

<b>Committee/Meeting:</b> Cabinet	<b>Date:</b> 3 July 2013	<b>Classification:</b> Unrestricted	<b>Report No:</b> CAB 008/134
<b>Report of:</b> Corporate Director of Development & Renewal  <b>Originating officer:</b> Ann Sutcliffe, Service Head-Strategic Property and Capital Delivery		<b>Title:</b> New Cross – Finsbury Market Cable Tunnel – Subsoil Disposal  <b>Wards Affected:</b> St Katharine’s & Wapping	

<b>Lead Member</b>	Cllr Alibor Choudhury
<b>Community Plan Theme</b>	One Tower Hamlets
<b>Strategic Priority</b>	Work Efficiently and Effectively as One Council

## **1.0 SUMMARY**

- 1.1 UK Power Networks (“UKPN”), an electricity distribution network operator, propose to construct a deep electricity cable tunnel to support the growing demand for power in London. A number of such projects are currently being undertaken across the capital by various providers. The UKPN proposal provides a tunnel from New Cross to Wellclose Square, London.
- 1.2 In order to complete the project UKPN must acquire the necessary rights or interests in land and property, which are predominantly subsoil. The Council have been approached by UKPN to acquire a freehold interest in a tube of subsoil in the Borough. CBRE were appointed to negotiate the terms of the disposal and, following negotiations have provided their recommendations.
- 1.3 The purpose of this report is to confirm the background of the project and recommend the terms upon which the Council should proceed with the transaction.

## **2.0 DECISIONS REQUIRED**

The Mayor in Cabinet is recommended to:-

- a) Note the contents of the report;
- b) Agree the freehold disposal of the subsoil interest to UKPN on the terms proposed in parts 1 & 2 of this report.

### **3.0 REASONS FOR THE DECISIONS**

- 3.1 The disposal will guarantee the Council a capital receipt which can be used to meet service delivery and / or Council priorities.

### **4.0 ALTERNATIVE OPTIONS**

- 4.1 Alternative options the Council could consider are:

(a) Do nothing. The Council could refuse to dispose on the terms proposed. This option is not recommended as, if UKPN use their compulsory purchase powers, the Council may still be forced to proceed with the disposal, receiving instead a nominal amount of £50.

### **5.0 BACKGROUND**

- 5.1 UK Power Networks (“UKPN”), an electricity distribution network operator, propose to construct a deep electricity cable tunnel to support the growing demand for power in London. A number of such projects are currently being undertaken across the capital by various providers. The UKPN proposal provides a tunnel from New Cross to Wellclose Square, London.
- 5.2 In order to complete the project UKPN must acquire the necessary rights or interests in land and property, which are predominantly subsoil. The Council have been approached by UKPN to acquire a freehold interest in a tube of subsoil in the Borough.
- 5.3 UKPN propose to construct the tunnel, at a depth of approximately 22m from the surface, passing through land and property held by LBTH. In total the tunnel will pass through approximately 135 linear meters, made up an area beneath Pier Head and Vaughan Way, E1 W (shown shaded orange on plan in Appendix A). The proposed tunnel will pass beneath land used for car parking and area of vegetation alongside a public highway.

### **6.0 COMPULSORY PURCHASE & STATUTORY COMPENSATION**

- 6.1 UKPN is a licensed distributor of electricity under section 6(1)(c) of the Electricity Act 1989 (“The Act”), which places upon them a statutory duty to provide and maintain a network of cables and power lines in London.
- 6.2 Under Schedule 4 of The Act UKPN have the powers to install tunnels and shafts and lay cables beneath streets. However, where it is necessary to cross other land interests they must seek to acquire the relevant rights by agreement or through use of compulsory purchase powers. The ability to exercise such powers is detailed in schedule 3 of The Act.

- 6.3 Should UKPN exercise the powers of compulsory purchase, compensation is payable in accordance with the statutory provisions set out in the Land Compensation Act 1961 s5 rules 2 (land taken) and 6 (disturbance) and the Compulsory Purchase Act 1965 s7 (severance and injurious affection).
- 6.4 In respect of compensation under rule 2 (land taken) there is no open market value basis for a 'tube' of subsoil as there is no market, except for a body possessing compulsory purchase powers. It follows that a nominal amount is payable and the amount adopted is generally £50, regardless of the length, volume and depth of the interest acquired. This approach was confirmed in respect of circa 300 cases before the Upper Tribunal (Lands Chamber) due to the construction of the High Speed 1 tunnel in East London. This approach is also been adopted by Transport for London in respect of subsoil acquisitions for the Crossrail project.
- 6.5 In respect of disturbance under Rule 6 it is the case that any other reasonable losses, as a result of the subsoil acquisition and works, can be claimed. CBRE advise, when subsoil is acquired, such claims are likely to consist of taking professional advice and the monitoring and making good damage following on from construction if required.
- 6.6 In respect of severance and injurious affection it is necessary to demonstrate a diminution in value of the retained interest. In respect of subsoil acquisition the possibility of a claim of this nature could be due to restrictions on developing or redeveloping the site. Given the tunnel depth a significant development would be required before the tunnel would impact on its construction.
- 6.7 UKPN have the ability to acquire the relevant interest in Council's land, subject to following the relevant statutory process. The Council has been advised that the probability of UKPN obtaining relevant compulsory purchase powers to deliver the New Cross to Finsbury Markey Cable Tunnel is 'high'. Obtaining the relevant compulsory purchase powers can take at least 18 months and the Council has been advised that UKPN are seeking to incentivise land owners to avoid time and cost of the statutory process. Upon confirmation of the statutory powers UKPN are able to rely on relevant case law, or the Upper Tribunal, to determine the value of LBTH's interest at £50.

## **7.0 NEGOTIATIONS WITH UKPN**

- 7.1 The Council had initial discussions with UKPN in January 2012 when terms were first proposed. The discussions gathered momentum and in September 2012 CBRE were instructed to provide advice and negotiate terms on the Council's behalf. Since instruction a number of meetings and discussions have taken place between CBRE and UKPN.
- 7.2 CBRE initially proposed the grant an interest to UKPN that provided an annual rental payment. Drawing on other comparables, this would provide an annual payment of £2,000. UKPN were unwilling to accept such a proposal,

following their legal advice, they wished to acquire a freehold interest in a tube of subsoil.

- 7.3 The details of financial negotiations are contained in part 2 of this report.
- 7.4 CBRE believe that the discussions with UKPN have now reached a point where terms can be recommended to the Council. They believe that there has clearly been a desire by UKPN to agree terms with all, or as many, landowners as possible in order to simplify or remove the use of compulsory purchase powers. CBRE advise that the ability to negotiate terms on the basis of this report's recommendations only exist for a limited period. Should UKPN ultimately exercise compulsory purchase powers there is no right to claim the incentivised payment.
- 7.5 CBRE have advised that negotiations with UKPN have concluded, subject to contract and client approval, that an agreement has been reached on the following basis:
- Payment to the Council of a capital receipt contained in part 2 of this report.
  - A 'development clause' be entered into. Should redevelopment of the land be impacted by the presence of the tunnel the costs (professional and construction) will be payable by UKPN less the incentive payment contained in part 2 of this report.
  - All reasonable professional costs associated with entering into the transaction to be met by UKPN. This also includes professional costs going forward, which includes producing a schedule of condition, and any discussions relating to damage or the like.
  - UKPN to make good any damage caused as a result of the works.
  - Use of the tunnel will be restricted to the transmission of electricity only.
  - Tunnel is for use by UKPN and subsidiary companies only.
  - UKPN to consult before, during, and after the works with residents in the nearby properties to deal with any concerns.

## **8.0 COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 8.1 This report seeks approval to dispose of a tube of subsoil to UK Power Networks (UKPN) in order to construct a deep electricity cable tunnel to support the demand for power in London.
- 8.2 As a licensed distributor of electricity, UKPN has the right to acquire the subsoil under compulsory purchase powers, with the statutory compensation payable to the Council likely to be a nominal sum of £50. However the compulsory purchase process could take approximately eighteen months

(paragraph 6.7) and to enable the tube of subsoil to be acquired sooner, the company has negotiated an enhanced settlement with the Council. The details of this commercial agreement are laid out in the restricted report included in Part 2 of this agenda. If agreed, the disposal will generate a one-off receipt for the Authority.

## **9.0 CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL SERVICES)**

- 9.1 Members need to have regard to the power in section 123 of the Local Government Act 1972 for the Council to dispose of land. This requires any disposal to achieve the best consideration reasonably obtainable unless the Secretary of State consents to the disposal.
- 9.2 It would have been possible to provide rights for UKPN using easements or wayleaves but it is unlikely the Council would have received a capital payment for such rights and as set out at paragraph 6 UKPN do have CPO rights which they could enforce.
- 9.3 The Council's position regarding future development has been safeguarded by the terms outlined in paragraph 7.5 which also demonstrate that the costs of this arrangement will be met by UKPN.
- 9.4 When considering the disposal, 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 don't. The One Tower Hamlets section of the report provides information relevant to these considerations.

## **10.0 ONE TOWER HAMLETS CONSIDERATIONS**

- 10.1 The capital receipt generated from the proposed disposal can be allocated to projects which contribute to the themes and aims of One Tower Hamlets. The Tower Hamlets Community Plan and the Council's Strategic Plan have been the subject of equality analysis and due regard would be given to the public sector equality duty in relation to any projects which benefit from the capital receipt.

## **11.0 SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 11.1 There are no specific implications arising.

## **12.0 RISK MANAGEMENT IMPLICATIONS**

- 12.1 If the Council chooses not to do proceed on the basis of the recommendations, it risks losing the land to compulsory purchase for a nominal value of £50, thereby resulting in the loss of a potential capital receipt.

**13.0 CRIME AND DISORDER REDUCTION IMPLICATIONS**

13.1 There are no specific implications arising.

**14.0 EFFICIENCY STATEMENT**

14.1 There are no specific implications arising.

**15.0 APPENDICES**

Appendix 1 – Site Plan

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**Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012**

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
None	N/A