

# GREATER LONDON AUTHORITY

## REQUEST FOR MAYORAL DECISION MD1360

**Title: Southall Gas Works (2)**

### Executive Summary:

The development of Southall gas works is a key regeneration scheme within the Southall OAPF area which will provide up to 3,750 new dwellings, a new primary school, healthcare, leisure provisions and nearly 50,000m<sup>2</sup> of employment space including retail, offices, hotel and conference facilities (the Scheme) on the land shown edged red on the plan at Appendix 1 (the Site). The GLA is supportive of the Scheme and believes that it would deliver significant benefits to Southall.

Redevelopment of the Site is dependent on the acquisition of certain third party land interests and new rights to enable, amongst other things, the creation of access into the main body of the site. The developer, St James West London Limited (SJWL), is negotiating with all landowners to acquire these land interests and new rights by agreement. However, should the acquisition of all necessary interests by private treaty (the preferred method), not be forthcoming in a timely manner, it is considered appropriate that land assembly is delivered through a Compulsory Purchase Order (CPO) to enable delivery of the Scheme.

This report seeks authority to make the CPO to acquire any land and other property interests required for the Scheme that cannot be acquired by private treaty.

### Decision:

That the Mayor gives approval for the GLA to:

1. Make, for the purposes of housing and regeneration and for the reasons set out in this report, a CPO under section 333ZA(1) of the Greater London Authority Act 1999 to acquire any outstanding property interests in the land and any new rights over the land as may be necessary to achieve the redevelopment and regeneration of the Site;
2. Cover the costs, as necessary, of preparing the CPO, subject to reimbursement of such costs pursuant to the indemnity provided in the Promotion Agreement;
3. Take all necessary steps to secure the making, confirmation and implementation of the CPO, including the publication and service of all relevant notices and the presentation of the GLA's case at any public inquiry;
4. Take any and all necessary steps, including approving terms for the acquisition of legal interests (including new rights) by agreement for the purposes of resolving any objections to the CPO.

### 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:**

17.6.14

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

### **Decision required – supporting report**

#### **1 The CPO Power**

- 1.1 The Greater London Authority Act 1999 (as amended by the Localism Act 2011) (GLA Act) grants to the GLA the power to acquire land in Greater London compulsorily for the purposes of housing or regeneration<sup>1</sup>. This power includes the ability to acquire new rights over land<sup>2</sup>. These powers are based on those granted to the Homes and Communities Agency (HCA) pursuant to the Housing and Regeneration Act 2008. The GLA's exercise of the power is subject to the Secretary of State's confirmation.
- 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 Site could be significantly delayed or constrained.
- 1.3 In exercising its CPO power, the GLA must have regard to the guidance in Circular 06/2004: Compulsory Purchase and The Crichel Down Rules (the Circular) that a CPO *"should only be made where there is a compelling case in the public interest"* and that the purposes for which the CPO is made *"sufficiently justify interfering with the human rights of those with an interest in the land affected"* (paragraph 17).

#### **2 The Site**

- 2.1 The Site 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 boundary into Hillingdon in three places to accommodate two new footbridges leading to the Country Park and Springfield Road and a new vehicular access off Pump Lane.
- 2.2 The main body of 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 former gas works site is currently unsightly and under-utilised although part is being temporarily used as off-airport car parking for London Heathrow airport. Some of the land remains subject to contamination from its former gas use and is constrained due to the remaining gas infrastructure.

#### **3 The Scheme**

- 3.1 The Mayor granted outline planning permissions and full planning permissions for the Site to the main landowner, National Grid (NG), on 29 September 2010.
- 3.2 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"*.

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<sup>1</sup> Section 333ZA(1) of the 1999 Act

<sup>2</sup> Section 333ZA(3) of the 1999 Act

3.3 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".*

3.4 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."*

3.5 Grampian type restrictions ensure that infrastructure proceeds in step with the occupation of the Scheme as demonstrated in the following table:

Limit on occupation	Trigger
No occupation	Beaconsfield Road accesses completed
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
1250 development units	South road/A4020 Uxbridge Road junction
1350 development units	Bulls Bridge signalised junction
1500 development units	M4 junction 3 improvements (occupation limited to less than 1500) and South Road northbound bus lane
1750 development units	Opening Pump Lane access to general traffic
2500 development units	Widening of railway bridge

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

## 4 Benefits of the Scheme

4.1 The Scheme will deliver a comprehensive mixed use development on a strategic but under-utilised brownfield site. It will positively bring contaminated land into beneficial use through appropriate remediation, thereby contributing to the environmental wellbeing of the local area.

4.2 In particular, the Scheme will deliver:

- 4.2.1 a significant quantum of much needed new housing that will help achieve Ealing Council's annual housing targets and the Mayor's London wide annual housing target during the proposed 20 to 25 year development programme;
- 4.2.2 a significant quantum of much needed affordable housing that will help achieve Ealing Council's annual affordable housing targets and the Mayor's London wide annual affordable housing target during the proposed 20 to 25 year development programme; and
- 4.2.3 a significant number of job opportunities for Londoners, particularly for those living in areas of economic deprivation, both during the construction programme and within the proposed Scheme uses e.g. business, commercial and leisure uses.

4.3 In addition, the Scheme will improve the social and economic wellbeing of the local community, offering benefits to existing residents of Southall as well as new residents of the Scheme including:

- 4.3.1 an extension to Southall town centre, which is identified as being in need of significant regeneration, thereby increasing its vitality and viability;
- 4.3.2 high quality design which will enhance the local area, making Southall a better place to live;
- 4.3.3 new cultural and leisure facilities, which might include a cinema and sports facilities;
- 4.3.4 a wide range of health, education and community facilities;
- 4.3.5 a significant amount of on-site green spaces, including new parks and play areas;
- 4.3.6 improvements to the local footpath and cycle network including the introduction of new routes, which will improve the environmental wellbeing of the area and reduce traffic;
- 4.3.7 significant improvements to transport infrastructure, delivering major highway improvements to relieve traffic congestion and create better connections in and around Southall;
- 4.3.8 improvements to the Grand Union Canal Conservation Area, including improvement to the canal tow path, making it safer and more accessible to local people;
- 4.3.9 improvements to the connections from the Order Land to the existing open space at Minet Country Park, which in itself will be improved through financial contributions pursuant to the Section 106 Agreement relating to the Scheme;
- 4.3.10 improvements to the setting of the Grade II listed water tower at the eastern end of the Site.

## **5 Land Required for the Scheme**

- 5.1 Investigations into the various land ownerships are ongoing but the GLA believes there to be at least thirty-six different land interests required to be secured to deliver the new access routes for the Scheme. Key landowners include LB Hillingdon, LB Ealing, Canal & River Trust (CRT), Network Rail, private householders and a garage business. The extent of the land required for the Scheme is shown for illustrative purposes only edged red on the draft Order Map at Appendix 4. The final boundaries of the land to be acquired will be determined following completion of the land ownership investigation.
- 5.2 The access routes, as permitted within the full planning permissions, include a new road bridge (the Pump Lane Access) which will also provide the main construction access for the Scheme, two new pedestrian and cycling bridges across the canal, three new roads into the site from Beaconsfield Road and will include road widening works where necessary. Without the new access routes, the Scheme and the benefits to be derived from it comprising new homes, jobs and amenities for Southall, cannot be delivered.

- 5.3 Since obtaining the planning permissions and the GLA's in principle agreement to consider the promotion of a CPO, NG and SJWL agreed the Sale and Purchase Agreement for NG's land, exchanged contracts with NG on 23 July 2013 and completed the acquisition on 10 June 2014.
- 5.4 The Mayor gave his approval on 27 February 2014 for the GLA to commence preparations for a CPO to acquire any outstanding third party land interests which SJWL is unable to acquire by private treaty provided that:
- SJWL indemnified the GLA in respect of all costs related to the CPO including the acquisition of any land interests, with no cost liability for the GLA; and
  - SJWL committed to certain Scheme delivery requirements.
- 5.5 A promotion agreement to secure, amongst other things, the above indemnity and commitment (the 'Promotion Agreement') was concluded on 8 April 2014 between the GLA, SJWL and St James Group Limited as Surety.

## **6 The Proposed CPO**

- 6.1 The Promotion Agreement was entered into on 8 April 2014. It includes roles and responsibilities, sets out the terms of how the GLA might exercise its CPO powers, if required, the enforceable mechanisms in the event that SJWL do not deliver the Scheme in accordance with the agreed timeframes, how the land acquisitions will be managed and confirms the indemnity arrangements for costs, continuing those established by the letter of indemnity dated 26 July 2013, whereby all costs will be reimbursed by SJWL.

- 6.2 In particular, the Promotion Agreement reflects the requirements of the Circular that the following will be discharged prior to the making of the CPO:

- 6.2.1 Demonstrating that there is a compelling case in the public interest for the making of the CPO

See section 7 of this report and the draft Statement of Reasons at Appendix 2.

- 6.2.2 SJWL evidencing its financial capacity to satisfy its obligations under the Promotion Agreement and carry out and complete the Scheme if the CPO is made

SJWL's financial capacity is underwritten by St James Group Limited. Sufficient evidence of its financial capacity has been provided to the GLA by way of the annual statement of accounts of St James Group Limited. Updated statements of accounts will continue to be provided as the Scheme proceeds and commitments are made to acquire any land.

- 6.2.3 A reasonable prospect of the Scheme being carried out if a satisfactory CPO is confirmed

St James Group Limited has provided a letter from its Chairman addressed to the GLA stating that it is the intention of the Group to progress the Scheme in line with a specified delivery timetable together with details of the Group's history of delivering similar mixed use schemes of comparable size and complexity. In addition the Promotion Agreement incorporates delivery milestones with a mechanism for accelerated financial payments if those milestones are not met.

- 6.2.4 St James Group Limited presenting its most recent annual group accounts to show financial capacity

These have been received.

- 6.2.5 There being no impediment to delivery of the Scheme

Planning permission has been granted and surveys, detailed design and other facilitating works are in progress.

SJWL has the benefit of an agreement to acquire the NG land for the Scheme and negotiations are on-going with third party landowners to acquire other necessary land interests.

SJWL is committed to delivery of the Scheme as per the delivery obligations in the Promotion Agreement.

6.2.6 Evidence that the third party interests are required for the purposes of the CPO

The GLA and SJWL are working together to identify land required to enable delivery of the Scheme. The CPO will only seek to acquire land which has been shown to be necessary to enable the Scheme to be delivered through either the provision of essential new access routes or new open space required in exchange for existing open space.

6.2.7 There being no alternative to the making of a CPO and the subsequent confirmation and implementation of a satisfactory CPO if the Scheme is to be carried out and completed

Negotiations are ongoing with all relevant third party landowners to acquire plots by agreement. Only if these negotiations are unsuccessful will the CPO be implemented and land vested.

6.3 As the proposed CPO will include the acquisition of open space land, a certificate from the Secretary of State will be required pursuant to Section 19 of the Acquisition of Land Act 1981. The GLA and SJWL are in the process of finalising their strategy for the provision of exchange land to replace the open space land that is required by the Scheme. An options paper is being prepared setting out this strategy which will be submitted to the Secretary of State as part of the application for the certificate. SJWL has prepared and continues to refine drawings and schedules of work to demonstrate that, if such works were carried out, the land provided in exchange will be equally advantageous to users of the open space land.

6.4 The GLA has consulted Counsel, at SJWL's cost, to establish the strength of case of the CPO, to identify any likely impediments to the CPO process and to consider the mechanisms for joint working proposed by the GLA and SJWL. Having taken Counsel's advice, the GLA is satisfied that there is a compelling case in the public interest for the timely assembly of land through a CPO and that the current collaboration arrangements are acceptable. It is intended that Counsel will be consulted further before making the CPO.

6.5 All of the GLA's external consultants will be paid directly by SJWL on behalf of the GLA and where actual costs for land acquisition, via CPO, are legally committed, the funds will be transferred into the GLA's accounts in advance of any such payments being made. All costs associated with legal commitments are covered by the guarantee from St James Group Limited. Payments made in arrears of cost to the GLA will be restricted to internal staff costs which will continue to be billed to and recovered from SJWL on a monthly basis.

6.6 SJWL has appointed Deloitte as CPO surveyor and local agent Monarch to assist in its negotiations with all landowners. Deloitte, with support from Monarch, has been progressing negotiations with land/property owners to purchase interests by private treaty. Dialogue has now been established with all the owners, with particular care being given to residential owners to clearly explain the CPO process and the options available. Information has been circulated to owners with details of sources of advice. Through these discussions SJWL has already acquired one residential property on The Crescent and made offers on several other residential properties.

- 6.7 Deloitte provides fortnightly updates to the project team on the progress on negotiations with landowners and highlighting where further support might be required from the GLA as the discussions proceed.
- 6.8 At the point of making the CPO, Deloitte will be appointed as agent for the GLA as the acquiring authority will thereafter lead on acquisition negotiations. The costs of the appointment are to be met by SJWL in accordance with the Promotion Agreement. A procurement process has been completed which demonstrated the benefits of the GLA appointing Deloitte to act on its behalf and maintain the relationships built with landowners in the interests of acquiring land through private treaty wherever possible. The GLA will write to all parties at the point of making the CPO to explain the transfer of the appointment.
- 6.9 Discussions continue with all landowners including the key stakeholders of LB Hillingdon, LB Ealing, CRT and Network Rail to progress acquisition by private treaty. However, the negotiations with these landowners are not yet progressed to a sufficient extent to enable any parcels of land to be withdrawn from the CPO. As and when agreements are reached and legal agreements entered into these plots are likely to be withdrawn from the CPO.
- 6.10 Land referencing services have been procured by SJWL and the GLA from Persona Associates. The GLA has sent introductory letters and Request for Information Notices to all landowners whose land or land interests may be included or affected by the CPO. Responses to the letters and notices are awaited which will thereafter enable the extent of the land acquisition, as illustrated on the draft Order Map at Appendix 4, to be determined and finalised.

## **7 Case for the CPO**

- 7.1 As set out above, the GLA has the power in section 333ZA of the GLA Act to acquire land in Greater London compulsorily for the purposes of housing or regeneration. This power includes the ability to acquire new rights over land. The GLA may only exercise the power with the Secretary of State's authority.
- 7.2 In exercising the power, the GLA will need to have sufficient certainty that the purposes for which the power is being exercised will be achieved, being in this case the delivery of housing and regeneration in Southall.
- 7.3 It is immaterial that the Scheme will be carried out by a third party and not the GLA.
- 7.4 The Circular provides guidance generally on the exercise of compulsory purchase powers.
- 7.5 Importantly the Circular requires that a CPO should only be made where there is a compelling case in the public interest. The Circular further states that an acquiring authority, when considering the making of a CPO, shall have regard to the following factors:
- 7.5.1 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 affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention;
  - 7.5.2 whether delivery of the scheme underlying the CPO is likely to be blocked by impediments to implementation; and
  - 7.5.3 evidence as to the status of the developer and that adequate resource is available to enable the acquisition of the land pursuant to the CPO and for the scheme underlying the CPO to proceed.
- 7.6 The Circular looks to acquiring authorities to seek to acquire land by agreement wherever practicable. However, the Circular recognises that it may be sensible for acquiring authorities to

start formal CPO procedures in parallel with their efforts to acquire by agreement. The Circular notes that this has the advantage of making the seriousness of the acquiring authority's intentions clear from the outset which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

- 7.7 In making the CPO, the Circular encourages acquiring authorities to offer those concerned about a CPO access to alternative means of dispute resolution where appropriate.
- 7.8 The Circular does not provide specific guidance on the GLA's power. However, the guidance in Appendix A of the Circular on orders made under section 226 of the Town and Country Planning Act 1990 is helpful, providing that the Secretary of State should have regard to the following factors in deciding whether to confirm a CPO under section 226:
  - 7.8.1 whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area;
  - 7.8.2 the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area;
  - 7.8.3 the potential financial viability of the scheme for which the land is being acquired;
  - 7.8.4 whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means.
- 7.9 In addition, as the GLA's power is based on the compulsory purchase power granted to the HCA in 2008, guidance can be taken from the guidance issued in 2010 on the HCA's compulsory purchase power. In particular, the guidance states that the compulsory purchase power is a *"vital instrument for implementing housing and regeneration projects for the public benefit and at a realistic cost"* (paragraph 6 of Appendix C of Circular 04/2010).
- 7.10 The guidance in Circular 04/2010 further identifies, at paragraph 13, certain factors which the Secretary of State should be mindful of in deciding whether to confirm a CPO made by the HCA. The following are relevant to the GLA's compulsory purchase power and as such the GLA should have regard to the same in choosing to make the CPO:
  - 7.10.1 whether it has been demonstrated that the land is in need of housing development and/or regeneration;
  - 7.10.2 what, if any, alternative proposals have been put forward by the owners of the land or by other persons for use of re-use of the land, whether such proposals are likely to be or are capable of being implemented, what planning applications have been submitted and or determined, and the extent to which the proposals advocated by other parties may conflict with the GLA's proposals as regards the timing and nature of any housing development and/or regeneration of the wider area concerned;
  - 7.10.3 whether the proposed development or regeneration is on balance more likely to be achieved if the land is acquired by the GLA, including the effect on the surrounding area that the purchase of the land by the GLA will have in terms of stimulating and/or maintaining the regeneration of the area;
  - 7.10.4 the quality of, and proposed timetable for completing, the proposals for which the GLA is proposing to acquire the land under their compulsory purchase powers and any alternative proposals.



- 7.11 The GLA has had regard to the requirements of the legislation and the guidance set out above and considers that there is a compelling case in the public interest to make the CPO. In particular:
- 7.11.1 the GLA considers that the benefits to be derived from implementation of the Scheme justifies the interference with the human rights of those with an interest in the land included in the CPO;
  - 7.11.2 the main part of the Site has long been underutilised and in need for housing development and regeneration. The GLA is satisfied that the use of its compulsory purchase power is entirely appropriate to achieve this outcome;
  - 7.11.3 no alternative proposals have been put forward for redevelopment of the Site;
  - 7.11.4 the GLA is confident that, other than assembly of the land required for the Scheme, there are no impediments to its delivery;
  - 7.11.5 the GLA is satisfied that the Scheme will be delivered by SJWL if the CPO is made;
  - 7.11.6 the Scheme for which planning permission has been granted is in accordance with the adopted planning framework for the Southall area;
  - 7.11.7 the GLA is satisfied that the Scheme is in accordance with adopted and emerging planning policy;
  - 7.11.8 the GLA is confident that the Scheme will deliver economic, social and environmental benefits to the local community. The GLA further believes that the regeneration of the Site will stimulate further regeneration of the Southall area;
  - 7.11.9 the GLA accepts that SJWL and, before that, NG has endeavoured and continues to endeavour to acquire the third party land interests for the Scheme by private treaty and is satisfied that the benefits of the Scheme will not be secured without the CPO.
- 7.12 Notice of the making of the CPO is given to categories of "qualifying persons", namely owners, lessees and occupiers (other than monthly tenants or those with a shorter tenancy) and publicised in the local newspaper. Objections from such qualifying persons will lead to a public inquiry.
- 7.13 SJWL and, as appropriate, the GLA has been in dialogue with the owners of the land required for the Scheme. The GLA is confident that every effort is being made to acquire such interests by agreement. However, the GLA believes that the use of compulsory purchase powers must now be more formally considered to complete the land assembly for the Scheme in a timely manner.

## **8 Human Rights Considerations**

- 8.1 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ("ECHR"). The ECHR includes provisions in the form of Articles, which aim to protect the rights of the individual.
- 8.2 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the ECHR.
- 8.3 As is clear from the Circular, a CPO should only be made where there is a "*compelling case in the public interest*", and that a public authority pursuing a CPO must be able to demonstrate that the purposes for which it is making that CPO sufficiently justify interfering with the human rights of those with an interest in the land affected. In making this assessment, the authority should have regard, in particular, to the provisions of Article 1 of the First Protocol and Articles 6 and 8 to the ECHR.

- 8.4 Article 1 of the First Protocol of the ECHR states that *"every natural or legal person is entitled to peaceful enjoyment of his possessions"* and that *"no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law...."*
- 8.5 Whilst the owners of the land comprised in the CPO may be deprived of their property if the Order is confirmed and thereafter implemented, this will be done in accordance with the law. The public benefits associated with the Scheme are set out in this report, and the GLA considers that the CPO strikes a fair balance between the public interest in seeing the regeneration proceed (which is unlikely to happen in the absence of the CPO), and the private rights which will be affected by the CPO.
- 8.6 If, despite efforts being made, it is not possible to secure agreements with the owners of the CPO land and their interests are acquired pursuant to a CPO then they will be entitled to compensation calculated under the CPO Compensation Code.
- 8.7 Article 6 of the ECHR provides that: *"in determining his civil rights and obligations ....everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"*.
- 8.8 The regeneration of Southall gas works has been comprehensively consulted upon. There has been an opportunity to make representations regarding the planning policies and planning applications relating to the Scheme. SJWL has further entered into extensive discussions and negotiations with the affected landowners regarding the regeneration proposals.
- 8.9 Where parties object to the CPO, the Secretary of State for Communities and Local Government shall arrange either for written representations, or for a public local inquiry to be held to provide those parties with an opportunity to be heard. Should the CPO be confirmed, a person aggrieved may challenge the order in the High Court if they consider that there are sufficient grounds for doing so. In relation to compensation disputes, affected persons have the right to apply to the Upper Tribunal, an independent judicial body. This process is compliant with Article 6.
- 8.10 Article 8 of the ECHR provides that: *"everyone has the right to respect for his private and family life, his home and his correspondence"* and that *"there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of....the economic wellbeing of the country..."*.
- 8.11 Whilst there may be some interference with the rights of the owners of the land comprised in the CPO, this will be done in accordance with the law. The GLA considers that the benefits associated with the Scheme as set out in this report, strike a fair balance between the public interest in seeing the Scheme proceed (which is unlikely to happen in the absence of the CPO), and the private rights which will be affected by the CPO.

## **9 Objectives & Expected Outcomes**

The key objective is to deliver the Scheme. If the GLA does not exercise its CPO powers, SJWL may be unable to assemble the land interests necessary to provide the access route for the Scheme and to comply with the planning permissions. It is intended that the CPO will be used in the public interest to secure the assembly of land in a timely manner, where it has not been possible to do this through agreement with landowners. SJWL will continue to negotiate with land owners to acquire by private treaty.

## **10 Key Issues**

### **10.1 A compelling case in the public interest**

As set out in section 9 of this report, a CPO should only be made where there is a compelling case in the public interest. The GLA is preparing the Statement of Reasons in support of the CPO, which will set out the GLA's justification for the use of its compulsory purchase power. A draft of the statement is at Appendix 2.

### **10.2 Resources**

The GLA must demonstrate that sufficient resources are available to complete acquisitions and implement the Scheme within a reasonable timescale.

The Scheme will be wholly funded by SJWL with financial backing from its parent company St James Group Limited. Whilst further financial checks will be required before the making of any CPO, the GLA team has had sight of the 2012 Annual Report and Financial Statements for 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 any more recent accounts will be received before making any CPO it is anticipated, subject to St James Group Limited acting as guarantor for SJWL, that sufficient resources can be demonstrated.

### **10.3 Working relationships**

Land belonging to both LB Hillingdon and LB Ealing will be included within the CPO. The GLA is only taking the step of including the borough land within the CPO because it is committed to the timely acquisition of the land for the Scheme. It would otherwise choose to acquire such land by agreement and not through compulsory purchase.

The GLA and SJWL are nevertheless committed to trying to acquire the land by agreement as soon as may be. To this end, positive relationships have been established with both boroughs and negotiations are underway.

If any land that was not so secured by private treaty was omitted from the CPO when it is made then that land could not subsequently be added (unless with the agreement of the owner which could be considered unlikely). The failure to demonstrate that all necessary land was secured, either through the CPO or private treaty, would severely impact on any claims that the Scheme could be delivered and put at risk any chance of a successful CPO (and delivered Scheme). However, if at any stage agreement for sale with either party is reached, that party's plot could be removed from the CPO.

### **10.4 Implementation**

The GLA will need to demonstrate that there are no impediments to the implementation of the Scheme.

The GLA must show that all of the land and interests within the CPO boundary are required for the Scheme within a reasonable timeframe, usually six years after publication of confirmation of the CPO. SJWL has confirmed that the land to be included within the CPO will be needed within this timescale because many of the plots to be acquired provide access routes and are part of the conditional works that must be completed before a start on Site is permitted under the terms of the planning permissions.

## 10.5 Open space and the requirement to provide exchange land

As indicated above, part of the land proposed to be acquired by the CPO comprises public open space that will be required to provide the new infrastructure, including the very first new access route into the Scheme, the Pump Lane Access.

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”<sup>3</sup> and gives it special protection. Specifically, section 19 of the Acquisition of Land Act 1981 provides that:

*“In so far as a compulsory purchase order authorises the purchase of any land forming part of a common, open space or fuel or field garden allotment, the order shall be subject to special parliamentary procedure unless the Secretary of State is satisfied –*

- (a) that there has been or will be given in exchange for such land, other than, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land is given in exchange has been or will be vested in the persons in whom the land purchased was vested, and subject to the like rights, trusts and incidents as attached to the land purchased or*
- (aa) that the land is being purchased in order to secure its preservation or improvement its management or*
- (b) that the land does not exceed 250 square yards in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway and that the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.*

*and certifies accordingly”.*

The most appropriate condition for this Scheme is section 19(1)(a), namely that ‘equally advantageous’ exchange land is to be provided.

Paragraph 6 of Schedule 3 of the Acquisition of Land Act 1981 is also relevant, providing that:

*“In so far as a compulsory purchase order authorises the acquisition of a right over land forming part of a common, open space or fuel or field garden allotment, it shall be subject to special parliamentary procedure unless the Secretary of State is satisfied –*

- (a) that the land, when burdened with that right, will be no less advantageous to those persons in whom it is vested and other persons, if any, entitled to rights of common or other rights, and to the public, than it was before, or*
- (aa) that the right if being acquired in order to secure the preservation or improve the management of the land, or*
- (b) that there has been or will be given in exchange for the right additional land which will as respects the persons in whom there is vested the land over which the right is to be acquired, the persons, if any, entitled to rights of common or other rights over that land, and the public, be adequate to compensation them for the disadvantages which result from the acquisition of the right, and that the additional land has been or will be vested in the persons in whom there is vested the land over which the right is to be acquired, and subject to the like rights, trusts and incidents as attach to that land apart from the compulsory purchase order, or*

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<sup>3</sup> Section 19(4) of the Acquisition of Land Act 1981

(c) *that the land affected by the right to be acquired does not exceed 250 square yards in extent, and that the giving of other land in exchange for the right is unnecessary, whether in the interest of the persons, if any, entitled to rights of common or other rights or in the interests of the public,*

*and certifies accordingly".*

SJWL has been progressing a strategy in respect of the open space land to be acquired and any new rights to be acquired over open space land which will be compliant with the above statutory requirements.

Where exchange land is to be provided, no transfer of existing open space land to SJWL can occur until the exchange land is ready for use. The requirement for the acquisition of open space land to provide the Pump Lane Access (which is the first stage of development) means that exchange land will be required in advance of the Site preparation phase.

#### 10.6 Deliverability

**The Circular 06/04 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."*

Pursuant to the Promotion Agreement, the GLA has secured from SJWL an obligation to commence the Scheme in a timely manner following acquisition of land pursuant to the CPO to deliver the housing and regeneration benefits of the Scheme and the Mayor's objectives of promoting jobs and growth. The GLA is accordingly satisfied that there is a reasonable prospect of the Scheme being delivered within a reasonable timescale.

#### 10.7 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 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 extends to any costs and compensation arising from any blight notice.

#### 10.8 Special protection for statutory undertakers

Network Rail, CRT 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, 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 the statutory undertakers and negotiations will continue to enable the necessary agreements to be completed.

## **11 Financial comments of the Executive Director Resources**

- 11.1 Any costs to the GLA, including internal staff costs, which relate to making the CPO necessary to deliver the project will be paid by or recovered in arrears from SJWL, with a parent company guarantee from St James Group Limited.
- 11.2 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.
- 11.3 Stamp Duty Land Tax relief would normally apply where land is acquired using CPO powers and the indemnity from SJWL should cover any SDLT liability incurred by the GLA.

## **12 Legal Comments**

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

## **13 Investment & Performance Board**

The following recommendations were approved by the Board on 20 May 2014:

- 13.1 That the Board endorses the proposal that, subject to a Mayoral Decision to make the CPO, the GLA should make, for the purposes of housing and regeneration and for the reasons set out in this report, a CPO under section 333ZA(1) of the Greater London Authority Act 1999 to acquire any outstanding property interests in the land and any new rights over the land as may be necessary to achieve the redevelopment and regeneration of the Site, the extent of which is shown indicatively edged red on the draft Order Map at Appendix 4 but remains subject to completion of the GLA's land ownership investigations.
- 13.2 It is noted that alongside the making of the CPO, SJWL will continue to negotiate with landowners to acquire the property interests and rights referred to above by private treaty, with assistance from the GLA as required.
- 13.3 That the Board endorses the proposal that the GLA:
  - 13.3.1 continues to cover the costs, as necessary, of preparing the CPO subject to reimbursement of such costs pursuant to the indemnity provided in the Promotion Agreement
  - 13.3.2 takes all necessary steps to secure the making, confirmation and implementation of the CPO, including the publication and service of all relevant notices and the presentation of the GLA's case at any public inquiry; and
  - 13.3.3 takes any and all necessary steps, including approving terms for the acquisition of legal interests (including new rights) by agreement for the purposes of resolving any objections to the CPO.

## **14 Next steps**

- 14.1 Further advice will be sought from Counsel in advance of making the CPO to reconfirm the necessity of the process and to review the legal approach.
- 14.2 Subject to that advice, the Mayor will decide whether the GLA will make the CPO.

- 14.3 The GLA will seek confirmation of the CPO by the Secretary of State, whilst continuing in parallel to try to acquire all third party land and property interests by private treaty.
- 14.4 The application to the Secretary of State may lead to a public inquiry, for which the GLA will need to make preparation.
- 14.5 The GLA will further seek to secure a Certificate under Section 19 and paragraph 6 of Schedule 3 of the Acquisition of Land Act 1981 in respect of the acquisition of any open space land or new rights over open space land.

## **Appendices**

Appendix 1 – Outline planning permission site layout plan

Appendix 2 – **Confidential** – Draft Statement of Reasons (Part 2 section)

Appendix 3 – **Confidential** – Draft Programme (Part 2 section)

Appendix 4 – Draft Order Map

**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:**

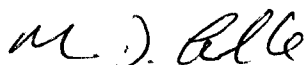
The Finance and Legal teams have commented on this proposal.

✓

**EXECUTIVE DIRECTOR, RESOURCES:**

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

Signature



Date

17.6.14

**CHIEF OF STAFF:**

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

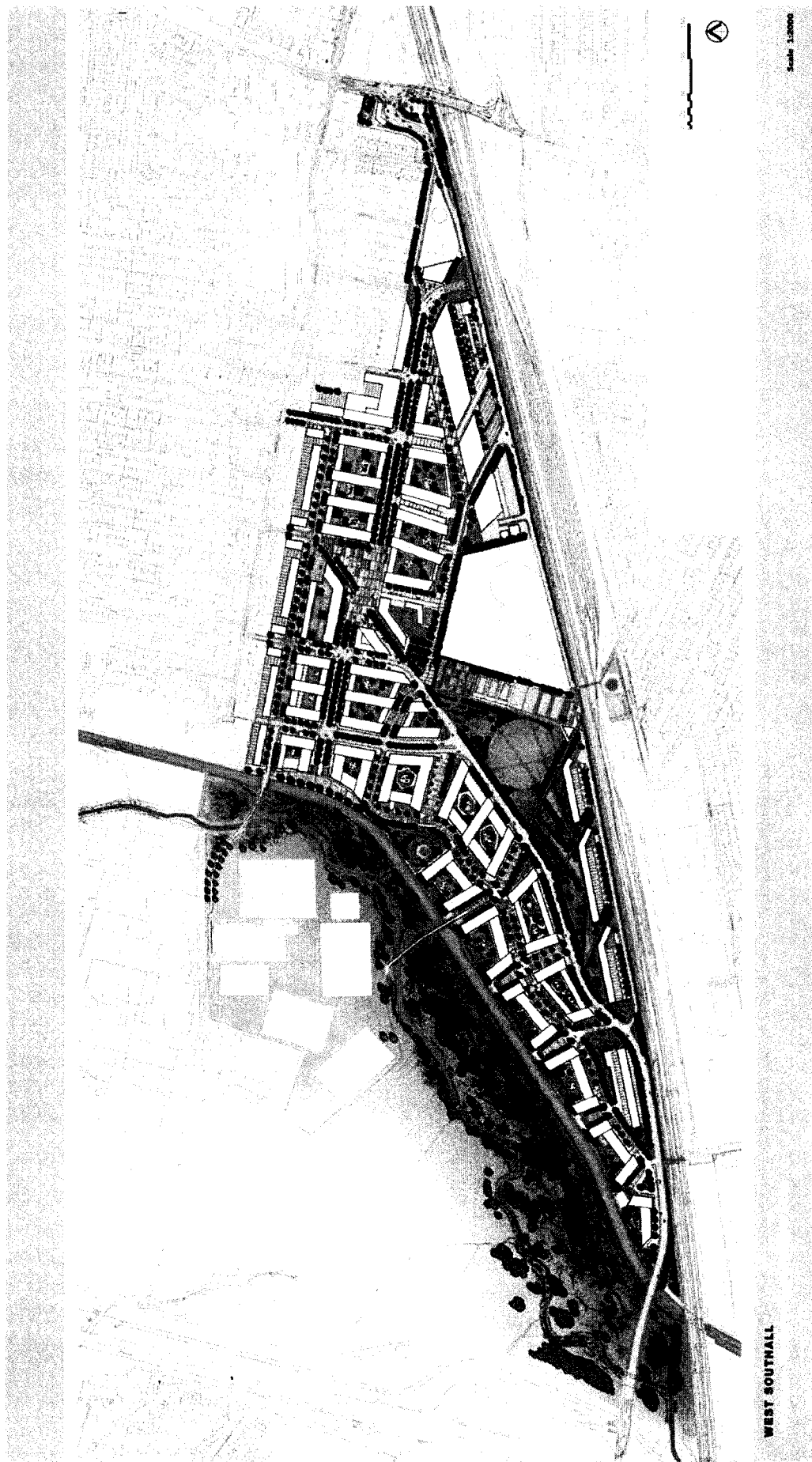
Signature



Date

17.06.2014









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**PERSONA ASSOCIATES**

1ST FLOOR  
100-102  
BATTLE OF ROAD  
HESKHAM  
NEWCASTLE  
NE12 1DQ

Tel: 01603 317796  
www.personaassociates.co.uk

R1  
ADDRESS: Southall  
DESCRIPTION: SOUTHALL GAS WORKS

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GAS WORKS

RED LINE  
BOUNDARY PLAN

1:2,500 (Plan), 1:1,250 (Inset) at A1

JUNE 2014

KG

6/6 COMMISSION DIRECTOR/ENGINEER

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