

REQUEST FOR MAYORAL DECISION – MD1312

Title: Southall Gas Works

Executive Summary:

The Southall gas works development scheme lies within the Southall OAPF area and adjacent to the forthcoming Crossrail station. Its delivery will provide up to 3,750 new dwellings, new schools, healthcare, leisure provisions and nearly 50,000m² of employment space including retail, offices, hotel and conference facilities.

The Mayor granted outline and full planning permissions for this scheme in 2010 and its delivery is currently dependent on the acquisition of land interests owned by third parties to provide for new access routes into the main site. The developer, St James West London (SJWL), is negotiating with all landowners to acquire their land by agreement.

This paper seeks approval for the GLA to start preparations so that it can consider whether or not to make a Compulsory Purchase Order to facilitate the acquisition of land required for the Southall Gas Works development in the event that such land cannot be acquired through negotiation alone.

Decision:

That the Mayor:

1. gives approval for the GLA to commence preparations for the possible making of a CPO to acquire for the Southall Gas Works development scheme any outstanding land interests which SJWL is unable to acquire by private treaty provided that acceptable deliverability commitments are obtained from SJWL; and
2. agrees that the GLA covers the costs, as necessary, of preparing for any potential CPO subject to the indemnity provided by SJWL pursuant to which it will reimburse all costs.

Mayor of London

I confirm that I do not have any disclosable pecuniary interests in the proposed decision, and take the decision in compliance with the Code of Conduct for elected Members of the Authority.

The above request has my approval.

Signature:

Date:

PART I - NON-CONFIDENTIAL FACTS AND ADVICE TO THE MAYOR

Decision required – supporting report

1. Introduction and background

- 1.1 The Greater London Authority Act 1999 (as amended by the Localism Act 2011) (the “GLA Act”) grants to the GLA the power to acquire land in Greater London compulsorily for the purposes of housing or regeneration¹. This power includes the ability to acquire new rights over land². These powers are identical to those granted to the Homes and Communities Agency (HCA) pursuant to the Housing and Regeneration Act 2008. The GLA may only exercise the power with the Secretary of State’s authority.
- 1.2 Paragraph 6 of the guidance issued in 2010 on the HCA’s CPO powers states that the powers are a “*vital instrument for implementing housing and regeneration projects for the public benefit and at a realistic cost*”. The same can be said of the GLA’s powers, without which the regeneration of the Southall Gas Works site could be significantly delayed or constrained.
- 1.3 The site of the Southall Gas Works development scheme (the Scheme) comprises approximately 45 hectares of land bounded by Victorian housing to the north extending off Beaconsfield Road, Southall town centre to the east and north, the Great Western mainline railway to the south and the Grand Union Canal to the west with Yeading Brook and the Minet Country Park beyond. The majority of the site is located in the London Borough of Ealing with the Grand Union Canal acting as the borough boundary with the London Borough of Hillingdon. The site crosses the borough boundary into Hillingdon in three places to accommodate two footbridges leading to the Country Park and Springfield Road and a new vehicular access off Pump Lane.
- 1.4 The site was historically used for a range of heavy industrial uses including gas manufacture that ceased in the early 1970s. Most of the infrastructure associated with this use has since been demolished although two redundant and decommissioned gasholder structures continue to occupy the central area of the site. The site is currently unsightly and under-utilised although part is being temporarily used as off-airport car parking for Heathrow. The site remains subject to contamination from its former gas use and is constrained due to the gas infrastructure remaining on the site.
- 1.5 The Mayor granted outline planning permissions and full planning permissions for the site to the main landowner, National Grid (NG), on 29 September 2010. At that time the Mayor stated that “*the application is clearly of major significance to London, with the homes it will deliver and the jobs it will create. Failure to give the Southall application the go ahead and develop this key brownfield site could be detrimental to the future economic prosperity of the area*”.
- 1.6 The outline planning permissions are for:
- “Demolition of 22 houses: the remediation of the land and redevelopment of the site to deliver a large mixed use development including residential, non-food retail, food retail, restaurants, bars and cafes, hotel, conference and banqueting, cinema, health care facilities, education facilities, office/studio units, sports pavilion, an energy centre, multi-storey car park and associated car and cycle parking, landscaping, public realm, open space and children’s play space”.*

¹ Section 333ZA(1) of the 1999 Act

² Section 333ZA(3) of the 1999 Act

- 1.7 The full planning permissions are for:
“New access roads from the Hayes by-pass and Southall town centre to the application site for vehicle, cycle and pedestrian access, including drainage and a flood relief pond. Widening of South Road across the railway line, for the creation of a bus lane and three new accesses onto Beaconsfield road. Two bridges over the Grand Union Canal and Yeading Brook to provide pedestrian and cycle access to the Minet Country Park and Springfield Road.”
- 1.8 Grampian type restrictions ensure that infrastructure proceeds in step with the occupation of the development as demonstrated in the following table:

Limit on occupation	Trigger
300 dwellings	Offer and negotiation for 12 months an agreement for lease of the school
400 dwellings	Eastern access
500 dwellings	Pump Lane/Bilton Way improvements
800 dwellings	South Road/Merrick Road junction
1,250 development units	South road/A4020 Uxbridge Road junction
1,350 development units	Bulls Bridge signalised junction
1,500 development units	M4 junction 3 improvements (occupation limited to less than 1500) and South Road northbound bus lane
1,750 development units	Opening Pump Lane access to general traffic
2,500 development units	Widening of railway bridge

In addition no construction works other than those required to provide the bridge itself can be commenced before the Pump Lane bridge is completed with all HGV movements to be undertaken using this access route only.

- 1.9 There are thirty-six different land interests required to deliver the new access routes for the Scheme. Key landowners include LB Hillingdon, LB Ealing, Canal and River Trust, Network Rail, private householders and a garage business. The access routes, as permitted within the full planning permissions, include a major new road bridge (the Pump Lane bridge) which will also provide the main construction access for all works, two new pedestrian and cycling bridges across the canal, three new roads into the site from Beaconsfield Road and road widening works. Without the new access routes the Scheme and its benefits of new homes, jobs and amenities for Southall, cannot be delivered.
- 1.10 National Grid (NG), the owner of the Southall Gasworks site, approached the GLA regarding the potential use of its CPO powers in 2012 and a further approach was made by the Berkeley Group (of which SJWL is a subsidiary) in early 2013 for assistance in assembling the third party land interests required to deliver the Scheme.
- 1.11 Since obtaining the planning permissions NG and the Berkeley Group continued their negotiations on the site’s Sale and Purchase Agreement. NG and SJWL, a subsidiary of St James Group and part of the Berkeley Group, exchanged contracts on 23 July 2013 and are expecting to discharge the one outstanding contract condition and complete the sale agreement in May 2014.
- 1.12 SJWL has appointed Deloitte as surveyor and local agent Monarch to help in its private treaty negotiations with all landowners. It has made contact with all land-owners and held meetings with all key stakeholders to commence discussions.
- 1.13 On 26 July 2013 SJWL provided a letter of indemnity agreeing to cover the GLA’s costs leading up to the two parties entering into the Promotion Agreement and a working group was established between the GLA and SJWL.

- 1.14 TfL Legal have procured external legal support, Wragge and Co, for the CPO and the initial work required to prepare a strategy for a CPO, identifying the issues to be considered and the potential risks to the GLA. Wragge and Co are appointed as the GLA's CPO solicitor with on-going input from a GLA client team led by the Strategic Projects and Property team within the Housing and Land directorate, supported by TfL Legal and TfL Commercial Property. The working group has met regularly to deal with specific issues and to agree the Heads of Terms for the Promotion Agreement and each party's roles and responsibilities.
- 1.15 Any fees incurred by the GLA in appointing external advisors will be promptly settled or reimbursed by SJWL pursuant to its indemnity to the GLA. In addition, the actual costs for land acquisition will be transferred into the GLA's accounts in advance of payments being made, with all costs associated with legal commitments made prior to payment also guaranteed by the St James Group. It is therefore proposed that payments made in arrears of cost to the GLA will be restricted to internal staff costs.
- 1.16 It should be noted that CPO is the method of last resort and no formal decision to make a CPO can be made until the necessary preparatory work has been done and supporting evidence collated. Negotiations will continue to acquire land by agreement wherever possible whilst the preparatory work is undertaken.

2. Objectives and expected outcomes

- 2.1 The key objective is to deliver the Scheme. Without the GLA's CPO powers SJWL may be unable to assemble the land interests necessary to provide the access routes and comply with the planning permissions.
- 2.1 If approved, the GLA will start the preparations for the consideration of a CPO in parallel with on-going negotiations to acquire by private treaty.

3 Other considerations

If the GLA is to make a formal decision as to whether or not a CPO is made, the preparatory work undertaken pursuant to this MD must obtain evidence to address the following points:

- 3.1 A compelling case in the public interest
A CPO should only be made where there is a compelling case in the public interest and the GLA will need to demonstrate that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land.
- 3.2 Resources
The GLA must show how the development is to be funded and demonstrate that funds will be available to complete acquisitions and implement the development scheme within a reasonable timescale.
The development will be wholly funded by a third party, SJWL. Whilst further work will be required before the making of any CPO the GLA team has had sight of the 2012 annual reports and financial statements for SJWL's parent company St James Group Limited which recorded a post-tax profit of £41.8m compared to a post-tax profit of £36.6m the previous year. Whilst the 2013 accounts will be required before making any CPO it is anticipated, subject to St James Group Limited acting as guarantor to SJWL, that sufficient resources can be demonstrated.
- 3.3 Reputation and governance
Through the Promotion Agreement SJWL will need to give a complete indemnity to the GLA for the costs associated with the CPO (including dealing with any requests for information) and the related compensation payments to owners and others and provide assurances to the GLA about the delivery of the housing and regeneration benefits from the development of the site.

3.4 Relationships with local authorities

It is possible that land belonging to both local authorities, Hillingdon and Ealing, will need to be included within the CPO if contractual agreements to purchase their land are not concluded before the CPO is to be made. The CPO will not be needed for any plots if at any stage contractual agreement for sale is reached.

3.5 Implementation

The GLA will need to demonstrate that there are no impediments to the implementation of the scheme underlying the CPO.

The GLA must show that all of the land and interests are required for the scheme underlying the CPO within a reasonable timeframe, usually six years after publication of confirmation of the CPO. SJWL has not yet finalised its phasing proposals for the scheme but has indicated that all of the land that may need to be included within the CPO will be needed well within this timescale because it is all needed for access routes and infrastructure.

3.6 Open space and the requirement to provide exchange land

Part of the land proposed to be acquired by the CPO comprises open space that will be required to provide the new infrastructure, including the very first new access route into the scheme, the Pump Lane bridge. Compulsory purchase legislation recognises the importance of open space, which is defined as “any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground”³ and gives it special protection.

Compulsory purchase legislation provides that the compulsory purchase of open space is subject to special parliamentary procedure unless the Secretary of State gives a certificate confirming his satisfaction that one or more of three conditions have been met. The most appropriate condition for this scheme would be that ‘equally advantageous’ exchange land is provided.

3.7 Promotion Agreement

Heads of Terms have been agreed in principle for the Promotion Agreement, subject only to Counsel’s opinion. These cover the following matters:

- a) The costs indemnity
- b) The process before the CPO is made including efforts by SJWL to acquire interests by agreement
- c) The making and submission of the CPO to the Secretary of State for confirmation including the application for a certificate that equally advantageous open space is to be provided to replace the open space within the CPO
- d) The consequences of legal challenges or failure of CPO confirmation
- e) The triggers from the developer for the implementation of the CPO
- f) The transfer of the acquired land to the developer
- g) The engagement of professional advisers including Counsel
- h) The commitments from the developer to demonstrate that the early phases of the scheme are likely to be delivered.
- i) Termination and dispute resolution.

The terms will need to be finalised before the Promotion Agreement is prepared and authority requested for its completion.

3.8 Deliverability

Circular 06/04 (“Compulsory Purchase and the Criche Down Rules”) includes the following statements:

“In preparing its justification, the acquiring authority should provide as much information as possible about the resource implications of both acquiring the land and implementing the scheme for which the land is required”

“It would only be in exceptional (and fully justified) circumstances that it might be reasonable to acquire land where there was little prospect of implementing the scheme for a number of years.”

³ Section 19(4) of the Acquisition of Land Act 1981

The GLA is working to secure a commitment from SJWL in the Promotion Agreement to commence the Scheme in a timely manner to deliver the housing and regeneration benefits of the Scheme and the Mayor's objectives of promoting jobs and growth.

In this case there is no proposal for a development agreement between the GLA and SJWL as the GLA is not the main landowner. The Promotion Agreement will therefore incorporate conditions, agreed in principle, which SJWL will need to meet before the GLA will implement the CPO. These include the discharge of some pre-commencement planning conditions, appointment of contractors for early works and the early payment of certain s106 payments if target dates are not met.

3.9 Disposal consent and best consideration

Any land acquired by the GLA under the CPO must be disposed of for best consideration unless the consent of the Secretary of State is obtained. Such consent is regulated by the General Consent.

The following points have to be considered:

- a) the consent applies where the Mayor considers that the disposal will further, facilitate or is conducive to promoting economic development and wealth creation in Greater London and/or promoting social development in Greater London and/or promoting the improvement of the environment in Greater London.
- b) the difference between the unrestricted value (market value including a special purchaser) and the consideration received for the disposal of land must not exceed £10million or 30% of the unrestricted value.
- c) State Aid requirements must be observed when making the disposal (which is a different issue to making the CPO).

3.10 Blight

The making and submission of the CPO to the Secretary of State creates statutory blight and a blight notice may be served by a residential or business owner requiring the GLA to purchase their land under certain circumstances, reflecting their inability to sell their property on the open market because of the CPO.

SJWL is seeking and will continue to seek to acquire all interests by agreement. Nonetheless the indemnity from SJWL will extend to any costs and compensation arising from any blight notice.

3.11 Special protection

Network Rail and other statutory undertakers such as utilities companies have special protection where a CPO affects their operational land.

This underlines the importance of negotiating the acquisition of the land interests required, by agreement if necessary after the CPO is made. Asset protection agreements and easements may be necessary in order to provide the reassurance such bodies require that they will be able to continue their activities.

SJWL is already in discussions with Network Rail and will be responsible for completing any necessary agreements.

4. Financial comments

4.1 Any costs to the GLA, including staff time, that relate to making any CPO necessary to deliver the site will be paid by or recovered in arrears from SJWL, with a parent company guarantee from St James Group.

4.2 If implemented, any land acquired pursuant to the CPO will be acquired by the GLA as the body with statutory power to do so. It is not considered that this would be the management and exploitation of land by the GLA on a commercial basis with a view to the realisation of profit under the Specified Activities order, so no transfer to GLAP prior to disposal to a third party will be necessary.

4.3 Stamp Duty Land Tax relief would normally apply where land is acquired using CPO powers but the indemnity from SJWL would cover any SDLT liability incurred by the GLA in any event.

5. Legal comments

5.1 The GLA has the power to make a CPO pursuant to section 333ZA of the GLA Act.

5.2 The Mayor may, under section 38 of the GLA Act, delegate the exercise of the GLA's functions to the Executive Director of Housing & Land as proposed above.

5.3 Further legal comments are set out in Part 2 of this paper.

6. Investment & Performance Board

The following recommendations were approved by the Board on 16 January 2014:

6.1 That the proposal that, subject to a Mayoral Decision, the GLA's Housing and Land directorate commences preparations for the making of a CPO to acquire for the Southall Gas Works development scheme any outstanding land interests which SJWL is unable to acquire by private treaty, be approved in principle; and

6.2 That the proposal that the GLA covers the costs, as necessary, of preparing for any potential CPO under the indemnity provided stating that SJWL will reimburse costs, be approved in principle.

7. Next steps

7.1 The agreed Heads of Terms will form the basis of the Promotion Agreement and this will need to be finalised, approved and entered into with SJWL.

7.2 Consultants will need to be appointed by the GLA including land referencers, CPO surveyors and Counsel.

7.3 Consultation will continue with the key stakeholders as a matter of priority including the two local authorities.

Appendices and supporting papers:

Appendix 1 - Outline planning permission site layout plan

Public access to information

Information in this form (Part 1) is subject to the Freedom of Information Act 2000 (FOI Act) and will be made available on the GLA website within one working day of approval.

If immediate publication risks compromising the implementation of the decision (for example, to complete a procurement process), it can be deferred until a specific date. Deferral periods should be kept to the shortest length strictly necessary. **Note:** This form (Part 1) will either be published within one working day after approval or on the defer date.

Part 1 Deferral:

Is the publication of Part 1 of this approval to be deferred? NO

Part 2 Confidentiality: Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part 2 form, together with the legal rationale for non-publication.

Is there a part 2 form – YES

ORIGINATING OFFICER DECLARATION:

Drafting officer to confirm the following (✓)

Drafting officer:

Julia Nunes-Carvalho has drafted this report in accordance with GLA procedures and confirms the following have been consulted on the final decision.

✓

Assistant Director/Head of Service:

Simon Powell has reviewed the documentation and is satisfied for it to be referred to the Sponsoring Director for approval.

✓

Sponsoring Director:

David Lunts has reviewed the request and is satisfied it is correct and consistent with the Mayor’s plans and priorities.

✓

Mayoral Adviser:

Richard Blakeway has been consulted about the proposal and agrees the recommendations.

✓

Advice:

The Finance and Legal teams have commented on this proposal.

✓

EXECUTIVE DIRECTOR, RESOURCES:

I confirm that financial and legal implications have been appropriately considered in the preparation of this report.

Signature

Date

CHIEF OF STAFF:

I am satisfied that this is an appropriate request to be submitted to the Mayor

Signature

Date