants the Mayor authority (or by delegation to the appropriate officer(s)) to approve decisions relating to dealings with the Council's land and property interests, including disposal of interests to CSDL and acquisition of others, in order to help facilitate the delivery of the scheme.
- 3.21 It is important to note the effect of s203 powers in 'title cleansing' would in effect over-ride rather than extinguish the rights identified and convert any such right into a claim for compensation. This will also prevent the ability of parties with a property ownership interest on the site to seek an injunction to halt or delay the progress of the scheme. The entitlement to compensation will be related to loss of property value where it can be evidenced. The use of s203 power must meet the legislative criteria set out in paragraphs 3.13 and 3.14 above.
- 3.22 The early impacts of the scheme beginning onsite in 2019 will be on the retail and residential units in the Festival of Britain properties in the northern section of the site. Currently a small number of retailers that have not agreed to lease variations have access rights through their leases with Poplar HARCA that allow the use of vehicles to deliver goods to the immediate rear of their premises. Under the scheme approved by the Council's Strategic Development Committee, there will be a loading bay at a short distance from where their businesses are located which will require such goods to be placed on a trolley and wheeled to the rear of their units. Changes to loading arrangements will be implemented by CSDL/HARCA from September 2019 (at the earliest), as large sections of the current vehicular access areas are scheduled to be built on. It should be noted that the majority of retail

businesses have agreed to variations to their leases to reflect this change, but not all have done so. It is important to note that access for deliveries will be available at business hours, but there will need to be good working relationships between the developer and retailers and residents to ensure this works effectively.

- 3.23 For the duration of Phase 1 lasting up to 2023, interim arrangements will need to be put in place that will allow businesses to continue receiving deliveries. Management Plans will need to be put in place to ensure retailers are able to sustain their business activities throughout the duration of the project. It is expected that some retailers will receive deliveries to the front of their premises. Such arrangements will need to be worked out on a business by business basis.
- 3.24 For residents in the Festival of Britain homes, interim arrangements will need to be put in place as the stairwells that currently exist will need to be demolished with replacement stairwells and new lifts at no capital cost to them. This is considered to be a more straightforward arrangement but will also require a Management Plan. Over the long term, officers expect commercial and residential property values to increase as a result of the scheme improvements.
- 3.25 The proposed development is likely to have some negative impacts on rights of light to neighbouring homes and other premises, acknowledged in Section 12 of the 26 September 2018 Cabinet Report. A study has been commissioned to assess the impacts which will be reviewed and independently assessed by the Council.
- 3.26 All stakeholders on the Chrisp Street site were written to on 29 April 2019 updating them of scheme progress and also informing them of the proposed land transfer process. Stakeholders with a property ownership interest who are likely to be impacted by the proposed approach in the short term – principally business owners in the Festival of Britain shop units; resident and non-resident owners in the Festival of Britain residential units; stakeholders with a property ownership interest outside the Chrisp Street site who are negatively impacted on rights of light grounds – are planned to be written to during May 2019 explaining how the proposed approach will affect them and what approach to mitigating actions (and compensation where applicable) would be adopted.
- 3.27 A CPO Inquiry (if directed by Secretary of State) is not expected to be held until 2020 at the earliest. However voluntary acquisition for planning purposes of CSDL/HARCA land interests by the Council would ensure the engagement of s203 of the Housing and Planning Act 2016 during the carrying out of Phase 1 thereby paving the way for the progress of the scheme which is a strategic regeneration priority for the Council

## **Cabinet Report Authority**

- 3.28 The Cabinet Report of 26 September 2018 makes reference to use of s203 powers (in Section 12 of the report) but does not make reference to when it would be used. The Council is proposing to use it earlier in order to allow the scheme to proceed.
- 3.29 There may be a view by external parties that the Council – specifically the Mayor - is acting outside the approvals it/he obtained at the 26 September 2018 meeting by using s203 without a further notification, meaning the Council could be exposed to the risk of legal action. This could occur after the developer has started onsite, hence their reasons for wishing to undertake the land transfer process proposed for early Summer 2019. Using s203 does not obviate the need for the CPO as there may be land interests that need to be acquired in both Phases 1 and 2.
- 3.30 It should be noted that the Indemnity Agreement (which underwrites the Council's costs associated with land assembly and the CPO process and the CPO) between the Council and the developer does require the Council to undertake the transfer at the developer's request once the developer has entered into an agreement to transfer the land. This transfer only relates to the developer's freehold interests. Outstanding leasehold interests that need to be acquired or lease varied to progress the scheme will continue to be negotiated on a voluntary basis. A supplemental indemnity is required (and will be sought from the developers), to cover the use of S.203 compensation and the council's costs of defending any legal challenge arising from its use.

## **4. HUMAN RIGHTS AND EQUALITIES IMPLICATIONS (As per the 26 September 2018 Cabinet Report)**

- 4.1 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 respect for, private and family 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 8).



- 4.2 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. Any interference with a Convention right must be necessary and proportionate.
- 4.3 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. In the present case the CPO would amount to an interference with the property rights of those individuals whose property or interests are to be acquired compulsorily. 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. There is a right for those individuals to object and have their objection heard at a public inquiry and, additionally, appropriate compensation will be available to those entitled to claim it under the relevant provisions of the CPO Compensation Code.
- 4.4 Before making a CPO, the Council must also 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. An Equalities Impact Assessment (EIA) has been carried out to assess the impact of the CPO and the Scheme on individuals or communities.
- 4.5 This EIA has been completed by an independent consultant using the LBTH EIA guidance and format and has included a comprehensive desktop review of equalities policy and legislation, regeneration priorities and other core Council documents. Central was a review of the scheme proposals, the planning application, the proposed CPO, offers for tenants and leaseholders and the CSDL retail strategy. For the purposes of this report, the EIA is described as an EqIA, to distinguish it from an Environmental Impact Assessment.
- 4.6 In addition, to support the evidence base to assess the likely positive and negative impacts, there has been a review of equalities data, in part held by the developer and HARCA and supported by a primary research programme, which was completed between May and June 2017. Specifically this research addresses the equalities profile of tenants, leaseholders, businesses and other property interests. This data has been analysed and sets out the core basis of the profile of key equality groups and protected characteristics being assessed through this EqIA.
- 4.7 A central component of the EqIA is the need to distinguish between regeneration impacts per se and specific impacts on particular protected characteristics. The EqIA highlights specific Equalities Impacts and reviews these against the 9 protected characteristics of the Equality Act 2010. It also

addresses issues of language, health and wellbeing and socio economic inequality.

- 4.8 The EIA report highlighted 'positive' and 'negative' equality impacts and set out a series of recommendations to mitigate negative impacts. The impacts are summarized below. The full report can be found at Appendix 7 and includes an action plan which identifies mitigation activities to address the identified impacts, which can be carried out.

#### **Addendum (May 2019)**

- 4.9 It should be noted that whilst this report is concerned with the Council using s203 powers rather than CPO powers referenced in the 26 September 2018 report, the intent is the same, namely to progress the regeneration of Chrisp Street and deliver the economic, social and environmental benefits detailed in that report.

#### **Equalities Impact Assessment (EqIA) highlighted positive impacts**

- 4.10 The design of the regeneration programme has sought to deliver a range of positive impacts. A summary of these positive impacts, specifically in terms of equality, is set out below.

#### **4.11 Housing**

- Housing needs that respond to a wide range of protected characteristics will be positively enhanced through the development of these new units providing opportunities for housing.
- There will be more homes designed to lifetime homes standards and with disability access.
- Improving the housing stock will provide more homes for more people, to higher standards and hence improve the quality of accommodation for residents currently on the estate.
- Fabric First approach will use sustainable forms of energy such as centralized heating and hot water and photovoltaics to generate electricity. This should mean lower running costs.
- Application of Considerate Contractor requirements to minimise negative impact during construction period
- There will be an expansion of housing offer (additional units) for those on the waiting list, many of whom come from protected characteristics.
- The needs of older people and those with disabilities will be enhanced by the development of properties built to lifetime homes standards.
- Families will have units that are in much better condition than they are currently.
- There will be more two and three bed units which will address local and community housing needs

#### 4.12 Business

- CSDL/ HARCA have confirmed that all retailers who had a right to renew their lease will be offered the option to stay within the scheme if they so wish.
- Alternatively, if any retailer wishes not to remain and surrender their lease to CSDL/HARCA, they will compensate them accordingly in line with the CPO compensation code.
- Retailers who are not being relocated will be provided with new shop fronts and unit improvements in line with the proposals submitted for planning.
- New signage and improved security arrangements will also be provided.
- CSDL/HARCA will meet the reasonable costs associated with either the granting of a new lease, an agreement to lease or the amendment to their current lease.
- CSDL will also pay reasonable professional costs (surveyor) if required up to an initial 10 hours, reviewable depending upon the complexity of the matter, plus reasonable legal costs associated with the transaction.
- For retailers who are required to relocate to another unit within the scheme CSDL/HARCA will offer the following in addition to that described above:
  - Retailers will be offered a unit of the same floor area or slightly smaller as they currently occupy unless a different size unit is more appropriate to their business performance and aspirations.
  - CSDL/HARCA will pay for the shop fit of the unit to, at minimum equivalent standards of their existing unit, and ensure all units meet current regulatory requirements.
  - CSDL/HARCA will also pay reasonable relocation costs associated with the move.
- CSDL will specify a mechanism to agree reasonable fees between the parties if agreement cannot be reached by referral to an independent surveyor / shopfitter. This store fit out is in addition to the new shop fronts and signage detailed above. CSDL / HARCA also will give personal rent concessions to independent retailers. This concession will last up to 5 years and be subject to them meeting reasonable criteria as detailed in the Retail Management Strategy Addendum.

#### 4.13 Community / District Centre Users

- New facilities
- Night-time economy
- Cinema
- Improved public amenity space
- Sustainable injection the longevity of the district centre
- New Children's Centre being built adjacent to site
- Additional community space
- Increase in parking provision for disabled people from 3 parking spaces

- currently to 10 in the new development a growth of 330%
- Design of new community facilities to address the access needs of disabled shoppers and those people with mobility scooters, prams, buggies and physical access needs
- Whilst there are no tenants to be rehoused in phase one of the scheme, those tenants in phase two will have the ability to move into completed phase one homes and as a result they would have the choice to remain in the locality should their children need to attend local schools, thus mitigating any possible educational disruption.

#### 4.14 **EqIA Highlighted negative impacts**

4.15 A summary of the potential negative impacts is set out below.

#### 4.16 **Generic Regeneration Impacts:**

- The CPO process does have a direct impact on leaseholders and other land holding interests as their homes/businesses will be compulsorily purchased if it has not been possible to agree a voluntary settlement. This is universal to all leaseholders and is not in itself an equality impact.
- What residential leaseholders and businesses choose to do next will be their decision, as they have the options of taking their sale value and buying elsewhere (if possible), porting their mortgage and rebuying in the new estate, or entering a shared ownership or shared equity as per the relocation offer.
- The CPO process may have a disproportionately negative impact on non-resident leaseholders who have no option to stay, however resident leaseholders have options under the relocation offer.
- For some, the relocation offer of porting mortgages and entering shared ownerships may cause financial burdens, particularly for people with low earning capability and/or ineligible to take on a mortgage.
- There will be less 4 plus bedroom units on site i.e. 30 down to 13. Although this is made up by significantly more 2 and 3 bedroom units.

#### 4.17 **Equality specific negative impacts:**

- Some burden may arise from households where their married status has changed since the property has been purchased and this may cause legal costs to clarify ownership and to agree the way forward for that household.
- The CPO process may have disproportionate impacts for leaseholders who are either older people and single parent families as their capacity to meet the increased values will impact against them. Similarly, this will have impacts on all leaseholders who find difficulty in meeting any possible increased cost of home ownership on the estate.
- Potential negative health impacts of the construction process including noise, dust, construction debris and environmental impacts, often negatively impacting more disproportionately on people with poor health and disability

- Households with children and older people may find the regeneration process and construction harder to live with.
- Language is potentially an issue for residents (leaseholders and tenants alike), businesses and market traders and in some cases residents who did not speak English as their first language may have felt that their understanding of the impact of the regeneration scheme had suffered because of this.
- Much of the interaction with residents will be through Poplar HARCA development team staff and those negotiating with leaseholders. In these cases, there is a real concern that the borough's equalities commitments are maintained in the negotiations process (training of staff to recognise equalities issues of those in negotiation).
- The decant process must address the equality needs of residents. These are most likely to be affecting those who are older, disabled or who have health conditions.
- The rehousing of the social tenanted properties should seek to retain the local feel for Chrisp Street particularly the BAME profile to reflect the local community and to sustain community cohesion.
- Wellbeing is a critical factor, as is the support network previously available pre-regeneration.
- Sense of community particularly those of immediate neighbours will have negative impacts on residents reliant on a local/neighbour care network, this is most likely to impact on older people, disabled and those with health conditions.

#### **4.18 Recommended Mitigation activity**

4.19 Below are the headline mitigation activities that are recommended to address the impacts highlighted above, which will be incorporated into a Mitigation Plan, which will form part of the Risk Management Plan referred to in Section 22.11 of the 26 September 2018 Cabinet Report. More detailed activities are set out in the action plan set out in the Full EIA.

- Generic Mitigation Activity
- Ethnic Mitigation
- Disability Mitigation
- Age Mitigation
- Socio-Economic Mitigation
- Language Mitigation
- Health Mitigation

#### **4.20 Addendum (May 2019)**

4.21 As referenced in this report, management plans will need to be put in place to ensure that disturbance to local stakeholders to ensure people who live, work and shop in the area is minimized. Such negative impacts are referenced in 15.16 above. As with Tower Hamlets as a whole, the Chrisp Street area and Lansbury Ward in which is located is populated by a diverse community and

any management plans will need to take account of that diversity, ensuring all members of the community are able to go about their livelihoods with any disturbance caused by the scheme mitigated where possible.

## **5. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 5.1 On 26th September 2018, the Mayor in Cabinet agreed the recommendations in a report to facilitate the delivery of a regeneration project at Chrisp Street Market. The report contained detailed finance comments and implications of the overall project in section 17.
- 5.2 This further report provides an update on the Chrisp Street Developments Ltd (CSDL) / Poplar HARCA partnership's progress on the acquisition of land and properties on the Chrisp Street element of the Lansbury (South) Estate following the approval of the Mayor for CPO proceedings to be initiated should efforts to acquire all of the appropriate property interests by agreement fail.
- 5.3 On completion of the CPO process, any properties that are not acquired via negotiation will ultimately be vested in the Council, although all costs will have been financed by Poplar HARCA/CSDL. At that stage it will be necessary to formally agree to transfer the interests of these properties to Poplar HARCA or CSDL at nil consideration in accordance with the terms of the Indemnity Agreement that is in place (see paragraph 5.4). In order to reduce any further delays in the regeneration programme, approval is sought to use powers under Section 203 of the Housing and Planning Act 2016, to override easements and enable developments to commence, with the right to compensation available to an affected landowner.
- 5.4 A CPO Indemnity Agreement was entered into between the Council and Poplar HARCA/CSDL in November 2018, meaning that there are no specific financial implications for the Authority arising from the CPO process because the costs of the purchases and associated compensation packages will be borne by Poplar HARCA/CSDL. The cost of all Council officer time involved in the CPO process is also being recharged to the organisations. It is important that the new proposals in this report are also fully covered by indemnity arrangements, including the costs of any legal challenges that may arise as a result of applying the Section 203 powers. In order to mitigate this risk, a supplementary indemnity agreement between the Council and the developer will be sought (see paragraph 3.30).

## **6. LEGAL COMMENTS**

- 6.1 The s203 power is contained within the Housing and Planning Act 2016. It is a new power intended to replace the older s237 County Planning Act power to “cleanse” property title, i.e. to remove existing rights and interests that could be an impediment to redevelopment and replace them with a right to compensation.
- 6.2 The new power is relatively untested and no caselaw or guidance relating to its use currently exists. However the Council has sought the advice of Counsel on this topic. One key difference between the old s237 power and the new s203 one is that the s203 process can be invoked whenever the criteria are met, rather than directly after a Compulsory Purchase Order is made. Therefore the power can be used in advance of the CPO, so long as the grounds for a subsequent compulsory purchase order are made out.
- 6.3 As the s203 power is intended to be part of a Compulsory Purchase process, invoking the power does potentially bind the Council to use those powers at a later date (or potentially face challenge on the grounds that use of the s203 powers was inappropriate).
- 6.4 As stated above s203 is an untested and new power and therefore there is a risk that during the period May -July such a case may be filed, in relation to ourselves or another local authority. That case could establish a contrary precedent; however, it is not possible to give a direct indicator of the level of risk. Council Officers in association with LBTH legal must seek a supplemental indemnity agreement with the developer specifically relating to s203 powers and any such risks.

## **7. ONE TOWER HAMLETS CONSIDERATIONS**

- 7.1 The Council has a range of statutory duties to facilitate development in the borough and provide affordable homes for local residents. Regeneration and development is a key factor 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.

## **8. BEST VALUE (BV) IMPLICATIONS (As per the 26 September 2018 Cabinet Report)**

- 8.1 The Council is required to consider the value for money implications of its decisions and to secure best value in the provision of all its services. The proposed regeneration scheme will be funded largely by private investment from the developers. In addition there will be £9.196m GLA funding to fund the delivery of 136 social rent/GLA Affordable Rent and 37 shared ownership homes. A bid submission is due from HARCA to fund the development of 27 Tower Hamlets Living Rent homes. Subject to a successful bid submission, the secured Right to Buy funds will deliver value for money in terms of the Council’s investment, as this will contribute to the delivery of 27 additional

affordable units as part of the scheme. The scheme will also attract New Homes Bonus and additional Council Tax and Business Rates for the Council.

- 8.2 The Council has considered and is satisfied that its duty to secure best value under section 3 of the Local Government Act 1999 in respect of the land transfer and property related issues set out in Section 11 above will be met by the satisfaction of the obligations upon HARCA/CSDL that will be secured through the parties entering into the CPO Indemnity Agreement.

**9. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT (As per the 26 September 2018 Cabinet Report)**

- 9.1 The housing stock transferred from the Council to HARCA was designed to an environmental performance consistent with standards for build in place at the time the properties were built (mid 1960s). The performance standards will have been improved to a limited degree 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.

- 9.2 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 for households that are expected to occupy the new homes within the scheme. The development will maximise reductions in carbon dioxide emissions through the implementation of Be Lean, Be Clean and Be Green energy efficiency measures. The development has been designed to achieve a 35.9% regulated carbon reduction on 2013 Building Regulations through on site measures.

**10. RISK MANAGEMENT IMPLICATIONS (As per the 26 September 2018 Cabinet Report)**

- 10.1 The Council is working with CSDL and HARCA to progress the regeneration proposal. The programme bears some time risks due to the need for occupiers to vacate the residential and commercial properties. The programme is being monitored closely. The CPO resolution for Chrisp Street will support the programme delivery if the need arises.

- 10.2 Failure to acquire the land interests through negotiation could jeopardize the Chrisp Street regeneration proposals unless this risk is off-set by taking steps to make a precautionary CPO, to acquire the land interests identified in this report.

- 10.3 Considering the risk management implications in more detail, there are a number of thematic risks associated (set out below) with this project which will be the subject of a detailed risk register which will need to be assembled, implemented and monitored following the adoption of the 26 September 2018 Cabinet Report.



## **Strategic Risks**

- 10.4 This Cabinet Report is intended to support the delivery of a longstanding regeneration priority identified in the Local Plan and a priority in the Council-sponsored Poplar Housing Zone. The over-arching strategic risk relates to whether the intervention being sought is the correct one required to deliver the outcome sought. Ultimately, the regeneration scheme is being proposed by the landowner, HARCA in conjunction with a developer, CSDL, to deliver a strategic priority of the Council.

## **Compliance Risks**

- 10.5 The key compliance risk relates to the making of the CPO and ensuring that the regeneration case for the scheme is robust, whether a CPO Inquiry becomes necessary or not. The Council also needs to be mindful of any potential negative impacts on protected equality groups identified in the 2010 Equality Act together with the impacts on the human rights of those affected. A full Equalities Impact Assessment has been undertaken and forms Appendix 7 of this Cabinet Report.

## **Financial Risks**

- 10.6 These are considered to be relatively small to the Council given that the large proportion of this risk is to be borne by the developer, CSDL. All the Council's scheme enabling costs are being met by CSDL through the Indemnity Agreement (Appendix 8). Financial risks may arise from falling revenue from the Street Market, if market activity falls. However, it is expected that market activity will increase after the scheme is complete and therefore this may not be a risk that becomes an issue.

## **Operational Risks**

- 10.7 The Council's own direct interests relate to services currently provided by the Idea Store; Street Market; Children's Centre and One Stop Shop. In turn, the Idea Store is not going to be relocated, but there is an intention to extend the first floor of the proposed Community Hub Building. Therefore there is likely to be some disturbance to service provision during this time. The Street Market is to be temporarily relocated for one year to the south of the Order Land in order to facilitate the resurfacing of the Market Precinct. The One Stop Shop is to be relocated to the ground floor of the Idea Store under an initiative sponsored by the Council, independent of the scheme proposed by CSDL.

## **Reputational Risks**

- 10.8 The making of the CPO and associated actions identified in the reports raises significant potential reputational risks to the Council. The temporary and permanent relocation of moving residents (i.e. tenants and leaseholders); retail businesses; market traders; and employees from the place of living and/or work will involve upheaval and disturbance to the stakeholders identified. This will mean that the potential for negative coverage through, for

example, Members' Enquiries; local press coverage; social media coverage is considered high. Delivering the CPO and the ensuring regeneration objectives in the long term should justify a limited degree of disturbance for people living, working or spending recreational time in the areas. Where there is an unjustifiable degree of disturbance, then the use of Members' Enquiries; local media; social media may prove a useful means of establishing where interventions have gone wrong and what can be done to correct them.

- 10.9 However reputational risks for the Council are considerably reduced by the fact that HARCA are experts at regeneration having carried out the following successful strategic regeneration schemes in Tower Hamlets in partnership with the Council and also making use of their CPO powers for HARCA projects at Aberfeldy Estate and Bow Bridge.
- 10.10 In the past, HARCA have successfully managed to relocate affected parties by negotiation without the need of recourse to use of CPO powers. The Council will further have oversight of the CPO process to ensure the risk of behaviours that might give rise to reputational harm are avoided.

### **Concluding Risk Points**

- 10.11 A proactive risk management approach with all the risks identified in a Risk Management Plan can reduce the likelihood of such risks becoming issues and mitigate the negative impacts where they so become issues.

### **Addendum (May 2019)**

- 10.12 The purpose of this Land Transfer report is to mitigate the possible negative impact of a risk becoming an issue. This forms part of the Council's overall approach to risk management as described above.

## **11. CRIME AND DISORDER REDUCTION IMPLICATIONS (As per the 26 September 2018 Cabinet Report)**

- 11.1 Historically, the Site has experienced significant issues of crime and anti-social behaviour (ASB). These issues are exacerbated by the design and isolated nature of parts of the estate, caused by being surrounded by rear building elevations, lack of natural surveillance and by major roads. This enables those committing ASB to easily evade police and other enforcement activities.
- 11.2 This has been evidenced by Poplar HARCA reporting in late 2017 that Fitzgerald, Ennis & Kilmore Houses have been the subject of ASB and criminal behaviour including drug use and problems with groups of people congregating in communal areas behaving anti-socially. The Police have also reported in late 2017 that Chrisp Street Market suffers from a range of issues including: criminal damage; shoplifting; robbery/attempted robbery; actual bodily harm; grievous bodily harm; and harassment.
- 11.3 The proposed scheme intends to address those issues. Section 9.160 of the Planning Officer's report to the Strategic Development Committee meeting of

15 February 2018 on the planning application for the scheme (Ref No PA/16/161) states the following:

### **Secure by Design**

- 11.4 The applicant has engaged with the Metropolitan Police's Secure by Design team as part of the design process and they have been consulted with as part of the planning application process. The Secure by Design officer raised no objection to the proposed design of the scheme and has requested that a condition be imposed (in the event that planning permission is granted) which requires the applicant to achieve Secure by Design accreditation prior to the commencement of the development. Furthermore, the applicant has committed to providing CCTV on the site and this would be secured via condition. With the inclusion of the abovementioned conditions, the development would incorporate measures to increase safety and reduce antisocial behaviour on the site.
- 11.5 In addition to the above, the site's 24 hour CCTV will be monitored onsite complemented by a 24 hour onsite security presence. The new scheme will also be well lit during night time which with the benefit of the redesign will help ensure that those perpetuating crime and anti-social behaviour will have fewer opportunities to negatively impact individual and community safety in the future.

### **12. SAFEGUARDING IMPLICATIONS (As per the 26 September 2018 Cabinet Report)**

- 12.1 Not applicable to this report.

## **Linked Reports, Appendices and Background Documents**

Strategic Development Committee Planning Report, Item 7.1, 24 July 2018

<http://democracy.towerhamlets.gov.uk/mgChooseDocPack.aspx?ID=9268>

Cabinet Report – 26 September 2018

Chrisp Street Regeneration Scheme: CPO Resolution, dealings with Council land/interests and Street Market Management Arrangements

### **Appendices to the Chrisp Street CPO Cabinet Report (26 September 2018)**

Appendix 1 - Chrisp Street - Order Land Location & CPO Boundary Plan

Appendix 2 - Chrisp Street - Schedule of all Land Interests to be acquired (Sept 2018)

Appendix 3 – Statement of Community Involvement (June 2016)

Appendix 4a – Chrisp Street Retail Management Strategy (June 2016)

Appendix 4b – Retail Leasehold Offer (June 2018)

Appendix 5 – Residential Leasehold Buyback Offer (June 2018)

Appendix 6 – Residential Tenants Offer (June 2018)

Appendix 7 - Equalities Impact Assessment (June 2018)

Appendix 8 - CPO Indemnity Agreement

Appendix 9 – Long Term Estate Management Proposal (June 2018)

Appendix 10 – Extract from Tower Hamlets Council Town Centre Strategy 2017-2022 (March 2017)

Appendix 11a – Market Stalls Offer (June 2018)

Appendix 11b - Future Chrisp Street Market Management Arrangements (16 October 2017, Updated June 2018)

Appendix 12 – Temporary Relocation Plan for Chrisp Street Market Traders and Lock Ups

Appendix 13 - Lock Ups Offer document (June 2018)

<http://democracy.towerhamlets.gov.uk/ieListDocuments.aspx?CId=720&MId=8827>

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

- None

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