

<b>Committee:</b>  <b>OVERVIEW AND SCRUTINY</b>	<b>Date:</b>  <b>10 June 2008</b>	<b>Classification:</b>  <b>Unrestricted</b>	<b>Report No.</b>	<b>Agenda Item No.</b>  <b>9.1</b>
<b>Report of:</b> <b>Assistant Chief Executive</b>  <b>Originating Officer(s):</b> <b>Amanda Thompson</b> <b>Team Leader, Democratic Services</b>			<b>Title:</b> <b>Cabinet Decision Called-in:</b> Heron Quays West – Proposal to Use Compulsory Purchase Powers to Aid Land Assembly and Development  <b>Wards:</b> Millwall	

## 1. SUMMARY

- 1.1 The attached report of the Corporate Director, Development and Renewal and the Assistant Chief Executive (Legal Services) was considered by the Cabinet on 7 May 2008 and has been “Called In” by Councillors Rupert Eckhardt, Peter Golds, Shirley Houghton, Peter Briscoe and David Snowdon for further consideration. This is in accordance with the provisions of Part Four of the Council’s Constitution.

## 2. RECOMMENDATION

- 2.1 That the Committee consider the contents of the attached report, review the Cabinet’s provisional decisions arising and decide whether to accept them or refer the matter back to Cabinet with proposals, together with reasons.

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### Local Government Act, 1972 Section 100D (As amended)

### List of “Background Papers” used in the preparation of this report

Brief description of “background paper”

**Cabinet report – 7 May 2008**

Name and telephone number of holder  
and address where open to inspection

**Amanda Thompson**  
**02073644651**

### **3. THE CABINET'S PROVISIONAL DECISION**

#### **3.1 The Cabinet after considering the attached report provisionally agreed:-**

- 1) That authorisation be given to the making of a compulsory purchase order under section 226(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 in respect of the area shown edged red on the plan at Appendix A for the purpose of securing the development of land at Heron Quays West identified in the Plan attached at Appendix A1 conditional upon:
  - (a) the prior entering into of a full indemnity agreement with the developer to pay all the Council's costs and liabilities of making the order; and
  - (b) the prior entering into of an agreement for lease in respect of a new training and enterprise;
- 2) That the Interim Corporate Director of Development and Renewal (after consultation with the Lead Member Resources and Performance, the Assistant Chief Executive (Legal Services) and the Corporate Director of Resources) be authorised to finalise, enter into and seal the compulsory purchase order and all documents associated therewith.

### **4. REASONS FOR THE 'CALL IN'**

- 4.1 The Call-in requisition signed by the five Councillors listed above gives the following reasons for the Call-in:
- 4.2 The Cabinet was asked to approve the use of compulsory purchase powers under sec 226(1)(a) of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004 in respect of land at Heron Quays West. The report to Cabinet stresses that this is needed as Third Parties who currently occupy the site under the terms of two long commercial leases are refusing to negotiate the surrender of their leases for market value to Canary Wharf Group (CWG). As such the Cabinet believes it is justified in activating the powers in sec 226(1)(a) *"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 price considerably in excess of market value."*
- 4.3 The basis of this decision, however, was taken on wholly inaccurate and misleading information that has made the decision of the Cabinet unsafe and subject to Judicial Review by third parties involved. Sec 3.8 of the original report states that the Third Parties "are refusing to negotiate the surrender of their leases for Market value to Canary Wharf". This inaccurate statement has been used to mislead the cabinet by trying to demonstrate that negotiations for the acquisition of the land could not be concluded in a reasonable time requiring the need for a compulsory purchase order (CPO).

- 4.4 There have been no negotiations between the Canary Wharf Group and the Third Parties in relation to the present scheme, PA/07/3088 as was considered by the Strategic Developments Committee of your Council on 13 March this year. The last time the Third Parties were approached by Canary Wharf Group both numbers 7 and 8 Heron Quays were outside of the proposed. The Third Parties were contacted by an agent acting on behalf of CWG w/c 5<sup>th</sup> May to discuss the property generally, and met him on 7<sup>th</sup> May, only hours before the Cabinet meeting.
- 4.5 At that meeting on 7<sup>th</sup> May the CWG agent stated, in the presence of the Third Parties' solicitor, that he had not been instructed to make any form of offer to acquire the Third Parties' interests at that stage. At no point did he indicate there was any proposal for compulsory purchase. This is at odds with the position laid out in 11.1 by officers and makes any decision that the Cabinet made unsafe.
- 4.6 Para 24 of Circular 6/04 states that Compulsory Purchase should be a "last resort", and para 17 states that a CPO should only be made where there is a "compelling case". In the current situation there have not even been discussions between CWG and the Third Parties which your Council proposes to acquire compulsorily yet the Cabinet has granted a CPO for this land at the request of CWG, based on the wrong belief that the Third Parties had refused to negotiate the surrender of their leases for market value. This leads only to one conclusion – that the Council has misinterpreted the facts presented by CWG, or that CWG has misled the Council.
- 4.7 Further to this, the report placed before the Cabinet stresses the needs of CWG for its future development and the benefits that the Council would receive by granting a CPO. This includes the provision of a new permanent training and enterprise centre in Canary Wharf to replace the facility temporarily located in the Red Sheds that will be lost with development. Sec 4.6 of the report goes on to state that a lease has been agreed between the Council and CWG for a 15,000 square foot training and enterprise centre for 7.5 years. This clearly shows that the Council had a vested interest in seeing that this development goes ahead.
- 4.8 This fact may well make the decision unsafe as contravening Sec 6 of the Human Rights Act 1998 that prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights. The European Court has stated that where public and private interest conflict then a "*regard must be had to the fair balance that has to be struck between competing interests of the individual and of the community as a whole*" if an authority seeks to interfere with Article 1 rights to peaceful enjoyment of possessions. In granting a CPO to CWG for a proposal that the Council has a material interest in without due regard for the needs of the leaseholders the Cabinet has shown that it has not balanced the interests in this case. In the whole of the report only 1 paragraph deals with the leaseholders while 7 deal with the needs of CWG and 7 deals with the benefits to the Council. This does

not demonstrate that the Cabinet balanced the needs of all parties in this situation and so makes the decision unsafe.

- 4.9 Given that CWG has yet to begin negotiations with the Third Parties for the purchase of their interest, the granting of a CPO at this time is in violation of the spirit of the Town and Country Planning Act and thus contrary to the intension of Parliament. The Third Parties have not been shown to be *“unwilling to dispose of property either at all or only at price considerably in excess of market value.”* It also provides CWG with a means of achieving an unfair commercial advantage over the leaseholders for the purchase of lease interests that may well go for a higher purchase price without a CPO in place.

## **5. ALTERNATIVE COURSE OF ACTION PROPOSED:**

- 5.1 The Councillors submitting the Call-in requisition have proposed the following alternative course of action:

- 1) That this decision be revoked and that a fresh discussion be held by the Cabinet on this matter with equal weight given to all interests in this matter.
- 2) In order to facilitate this discussion a new report, with all documentary evidence, should be drawn up and an investigation should be held by Officers into why this issue was brought before the Cabinet before negotiations had started.
- 3) That the Cabinet investigate what information was available to Officers with regards to negotiations between CWG and the Third Parties.
- 4) That CWG be required to submit new plans to the Strategic Development Committee including the sites of 7 and 8 Heron Quays.
- 5) That no CPO should be granted until CWG can demonstrate that negotiations have failed between themselves and Third Parties to such a degree that there is not other option but a CPO. So that time can be allowed for these negotiation to take place this issue should not come before the Cabinet within the next six months

## **6. CONSIDERATION OF THE “CALL IN”**

- 6.1 The following procedure is to be followed for consideration of the “Call In”:

- (a) Presentation of the “Call In” by one of the “Call In” Members followed by questions.
- (b) Response from the Lead Member/officers followed by questions.
- (c) General debate followed by decision.

**N.B. – In accordance with the Overview and Scrutiny Committee Protocols and Guidance adopted by the Committee at its meeting**

**on 6 June, 2007, any Member(s) who presents the “Call In” is not eligible to participate in the general debate.**

- 6.2** It is open to the Committee to either resolve to take no action which would have the effect of endorsing the original Cabinet decisions, or the Committee could refer the matter back to the Cabinet for further consideration setting out the nature of its concerns and possibly recommending an alternative course of action.