

**THE LONDON BOROUGH OF SOUTHWARK  
(ELEPHANT AND CASTLE TOWN CENTRE)  
COMPULSORY PURCHASE ORDER (No. 2) 2023**

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**STATEMENT OF REASONS  
OF THE LONDON BOROUGH  
OF SOUTHWARK**

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**Section 226(1)(a) Town and Country Planning Act 1990**

**Acquisition of Land Act 1981**

**Section 13 Local Government (Miscellaneous Provisions) Act 1976**

**Date: 29 December 2023**

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## 1. INTRODUCTION

- 1.1 The London Borough of Southwark ("**the Council**") has made the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order (No. 2) 2023 ("**the Order**").
- 1.2 The Order has been made under section 226(1)(a) of the Town and Country Planning Act 1990 ("**the 1990 Act**"), as the Council thinks that the proposed acquisition will facilitate the carrying out of development, redevelopment, or improvement on or in relation to land.
- 1.3 Furthermore, pursuant to section 226(1A) of the 1990 Act, the Council thinks that such development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social and environmental well-being of the Borough of Southwark.
- 1.4 The Order is also made under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to enable the Council to acquire new rights over land in order to enable the proposed works to be carried out, used and maintained.
- 1.5 This document is the non-statutory Statement of Reasons prepared on behalf of the Council in accordance with paragraph 196 of the Government's *Guidance on Compulsory Purchase Process and the Crichel Down Rules* (July 2019) ("**the Guidance**").
- 1.6 The land comprised within the Order ("**the Order Land**") is explained in detail in Section 4 below, but in summary the land to be acquired comprises: certain railway arch units very close to the site of the former Elephant and Castle Shopping Centre ("**the Shopping Centre Site**" and "**the Shopping Centre**" respectively); a corridor of land which lies immediately to the west of the railway viaduct (so immediately to the east of the Shopping Centre Site); a couple of small areas immediately adjacent to the London College of Communication site ("**the LCC Site**"); and a couple of electricity sub-stations located within the LCC Site. In addition, new rights are sought over various parcels, including in relation to the railway viaduct (but not so as to interfere with the operation of the railway). The Order Land falls within the Elephant and Castle town centre.
- 1.7 The schedule to the Order ("**the Schedule**") lists the owners, lessees, tenants and occupiers of the Order Land. It also lists other parties with a qualifying interest in the Order Land as defined by section 12(2) of the Acquisition of Land Act 1981 ("**the 1981 Act**"), including those parties who have the benefit of rights within or over the Order Land or restrictive covenants that affect the Order Land.
- 1.8 The land proposed to be acquired pursuant to the Order is coloured pink on the map to the Order ("**the Order Map**"). The land on, over or under which new rights are to be acquired is coloured blue on the Order Map. Further information on the Order Map is contained in Section 4 below and a copy of it (unsealed) is annexed to this Statement at **Annex 1**, along with the accompanying location plan. The copy of the Order Map and location plan annexed to this Statement are provided at size A3; at

scale copies of the Order Map at size A2 are being provided to the Secretary of State and to qualifying persons, and are available for inspection at the Council's offices.

- 1.9** The Council's purpose in making the Order is to facilitate the development, redevelopment or improvement on or in relation to the Order Land, namely a mixed use town centre redevelopment scheme including residential, retail, offices, education, assembly and leisure, a new station entrance and station box for use as a London Underground operational railway station, nightclub incorporating sound mitigation lobby, commercial, business and services, access and highway works, public realm and landscaping, car and cycle parking, plant and servicing and associated and ancillary works ("**the Scheme**") on and adjacent to the Order Land. The Order Land forms an integral part of the wider piece of land required for the Scheme, with that wider piece of land encompassing the immediately adjacent Shopping Centre Site, 26-32 New Kent Road, the current London Underground Northern Line Elephant & Castle station, the LCC Site and a small part of Elephant Road and the railway station where a heating network pipe will be located ("**the Scheme Land**"). A plan of the Scheme Land is at **Annex 2**. The Scheme essentially comprises two main parts: "the East Site", comprising the Shopping Centre Site and its immediate surroundings on New Kent Road, Walworth Road and some of the arches under the adjacent railway viaduct; and "the West Site", comprising the LCC Site and its immediate surroundings. Further details of the Scheme are contained in Section 6 below.
- 1.10** The Scheme will result in a substantial improvement in Elephant and Castle's retail and leisure offer, the provision of new housing (including affordable housing), improved premises for Corsica Studios ("**Corsica**") (including a sound mitigation lobby assisting the continued use of the nightclub adjacent to the new residential premises), a new campus building for LCC, relocation premises for displaced occupiers of the railway arch units 6 and 7 Farrell Court, and improvements to the town centre environment and connectivity, with high quality public realm with permeable routes for pedestrians through the new town centre including to Elephant Road and Elephant Park via the Park Route. The Scheme will thereby contribute very significantly towards economic, social and environmental well-being improvements.
- 1.11** Full planning permission (reference 16/AP/4458) was granted by the Council in respect of the vast majority of the Scheme on 10 January 2019 ("**the 2019 Permission**"), subject to a comprehensive agreement under section 106 of the 1990 Act of the same date. In addition, listed building consent (reference 16/AP/4525) was granted on 10 January 2019 for that small part of the Scheme comprising minor amendments to the northern elevation of the Grade II listed Metropolitan Tabernacle building, which immediately abuts the current LCC building. A judicial review challenge against the 2019 Permission was dismissed on all grounds by the High Court (December 2019) and the Court of Appeal (May 2021).
- 1.12** Minor amendments to the Scheme have been approved since January 2019. A permission granted under section 73 of the 1990 Act on 12 March 2021 (reference 20/AP/3675) permits an enlarged new London Underground station box and associated amendments ("**the March 2021 Permission**"). A further section 73

permission granted on 29 July 2021 (reference 21/AP/1104) ("**the July 2021 Permission**"), contains minor amendments to the March 2021 Permission. Further information on the planning position for the Scheme is set out in Section 6 below.

- 1.13** The Scheme is being promoted by Elephant and Castle Properties Co. Limited ("**EC**"), a company incorporated in the British Virgin Islands, which is the freehold owner of the Shopping Centre Site and 26-32 New Kent Road. It is the planning applicant in respect of the 2019 Permission and the subsequent minor amendments which have been permitted.
- 1.14** EC is a subsidiary company of Get Living Plc, an English public limited company. Get Living's shareholders are "the Triangle Partnership". The Triangle Partnership comprises three parties: (1) Dutch pension fund Stichting Depositary APG Strategic Real Estate Pool, which has a 39% share in the Partnership and is the largest pension fund manager in the Netherlands; (2) Aware Super, an Australian pension fund, which has a 22% share in the Partnership; and (3) DOOR SLP, which has a 39% share in the Partnership. DOOR is a co-investment platform co-founded by Oxford Properties Group and DV4 Limited and it is a separate legal partnership registered in Jersey. All its assets are based in the UK. The Oxford Properties Group is the global real estate arm of the Ontario Municipal Employees Retirement System and based in Toronto, Canada. DV4 is a real estate investment vehicle based in the British Virgin Islands.
- 1.15** EC is advised by Delancey Real Estate Asset Management ("**Delancey**"). Delancey is an experienced developer and operator of major mixed use schemes.
- 1.16** EC already owns the freehold title to a substantial part of the land required for the Scheme, namely the Shopping Centre Site and 26-32 New Kent Road (inclusive). EC also owns long-leasehold titles to Units 113A and 120, and 113B and 121 Elephant and Castle Arches described in Section 4, though its leasehold interest in these arches is constrained to be used only for access. EC has acquired various titles and occupational interests over the course of the last 7 years. All interests in 26-32 New Kent Road were acquired by agreement, and vacant possession of the Shopping Centre Site was achieved through agreement, by way of exercising agreed break clauses in occupational tenancies and agreeing tenancies with occupiers that were contracted out of the security of tenure provisions of Part II of the Landlord and Tenant Act 1954.
- 1.17** In December 2021, EC entered into an agreement with Transport for London ("**TfL**") and London Underground Limited ("**LUL**"), whereby TfL agreed to transfer to EC several plots of land around the periphery of the Shopping Centre Site and the LCC Site, and the construction of a new London Underground station box, to house the Northern Line and with capacity to also house the Bakerloo Line, will be undertaken by EC and its group company for LUL. When that station box is handed over to LUL, the intention is that LUL will then fit it out for its new operation (subject to having the funding to do so). When the new Underground station is operational, EC will then be able to redevelop the current LUL Elephant & Castle Northern Line station (immediately adjacent to the Shopping Centre Site). In this way, the interests of TfL and LUL have been brought into the Scheme by agreement. Some new crane

oversail rights are sought over TfL highway areas adjacent to the LCC Site under the Order.

- 1.18** In addition, Elephant Three Properties Limited (a group company of EC) already has a contract to purchase the freehold title to the LCC Site from its owner, University of the Arts, London ("UAL"). It is through that contractual arrangement that EC proposes to bring the LCC Site within the Scheme, which is why the LCC Site is not included in the Order Land.
- 1.19** The Shopping Centre was closed in September 2020. This was a decision taken by EC and the immediate landlord of the tenants, a group company of EC, and it did not require any compulsory acquisition. Accordingly, any adverse effects flowing from that decision do not flow from the proposed Order and had already occurred well before the Order was made. A range of relocation measures were put in place by EC and the Council to support the relocation of occupiers of the Shopping Centre and adjoining land and to mitigate the impact of the closure of the Shopping Centre on local traders and residents. These included: relocation for some traders to affordable retail units in the adjacent 50 New Kent Road (now known as Elephant Central), owned by a related company to EC; relocation of some traders to Elephant Arcade at ground floor level of the nearby Perronet House (owned by the Council); the provision of temporary retail units at Castle Square on Elephant Road, also owned by a related company to EC; the payment of a £647,836 relocation contribution (inclusive of indexation) by EC to the Council under the section 106 agreement; the provision of an additional £200,000 fund by the Council to assist traders who were relocating onto the open market or who chose to close their business and change careers and trade; the provision of 10% affordable retail units within the Scheme pursuant to the section 106 agreement; and the assistance of an independent business relocation advisor for traders (funded by EC).
- 1.20** Work pursuant to the 2019 Permission began by way of demolition of the Shopping Centre in January 2021. Following completion of demolition of the Shopping Centre, on 17 March 2022 substantive construction work (in the form of piling) began on the Shopping Centre Site pursuant to the July 2021 Permission. At the time of writing, the ground works on the Shopping Centre Site are complete and the building frames for new blocks on that site are visible above the perimeter hoarding. Works are progressing in line with the construction programme, with completion of the East Site envisaged in 2027.
- 1.21** Notwithstanding the significant landholdings that EC (and its group companies) already have or control, and the works that have been undertaken to date, the carrying out and completion of the Scheme requires the acquisition of property interests currently owned by third parties and the acquisition of new rights over land held by third parties. Those parties include a number of traders in railway arches 6 and 7 Farrell Court, and Corsica, which is the tenant of railway arches 4 and 5 Farrell Court.
- 1.22** The Council and EC will continue to negotiate with those third parties to acquire their interests and the new rights by agreement wherever practicable, but compulsory purchase powers are required to ensure that the redevelopment may be achieved, with the consequent benefits.

- 1.23 As per the Guidance, the Council acknowledges that a compulsory purchase order should only be made as a last resort and if there is a compelling case in the public interest, which justifies the interference with the human rights of those with an interest in the land affected. The Council considers that a clear and compelling case in the public interest exists for making the Order, as described in this Statement of Reasons.
- 1.24 Accordingly, the Council will submit the Order to the Secretary of State for Levelling Up, Housing and Communities for confirmation pursuant to the 1981 Act. If confirmed by the Secretary of State, the Order will enable the Council to acquire compulsorily the land and new rights included in the Order.
- 1.25 The Order was made following a resolution of the Council's Cabinet of 17 October 2023. The Cabinet report forms part of the papers submitted with the Order. In broad summary the Order seeks to achieve the following objectives:
- (a) The delivery of the pedestrian route (referred to as the Park Route) identified in the 2019 Permission and the Southwark Plan. The route beneath the rail viaduct is intended to connect the town centre site to Elephant Road and Elephant Park. Two rail arches (6/7 Farrell Court, Elephant Road) owned by Arch Co are required to achieve this outcome. The arches are currently occupied by two local Black Asian Ethnic Minority ("**BAME**") businesses, Beset (7 Farrell Court) and DistriAndina (6 Farrell Court). Beset have shared occupation of 7 Farrell Court with various other small BAME businesses. Therefore the Council is seeking to acquire Arch Co's long-leasehold title to these two arches, plus the occupational interests, and some limited rights from Network Rail to implement works to the undersides of the railway arches.
  - (b) The retention of Beset (and the other occupants in their current unit) and DistriAndina within the Scheme by providing replacement premises for Beset and its occupiers in railway arches 113B/121 on Elephant Road and (potentially, if they wish) DistriAndina in arches 113A/120, due to the need to relocate them to deliver the Park Route. Therefore it will ensure that these BAME businesses have options for continuity of trade in the immediate area of their current premises. DistriAndina as a retail business continues to have an option to take an affordable business unit in one of the new blocks on the East Site should they wish to do so. The Council is seeking to give effect to whichever is DistriAndina's preferred relocation option. To the extent that Beset and DistriAndina do not take up the offers in respect of Arches 113A/120 and 113B/121, they will otherwise be used for retail/café purposes. Arch Co owns the long-leasehold title to these units and the Council is therefore seeking to acquire its title and some limited rights from Network Rail to undertake works to the arches to deliver the new units (and some kiosk units) in arches 113A/120 and 113B/121. At the moment the long-leasehold interest held by EC in arches 113A/120 and 113B/121 is not sufficient to allow any beneficial occupation and the Council does not want to see these units left vacant.
  - (c) The delivery of provisions to enable the Corsica nightclub, identified as a grass roots music venue in the Mayor for London's Culture and Night Time

Economy SPD, to have the option to continue to operate from its current premises at 4/5 Farrell Court. The town centre scheme includes the construction of new residential properties within 10m of the western elevation of the venue. A condition of the planning permission requires the developer to provide details as to how the scheme will ensure that the amenity of residents occupying these units is protected from noise emanating from the premises. Planning policy requires the developer to take appropriate mitigation measures in line with the agent of change principle to ensure that the venue can continue to operate in the new context created by the town centre redevelopment. The proposed solution is the construction of a sound mitigation lobby on the western elevation of 4/5 Farrell Court. In order to ensure that Corsica can have the option to operate from their current premises at 4/5 Farrell Court with the benefit of a single new lease over 4/5 Farrell Court and the sound mitigation lobby (once built), it is necessary to acquire Arch Co's long-leasehold interest in that land and a new right from Network Rail to affix the lobby and associated works to the viaduct. Without these, the construction of the sound mitigation lobby, which is intended to mitigate noise from the premises, and associated works, will not be possible.

- (d) In the event that Corsica opt not to take up the proposed option, the design of 4/5 Farrell Court with the sound mitigation lobby will be such that the premises can continue to be used as a night club by an alternative operator. This will ensure that the agent of change principle detailed in the Mayor's Culture and Night Time Economy SPD is met.
- (e) To secure other relatively minor land interests along the edge of the viaduct to facilitate the delivery of public realm necessary to complete the East Site. On the West Site there is a need to acquire two sub-stations to ensure the second phase of the development can be implemented. Therefore the Council is seeking to acquire those interests under the Order.
- (f) The acquisition of some limited rights to ensure the scheme can be implemented e.g. from Network Rail, and on the West Site for access to the Metropolitan Tabernacle to facilitate the demolition of the immediately adjacent London College of Communication building and for crane oversailing rights over the Tabernacle.

**1.26** The Order supersedes a previous compulsory purchase order made by the Council on 2 February 2023, the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order 2023 ("**the Previous Order**"), which had followed a 6 December 2022 Cabinet resolution by the Council. The Previous Order applied to the same area of land as the Order and was for a very similar version of the Scheme. In broad summary, the Council's objectives in making the Previous Order differed from those outlined above for the Order in the following respects:

- (a) It was envisaged at that time that Corsica would relocate to arches 113A/120 and 113B/121, rather than having the opportunity to stay in situ at 4/5 Farrell Court as is now the case. The evidence available at the time of the December 2022 report suggested that relocation of the venue further up Elephant Road was the only practical way to achieve this outcome and meet planning policy



requirements. The December 2022 report included that arches 113A/120 and 113B/121 would be used for retail/café uses if not for relocating Corsica. Accordingly, the Previous Order did not contain any new right to facilitate the delivery of a sound mitigation lobby on the rear of 4/5 Farrell Court.

- (b) As it was envisaged that Corsica would move to arches 113A/120 and 113B/121, it was envisaged at that time that Beset and the other occupants of 7 Farrell Court could relocate to 4/5 Farrell Court. It was envisaged at the time of the report that DistriAndina would move to an affordable retail unit within the town centre scheme.

- 1.27** Following the Cabinet decision to approve the December 2022 report, the CPO indemnity agreement (whereby EC, backed by the guarantee of Get Living Plc, underwrites the cost of the CPO process) was completed on 1 February 2023 and the Previous Order was made on 2 February 2023. The relevant statutory procedures were followed as to notification to affected parties and 11 objections were received. Following the making of the Previous Order further discussions were held with Corsica. While Corsica recognised that relocation a short distance up Elephant Road was one option, having considered it in detail it was not their preferred option and they requested that the Council reassess whether there was a solution by which they could continue to operate from their current premises at 4 and 5 Farrell Court. This was the outcome which had been envisaged at the time of the 2018 planning committee report.
- 1.28** New acoustic surveys were undertaken during the summer period. These were overseen by a specialist acoustic engineer appointed to advise the Council. Corsica also participated in this exercise and had their own independent acoustic advisor. This work had a positive outcome. A technical solution was devised in the form of the construction of a sound mitigation lobby on the western façade of 4 and 5 Farrell Court.
- 1.29** In terms of relocation on Elephant Road, after the Previous Order was made Beset also expressed a preference to have one relocation unit with a mezzanine floor (as it currently has) of comparable size to 7 Farrell Court, rather than two adjoining units which together are of comparable size (such as 4/5 Farrell Court). Neither 4 nor 5 Farrell Court have the height to incorporate a mezzanine floor on the scale which is currently in 7 Farrell Court, whereas arch 113B/121 does have such height.
- 1.30** Given the uncertainty that occurred as regards the Corsica situation, the Council held off from submitting the Previous Order to the Secretary of State for confirmation. When the Corsica position had become clearer, the Council wrote to affected parties notifying them that the Previous Order had not been submitted to the Secretary of State and that there was a likelihood that a different solution for Corsica would be devised, and that the Council was proposing that the occupiers of 7 Farrell Court would be relocated to one of arches 113A/120 or 113B/121.
- 1.31** As a different solution for Corsica had been devised, resulting in revised relocation proposals, and the Previous Order did not contain the new right to affix the sound mitigation lobby to the viaduct, a new CPO resolution for the Order was therefore

sought and obtained from Cabinet on 17 October 2023, along with Cabinet's approval of the withdrawal of the Previous Order. The Previous Order was then withdrawn.

- 1.32** In conclusion, the relocation proposals envisaged by the Order are simplified and improved from the Previous Order, following a positive and collaborative approach by the Council and its technical consultants to objections made by the affected parties to the Previous Order. These changes are overwhelmingly positive ones which will help facilitate the delivery of the Council's objectives for the Scheme, with even further reduced impacts on affected parties.

## **2. ENABLING POWERS**

- 2.1** The Council has made the Order pursuant to section 226(1)(a) of the 1990 Act and section 13 of the Local Government (Miscellaneous Provisions) Act 1976.

- 2.2** Section 226(1)(a) of the 1990 Act enables the compulsory acquisition of land where an acquiring authority thinks the acquisition will facilitate the carrying out of development, redevelopment, or improvement on or in relation to land. Section 226(1A) of the 1990 Act requires a local authority not to exercise its powers under section 226(1)(a) unless the acquiring authority thinks the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects: (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; and (c) the promotion or improvement of the economic well-being of their area.

- 2.3** The Council is satisfied that the purpose of the Order falls within the powers set out above. The purpose in seeking to acquire the land is explained in Section 7 below.

- 2.4** The exercise of powers under section 226(1)(a) is appropriate because it has not been possible to acquire by agreement all interests that are required for the Scheme, and it is not clear that all remaining land interests can be acquired by agreement.

- 2.5** Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 enables the Council to acquire new rights which are not in existence when the Order is made and are specified in the Order. The new rights to be created and acquired are reasonably required to enable the demolition of existing properties on the LCC Site, the construction of significant parts of the Scheme and the reasonable use of the completed Scheme. The rights are set out in detail in the Schedule and are explained in Section 4.

- 2.6** The General Overview section of the Guidance provides that there must be a compelling case in the public interest for making a compulsory purchase order. Paragraph 2 of the Guidance provides that compulsory purchase is intended as a last resort to secure the assembly of the land needed for the implementation of projects. However, paragraph 2 of the Guidance also acknowledges that:

*"... if an acquiring authority waits for negotiations to break down before starting the compulsory purchase process, valuable time will be lost. Therefore, depending on when the land is required, it may often*

*be sensible, given the amount of time required to complete the compulsory purchase process, for the acquiring authority to:*

- plan a compulsory purchase timetable as a contingency measure; and*
- initiate formal procedures.*

*This will also help to make the seriousness of the authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations."*

**2.7** The Council has had regard to that advice, and the Guidance in general, and is satisfied that it may lawfully exercise its compulsory purchase powers, as there is a compelling case in the public interest for doing so which justifies the interference with private rights.

**2.8** The Council is satisfied that the Guidance and legal requirements to ensure the statutory procedures have been followed correctly have been met.

### **3. BACKGROUND AND CONTEXT FOR THE ORDER**

**3.1** The Order Land, and the Scheme Land, fall within what historically was Walworth, a long-standing London district with a proud history. The main focal point in Walworth has traditionally been Walworth Road that links Camberwell Road with the Elephant and Castle and has been the main retail thoroughfare which in the past contained civic buildings including a town hall.

**3.2** Historically, Walworth Road generally provided day to day shopping, with occasional/luxury goods being provided at the Elephant and Castle. The area was, however, extensively bombed during the Second World War and was followed by the post-war modernist re-planning of the area centred around a major highway with subways. This resulted in the construction of the Shopping Centre, which opened in 1965 and was Europe's first covered shopping mall. The mall provided a range of stores including those selling goods for occasional purposes as well as national retailers selling convenience goods. The redevelopment of traditional streets and terraced housing to the east of the centre to create the Heygate Estate followed this intervention. This comprehensive redevelopment resulted in the removal of the historic street pattern and the disconnection of the Elephant & Castle from the neighbourhoods surrounding it, including the retail premises of Walworth Road.

**3.3** The Shopping Centre struggled to attract retailers from the outset. Records show that when it opened only 29 of the 120 units were occupied. It was designed to provide retail on three floors but this was too much and in 1978 the second floor was converted to offices.

**3.4** In the 1980s both Walworth Road and the Shopping Centre went into decline. There were a number of factors that caused this, including: initial depopulation, changing consumer habits and requirements, external competition and the lack of locational focus giving potential shoppers a reason to visit.

- 3.5** Walworth Road in retail terms emerged as a provider for goods and services needed by the local community and has managed to retain some national multiples e.g. Marks and Spencer, Iceland, Boots and Morrisons, as well as a Tesco Express. Market forces saw the Shopping Centre following in the same way and it was predominantly also a provider of local goods and services, but it had some national multiples, such as WH Smith, Iceland, Peacocks, Clarks, Co-Op, Superdrug, Greggs and Boots.
- 3.6** Walworth Road and the Shopping Centre effectively competed against each other for the same custom, whereas the Council's aspiration has been for businesses complementing each other and delivering different retail offers.
- 3.7** Historically, the north of Southwark lacks an area for comparison goods shopping and this results in this type of retail expenditure going elsewhere, often out of the Borough, to the detriment of the local economy and employment opportunity. The report to Planning Committee on 3 July 2018 for the 2019 Permission stated "*a retail study completed on behalf of the Council in June 2015 (the Southwark Retail Study) advises that just under 50% of comparison goods spend is made outside the borough. The redevelopment of the site to include a new shopping centre presents an opportunity to claw some of this back and although the uplift in retail floorspace would not be significant, the floorspace would be of a higher quality and could be designed to suit the needs of modern, comparison retailers.*" It is therefore appropriate that the Council supports a more diverse retail offer being available at the Elephant and Castle.
- 3.8** The Shopping Centre was Elephant and Castle town centre's primary retail location. However, it was a single use monolithic structure which was badly outdated and did not stand the test of time well. Physically, the environment immediately around the Shopping Centre is poor, with outdated buildings, poor linkages and low quality public realm.
- 3.9** The buildings on the LCC Site are outdated and in need of significant redevelopment. LCC have publicly confirmed their requirement for a new building. The provision of a new building for LCC is included within the Scheme.
- 3.10** The lack of ground level active frontages in the LCC Site also contributes to poor quality public realm in which there is little incentive to linger. The large footprints of the Shopping Centre (when present) and the buildings on the LCC Site also contribute to poor connectivity for pedestrians and cyclists.
- 3.11** As well as being a visual barrier, the railway viaduct separates the central area of the town centre from residential areas to the east, particularly the former Heygate Estate (now the Elephant Park development). A key aspect for the Council has been to improve connectivity with a new, attractive through route to Elephant Road, linking the Shopping Centre with Elephant Park.
- 3.12** The Shopping Centre had suffered from limited investment under previous owners and was in need of substantial redevelopment. Many of the retail units were small and no longer fit for purpose for retailers' current requirements in respect of unit size and configuration.

- 3.13** Elephant and Castle does not have the range of retailers compared to its competing centres, including a lack of more upmarket retailers. The Council's retail study referred to above reported Elephant & Castle to have fewer retail units, less convenience, comparison and food & beverage floorspace than the Borough's three other major centres – Peckham, Canada Water and Walworth Road.
- 3.14** The Scheme Land does not currently contain any homes.<sup>1</sup> Such a key town centre site should be contributing a significant number of much needed homes in line with well-established national and local planning policies to reuse and vitalise brownfield land.
- 3.15** The Council accordingly recognised many years ago that regeneration was needed to bring about a significant change in the town centre's fortunes and to allow Elephant and Castle town centre to fulfil its potential. The achievement of this is a key and long-standing aim of the Council.
- 3.16** The Council has been pursuing an ambitious plan to regenerate Elephant and Castle since 1997. The objective from the outset has been to address the legacy of the 1960s redevelopment of the area which resulted in a traffic dominated centre, encompassed by poorly connected, monolithic, buildings which in combination result in a disconnected public transport system. Pedestrians were directed to use a network of subways which were prone to flooding, confusing to navigate, and perceived as being unsafe particularly for vulnerable groups such as women and the elderly. The roundabouts created some of the most dangerous and hostile roads conditions for cyclists in London resulting in high levels of fatalities and serious injuries.
- 3.17** The 2004 Elephant & Castle Supplementary Planning Document ("**2004 SPD**") promoted the regeneration of the area by building on the Elephant's strengths in the form of its close proximity to the central London economy and public transport connections in the form of two tube stations, an overground rail station and numerous bus routes. The vision it set out was to establish a new town centre on a 55 acre core area which included the former Heygate Estate site (now Elephant Park), the Shopping Centre Site and land along Walworth Road and Elephant and Castle. Subsequently this site (site 39P) was incorporated into the 2007 Southwark Plan.
- 3.18** The 2004 SPD proposed that the core area be comprehensively redeveloped to provide new market and affordable homes, commercial, community and leisure uses, based around an integrated public transport hub and an open network of pedestrian/cycling friendly routes and public spaces. The vision specifically set out to address the legacy of the 1960s re-planning of the area which had resulted in the central area of Elephant & Castle becoming disconnected from the neighbourhoods surrounding it. The creation of new pedestrian routes at grade to achieve this was therefore central to the Council's vision for the area from the outset. A wider 170 acre opportunity area was also defined, with the capacity to accommodate further growth in new homes and jobs on under-utilised and vacant land. The opportunity area was subsequently incorporated into the 2007 Southwark Plan, 2010 Core

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<sup>1</sup> There is a caretaker's flat within the Metropolitan Tabernacle adjacent to the LCC Site. No changes to that flat are proposed by the Scheme.

Strategy and the London Plan 2011 (and 2015). While the 2004 SPD was replaced in 2012 by the Elephant & Castle SPD the vision for the area remained substantially the same.

- 3.19** Over the intervening period significant progress has been made towards the delivery of the Council's plan. This includes the continuing redevelopment of Elephant Park (including Trafalgar Place), with over 1,000 homes occupied and establishing new routes and public spaces, most notably Sayer Street which includes new retail and affordable retail units and which links the newly formed Walworth Square with Castle Square/Elephant Park. A number of significant sites within the core area have been redeveloped for mixed use schemes consistent with the original town centre vision, including Strata (former Castle House), Uncle (former London Park Hotel), Printworks (Amelia Street), Steadman Street, 50 New Kent Road (former Castle Industrial Estate) and Elephant One (formerly part of the Leisure centre).
- 3.20** In parallel, significant improvements have been made to the area's social infrastructure. The Castle Centre has been completed, providing new public leisure facilities including a swimming pool, 4 court sports hall and gym. The inner ring road has been remodelled, reducing its dominance and the severance it had created for residents living in the area. The roundabouts have been removed, creating a new peninsula, and the network of subways closed. Pedestrians can once again move around safely at surface level via signalised crossings. The new road layout has created safer conditions for cyclists. New public spaces are being created resulting in a marked increase in the numbers of people visible at the centre of the Elephant.
- 3.21** The delivery of the regeneration of the area has taken place in phases across large and small sites that required the coordination of a number of private and public sector partners. While much of the plan has been achieved, the central area of the core site, focused on the Shopping Centre Site, remains to be implemented in line with the Council's original and current vision to establish a new town centre. This site has been central to the delivery of the vision since the adoption of the 2004 SPD. Given its prominent location the Scheme represents the most important regeneration opportunity in the town centre. It would greatly enhance Elephant and Castle's retail, leisure and housing offer, allow further major public transport improvements, provide an enhanced public realm, and secure a modern educational establishment. In short, the Scheme would transform the town centre.
- 3.22** Both the London Plan and the Council's planning policies recognise the need to revitalise Elephant & Castle town centre, and the need for the comprehensive redevelopment of the Order Land and the Scheme Land. The Scheme has the benefit of planning permission (except in the relatively minor respects referred to in paragraphs 12.3 – 12.4) and is in accordance with national, London and Council planning policies.

#### 4. DESCRIPTION OF THE ORDER LAND

##### Description of the Order Land

- 4.1 The Order Land comprises approximately 2.55 acres (1.03 hectares), of which 1.74 acres (0.70 hectares) are attributable to the new rights areas on sheet 1 of 2 of the Order Map.
- 4.2 The Order Land is in a variety of ownerships. Full details of the ownership of each interest in the land and the new rights comprised in the Order are contained in the Schedule and shown on the Order Map.
- 4.3 The Order Map comprises two sheets: sheets 1 of 2 and 2 of 2. Sheet 1 of 2 comprises parcels 1-20 and Sheet 2 of 2 comprises parcels 21-59. Although not forming part of the Order Map, a location plan showing the site in the context of the locality is also provided for convenience and is also included at **Annex 1**. The land proposed to be acquired is shown coloured pink on the Order Map ("**the Pink Land**"). The Pink Land comprises:
- 4.3.1 the railway arch premises underneath the railway viaduct, and to the north of the Elephant & Castle railway station, known as Units 113A and 120, and 113B and 121 Elephant and Castle Arches (parcels 25 and 28 on the Order Map), which have been used to provide access to and from the Shopping Centre Site via Elephant Road. EC currently owns long leasehold titles in respect of those arch premises. However, its lease is constrained to providing access, so it does not allow for any beneficial, occupational uses. Arch Co owns a long leasehold interest in those arches which is not so constrained, and the freehold title, while unregistered, is accepted to be owned by Network Rail. This land is required so as to create relocation premises for the displaced occupiers of Units 127/133 Elephant and Castle Arches (7 Farrell Court), Beset International Limited and their occupants (envisaged to be relocated in Units 113B and 121), and potentially for the displaced occupier of Units 128/134 Elephant and Castle Arches (6 Farrell Court), DistriAndina UK Limited. DistriAndina have been offered the opportunity to relocate to Units 113A and 120. An alternative offer to move to a new block elsewhere within the Scheme is open to DistriAndina. If these occupiers do not choose to relocate to these arch units, the units are nevertheless required for retail/café uses (as explained further in Section 7);
- 4.3.2 to the south of the Elephant & Castle railway station, the railway arch premises underneath the railway viaduct known as Units 127/133 Elephant and Castle Arches (7 Farrell Court) and Units 128/134 Elephant and Castle Arches (6 Farrell Court), which are accessed via Elephant Road (parcels 41 and 48 respectively). These units have occupational tenants, Beset International Limited (7 Farrell Court) and DistriAndina UK Limited (6 Farrell Court), with Beset having shared occupation of that unit with other small businesses. The long leasehold title to these units is owned by Arch Co, with Network Rail again owning the unregistered freehold title. This land is required so as to create the Park Route, an important pedestrian link between the Scheme, Castle Square and the Elephant Park redevelopment as well as providing a more direct link to the retail areas and new library on Walworth Road (as explained further in Section 7);

- 4.3.3 immediately to the south of 6 Farrell Court, railway arch premises underneath the railway viaduct known as Units 129-130 and 135-136 Elephant and Castle Arches (4 and 5 Farrell Court), which are accessed via Elephant Road. 4 Farrell Court is parcel 58 on the Order Map, 5 Farrell Court is parcel 52. These units are occupied by the occupational tenant, Corsica, which operates a nightclub. The long leasehold title to these units is owned by Arch Co, with Network Rail again owning the unregistered freehold title. Bisecting 4 and 5 Farrell Court is an access way (for fire escape purposes) (parcel 53) which is owned freehold by Network Rail, with the long leasehold title being owned by Arch Co. Although Corsica do not have a tenancy of that access way, they do have a right to use it as an access route via their tenancy. In practice they occupy the accessway. All of this land and some of the land to the immediate west of 4 and 5 Farrell Court is required so as to carry out works to the nightclub to construct a sound mitigation lobby and associated alterations and to then offer a new lease of the unified whole to Corsica (or, if they do not wish to take up that option, to another nightclub operator) (as explained further in Section 7).
- 4.3.4 a corridor of land running along the western side of the railway viaduct (but excluding the Thameslink railway) (parcels 22, 25 (part), 28 (part), 29-31 (inclusive), 36, 40, 46 and 56). The freehold title to this corridor is largely unregistered, but accepted by all parties to be owned by Network Rail (who also own a registered freehold title to part of the corridor). The long leasehold title to the corridor is held by Arch Co, though EC also has a long leasehold title to parcel 22. On one part of the corridor, immediately to the west of 4 and 5 Farrell Court (parcel 46), an external smoking shelter has been erected which is used by Corsica. This shelter may also impinge on the immediately adjacent title EC owns to the Shopping Centre Site, and so a very small part of that title is included in the Order (parcel 50), though the Schedule excludes EC's title from acquisition (as it does with parcel 22). This corridor of land is mainly required to complete important areas of new public realm in the Scheme, including the Park Route, but also (in respect of the area to the immediate west of 4 and 5 Farrell Court) to construct the new sound mitigation lobby for the nightclub, which will be affixed to the western façade of the railway viaduct;
- 4.3.5 adjacent to the corridor of land running along the western side of the railway viaduct, a tiny fragment of land which juts into the vehicular access road which led to the basement of the Shopping Centre (parcel 37). The freehold title to this fragment is owned by Network Rail Infrastructure Limited. It is not clear why this land remained with Network Rail's predecessors (the British Railways Board) given that it has for many years formed part of the access into the Shopping Centre and for that reason it is not considered to be operational land nor would its acquisition affect the operation of the railway. This land is required as part of the new public realm.
- 4.3.6 two ground floor electricity sub-stations within the LCC Site, close to Oswin Street (parcels 3 and 4). This land is required because new proposed buildings will be located where the sub-stations are located;
- 4.3.7 a very small piece of footway and an area of hardstanding and structures to the immediate north of the LCC Site, adjacent to St George's Road (parcel 2). This small area of unregistered land is required as part of the paved public realm of the Scheme;



- 4.3.8 an area of hardstanding immediately to the north of Pastor Street and forming part of the southern access into the LCC Site (parcel 15). This small area of unregistered land is required so as to form the beginning of a corridor of new public realm running northwards from Pastor Street. The proposed basement of the new buildings which will be erected on the LCC Site as part of the Scheme also marginally protrudes into this area.
- 4.4 The Council is seeking the power to acquire all the interests in the Pink Land unless expressly stated in the Schedule. EC's (and its group companies') ownership and control of large parts of the land required for the Scheme is summarised above.
- 4.5 The land over which new rights are sought is shown coloured blue on the Order Map ("**the Blue Land**"). These rights are being acquired pursuant to section 13 of the Local Government (Miscellaneous Provisions) Act 1976. Not all of the new rights are required in respect of each plot within the Blue Land. The Schedule provides full details of the rights to be acquired with respect to each plot. By way of broad summary of the areas affected and the new rights sought:
- 4.5.1 the railway viaduct structure enclosing railway arch premises 113A and 120, and 113B and 121 Elephant and Castle Arches (parcel 21), for the purposes of affixing apparatus to the sides and undersides of the railway viaduct and to install new frontages and rear elevations at the end of these arches. By way of explanation, the Council is seeking the acquisition of title (or, in the case of these specific arches, better title than EC already owns) to the arch premises within the Pink Land, as referred to in paragraph 4.3, but the title being acquired relates to the arch premises and will exclude the railway viaduct structure itself. Some works to the viaduct are required to facilitate the Scheme, which in this case include the affixing of apparatus to the sides and underneath of the viaduct structure, and the ability to install new frontages and rear elevations at either end of these arches for the proposed relocation premises for Beset and their occupiers and potentially DistriAndina, hence these new rights. New rights are also sought to affix small kiosk units to the viaduct structure. The railway viaduct structure is owned by Network Rail and so these new rights are sought in respect of Network Rail's title;
- 4.5.2 a pedestrian right of way over a small area of land owned by Network Rail to the immediate west of the Elephant and Castle railway station (parcels 34, 35 and 38), and the right to pave and to repair and maintain the paving on that area, to ensure that the surface level access to and from the Scheme into the railway station occurs;
- 4.5.3 a right to pave and repair and maintain the paving on a small area to the immediate west of the railway station, underneath an external staircase (parcel 39), to ensure that the area is finished in the same manner as the adjacent public realm areas;
- 4.5.4 the railway viaduct structure enclosing railway arch premises 4 – 7 Farrell Court (parcel 59), to enable (in summary): the removal of the existing shopfronts and rear elevations (and any related signage and other apparatus) and the internal premises of 6 and 7 Farrell Court in so far as they are affixed to the viaduct, and to attach apparatus to the sides and undersides of the railway viaduct (including a retail kiosk), so that 6 and 7 Farrell Court can become the Park Route, the pedestrian route from the Shopping Centre Site to/from Castle Square, Elephant Road and the Elephant

Park development and which will provide a more direct link to the retail areas and new library on Walworth Road; and for the purposes of affixing apparatus to the sides and undersides of the railway viaduct, and the installation of revised front and rear elevations for the premises at 4 and 5 Farrell Court in so far as the same are or will be affixed to the sides and undersides of the railway viaduct, and to install and attach the proposed sound mitigation lobby to the viaduct structure;

- 4.5.5 the railway viaduct structure abutments next to the relevant railway arch premises (see for example, parcels 23, 24 , 26 and 27, etc) for the same reasons as referred to at paragraphs 4.5.1 and 4.5.4 above);
- 4.5.6 a very small piece of unregistered land (parcel 12) adjacent to the Metropolitan Tabernacle and part of the Metropolitan Tabernacle (parcel 13), for entry onto the land and works required to de-couple the current LCC building from the northern façade of the Tabernacle, and carrying out any consequential amendments to that façade as a result, to erect scaffolding over that land (and to manage access thereto) whilst demolition on the adjacent LCC Site takes place, and to oversail a crane over these parcels and a further part of the Tabernacle site (parcel 14). A right of entry is also sought in respect of parcel 14 to facilitate the installation and removal of scaffolding on parcels 12 and 13;
- 4.5.7 a small part of The Castle Centre (leisure centre) to the south of the LCC Site, part of the grounds of Perronet House to the north of the LCC Site, and parts of highways adjoining the LCC Site being Elephant and Castle, St George's Road, Oswin Street, and Brook Drive, and the entirety of Pastor Street, in each case for crane oversailing. These crane oversail areas are shown as parcels 1, 5-11 (inclusive) and 16-20 (inclusive) on the Order Map.

### **The Order Map & Schedule**

- 4.6 The Order Map identifies the Order Land and within it the Pink Land and Blue Land. Individual parcel boundaries and numbers on the Order Map correspond with the Schedule. Sheet 1 of 2 of the Order Map identifies areas of the Order Land to the west of Elephant and Castle highway and Sheet 2 of 2 of the Order Map identifies areas of the Order Land to the east of Elephant and Castle highway. The Location Plan for the Order Map (though not forming part of the Order Map itself) shows the wider site context.
- 4.7 As well as owners, lessees, tenants and occupiers, the Schedule also lists other parties who may have a qualifying interest in the Order Land where known after reasonable enquiry. Section 12(2A) of the Acquisition of Land Act 1981 identifies that a "qualifying person" in relation to a CPO is "a person the acquiring authority thinks is likely to be entitled to make a relevant claim if the Order is confirmed and the compulsory purchase takes place". Section 12(2B) provides that a "relevant claim" is a claim for compensation under section 10 of the Compulsory Purchase Act 1965. Such claims can include claims for interference with rights held over a site that is the subject of a CPO. Table 2 of the Schedule includes any potential entries that the Council is aware of in this regard in respect of the Order Land. It is not considered that Arch Co have any title to the railway viaduct structure itself (that being owned by Network Rail) but for the avoidance of any doubt Arch Co are listed as a lessee in

relation to that structure in Table 1 of the Schedule. Similarly some of the occupiers of 7 Farrell Court are listed as tenants even though the Council has not seen any tenancy documents in respect of their occupation.

- 4.8** The Schedule has been based on information gathered through Land Registry documents, site inspections and enquiries and responses to notices issued under section 16 of the Local Government (Miscellaneous Provisions) Act 1976. The Council is satisfied that it has undertaken all reasonable enquiries to ensure that the Schedule is as accurate as possible.

#### **Location and topographical features of the Order Land**

- 4.9** The Order Land is located right in the heart of Elephant and Castle town centre. The area includes a complex road junction system, which forms part of the London Inner Ring Road, with the convergence of Walworth Road (A215), Elephant and Castle (the A3), New Kent Road (A201) and St George's Road (A302). The Order Land falls either side of the Elephant and Castle road. Essentially the Shopping Centre Site (and its immediate surroundings) and the LCC Site occupy two individual sites in prominent positions, opposite each other across Elephant and Castle, with the Shopping Centre Site (and its immediate surroundings) being immediately east of Elephant and Castle, and the LCC Site being immediately west of Elephant and Castle.
- 4.10** As can be seen on Sheet 1 of 2 of the Order Map, the Order Land is bounded by (and includes part of) Elephant and Castle on its western side (i.e. adjacent to the LCC Site). Elephant and Castle is administered by TfL as highway authority.
- 4.11** Adjacent to the LCC Site, the Order Land is bounded to the north by (and includes part of) St George's Road. St George's Road is administered by TfL as highway authority.
- 4.12** Adjacent to the LCC Site, the Order Land is bounded to the west by (and includes part of) Oswin Street, administered by the Council as highway authority.
- 4.13** Also adjacent to the LCC Site, the Order Land is bounded to the south by (and includes part of) Brook Drive and to the south/south east by (and includes) Pastor Street, both of which are administered by the Council as highway authority. Immediately south of part of the LCC Site, fronting Elephant and Castle, is the Metropolitan Tabernacle. The Order Land extends over part of the Metropolitan Tabernacle, the grounds of Perronet House and The Castle Centre for the reasons at paragraphs 4.5.6 - 4.5.7 above.
- 4.14** The Order Land on Sheet 2 of 2 of the Order Map is bounded to the west and north by the Shopping Centre Site and 26-32 New Kent Road (including the site of the former Charlie Chaplin pub and the former Coronet Theatre). These are owned by EC and currently form a construction site.
- 4.15** The railway arch units which are intended to be acquired under the Order are bounded to the north and south by other railway arch units.

- 4.16** The Order Land on Sheet 2 of 2 is bounded to the east by Elephant Road. Elephant Road is administered by the Council as highway authority. To the east of the Order Land is Porchester House and the other parts of the Elephant Central development at 50 New Kent Road, and Castle Square which houses temporary retail units. To the south of the Order Land is Walworth Road, which is administered by TfL as highway authority and by the Council as highway authority to the south and east of the railway viaduct.

### **Uses of the Order Land**

- 4.17** The railway arch premises at Farrell Court are in a variety of commercial uses, with 4 and 5 Farrell Court being used as a nightclub; 6 Farrell Court is used as retail/café/restaurant; 7 Farrell Court is used for a variety of uses comprising retail, café, hair and beauty salons, logistics, legal office, office and a money transfer service. The arch units 113A and 120 and 113B and 121 were formerly used for access to the Shopping Centre Site and the rear of the former Coronet Theatre and are currently being used as site access gates to the construction site. The corridor of land to the immediate west of the railway viaduct comprises areas of hardstanding and structures at the rear of the railway arch units and the railway station, with an area immediately to the west of 4 and 5 Farrell Court being used by Corsica as an ad hoc covered external smoking area and store for cloaks. The Metropolitan Tabernacle is used as a church. The Castle Centre is used as a leisure centre. The grounds of Perronet House are used for access to the retail/café restaurant uses at ground floor of that building and the residential uses above it. Some parcels form vacant hardstanding and other parcels are in public highway use.

## **5. RELEVANT PLANNING POLICY**

- 5.1** The Guidance (paragraph 95) makes clear that acquiring authorities may use compulsory purchase powers to assemble land where necessary to implement proposals in the Local Plan. The Order is necessary to implement and complete the Scheme as a whole. There is considerable policy support for the Scheme at all levels i.e. local, London and national level and, indeed, for specific elements of the Scheme which the Order would facilitate.

### **National Planning Policy Framework**

- 5.2** The NPPF is a material consideration in planning applications. It sets out the Government's strong commitment to delivering sustainable development. It advises that there are three elements to sustainable development; economic, social and environmental. Sustainable development is the principal theme underpinning both London-wide and Southwark Plan policies, where the regeneration of areas such as the Elephant and Castle is of high priority.
- 5.3** Paragraph 60 of the NPPF sets out the Government's overarching objective of significantly boosting the supply of homes, whilst paragraph 86 of the NPPF states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

- 5.4 Paragraph 90 of the NPPF acknowledges the important role that town centres play at the heart of local communities and requires planning policies to define a network and hierarchy of town centres and promote their long-term vitality and viability by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries, allows a suitable mix of uses, including housing and reflects their distinctive characters.
- 5.5 Paragraph 96 of the NPPF provides that planning policies and decisions should aim to achieve healthy, inclusive and safe places and beautiful buildings which (a) promote social interaction for example through street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontages, (b) are safe and accessible, for example through the use of attractive, well-designed, clear and legible pedestrian and cycle routes, which encourage the active and continual use of public areas; and (c) enable and support healthy lifestyles – for example through the provision of safe and accessible green infrastructure and layouts that encourage walking and cycling.
- 5.6 With regards to public realm and pedestrian connectivity, paragraph 116 of the NPPF seeks to ensure that development gives priority first to pedestrian and cycle movements and create places that are safe, secure and attractive which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards.
- 5.7 At paragraph 123, the NPPF states that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
- 5.8 Paragraph 125 of the NPPF recognises that local planning authorities should take a proactive role in identifying and bringing forward land that may be suitable for development needs, using the full range of powers available to them. This includes identifying opportunities for land assembly, supported where necessary by compulsory purchase powers, where this can help to bring more land forward for meeting development needs and/or secure better development outcomes.
- 5.9 Paragraph 193 of the NPPF provides that planning decisions and policies should ensure that new development is integrated effectively with existing businesses and community facilities, which should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or facility could have a significant adverse effect on new development in its vicinity, the applicant (or "agent of change") should be required to provide suitable mitigation before the development has completed.

### **London Plan**

- 5.10 The London Plan was adopted on 2 March 2021. It supports the continued growth of London, focussing the development of new homes and jobs within identified Opportunity Areas, being *"significant locations with development capacity to*

*accommodate new housing, commercial development and infrastructure (of all types), linked to existing or potential improvements to public transport connectivity and capacity...[they] typically contain capacity for at least 5,000 net additional jobs or 2,500 net additional new homes or a combination of the two" (paragraph 2.1.1).*

- 5.11** The Scheme Land falls within the allocated Elephant and Castle Opportunity Area, which has the potential for 5,000 new homes and 10,000 new jobs. Policy SD1 of the London Plan seeks to ensure that Opportunity Areas fully realise their growth and regeneration potential, and inter alia, promotes agencies working together to promote and champion Opportunity Areas and identify those that require public investment and intervention to achieve their growth potential.
- 5.12** The Central Activities Zone ("CAZ") and the network of Town Centres are identified as the primary locations for commercial activity in the capital. The Scheme Land sits within the CAZ, the strategic priorities and functions for which are set out in Policy SD4 of the London Plan; this includes promoting and enhancing the roles of the CAZ based on an agglomeration and rich mix of strategic functions and local uses.
- 5.13** The Scheme Land is also allocated within the Elephant and Castle Town Centre, which is defined as a Major Town Centre in the London Plan, with medium commercial growth potential and high residential growth potential. Policy SD6 seeks to promote and enhance the vitality and viability of London's varied town centres, by inter alia encouraging strong, resilient, accessible and inclusive hubs with a diverse range of uses including main town centre uses, night time economy, civic, community, social and residential uses.
- 5.14** Elephant and Castle is classified as an NT2 in the night-time economy classification. The town centre is of regional or sub-regional significance with regard to the night-time economy, which attracts visitors from across and beyond London and tend to feature smaller venues and premises.
- 5.15** The Scheme Land sits within London transportation zone 1 and has a Public Transport Accessibility Level rating of 6b (excellent). Elephant and Castle sits in the background of townscape view 23A.1 looking from the Serpentine Bridge in Hyde Park to Westminster (London View Management Framework 2012).
- 5.16** A summary of the London Plan planning policies relevant to the Scheme is provided below:
- GG1 (Building strong and inclusive communities) requires those involved in planning and development to (among other things): seek to ensure changes to the physical environment to achieve an overall positive contribution to London; provide access to good quality community spaces and infrastructure that accommodate, encourage and strengthen communities, increasing active participation and social integration; ensure that streets and public spaces are consistently planned for people to move around and spend time in comfort and safety; ensure that new buildings and the spaces they create are designed to reinforce or enhance the identity, legibility, permeability and inclusivity of neighbourhoods; and support and promote the creation of a London where all

Londoners, including those with protected characteristics, can move around with ease.

- GG2 (Making the best use of land) states that those involved in planning and development must (among other things): enable the development of brownfield land, particularly in Opportunity Areas; and plan for good local walking, cycling and public transport connections to support a strategic target of 80% of all journeys using sustainable travel, enabling car free lifestyles that allow an efficient use of land, as well as using new and enhanced public transport links to unlock growth.
- Policy SD1 (Opportunity Areas) seeks to ensure that Opportunity Areas fully realise their growth and regeneration potential.
- Policy SD4 (The Central Activities Zone) requires promotion and enhancement of the unique international, national and London-wide roles of the CAZ, based on an agglomeration and rich mix of strategic functions and local uses.
- Policy SD6 (Town centres and high streets) requires the vitality and viability of London's varied town centres to be promoted and enhanced through appropriate town centre development.
- Policy D2 (Infrastructure requirements for sustainable densities) states that the density of development proposals should consider the provision of future planned levels of infrastructure rather than existing levels, and be proportionate to the site's connectivity and accessibility by walking, cycling, and public transport to jobs and services.
- Policy D3 (Optimising site capacity through the design-led approach) promotes the Mayor's ambitions for a design-led approach, where all development must make the best use of land by following a design-led approach that optimises the capacity of sites, including site allocations.
- Policy D6 (Housing quality and standards) requires housing development to be of high quality design and provide adequately-sized rooms with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners without differentiating between tenures.
- Policy D8 (Public realm) states that development should ensure that public realm is well-designed, safe, accessible, inclusive, attractive, well-connected, related to the local and historic context, and easy to understand, service and maintain. In particular, they should demonstrate an understanding of how people use the public realm, and the types, location and relationship between public spaces in an area, identifying where there are deficits for certain activities, or barriers to movement that create severance for pedestrians and cyclists. Desire lines for people walking and cycling should be a particular focus, including the placement of street crossings, which should be regular, convenient and accessible.

- Policy D9 (Tall buildings) sets out the design criteria which all tall building proposals should meet, and requires Boroughs to determine if there are locations where tall buildings may be an appropriate form of development.
- Policy D13 (The Agent of Change) places the responsibility for mitigating impacts from existing noise emitting activities or uses on the proposed new noise-sensitive development. This means that the responsibility for mitigating the impact of noise is on the proposer of e.g. the new residential development. As a consequence, the developer of residential units close to a noise emitting activity (such as a music venue like Corsica) may need to design them in a more sensitive way to protect the new occupiers from noise impacts and/or to pay for soundproofing of the existing music venue.
- Policy H1 (Increasing housing supply) seeks to optimise the potential for housing delivery on all suitable and available brownfield sites.
- Policy H4 (Delivering affordable housing) requires major developments which trigger affordable housing requirements to provide affordable housing in line with the relevant policy thresholds.
- Policy S1 (Developing London's social infrastructure) states that boroughs should ensure the social infrastructure needs of London's diverse communities are met, informed by a needs assessment of social infrastructure.
- Policy E1 (Offices) supports improvements to the quality, flexibility and adaptability of office space of different sizes (for micro, small, medium-sized and larger enterprises) through new office provision, refurbishment and mixed-use development.
- Policy E9 (Retail, markets and hot food takeaways) supports a successful, competitive and diverse retail sector, which promotes sustainable access to goods and services for all Londoners, should be supported in line with the wider objectives of the London Plan, particularly for town centres.
- Policy HC1 (Heritage conservation and growth) states that development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings.
- HC6 (supporting the night-time economy) states that the night-time economy should be promoted, where appropriate, particularly in the CAZ, strategic areas of night-time activity, and town centres where public transport such as the Night Tube and Night Buses are available. The policy seeks to protect and support evening and night-time cultural venues such as pubs, night clubs, theatres, cinemas, music and other arts venues.
- Policy T1 (Strategic approach to transport) requires Development Plans to support, and development proposals to facilitate the delivery of the Mayor's strategic target of 80% of all trips in London to be made by foot, cycle or



public transport by 2041, requiring all development to make the most effective use of land, reflecting its connectivity and accessibility by existing and future public transport, walking and cycling routes, and ensure that any impacts on London's transport networks and supporting infrastructure are mitigated.

- Policy T2 (Healthy Streets) states that development proposals should deliver patterns of land use that facilitate residents making shorter, regular trips by walking or cycling. Part D of the policy states that development proposals should be permeable by foot and cycle and connect to local walking and cycling networks as well as public transport.

## **Southwark Plan 2022**

- 5.17** At borough level, the Southwark Plan notes that Elephant and Castle has the potential to provide significant amounts of new offices, shops, leisure and cultural uses, university facilities, parks, homes and a community health hub. The site allocations in Elephant and Castle (inclusive of the Elephant Park development) will deliver around 135,000 sq m offices and employment workspace, 37,000 sq m retail, community and leisure floorspace and around 2,369 homes (Policy ST2). Policy ST1 provides the targets for the distribution of jobs, which for the Elephant and Castle Opportunity Area is 10,000. 10,000 sq m of net new retail floorspace is also a target within the Elephant and Castle Major Town Centre.
- 5.18** Policy AV.09 requires development in the area to support the area's function as a major town centre for all Southwark residents and a central London location that attracts global business, research, teaching, shopping, flexible business spaces and cultural activities. It sets out the vision for Elephant and Castle Area, which is to provide an attractive destination for visitors with a strong daytime and night-time economy which provides a range of cultural and entertainment spaces alongside a lively and diverse retail environment for local residents. It states that development in this location should (among other things) provide: opportunities for existing small businesses to relocate and continue trading; for the creation of open spaces and quality public realm to provide greenery, safety and connectivity; new transport infrastructure links with the surrounding areas by providing safe and accessible walking routes.
- 5.19** Site allocation NSP48 comprises the Shopping Centre Site and the immediate buildings around it on New Kent Road, and the railway arches along Elephant Road, and the LCC Site. The allocation identifies an indicative capacity for 977 new homes, and the site requirements include employment uses (identified as Class E(g)(i)) and F1(a) education space, in each case to at least an equivalent amount to what was on the site. The allocation also supports new homes, civic space, public realm enhancements including along the railway viaduct, a new tube station entrance, and high quality active frontages. The site allocation also advises that a new community health hub may be provided. The site designation plan shows two improved pedestrian connectivity routes: one linking the Elephant and Castle peninsula and Underground station with the railway station and out onto Elephant Road, and the other providing a link from Elephant Road through arches to the south of the railway

station into the East Site and beyond, towards the open space of St Mary's Churchyard Newington.

**5.20** Design and accessibility guidance provided in NSP48 states that the allocation site represents one of the most significant growth opportunities in Southwark, taking advantage of the site's potential to deliver a comprehensive mixed-use development in this highly accessible location, with substantial areas of landscaping and high quality public realm enhancements. Redevelopment should enhance the connectivity to the existing cycle network and walking routes, improving the accessibility to the bus, tube and station interchange and enable the Low Line walking route along the railway viaduct.

**5.21** A summary of the other Southwark Plan 2022 planning policies relevant to the Scheme is provided below:

- Policy SP1 (Homes for all) sets out the Council's target to deliver at least 40,035 homes between 2019 and 2036 (2,355 new homes per annum).
- Policy SP4 (A green and inclusive economy) states that the Council will target the delivery of at least 460,000 sq m of new office space between 2019 and 2036 (equating to around 35,500 jobs), with around 80% of new offices delivered in the CAZ.
- Policy P1 (Social rented and intermediate housing) requires development that creates 10 or more homes to provide the maximum viable amount of social rented and intermediate homes.
- Policy P13 (Design of places) seek to ensure height, scale, massing and arrangement respond positively to the existing townscape, character and context, and better reveal local distinctiveness and architectural character.
- Policy P14 (Design quality) requires development to provide high standards of design, innovative design solutions that are specific to the site's historic context, topography and constraints, and adequate daylight, sunlight and outlook for new and existing residents.
- Policy P15 (Residential Design) states that development must achieve an exemplary standard of residential design.
- Policy P17 (Tall buildings) identifies areas where the Council expect tall buildings, which is typically within Major Town Centres, Opportunity Area Cores, Action Area Cores and the Central Activities Zone.
- Policy P18 (Efficient use of land) states that development will be permitted that optimises land use and does not unreasonably compromise development potential or legitimate activities on neighbouring sites.
- Policy P27 (Education places) supports development of educational facilities where proposals provide further education places to meet identified needs.

- Policy P30 (Office and business development) requires development to promote the successful integration of homes and employment space in physical layout and servicing in areas that will accommodate mixed use development.
- Policy P33 (Business relocation) provides that where existing small or independent businesses or small shops may be displaced by development, a business relocation strategy, written in consultation with affected businesses, must be provided. The strategy must set out viable relocation options.
- Policy P34 (railway arches) supports commercial or community uses in railway arches.
- Policy P35 (Town and local centres) states that town centres should be the main focus for new developments providing new shops, education, healthcare and community facilities, offices and workspaces, leisure facilities and entertainment venues. This includes encouraging a diverse night-time economy with a range of appropriate activities throughout the evening and night-time.
- Policy P46 (Leisure, arts and culture) seeks to ensure development retains or re-provides existing leisure, arts and cultural uses.
- Policy P49 (Public transport) requires development to demonstrate that the public transport network has sufficient capacity to support any increase in the number of journeys by the users of the development, whilst improving accessibility to public transport by creating and improving walking and cycling connections to public transport stops or stations.
- Policy P51 (Walking) states that development must enhance the borough's walking networks by providing footways, routes and public realm that enable access through development sites and adjoining areas.

### **2012 Elephant and Castle Supplementary Planning Document ("2012 SPD")**

**5.22** The 2012 SPD previously provided a framework to guide development in the area until 2027. It was replaced by the Southwark Plan 2022 and so is no longer extant policy, but it is referred to here for context and to further emphasise what have been long term planning policy objectives of the Council and how the Scheme fits those objectives. Under the 2012 SPD, the Elephant & Castle Opportunity Area was divided into character areas and the Shopping Centre Site and the LCC Site formed part of the central character area. The strategy for this area was to:

- Use development opportunities to redevelop or remodel the shopping centre and expand its appeal to a larger catchment.
- Provide a range of unit sizes and affordable retail units which are made available to existing occupiers displaced by development from across the opportunity area.

- Provide a range of arts, cultural, leisure and entertainment uses, including food and drink uses which make a positive contribution to the evening economy.
- Support the growth of the LCC.
- Strengthen links between the shopping centre and Walworth Road ensuring that it becomes a key shopping axis.
- Require developments to be mixed use and introduce active uses at ground level wherever possible.
- Ensure that development opportunities provide opportunities for existing and future small and medium sized businesses.
- Transform leisure opportunities by building a new leisure centre.
- Make significant improvements to the interchange between buses, tube and rail and increase capacity in the Northern Line station.
- Replace subways with surface level crossings.
- Improve east-west pedestrian connections by providing direct links through the shopping centre site and railway viaduct.
- Take opportunities to activate and soften key public spaces around the central area and provide a new civic space at the front of the shopping centre.
- Ensure all development and public realm enhancements are of the highest quality to provide a positive perception of the area.
- Use tall buildings to signal the regeneration of the area, help define gateways into the central area and create an interesting skyline.
- Comprise potential sites for tall buildings include the shopping centre and leisure centre sites. However, they must not detract from heritage assets, including the view of the Palace of Westminster from the Serpentine Bridge.
- Provide the potential to link key sites, including the shopping centre and leisure centre, within a district CHP/communal heating network.

**5.23** With regard to land use, guidance note SPD21 advised that a redevelopment/remodelling of the Shopping Centre would be supported. Proposals for the Shopping Centre should:

- Support the objective of consolidating the Elephant and Castle as a major town centre.
- Improve the retail offer by providing a range of types of retail, including comparison goods floorspace.

- Provide a range of unit sizes and affordable retail units which are made available to existing occupiers displaced by development.
- Increase the number of employment opportunities on the site and ensure that there is no net loss of non-residential floorspace.
- Provide a range of arts, cultural, leisure and entertainment uses, including food and drink uses which make a positive contribution to the evening economy.
- Introduce residential use as part of mixed-use development where feasible.
- Provide space for an increase in the capacity of the Northern Line ticket hall.

**5.24** SPD 6 stated that proposals involving arts, cultural, leisure and entertainment uses which contribute towards consolidating Elephant and Castle and Walworth Road as a major town centre will be supported. Paragraph 4.3.5 of the supporting text acknowledged that the development of the evening and night-time economy in the area will help keep the town centre lively and safe at different times of the day and provide more leisure opportunities for local people, visitors and people working in the area.

**5.25** Regarding public realm and connectivity, SPD 11 required development to provide convenient, direct, safe, and attractive pedestrian and cycle links which follow desire lines, whilst facilitating east-west pedestrian and cycle movement through the opportunity area and reducing severance created by the railway viaducts and main roads.

### **Conclusion on planning policy**

**5.26** All levels of planning policy strongly support a high density, mixed use development on the Scheme Land, which comprises a large, brownfield site. The comprehensive redevelopment of the Scheme Land for new and improved retail, leisure, education, community facilities and employment space, which contribute to the daytime and night-time economy, alongside high quality new homes, as comprised in the Scheme, is supported by planning policy at all levels. In addition, there is clear policy support for the delivery of high-quality public realm improvements and the creation of permeable pedestrian and cycle routes within the town centre which enhance pedestrian experience and connectivity. It can be seen that there is specific planning policy support not just for the Scheme as a whole but also for the creation of the Park Route, pedestrian connectivity, connectivity between public transport nodes, public realm improvements and protecting the night-time economy (in relation to the improvements to the nightclub). The Scheme will also provide relocation opportunities for the occupiers of 7 Farrell Court, at arch Units 113B and 121, and for the tenant of 6 Farrell Court either in arch Units 113A and 120 or in a new unit elsewhere within the Scheme fronting Walworth Road, in line with policy to enable existing small businesses to relocate and continue trading. The proposal to bring the otherwise vacant arches to the north of the railway station into beneficial use is also in line with policy to utilise railway arch space for commercial purposes. All of these important aspects will be facilitated by the Order.

## 6. PROPOSALS FOR THE USE OR DEVELOPMENT OF THE LAND - THE SCHEME

### Planning Position

- 6.1** The 2019 Permission permits the *"phased, mixed use redevelopment of the existing Elephant and Castle shopping centre and London College of Communication sites comprising the demolition of all existing buildings and structures and redevelopment to comprise buildings ranging in height from single storey to 35 storeys (with a maximum building height of 124.5m AOD) above multi-level and single basements, to provide a range of uses including 979 residential units (use class C3), retail (use class A1-A4), office (use class B1), Education (use class D1), assembly and leisure (use class D2) and a new station entrance and station box for use as a London Underground operational railway station; means of access, public realm and landscaping works, parking and cycle storage provision, plant and servicing areas, and a range of other associated and ancillary works and structures"*. The approved drawings for the 2019 Permission clearly show that the proposed works extend beyond the Shopping Centre and the LCC Site.
- 6.2** The listed building consent dated 10 January 2019 permits *"minor amendments to the northern elevation of the grade II listed Metropolitan Tabernacle building by virtue of the demolition of the immediately adjacent/abutting London College of Communications building (subject to planning application reference: 16-AP-4458)"*. This consent has not been implemented yet – it will be necessary to implement it once the redevelopment begins on the LCC Site. It has a 10 year time limit for beginning work.
- 6.3** The March 2021 Permission permits *"minor material amendment under [section 73 of the 1990 Act] to vary condition 1 (approved drawings) of the [2019 Permission]...comprising the enlargement and reconfiguration of the consented station box, including the provision of an additional basement level and minor elevational changes to the station entrance to: enable the new station entrance to serve as the single point of entry/exit for both Northern and Bakerloo lines in the future; facilitate future connection with the Bakerloo line platforms from the ticket hall, through the provision of space for three additional escalators; provide simpler step free access routes between the ticket hall and the Northern line platforms; provide an extension to the firefighters' lift shaft to the Bakerloo line connection level; and secure revisions to retain access to an existing London Underground ventilation shaft"*.
- 6.4** On 8 April 2021, a non-material amendment approval (reference 21/AP/1064) to the March 2021 Permission was granted. This simplified the description of development, removing references to building heights and unit numbers. The amended description of development permitted was *"phased, mixed use redevelopment of the existing Elephant and Castle shopping centre and London College of Communication sites comprising the demolition of all existing buildings and structures and redevelopment to comprise buildings ranging in height from single storey to 35 storeys above multi-level and single basements, to provide a range of uses including residential (use class C3), retail (use class A1-A4), office (use class B1), education (use class D1), assembly and leisure (use class D2) and a new station entrance and station box for*

*use as a London Underground operational railway station; means of access, public realm and landscaping works, parking and cycle storage provision, plant and servicing areas, and a range of other associated and ancillary works and structures".*

- 6.5** The July 2021 Permission permits "*minor material amendments to [the March 2021 Permission]*". The substantive amendments permitted can be summarised as follows: amendment to condition 1 (approved plans) to secure the following changes:

Amendments to the office, leisure, retail, and educational floorspace areas,

Amendments to the residential unit mix and quantum

Alterations to the residential communal amenity space, minor alterations to the building heights, elevations and positioning

Alterations to pedestrian routes and walkways and associated ancillary works

Deletion of Conditions 27 (Western Viaduct Boundary) and 48 (External Noise Levels in Private Amenity Areas)

Amendments to conditions 19 (Detailed Construction Drawings East Site) 20 (Detailed Construction Drawings Education Building), 26 (Basement Access Detailed Design), 29 (Public Toilets), 31 (Landscaping Scheme), 45 (Sound Insulation: Education Building), 51 (A3/A4 Opening Hours) and 54 (Wind Microclimate) to amend the trigger for submitting information for conditions 19, 20, 26 and 31, to change condition 29 to a compliance condition under condition 54 (now condition 31), to increase the consented opening hours under condition 51, and to amend wind speed levels (it is now condition 50).

- 6.6** Discharge of pre-demolition conditions pursuant to the 2019 Permission took place and demolition on the Shopping Centre Site and 26-32 New Kent Road began pursuant to the 2019 Permission in January 2021. Further discharge of conditions, and the applicable section 106 obligations, continues.

- 6.7** On 29 October 2020, EC and the Council agreed a variation to paragraph 1.3 of Part 7 of Schedule 2 of the section 106 agreement, so that EC would be allowed to demolish the then existing buildings on the Shopping Centre Site without first entering into a development agreement ("**DA**") with LUL. The requirement to enter into the DA with LUL was left in place in the section 106 agreement but was relaxed so that demolition could take place beforehand. EC was to use reasonable endeavours to enter into the DA with LUL within 6 months of beginning demolition, but if the DA was not exchanged by that time EC was still permitted to undertake demolition works. This variation of the section 106 agreement meant that no "Implementation" of the Scheme (i.e. works of piling or other substantive construction works) could take place pursuant to the section 106 agreement until the DA with LUL was in place, and that the DA had to contain (among other items) a requirement on LUL to enter into a further section 106 obligation, prior to Implementation, as to the fit-out of the station box and an agreed programme for the phasing and completion of the station box works.

- 6.8** On 7 May 2021 the Council received an application from EC (reference 21/AP/1581), supported by TfL, to further amend the section 106 agreement to remove the requirements for details of the timescales for the fit out and opening of the station box to be provided in the DA. TfL advised in writing that owing to the long term funding uncertainty that TfL faces as a result of the global pandemic, which has had a significant impact on TfL revenues, TfL/LUL were unable to enter into a binding commitment to fund of the fit-out (and consequently the opening) of the station box. That means that the DA could not be entered into, which would mean that Implementation of the Scheme could not take place once demolition had finished. EC therefore requested, with TfL support, that the terms which LUL could not commit to at this stage were removed from the section 106 agreement, thus enabling the DA to be entered into and EC to proceed with works beyond demolition.
- 6.9** That request was carefully considered by the Council, which concluded that: the changes remove the certainty as to the fitting out and opening of the new station box; there is no guarantee that LUL will have the necessary funds in the future; it is possible that the entire site could be occupied without the new station box being opened, and if that happened it is likely that access to the existing underground station would need to be managed more frequently; whilst the delivery of the new station box was a factor in the grant of planning permission, EC has no control over LUL funding; if the Scheme cannot be Implemented that will lead to a vacant site at the heart of the town centre, which would not bring the various other benefits of the Scheme; TfL/LUL do have funding for the enlarged station box (but not fit-out) and connecting tunnels; and when all of these factors are considered in the round, including the unprecedented situation that LUL finds itself in due to the pandemic, the amendment to the section 106 agreement was acceptable. The deed of variation to implement these changes was agreed on 29 June 2021. Though the current position with TfL funding as a result of the pandemic means TfL is not currently in a position to enter into a binding commitment to undertake the fit out of the station box, the Scheme will deliver the enlarged station box and it is very unlikely that, with the new box in existence, TfL/LUL will not fund its fitting out within a reasonable timescale, i.e. the fitting out may at worst be delayed but not lost. All parties are still working towards the provision of the new station box and EC and TfL/LUL have entered into the DA as envisaged.
- 6.10** LUL obtained planning permission 20/AP/0681 on 29 July 2020 for *"the construction of tunnelled connections to the existing Northern Line platforms from a new station box for the Elephant and Castle London Underground Northern Line Station"*, thereby authorising those works. It is envisaged that these works will be undertaken when the completed LUL station box is handed over to LUL, which is scheduled to be in February 2025.
- 6.11** Further non-material amendment approvals in respect of the July 2021 Permission have been granted on 2 December 2021 (reference 21/AP/3848), 4 February 2022 (references 21/AP/4180 and 22/AP/0109) and on 1 June 2022 (reference 22/AP/1090). At the time of writing a further non-material amendment application (reference 23/AP/2759) is being considered by the Council for basement layout amendments, relocation of residential cycle stores and amendments to proposed tree locations and quantum.



**6.12** On 10 June 2022, the Council granted planning permission (reference 21/AP/4628) for the installation of underground heating pipework and associated works, to run from 50 New Kent Road to the East Site under Elephant Road and the railway station. The proposed connection will enable the East Site to benefit from heating produced at the 50 New Kent Road site.

**6.13** Accordingly, save as set out in paragraph 12.3-12.4 below, planning permission exists for the Scheme.

#### **The Scheme-overview**

**6.14** Having begun demolition work under the 2019 Permission, EC has begun the substantive construction of the Scheme on the Shopping Centre Site under the July 2021 Permission. Work there is well underway. The description of the Scheme in the remainder of this section incorporates the minor amendments that are authorised through the July 2021 Permission (which include the amendments to the 2019 Permission secured by the March 2021 permission) and the non-material amendment approvals granted in respect of the July 2021 Permission to date (excluding the current application 23/AP/2759).

**6.15** The 2019 Permission pre-dates the changes to the Use Classes Order and introduction of the new Use Class E. As such, the former use classes continue to apply to the uses permitted under that permission and the March and July 2021 Permissions. The July 2021 Permission (as amended by the non-material amendment approvals, excluding the current application 23/AP/2759) comprises a total of 196,675 sq.m. (GIA) of floorspace:

<b>Use</b>	<b>Consented Floorspace (sq m, GIA)</b>
A1-A4 Retail, cafes/restaurants	18,210
B1 Business	7,019
C3 residential	104,438
D1 non-residential institutions (education)	43,870
D2 Assembly and Leisure	6,462
Sui Generis London Underground use	9,046
Shared plant floorspace	3,275
Shared circulation floorspace	3,793
Basement ramp	562

Use	Consented Floorspace (sq m, GIA)
<b>Total</b>	<b>196,675</b>

**6.16** The changes proposed by application 23/AP/2759 are on the East Site and would result in an overall small increase in the total GIA floorspace permitted by the July 2021 Permission to 196,743 sq m.. The application proposes small increases in the residential, D1 and D2 floorspace and a small decrease in the A1-A4 floorspace on the East Site, with a reduction in the London Underground floorspace to 7,708 sq m.

**6.17** The Scheme includes the demolition of all existing buildings on the Shopping Centre Site and 26-32 New Kent Road, and (once the new station box is ready and operational) the current London Underground Northern Line station. A new LCC campus building will be provided on the East Site and once that is complete, UAL will move into the new LCC campus building on the East Site, allowing the demolition of the existing LCC buildings on the West Site and their replacement by new buildings.

**6.18** In broad terms, the redevelopment under the July 2021 Permission includes:

- new retail (including affordable space);
- new leisure facilities, including a multi-screen cinema;
- a new cultural venue;
- 983 high quality new residential flats (with 35% affordable housing provision by habitable room, including 119 flats at social rent levels);
- new offices (including affordable workspace);
- a new London Underground station box and entrance on the East Site, to replace the current Northern Line station adjacent to the Shopping Centre. The new station box will allow for an enlarged ticket hall, to accommodate the Northern Line and with capacity to house the Bakerloo Line too, thereby facilitating the London Plan's aim of extending the Bakerloo Line from Elephant and Castle to Lewisham;
- a new modern campus building for the LCC on the East Site, to replace its current outdated buildings on the West Site;
- the Park Route, a new pedestrianised route from Elephant Road into the heart of the new development, through some of the railway viaduct arches to the south of the railway station, thereby improving the connectivity of the new centre with Elephant Park to the east;
- significant improvements in public realm.

- 6.19** On the East Site, the consented development is laid out as four plots, E1 to E4, which would be set around a new public realm square at the centre of the site described as "The Court". There would be two new public realm routes leading to The Court: the Station Route, which would connect the peninsula with The Court and Elephant and Castle railway station; and the Park Route, which would connect Elephant and Castle with The Court and beyond through what are currently the railway arch premises 6 and 7 Farrell Court, which would be knocked through to create a new connection from the site to Elephant Road and the new Elephant Park beyond, with a small retail kiosk unit also being provided in one of the arches.
- 6.20** A third route would be created on the southern part of the site, connecting Walworth Road with The Court, running parallel with the railway viaduct. The plots would sit above a large servicing basement, with a new vehicular access from New Kent Road. Plot E1 includes the new campus building for the LCC and the new station box and ticket hall. There would be three residential towers on the East Site, in plots E2 and E3.
- 6.21** Under the July 2021 Permission (as amended), the East Site comprises buildings ranging from 4-32 storeys, providing 485 new residential units, 14,248 sq m GIA A1-4 retail floorspace, 7,019 sq m GIA B1 business floorspace, 43,870 sq m D1 educational institution floorspace, to be occupied by LCC, and 3,614 sq m D2 leisure floorspace.<sup>2</sup>
- 6.22** Further development within some railway arch units, beyond that consented by the July 2021 Permission, is also proposed.
- 6.23** First, the redevelopment of two arches to the north of the railway station (units 113A and 120 and 113B and 121) to provide relocation premises for Beset and their occupiers, and potentially DistriAndina should they wish to move there, and otherwise for retail/café uses. The creation of the Park Route in 6-7 Farrell Court would lead to the displacement of these tenants and occupiers. As explained further in Section 7, to mitigate adverse impacts on these tenants and occupiers, the Council and EC propose to redevelop these northern arches to create relocation opportunities. (DistriAndina has also been offered an alternative relocation opportunity to relocate to a new unit elsewhere within the Scheme, fronting Walworth Road.) To do this the Council needs to exercise powers of acquisition both in respect of title and in the creation of new rights.
- 6.24** Second, the carrying out of works to create the sound mitigation lobby to the immediate west of 4 and 5 Farrell Court and to make internal and external alterations to 4 and 5 Farrell Court. A new lease of the unified area with its improvements is to be offered to Corsica.
- 6.25** A plan showing indicatively the locations of these railway arch units and briefly describing the proposals for them is at **Annex 3**.

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<sup>2</sup> These figures will be adjusted slightly if application 23/AP/2759 is granted.

- 6.26** On the West Site, the consented development is laid out as three plots, W1, W2 and W3 which would sit either side of Pastor Street. Pastor Street would effectively be extended northwards by way of an additional public realm through route, to meet St George's Road, effectively creating a new central street through the site providing a through-route for pedestrians and limited vehicular access to a servicing yard at the centre of the site. The West Site would be served by a single level basement accessed via a one-way ramp at the northern end of Oswin Street. The basement would predominantly sit beneath plot W1 and would contain 34 accessible parking spaces, cycle parking, an energy centre, refuse storage and plant space. The West Site would also contain three residential towers.
- 6.27** The West Site comprises a range of buildings of varying heights up to 35 storeys, providing 498 new residential units, 3,962 sq m GIA A1-4 retail floorspace, and 2,848 sq m D2 leisure floorspace.

### **Mix of Town Centre Uses**

- 6.28** The July 2021 Permission (as amended) will provide 75,561 sq m of new 'town centre' uses comprising retail (A1-A4), B1 and D class floorspace.<sup>3</sup> The resulting uplift in town centre uses as compared to the buildings which were previously in use will be in excess of 6,000 sq m.
- 6.29** The July 2021 Permission (as amended) will provide 18,210 sq m of retail (Class A1-A4) floorspace across both sites, representing an increase of 3,078 sq m of retail floorspace within use classes A1-A4 overall as compared to the previous buildings. The July 2021 Permission meets the requirements of the Council's Supplementary Planning Guidance by providing 10% affordable retail space on the site (a minimum of 1,861 sq m).
- 6.30** The majority of the retail floorspace will be located on the East Site. This site will have excellent connections to Castle Square and Elephant Park, and will therefore integrate with the retail elements there, and with those along Walworth Road where the retail frontage is being extended towards the East Site to create a continuous retail high street.
- 6.31** The high quality retail space within the Scheme provides an opportunity to claw back some of the comparison expenditure currently leaking out of the borough. The 2015 Southwark Retail Study found that just under 50% of comparison goods spend is made outside the borough.
- 6.32** EC proposes to develop a vision for Pastor Street on the West Site to provide a cluster of affordable retail and commercial spaces as part of the formal affordable retail offer.
- 6.33** The new LCC campus on the East Site will secure LCC's long-term future in the area and is a significant positive aspect of the Scheme.

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<sup>3</sup> Again, these figures and those in paragraphs 6.29, 6.37, 6.38 and 6.53 will be adjusted slightly if application 23/AP/2759 is granted.

- 6.34** LCC serves over 5,800 full and part-time students and 454 (full-time equivalent) staff at its current home on the West Site and specialises in creative courses in fields such as journalism, publishing, film, television and sound, graphic communication and photography. It is an important asset to the Opportunity Area, attracting large numbers of visitors in addition to the students, and forms part of a hub for the creative clustering which is apparent in the Elephant and Castle area. The numbers of staff employed at the site may increase to approximately 900 as a result of the proposal (an increase of 446 jobs).
- 6.35** The brief for the building includes making it more open and accessible to the local community. The lower floors of the education building would be publicly accessible and capable of delivering a cultural function for the area, with flexible space for exhibitions, events and the Stanley Kubrick archive. There is sufficient space to accommodate UAL's core university service at the site including its international language centre, training, conference and student union facilities. The building will incorporate a 3-storey exhibition space for student work and archive collections, which can also be hired by the local community.
- 6.36** The second element of the new D class floorspace is the proposed cultural venue which will be located on the West Site. This space has been designed to be a multi-functional space that will occupy a prominent position in the area, with a frontage to Elephant and Castle and facing the peninsula. The ground floor will comprise a lobby with ticketing and reception desk, an event space with capacity for 300 people and ancillary spaces which can be used as recording studios and rehearsal space. At first floor level there will be a foyer, bar and entrance to the main performance space which will have capacity for 500 people. The plans incorporate music rehearsal and recording studios with the potential for events to be held every night to complement the creative uses at the LCC.
- 6.37** The Scheme incorporates 6,462 sq m of assembly and leisure (Class D2) floorspace, split between the East and West sites. This includes provision for a multi-screen cinema and offers flexibility to bring forward other leisure uses. The East Site previously housed a bingo facility which closed before the other units in the Shopping Centre. In order to mitigate the loss of this facility, the section 106 agreement includes an obligation on the Developer to offer first refusal to a bingo operator, on commercial terms, to lease approximately 1,453 sq m of the leisure floorspace within the Scheme.
- 6.38** The 7,019 sq m of new office (Class B1) floorspace located on the East Site would include 10% affordable workspace.
- 6.39** The proposed improvements to 4 and 5 Farrell Court will ensure that the nightclub use, an important part of the local night-time economy, is secured, in keeping with the requirements in policy AV.09 to facilitate cultural activities. It is also in keeping with Policy D13 of the London Plan (The Agent of Change) in placing the onus onto the residential developer to provide solutions to enable the harmonious co-existence of the noise emitting use and the proposed new residential use.
- 6.40** The proposed redevelopment of arch Units 113A and 120 and 113B and 121 will offer refurbished premises for (and suitable to) the small, local businesses which

currently use 7 Farrell Court (within 113B and 121) and potentially for the small business currently using 6 Farrell Court (within 113A and 120). Again, this is in keeping with policy AV.09.

### **New Homes**

- 6.41** The Scheme will provide 983 residential units in a highly accessible location, on a brownfield site at the heart of the opportunity area which is a focus for new development. 983 homes equates to 42% of the borough's annual housing target and 20% of the minimum target for the Opportunity Area; a significant contribution to the borough's housing stock.
- 6.42** The Scheme provides 35% affordable housing by habitable room in perpetuity. This equates to 337 affordable units, of which 119 will be social rent level (35% of the affordable), 57 at London Living Rent level and 161 discount market rent. The section 106 agreement includes a review mechanism to provide additional affordable housing benefits if the Internal Rate of Return (the measure of developer profit) is above the 11% which has been agreed.
- 6.43** As agreed with the Council, the Scheme will have a unit mix of 1.5% studio units, 29.8 % 1 bed units, 56% 2 bed units, 12.4% 3 bed units and 0.2% 4 bed units.
- 6.44** The scheme complies with wheelchair policy which requires ninety percent of new housing to meet Building Regulation requirement M4 (2) "accessible and adaptable dwellings" and ten per cent of new housing to meet Building Regulation requirement M4 (3) "wheelchair user dwellings", i.e. designed to be wheelchair accessible or easily adaptable for residents who are wheelchair users.
- 6.45** The Scheme provides a good standard of accommodation in line with the Council's requirements set out in the Residential Design Standards SPD. The majority of units (60.3%) on the East Site will be dual aspect. The majority of units (80.6%) on the West Site will also be dual aspect. All of the units will comply with the minimum floor areas including for storage space.

### **Transport**

- 6.46** The Scheme includes the construction of a station box which will become a new ticket hall for the Northern and Bakerloo Lines, with a prominent new entrance to the new facility in Plot E1 directly fronting on to the peninsula. From here, the new 'Station Route' will extend into the centre of the site, providing a direct surface pedestrian connection to the overground station. From the new entrance to the underground station, escalators will descend to a new ticket hall level where further escalators will link to platform level, allowing for the removal of the existing lifts and closure of the current ticket hall once the new ticket hall is opened. This will in turn allow for redevelopment of the current ticket hall site as part of the Scheme.
- 6.47** The works proposed will increase the operational capacity, efficiency and accessibility of the Underground station and greatly improve the transition from street to platform level. This represents a significant improvement in strategic transport infrastructure at Elephant and Castle and is a key part of unlocking the growth

required by planning policy in the town centre. All parties are working towards the provision of the new Underground station as referred to earlier in this Statement.

- 6.48** The layout of the East Site has been planned to improve the transition between the national rail station, the tube station and the wider town centre, improving the efficiency of this location as a major transport interchange. The Scheme includes bus stop upgrades and real-time public transport information.
- 6.49** The removal of the existing basement ramp from Elephant Road allows for a new ground level access to be created between the shopping centre and the existing overground rail ticket hall (from which stairs go to the platforms above). The diagonal "Station Route" forms an axis running from the peninsula to the heart of the site, providing a very direct link between the rail station and the new Underground ticket hall and the wider town centre.
- 6.50** The Scheme includes a substantial investment in cycling infrastructure within the buildings and the public realm amounting to 2,115 long-stay and 302 short-stay cycle parking spaces. The scheme will deliver an additional 60 cycle hire docking points, split between 2 new locations: one primarily serving the East Site and one the West.

#### **Public Realm**

- 6.51** As referred to above, the Scheme delivers significant public realm benefits in the form of a network of new routes through the site and completes the network of routes, reknitting the centre to the surrounding neighbourhoods as required by policies AV.09 and NSP48. The Scheme also includes hard and soft landscaping, tree planting, and the provision of new public toilets.
- 6.52** In combination these connections – particularly the Park Route – greatly improve the permeability of the site and by improving connections with the wider town centre fulfil a key ambition of the local plan.
- 6.53** Whilst it is recognised that there will be some loss of existing trees as a result of the Scheme, including 4 category B trees, the most valuable will be retained, with no category A trees requiring removal. 10 additional trees will be planted in the public realm across both sites, together with 94 new trees in the communal gardens on the East Site and 81 on the West Site, resulting in a significant increase in the number of trees on the site.

### **7. PURPOSE AND JUSTIFICATION FOR THE ORDER**

- 7.1** The purpose of the Council in making the Order is to facilitate the development, redevelopment or improvement on or in relation to the Order Land, by way of the Scheme.
- 7.2** The Council thinks the making and confirmation of the Order will facilitate the carrying out of development, re-development, or improvement on, or in relation to, the Order Land. The Scheme is already well underway on part of the East Site, adjacent to the Order Land, and EC has shown through all of its progress its continued intention to proceed with the Scheme so as to complete the East Site redevelopment

and then carry out the West redevelopment if CPO powers are utilised. Despite considerable effort being expended in seeking to acquire the requisite land interests for the Scheme as a whole by agreement, this has not occurred to date. Without the use of CPO powers, it will not be possible to deliver key areas of public realm on the East Site, including the Park Route, nor to complete the East Site redevelopment of the Scheme. The title and new rights sought in respect of the West Site are necessary to enable demolition of the current LCC buildings and construction in respect of the West Site. Further detail on these aspects is included at paragraphs 4.3 (title acquisition) and 4.5 (acquisition of new rights) of this Statement.

**7.3** In addition, in respect of the proposed acquisition of title to and rights in respect of the railway arch units 113A and 120 and 113B and 121 to the north of the railway station, the Council's justification in doing so is to facilitate their redevelopment as relocation premises for displaced tenants and occupiers of 7 Farrell Court and potentially 6 Farrell Court if DistriAndina wish to move there. Recent CPO inspectors' decisions have emphasised the importance of seeking to offer on-site relocation opportunities and the Council and EC are seeking to offer "like for like" arch premises on the same road to these affected parties for relocation. DistriAndina have an alternative offer to move to a new unit elsewhere within the Scheme, fronting Walworth Road, if they wish. The Council is seeking to give effect to DistriAndina's preference.

**7.4** Corsica currently occupy 4 and 5 Farrell Court. London Plan policy D13 (The Agent of Change) places the responsibility for mitigating impacts from existing noise emitting activities or uses on the proposed new noise-sensitive development. This means that the responsibility for mitigating the impact of noise is on the proposer of e.g. the new residential development. As a consequence, the developer of residential units close to a noise emitting activity (such as Corsica) may need to design them in a more sensitive way to protect the new occupiers from noise impacts and/or to pay for soundproofing of the existing music venue. Corsica is on the GLA's Cultural Use at Risk register, so some intervention by the Council has been envisaged to ensure Corsica can continue to operate successfully.

**7.5** The change in approach for Corsica as compared to the Previous Order is explained in Section 1 of this Statement. The justification for acquiring the Arch Co title to the land to the immediate rear of 4 and 5 Farrell Court was previously so that it could form part of the proposed public realm. That is still correct in part but, as the proposed sound mitigation lobby will be located there, it is necessary to acquire the rear area for the construction of that lobby too. Without being in control of that area, EC and the Council cannot bring about the construction of the lobby. The Arch Co title to 4 and 5 Farrell Court and the fire escape accessway which bisects those two units is required because EC intends to undertake internal reconfiguration works in addition to the lobby works, which will require adjustments to the fire escape and other alterations, and, once the works are complete, EC needs to offer Corsica a new lease of the unified area. EC also needs the ability to affix the lobby structure and other apparatus to the viaduct structure owned by Network Rail. The cost of these works is considerable and EC, understandably, wishes to have the comfort that it can control the whole of the unit plus the rear area, so as to deliver the lobby and other works, and to grant a lease of the unified whole, before embarking on those works.



- 7.6** As with the delivery of the new residential units, the retention of the nightclub use in this location also attracts strong planning policy support and the retention of that use as an important part of the night-time economy is needed.
- 7.7** The proposal would also have the added benefit that Corsica would be able to operate within an area clearly and securely let to them – at present they are using areas which fall outside their tenancy area (to the rear of 4 and 5 Farrell Court, and within the fire escape) and the basis for their doing so is unclear. The proposed new tenancy of the unified area being offered is for 15 years, a considerable betterment compared to the short periodic tenancy they currently have and therefore will provide them with greater long term certainty.
- 7.8** The long leasehold title to 4 and 5 Farrell Court is owned by Arch Co, with Network Rail again owning the unregistered freehold title. The fire escape which bisects the two units is in the same ownership. To achieve the development of 4 and 5 Farrell Court referred to above it will be necessary for the Council to acquire Arch Co's long leasehold title to the units and the fire escape, and to acquire new rights in respect of Network Rail's freehold title to the viaduct structure to undertake the necessary physical works.
- 7.9** As discussed above, the creation of the Park Route in 6 and 7 Farrell Court would displace the occupiers of those units. The Council is mindful that the occupiers of the units are small, local businesses. There is a need to mitigate any adverse impacts on those tenants and occupiers. Although efforts have been made to secure the relocation of the tenants and their occupiers elsewhere in the vicinity this has not been achieved. No suitable alternative relocation premises has been found which meets the requirements of the tenant of 7 Farrell Court (Beset). In any event, the Council and EC are of the view that the relocation opportunity now offered (Arches 113B/121) is the best and most suitable for Beset and their occupiers as it is so close and so similar to their existing premises. Accordingly, this would be the best mitigation against their displacement (and the potential adverse effects arising therefrom). Similarly for DistriAndina, EC also proposes to relocate them within the Scheme, either into Arches 113A/120 or into a new unit fronting Walworth Road on the East Site.
- 7.10** DistriAndina meet the eligibility criteria to move into new premises on the East Site under the terms of the existing section 106 planning agreement, whereas Beset do not (as Beset are not a retailer), so DistriAndina also have that option available to them.
- 7.11** EC owns a long leasehold title to Arches 113A/120 and 113B/121 which are proposed for the relocation premises, and otherwise for retail/café uses, but the leasehold title EC owns is constrained to be used for access purposes only. It does not allow for any beneficial occupational uses, and so would not allow for the proposed redevelopment of these arches. Arch Co owns a long leasehold interest in these arches which is not so constrained (other than by the EC leases) and the freehold title is accepted to be owned by Network Rail. To achieve the development of the Arches 113/120 and 113B/121 it will be necessary for the Council to acquire Arch Co's long leasehold title to the units, and to acquire new rights in respect of Network Rail's freehold title to the viaduct structure to undertake the necessary physical works (such as the affixing to the viaduct arches of new front and rear elevations). So the

acquisition of title and new rights in respect of Arches 113A/120 and 113B/121 is justified as it is the means by which the relocation premises, or if not retail/café uses, can be achieved.

- 7.12 So the Order will facilitate the carrying out of redevelopment on, or in relation to, the Order Land and thus the test in section 226(1)(a) is satisfied.
- 7.13 In terms of the test under section 226(1A), the Scheme represents a vital, comprehensive redevelopment of Elephant and Castle town centre. In this case, the Council thinks the development, re-development or improvement is likely to contribute very significantly to the improvement of all three well-being objects.

#### **Contribution to the economic, social and environmental well-being of the area**

- 7.14 The Scheme is likely to result in *economic* well-being improvements, including a material increase in the quantity and quality of town centre uses, including providing additional and better quality retail, leisure, education and office provision, consistent with the long term strategy to regenerate the Town Centre and enhance its vitality and viability. The Scheme will create enhanced linkages, and assist in the regeneration of the wider centre. The Scheme includes the provision of affordable retail and office floorspace. The education facility will secure LCC's long-term future in the area.
- 7.15 The Scheme will create around 1,300 construction jobs per year during peak times over the 10 year build programme. The completed Scheme will generate up to 2,085 new full time equivalent jobs, depending on the exact nature of the commercial uses which will ultimately come forward, an increase of over 600 when compared with the estimated 1,418 full time equivalent jobs on the East and West Sites before the development commenced. Measures to secure jobs for unemployed borough residents are contained in the section 106 agreement and will deliver significant economic benefits to the local population.
- 7.16 The Scheme will secure key new transport infrastructure, including a new station entrance, create enhanced linkages between existing transport provision, and provide a comprehensive package of measures to enhance the connectivity of the new town centre. These measures will make the town centre more competitive, better able to retain and attract trade from within its catchment, including meeting the needs of the additional local residents, workers and students, and encourage the use of sustainable means of transport.
- 7.17 As regards the fitting-out and opening of the underground station box, the amendments made to the section 106 agreement due to TfL's funding position means that there is an increased chance (as compared to the position in April 2020, when the Council originally resolved to use CPO powers) that the new station box will not be fitted out and come into operation, but the likelihood of the new station being fitted out and becoming operational at a reasonable point in the future is still high. Even if reduced weight was given to the new station box due to the TfL funding uncertainty, the Order would still be justified for all the other economic, social and environmental well-being improvements that the Scheme would bring.

- 7.18** The new residential population (up to 1,880 people) is expected to have a total household expenditure in excess of £28 million per annum, some of which would be spent locally on goods and services, thereby contributing to the local economy and supporting new jobs locally. It is also estimated that Council Tax revenue could be up to £2.1 million per annum, based on 2020-21 Council Tax bands and assuming all units are fully occupied and no rebates or discounts are given. The Scheme will generate estimated CIL payments (assuming social housing relief is applied) of £4,278,679 Mayoral CIL and £11,230,308 Southwark CIL.
- 7.19** The Scheme will deliver significant *social* well-being improvements. These include the creation of a more balanced mix of uses, creating quality homes, offices, education and community facilities, including the provision of affordable retail, workspace and homes. The Scheme includes the provision of cultural and community facilities, including new and enhanced public realm and public toilets which will benefit all sections of the community. It will allow for the longer term future of Corsica at 4 and 5 Farrell Court, at their option, with the benefit of the sound mitigation lobby and, if they choose not to take up that option, nevertheless facilitating the continued use of the units as a nightclub with the benefit of the sound mitigation lobby and more secure lease terms. It will also include relocation premises for the small, local businesses which will be displaced by the creation of the Park Route.
- 7.20** The Scheme will also deliver significant *environmental* well-being improvements. In addition to providing well designed buildings and well connected spaces, the Scheme will contribute to securing more sustainable travel patterns, by better serving the needs of current and future residents, workers and students. The Scheme includes improved pedestrian permeability, increased site wide cycle facilities and public realm improvements, including additional landscaping and tree planting. The Scheme also includes improved premises for Corsica which will have better sound insulation than the current premises.
- 7.21** Notwithstanding that there will be negative effects to those affected by the Order, as considered fully by the Council's Cabinet in October 2023 (Appendix H to the Cabinet Report, which details the negative effects attributable to the Order, is reproduced at **Annex 4**) and having taken those negative effects into account, the development, re-development or improvement is likely to contribute to the achievement of all of the well-being objects in accordance with section 226(1A) of the 1990 Act.
- 7.22** The specific economic, social and environmental well-being improvements that the Order will deliver directly are in themselves sufficient to satisfy section 226(1A) of the 1990 Act. Firstly, without the Order, the Park Route as shown in the planning permission approved drawings cannot be delivered. It has been a key aspect of the Council's planning vision for a long time that the redeveloped Shopping Centre Site should be opened up for pedestrians to what is now Elephant Park, thus facilitating the connection of these two key sites. EC is under an obligation in the section 106 agreement to use reasonable endeavours to open the Park Route prior to the East Site opening. Although the section 106 agreement allows for an alternative route for the Park Route through one of the arches to which EC has some long leasehold, or such

other alternative route that the Council may approve, the July 2021 Permission only shows the route through 6 and 7 Farrell Court, so that is the approved route under the permission. That route was chosen for the planning application, after analysis of likely pedestrian footfalls, and what would be the optimum route through the East Site, because it forms a natural pedestrian "desire line", as it aligns with a boulevard from Elephant Park and so represents the optimum connection to Elephant Park and Lendlease's new redevelopment around it. From the chosen Park Route, pedestrians will be able to continue west through the new town centre to Elephant & Castle highway with its bus services (and Brook Drive and the open space of St Mary's Churchyard Newington beyond), or to move northwest to the new Underground station. This route is also close to Castle Square and Walworth Road. By contrast, the arches EC has long leasehold title to are situated further away from Walworth Road and Elephant Park and so would be inferior as a direct pedestrian link to those areas. In addition, these arches are located close to (and opposite) the proposed new building for the LCC, Building E1, and for pedestrians to emerge opposite building E1 and close to the railway station, when considered along with users of the rail station, risked creating a pinchpoint. Building E1 would likely have had to have been smaller to accommodate additional pedestrian circulation space, losing mass from its south eastern corner. Reduced footprint of that building would be problematic due to UAL's requirements for the new educational facility to achieve critical mass in order to retain the LCC at Elephant & Castle. Shifting Building E1 to the west would have impacted on the Station Route, making it too narrow and affecting the clear and permeable route through the East Site to the Elephant & Castle peninsula.

- 7.23** Secondly, areas of new public realm adjacent to the railway viaduct are also at risk of not being delivered without the Order, including the ability to complete the Station Route from the new Underground station box to the railway station for pedestrians, via the new right sought in that respect. Again, this is a key aspect of the East Site.
- 7.24** Thirdly, the Order will facilitate a practical solution for the retention of the nightclub use in this location, as explained earlier in this Statement of Reasons.
- 7.25** Fourthly, the Order will facilitate the redevelopment of Arches 113B and 121 to provide a suitable and immediately adjacent relocation opportunity for the tenant and occupiers of 7 Farrell Court, thus mitigating adverse impacts on them. Arches 113A and 120 have also been offered to DistriAndina as a potential relocation opportunity. To the extent that these tenants do not wish to take up these premises, the Order will nevertheless facilitate their use for retail/café purposes instead of lying vacant, incapable of beneficial use.
- 7.26** Fifthly, the title and new rights being sought in relation to the West Site itself are all necessary for the West Site redevelopment to proceed, thus the Order unlocks all the benefits associated with the West Site, including 498 residential units (165 of which are to be affordable), new retail floorspace (including affordable retail) and a new cultural venue.
- 7.27** The Order is therefore essential to the successful implementation and completion of the Scheme and many of the well-being improvements it will bring.

**Whether the purpose for which the Council is proposing to acquire the land could be achieved by other means**

- 7.28** The purpose for which the Council is proposing to acquire is explained above. Due to the number of third party interests in the proposed Order Land and the fact that negotiations have been taking place with affected parties for some time, the prospects of acquiring all the remaining interests by agreement to enable comprehensive redevelopment within a reasonable timescale or at all are unlikely.
- 7.29** All of the elements included in the Order Map are essential to the successful implementation, completion and use of the Scheme. The Order will address the last few pieces of the jigsaw in terms of land assembly.
- 7.30** The Council has considered whether redevelopment in accordance with the planning policy objectives might be achieved without the need for compulsory purchase. However, any proper redevelopment needs the interests/rights covered by the Order, and certainly any development in line with planning policy does. The Scheme, as per planning policy, is an holistic concept which cannot be delivered on a piecemeal basis and any attempt by third parties to redevelop parts of the land on a piecemeal basis avoiding the use of CPO powers would destroy the additional benefits that come from a co-ordinated, holistic regeneration in line with planning policy.
- 7.31** As to the prospect of achieving the planning objectives at a different location, the scope for alternative locations is absent due to the purposes of the Order, which seeks to achieve the regeneration of the town centre core area. The Scheme is to regenerate this area of land, which cannot be achieved on another area of land.
- 7.32** The Council has considered whether there are any alternative proposals for this land and whether such proposals would be appropriate. There are no known alternative proposals that the Council is aware of, and even if there were, such alternatives would not be appropriate as they would not (1) meet the objectives of planning policy for a comprehensive redevelopment of the Scheme Land and (2) provide the benefits of the Scheme.
- 7.33** The Council has also considered whether the Scheme could be delivered by means of alternative proposals which would involve less interference with property rights. This not practicable. EC has already procured numerous interests by agreement over the course of 7 years, which shows that the use of the CPO powers envisaged is justified. As regards the Park Route, although the section 106 agreement does provide that an alternative route may be provided in one of the arches that EC already has some leasehold title to, or another route approved by the Council, the reason why the route is inferior to that which was chosen is explained above.
- 7.34** Consideration has also been given to whether it is necessary to acquire arches 113B/121 as a relocation premises for Beset and their occupiers (as to one unit), and potentially 113A/120 for DistriAndina if they wish to move there, and otherwise for retail/café use, and whether there are any alternatives to doing so. No suitable alternative off site relocation opportunity which meets Beset's requirements has been found. Recent decisions on CPOs have highlighted the importance of seeking where possible to provide relocation opportunities for occupiers within the scheme area.

Beset have expressed a preference to take one railway arch unit which can accommodate a mezzanine floor, thereby recreating their arrangements in 7 Farrell Court. Although 4-5 Farrell Court had previously been envisaged for their relocation, those units do not possess the height to include a mezzanine floor across them which would be big enough and compliant with building regulations. The arches at Arches 113A/120 and 113B/121 do have sufficient height. In addition, it is now proposed to retain the nightclub use within 4-5 Farrell Court and in particular to give Corsica the option to have a longer term occupation of 4-5 Farrell Court. It would be preferable to retain the nightclub use in situ, which means 4-5 Farrell Court would not be available for the relocation of Beset and its occupiers (or DistriAndina). EC does not have the necessary title to bring about the beneficial use and works in arches 113A/120 and 113B/121, so the acquisition of greater leasehold title and associated new rights is necessary to achieve this. Consideration has also been given to whether it is necessary to acquire the leasehold title to 4 and 5 Farrell Court and the land to the immediate rear of those units where the sound mitigation lobby is to be sited, and associated new rights against the viaduct. The leasehold title to the rear area is required to build the lobby and then offer the new longer term lease of it to Corsica along with 4 and 5 Farrell Court as a unified space; new rights are required to affix the lobby to the viaduct and for associated physical works. The leasehold title to 4 and 5 Farrell Court and the bisecting fire escape accessway is required to facilitate these works and to obtain control of the unit so as to offer a longer term lease of the unified space (i.e. with the sound mitigation lobby) to Corsica. If Corsica choose not to take up that option, then the leasehold title is still required to ensure that a longer term lease of the unified floorspace (with the sound mitigation lobby) can be offered to other operators to seek to retain the use.

- 7.35** The Council needs to acquire title to the corridor of land within Arch Co's demise to the west of the railway viaduct to ensure that control of the public realm areas is achieved and to enable construction of the sound mitigation lobby adjacent to 4 and 5 Farrell Court.
- 7.36** The Council needs to acquire title to the two unregistered areas on the West Site to ensure these are brought into the Scheme, and it is not possible to negotiate the acquisition of those areas by agreement given their unregistered nature.
- 7.37** If the Council does not act now then the completion of the East Site, and the West Site redevelopment, will be entirely dependent on the owners and occupiers of the outstanding land interests. Although Arch Co have raised the possibility (in their objection to the Previous Order) that they would be willing to grant a licence, on appropriate terms, in respect of some of the aspects sought by the Council and EC under the Previous Order, such a licence (if agreed) would not for example, enable the Council to secure vacant possession of 6 and 7 Farrell Court for the purposes of creating the Park Route, nor would it secure the Park Route fully and permanently or give any long term control of the site to the Council or EC.
- 7.38** In deciding whether to make and pursue the Order, the Council has also had due regard to the objections which were received to the Previous Order. A detailed summary of these objections was provided to the Council's Cabinet prior to the October 2023 resolution and, notwithstanding those objections, the Council considers

the Order to be fully justified. To the extent that such objections are replicated for the Order, the Council will deal with them in detail in its Statement of Case and evidence to the public inquiry.

- 7.39 In summary, there is no credible alternative which could deliver a comprehensive scheme which meets the planning policy objectives within a reasonable timeframe.

## **8. SPECIAL CONSIDERATIONS AFFECTING THE ORDER LAND**

### **Listed buildings and conservation areas**

- 8.1 The Metropolitan Tabernacle is a Grade II listed building and a part of it is included within the Order Land (for the acquisition of new rights only) for the reasons set out in Section 4 above. The Michael Faraday Memorial located on the peninsula is also a Grade II listed building and is located adjacent to the Order Land. Metro Central Heights is Grade II listed and is located to the north of the Order Land.

- 8.2 No part of the Order Land is within a conservation area. The LCC Site (and part of the Order Land adjacent thereto) is adjacent to the Elliot's Row Conservation Area.

### **Special categories of land**

- 8.3 There is no land within the Order Land which is owned by another local authority, by the National Trust or which forms part of a common, open space land or fuel or field garden allotment.

- 8.4 The Order Land includes land owned by statutory undertakers:

- 8.4.1 Network Rail – the corridor of land to the west of the railway viaduct is owned by Network Rail, as are the railway viaduct (including the railway station) and the Thameslink railway on it. The railway arch occupational units are also owned freehold by Network Rail. The Schedule is careful to exclude the railway viaduct and the Thameslink railway (i.e. Network Rail's operational land) from the Pink Land, i.e. the land to be acquired. Moreover the Schedule will exclude Network Rail's interest from being acquired, save in respect of the tiny fragment of land owned by Network Rail which juts into what was the vehicular access into the old Shopping Centre (and which for that reason is not viewed as operational land). As with the railway arch occupational units (including those at 4-7 Farrell Court), the corridor of Pink Land to the west of the railway viaduct is not, in the Council's view, operational land, as Network Rail has granted a long lease of it to Arch Co along with the occupational units. The Council is willing to agree that, in acquiring the long leasehold title in these strips adjacent to the viaduct from Arch Co, for the avoidance of doubt it will grant (by way of a lease of easements) any necessary rights of access along the corridor to the west of the viaduct to any occupational tenants of the railway arch units whose interests are not being acquired and who currently have such access rights within their tenancies, simultaneous with the acquisition of the corridor. In terms of the new rights sought over the railway viaduct and the Network Rail land immediately to the west of the station, these are considered to be relatively minor and are in any event caveated so as not to cause interference with the operation of the railway. In these ways, no detriment to Network Rail's statutory undertaking should

arise. Network Rail objected to the Previous Order and submitted a representation letter to the Department for Transport under section 16 of the Acquisition of Land Act 1981 in March 2023. However, both the objection and representation letter indicated that Network Rail would be in a position to remove its objection and representation if an agreement was reached on certain matters. Since that time, EC and Network Rail have been negotiating an agreement which would, when completed, allow for Network Rail's objection to be removed. Those discussions are continuing in the context of the Order and EC are seeking to complete the agreement as soon as practicable.

- 8.4.2 TfL – several plots of highway land adjacent to the LCC Site are owned by TfL. Crane oversailing of these plots is envisaged. However, the oversailing will take place far above the highway and there should be no detriment to the operation of the highway. After the making of the Previous Order, the Council and TfL agreed upon an arrangement whereby, although the rights were included in the Previous Order, TfL would grant licences for oversail on certain terms in the future once EC is ready to proceed on the West Site and as long as they do so then the Council agreed not to use confirmed CPO powers against TfL. On this basis there was no need for TfL to object to the Previous Order and the arrangement is to the satisfaction of all three parties. The same approach is intended again in respect of the Order and so, although the crane oversail rights are included in the Order (to cover the unlikely event that TfL departs from the arrangement), there should be no need to implement confirmed CPO powers against TfL, nor for TfL to object to the Order.
- 8.4.3 Electricity substations operated by London Power Networks. Two substations on the West Site will need to be removed in due course; given that agreement was reached on the surrender of the East Site substation lease it is hoped such an agreement will be reached in respect of the West Site substations, but those two substations are included in the Schedule.
- 8.4.4 The Order Land also contains statutory undertaker and telecommunications operator apparatus.
- 8.5 Statutory undertakers have a separate and additional power to make representations to the Minister responsible for their undertaking in accordance with section 16 of the 1981 Act. As referred to above, Network Rail made such a representation in respect of the Previous Order and EC is working to address any concerns Network Rail may have. However, for the reasons given above, the Council does not envisage any detriment to the operation of any of the statutory undertakers.

## **9. HUMAN RIGHTS**

- 9.1 The Human Rights Act 1998 requires a public authority to act in a way which is compatible with the European Convention on Human Rights ("**the Convention**").
- 9.2 The following rights under the Convention are potentially relevant in the process of considering, making, confirming and implementing a compulsory purchase order:
  - 9.2.1 Article 6 (right to a fair and public hearing to determine a person's civil rights);



- 9.2.2 Article 1 of the First Protocol (right to peaceful enjoyment of possessions);
- 9.2.3 Article 8 (right to respect for private and family life, including a person's home).
- 9.3 The requirements of Article 6 (right to a fair and public hearing) are satisfied by the well-established statutory procedures under the 1981 Act, including rights to object and to be heard at any public inquiry and the right to statutory challenge. Disputes as to compensation can be referred to the Lands Chamber of the Upper Tribunal.
- 9.4 In respect of Article 1 of the First Protocol, every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. This does not impair, however, the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. A fair balance must be struck between the public interest and private rights. Interferences under Article 1 of the First Protocol must be in pursuit of a legitimate aim.
- 9.5 The acquisition of land (and the creation and acquisition of new rights) as envisaged by the Order will interfere with rights under Article 1 of the First Protocol. The Order will give rise to the acquisition of property interests against the will of the owner and may also in certain instances infringe the enjoyment of existing assets with economic value, such as the goodwill of a business (which could happen in a worst case scenario in respect of the tenants and occupiers of 4 and 5 Farrell Court and 6 and 7 Farrell Court). It will also interfere with rights over the Order Land. However, Article 1 of the First Protocol allows for such interference if it is in the public interest and subject to the conditions provided for by law and the principles of international law. The interference must also be in pursuit of a legitimate aim, which is the case here. Therefore, the exercise of compulsory purchase powers pursuant to the Order is lawful in Article 1 terms provided that the Council strikes a fair balance between the public interest and the private rights protected by Article 1. It is also relevant that compensation is available to persons affected by compulsory acquisition in certain instances. By way of the very considerable benefits that will arise from the Scheme (even limited to those specific benefits that the Order would directly deliver), it is considered the compelling benefits in the public interest, when weighed against the private rights of individuals, and indeed the wider adverse implications set out in **Annex 4**, justify the interference with Article 1 rights in this case.
- 9.6 Under Article 8, everyone has the right to respect for private and family life, his home and his correspondence; there shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. Any interference with this right must be proportionate. Article 8 covers family life and private social life enjoyed at a place of work or in professional, business or commercial activities. If children could be affected the best interest of the child shall be a primary consideration.

- 9.7 Article 8 Convention rights can potentially be relevant in compulsory acquisition. The rights guaranteed by Article 8 may include the right to respect for private and family life enjoyed at a company or individual's business premises. Since Article 8 guarantees the right to a "private social life", it covers private social life enjoyed at a place of work or in professional, business or commercial activities. Article 8 does, though, allow for interference if it is necessary in the public interest and proportionate to the legitimate aim being pursued (here, economic well-being).
- 9.8 For this Order, there is no evidence to show Article 8 is engaged but assuming conservatively that Article 8 is engaged by reason of any interference with business premises and to affected individuals' private social lives derived from the business setting, given the public benefits of the Scheme (even if limited to those specific benefits that the Order will directly deliver) and the compensation which will be payable in respect of any acquisition of land or new rights over land or the overriding of rights, any interference with rights in this case is proportionate, in the public interest and in pursuit of a legitimate aim.
- 9.9 Regard has been had to whether there is any infringement of Articles 9 (freedom of thought, conscience and religion), 11 (freedom of peaceful assembly and association) or 14 (freedom from discrimination) of the Convention; in each case it is considered that these rights are not engaged and there is no infringement.
- 9.10 If a compelling case in the public interest can be demonstrated then this will meet the requirements of the Convention. In making the Order, the Council has carefully considered the balance to be struck between individual rights and the wider public interest. Having regard to the matters set out above a compelling case in the public interest exists for the making and confirmation of the Order.
- 9.11 Interference with rights under the Convention is considered to be justified to secure the benefits which the Scheme will bring, including the economic, social and environmental well-being improvements referred to above. The purpose of the Order justifies the interference with human rights that the Order would cause and the public benefit outweighs the private loss.
- 9.12 In addition, appropriate compensation will be available to those entitled to claim it under the relevant statutory provisions.
- 10. EQUALITY ACT 2010**
- 10.1 The Council has a statutory duty under section 149 of the Equality Act 2010 to have due regard to the need to:
- 10.1.1 eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
  - 10.1.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - 10.1.3 foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**10.2** The "relevant protected characteristics" are:

- (a) age;
- (b) disability;
- (c) gender reassignment;
- (d) pregnancy and maternity;
- (e) race;
- (f) religion or belief;
- (g) sex;
- (h) and sexual orientation.

**10.3** By way of historical background, in October 2015 the Council commissioned an equalities impact assessment from AECOM to inform future decision making. That equalities work identified a range of positive and negative impacts on groups with protected characteristics and the findings were reported to the Council's Cabinet in May 2017 and were then used to formulate the business relocation and mitigation package that was subsequently incorporated into the section 106 agreement. The AECOM work was supplemented by further analysis by EC's consultants, Quod, which was submitted with the planning application for the 2019 Permission, and the July 2018 Planning Committee report, which led to the 2019 Permission, set out and analysed in considerable detail the potential equalities impacts relevant to the planning application.

**10.4** The analysis highlighted the potential adverse risk to older people using the then bingo hall at the Shopping Centre. Secondary analysis found that a significant proportion of users of the facility were aged over 45 and that 62% identified themselves as being of Black/African/Caribbean/Black British descent. Subsequently, in 2018 the operator of the bingo facility agreed to sell its lease to EC and the bingo hall closed. The Order will not therefore be the cause of the loss of the bingo facility. Notwithstanding this, the section 106 agreement includes an obligation requiring the developer to give first refusal to a bingo operator to take a portion of the leisure space in the consented scheme. Other section 106 agreement measures were secured to mitigate potential adverse effects on local independent businesses (including those with protected characteristics) then operating from the East Site, including a relocation strategy, a business support advisor, a relocation fund, and affordable retail premises within the Scheme itself (on both East and West Sites).

**10.5** Prior to the Cabinet meeting of 7 April 2020, AECOM were asked to update their analysis. AECOM found that the mitigation package put in place through the section 106 agreement had had positive outcomes, and noted the positive impacts the engagement activities EC had undertaken in terms of resolving issues around relocation of businesses. AECOM found that the mitigation package, while not able

to fully recreate the then current clusters of businesses, contributes to resolving many of the potential adverse equality impacts of the development.

- 10.6** In addition to the section 106 measures, the Council assisted local traders by offering market pitches at East Street and making £200,000 available to help local operators who had been unsuccessful in finding alternative locations to trade from or who had decided not to seek alternative premises. The £200,000 was largely expended by way of grants.
- 10.7** The Council further considered the equalities position in respect of the planning application for the July 2021 Permission. Quod submitted an Equality Statement Addendum on behalf of EC which concluded that there were no new negative adverse impacts arising from the amendment planning application, and the findings of this, along with the analysis of officers, were considered by the Council's Planning Committee on 6 July 2021. Officers concluded that the changes to the land use quantum, distribution of uses across the site and the layout and design changes would raise no equality issues of a greater scale or significance than those arising from the consented schemes. The additional affordable retail, leisure, education, employment floorspace and residential units were all considered to have positive equality impacts. It was noted that the potential bingo hall is smaller than secured under the 2019 Permission but it has the potential to be brought forward earlier in the development programme, thereby reducing the period that the facility would not be available. On balance, this was considered to be acceptable in terms of the impact on the groups with protected characteristics who were identified as the main users of the former bingo hall.
- 10.8** Under the section 106 agreement, local people are to be provided with opportunities for training and employment. The Council will work with EC to ensure that protected groups are able to take the full benefit of these opportunities.
- 10.9** All of the above is by way of historical background. The Shopping Centre was closed, without any need for a CPO to be made or implemented, in 2020, and so the potential equalities impacts previously identified (unless referred to below) are not relevant to the Council's decision to make the Order in 2023. The Council is very aware of its continuing duty under the 2010 Act, and so a further equalities impact assessment, assessing the potential equalities impacts of making and implementing the Previous Order, was undertaken and considered by Cabinet in December 2022 prior to making the Previous Order. Moreover, a further, updated impact assessment was undertaken prior to the October 2023 Cabinet meeting in respect of the Order. That impact assessment is available as part of the documentation accompanying the Order but in summary the key findings are:
- (a) There is a potential adverse effect on the Latin American and (in one case) Black African (protected characteristic of race) businesses who occupy 6 and 7 Farrell Court, which in a worst case scenario may include the closure and loss of those businesses. However, the Council and EC are seeking to acquire Arches 113B and 121 to redevelop it into a relocation opportunity within the Scheme for Beset and their occupiers, and to relocate DistriAndina into the Scheme either in Arches 113A and 120 or in a new unit on the East Site, thus mitigating the adverse impacts on those occupiers. Accordingly, it is

considered unlikely that their businesses would close as a result of the exercise of CPO powers.

- (b) To avoid potential disadvantage to those affected occupiers whose first language is Spanish, the Council will make available Spanish translations of its key Order documents to those parties in a reasonable and proportionate way. Accordingly, a Spanish translation of an extract of the Order and a Spanish translation of this Statement have been provided to those parties who have requested assistance in this respect.
- (c) In respect of Corsica, and a worst case scenario of its business closing if the confirmed CPO does not include the acquisition of all necessary rights and interests in the northern arches for EC to deliver the proposed solutions for them of a long term home at 4 and 5 Farrell Court, it is not considered that any one group with protected characteristics would be disproportionately affected. However, the Council and EC's intention is to acquire the long leasehold title to those units and to construct the sound mitigation lobby to the immediate rear of the units and offer the unified floorspace to Corsica on a new lease for a longer term basis than they currently have. If Corsica do not take up the offer of a new lease, then the intention is that the units would be offered to another nightclub operator so that the use would be preserved in situ.
- (d) There will potentially be some temporary, short term (up to 3 months) adverse impacts on the Tabernacle due to the need to scaffold part of their land whilst works to decouple and demolish the immediately adjacent LCC building take place. This is explained in detail in the equalities impact assessment and potentially could disproportionately affect groups sharing the protected characteristics of religion, age, race, pregnancy and maternity, and disability. Any adverse impacts are considered to be minor. Proposals for mitigation are explained in the equalities impact assessment. For the avoidance of doubt, the Tabernacle will be able to remain open and the main entrance on the front façade will remain open, and the disabled entrance within the front side arch will be available at all hours when the Tabernacle is being used.
- (e) There will be benefits to all users of the East Site from the creation of surface level public access to create the Station Route, the Park Route and further public realm adjacent to the railway viaduct. This is likely to be particularly beneficial to the elderly, those with disability, pregnant women and families with young children. It will also ensure the permeability of the site for visitors to all parts of the East Site, including the replacement affordable retail floorspace and proposed replacement bingo facility, both of which are included in the East Site at least in part to address adverse equality impacts identified at the planning permission stage.
- (f) The acquisition of title and new rights in respect of the West Site will unlock the ability to develop the West Site, including the affordable retail floorspace, new dwellings (including affordable housing units, and 10% wheelchair accessible units) and job opportunities associated with that phase of the Scheme, all of which are considered to have positive equality impacts.

- (g) It is not considered that the daylight and sunlight impacts which could arise from the construction of tall buildings on the West Site would disproportionately affect any one group with protected characteristics.

**10.10** The equalities position will continue to be monitored and reviewed throughout the progression of the Scheme.

**10.11** In summary, steps are being taken to ensure that the processes pursuant to the Order are applied in a fair and non-discriminatory manner. The Scheme will bring a range of benefits to protected groups, including enhanced access, housing provision, employment and training opportunities, public realm and public transport improvements. Weighing up the relevant considerations and recognising the adverse impacts on those with protected characteristics, which the Council has sought and will continue to seek to mitigate, for the reasons summarised in this Statement of Reasons there is a compelling case for the Order and the benefits that will result to the community at large.

## **11. RESOURCES AVAILABLE FOR THE SCHEME**

**11.1** Paragraph 14 of the Guidance states that in preparing their justification, acquiring authorities should address:

*"(a) **sources of funding** – the acquiring authority should provide substantive information as to the sources of funding available for both acquiring the land and implementing the scheme ...*

*(b) **timing of that funding** – the funding should generally be available now or early in the process ... "*

**11.2** The Council has entered into an agreement with EC which gives a complete indemnity to the Council in respect of all compensation to be paid pursuant to the Order and/or through the operation of section 203 of the Housing and Planning Act 2016 and/or through blight notices under section 137 of the 1990 Act. All other costs associated with the Order will also be borne by EC. EC has a proven track record of acquiring (and paying for) interests required for the Scheme by way of private agreements. Furthermore, EC's obligations in the agreement are backed by a guarantee from Get Living Plc, a major English public limited company. The Council is satisfied that Get Living has good covenant strength to meet its obligations in the unlikely event that EC defaulted.

**11.3** Moreover, the East Site redevelopment is already fully funded. EC has procured a major loan in the sum of £365 million for the development stage funding and has procured grant funding from the GLA in respect of affordable housing for the East Site in the sum of £9,631,750. In addition, ongoing contracted payments from UAL and LUL have been and will be made in respect of the East Site.

**11.4** In respect of the West Site, the Council is satisfied that the funding is likely to be available in good time to commence the West Site redevelopment as envisaged. It is anticipated that around 40% of the West Site redevelopment cost (including land acquisition) will be financed by equity payments from the Triangle partners and a

further affordable housing grant in respect of the West Site, with around 60% being provided through debt financing. Understandably, the developer will not seek that debt funding for the West Site until closer to the time that the West Site redevelopment is begun, otherwise it would incur significant and unnecessary interest charges in the interim period. (By way of example, the East Site debt funding for the construction of new buildings on East Site was put in place in December 2021, and piling began in March 2022.) As to whether the West Site debt funding is likely to be obtainable on reasonable commercial terms to the developer, it is considered that this is likely to be the case given: the identity of EC's backers; the central London location and prestige of the redevelopment, with which lenders are likely to wish to be associated; that Delancey, who advise EC, are experienced in and have obtained significant debt funding on other large scale redevelopment projects for their clients; and the fact that EC was able to procure debt funding to fully fund the East Site redevelopment. Similarly, there is no reason to think that affordable housing grant for the West Site will not be available given that such grant was procured for the East Site.

- 11.5** It is unnecessary, as part of the indemnity agreement, to include an obligation on EC to build the Scheme. In April 2020 the Council took the considered view that the heavy investment and commitment to the Scheme then shown by EC meant it was likely that EC would progress with the Scheme, such that an obligation on EC to build the Scheme was unnecessary. That view has been borne out (and reinforced) by the considerable progress that EC has subsequently made with the Scheme. The numerous commitments and heavy investment since April 2020 lend further weight to the conclusion that the Scheme will progress and be completed subject to the Council using CPO powers. Moreover, the reality of the situation is that once the new UAL campus building is completed on the East Site, this triggers the transfer of the LCC Site to EC's group company (subject to an arrangement whereby UAL can continue to occupy the current LCC buildings whilst they fit-out the new building on the East Site). Having spent a considerable sum in procuring the LCC Site and its vacant possession, it is very likely that EC would continue with the Scheme on the West Site subject to the Order having been confirmed.
- 11.6** Paragraph 106 of the Guidance refers to the Secretary of State taking into account *"the potential financial viability of the scheme...A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be."*
- 11.7** The potential viability of the Scheme has been examined as part of the planning application process in the context of the maximum level of affordable housing that can be provided. Discussion took place during the original planning application process as to what the appropriate level of developer profit should be to reflect the risk and complexity of the Scheme. The relevant expression of profit level for a developer for a build to rent housing scheme is the internal rate of return ("IRR"). EC's target rate of return is 11%. Viability assessment work was carried out during the planning application process in the context of the maximum amount of affordable

housing that can reasonably be supported by the Scheme. The viability experts appointed by EC concluded that the then current IRR was 7.51% but both they and the experts appointed by the Council nevertheless both agreed, as part of the viability work for the planning application, that a full target return of 11% is achievable over the lifetime of the development, having regard to market forecasts which have been adopted from residential and commercial agents, as well as costs advice from cost advisors. The advice from GVA (now Avison Young), advising the Council, was that all current forecasts at that time suggested that this growth in IRR over the construction period is achievable and possibly conservative.

- 11.8** In June 2021, as part of consideration of the revised planning application, DS2 (advising EC) concluded that there had been a notional increase in viability so that the ungeared IRR had risen to 10.23% but pointed out this was derived only from the fact that the East Site value had reduced due to the demolition of buildings, and that in real terms there was a reduction in retail values due to the COVID-19 pandemic, and the general decline in high street retailing, increased construction costs and the pandemic's effect meant that development economics were extremely challenging. Avison Young concurred that the target level of profit was not predicted to be met with the requisite level of affordable housing.
- 11.9** Some time has passed since the grant of the July 2021 Permission. Accordingly, the viability position has been the subject of further expert work by Avison Young for the Council. In November 2022, Avison Young carried out a high level review of the viability of the Scheme. The exercise took the form of a review of the updated proposed Scheme appraisals and commentary upon whether the inputs are reasonable at this point in time. This high-level review was undertaken on a desktop basis to inform the Council's decision making. Avison Young advised that this exercise would likely have to be reviewed again in the run up to a CPO inquiry. The review also included a sensitivity analysis of the IRR, commercial rents and yields.
- 11.10** On the basis of their high level analysis, Avison Young concluded in November 2022 that the Scheme is viable. Avison Young advised that the following points further reinforce their conclusion that the Scheme is viable: the East Site works have been procured under a fixed price Design and Build Contract with a major building contractor, Multiplex; full funding for the East Site has been secured; the existence of the contractual agreement with UAL/LCC; the Scheme has commenced and is proceeding; whilst the current macro-economic situation is challenging, there nevertheless remains underlying demand for high quality professionally managed residential stock, and rental forecasts remain positive.
- 11.11** Avison Young updated their analysis prior to the October 2023 Cabinet meeting and came to the same conclusion.
- 11.12** Viability is a moot point in respect of the East Site because EC has chosen to proceed, has funded it and has a contractor appointed and on site to build it (subject in the case of the Order Land to being able to do so). As regards the West Site, the reality is that once the new university campus building has been completed on the East Site for UAL, the completion of the sale of the LCC site is triggered, albeit UAL will have some time in which to move across to the East Site. So, having paid a very considerable sum to acquire the West Site at that point, it is highly likely that EC's



group company, Elephant Three Properties Limited, would then proceed with the West Site redevelopment (subject to the Order enabling it to do so), to recoup a return on its investment. The Guidance points out that a CPO can still be confirmed if there is uncertainty over financial viability if the case for it is very compelling. In this case, the Council has the benefit of Avison Young's updated expert advice that they believe the Scheme is viable. Moreover, officers do not consider there is any real uncertainty that the West Site will proceed given the factors above but, even if there was such uncertainty, the confirmation of the CPO will still be justified because the case for the CPO is so very compelling.

## **12. HOW THE COUNCIL WILL OVERCOME ANY OBSTACLE OR PRIOR CONSENT NEEDED TO IMPLEMENT THE SCHEME**

- 12.1** Investigations to date have not revealed any physical factors which would impede the Scheme.
- 12.2** Agreements with statutory undertakers are either in place or expected to be in place shortly.
- 12.3** EC envisages that the railway arches to the north of the railway station shall be brought into beneficial occupational use for the relocation of affected occupiers and otherwise for retail/café use. The July 2021 Permission does not include a change of use to commercial, business and services for those units. EC has instructed planning consultants to formulate an application for such planning consent in respect of those arches. There is no reason why the requisite consent for the proposed use of these arches will not be forthcoming, subject to any necessary conditions, as such uses will be in keeping with the current uses on Elephant Road and the planning policies for the Opportunity Area. The sound mitigation lobby and associated works in 4 and 5 Farrell Court would require planning permission. In the Council's view there is no reason why such consent will not be forthcoming given it would assist in securing the long term future of the nightclub use and would bring about environmental improvement (for noise amenity).
- 12.4** The Government intends to bring into operation revised building regulations to require second staircases in new, tall residential buildings. EC's representatives are of the view that, even if the West Site tall buildings are not caught by the proposed regulations (because they form part of a permission which has already been begun), they may well choose to put second staircases in the West Site tall buildings. Similarly, they are also considering whether the energy strategy for the West Site could be enhanced by changing the currently consented gas based system to an all-electric supply. These positive changes, if pursued, would require some form of planning approval from the Council, because pursuant to the planning permission the Scheme is to be built in accordance with the approved planning drawings and they do not currently show such second staircases or an all-electric based energy supply. The form of such planning approval would depend on the level of materiality of any change to the West Site buildings and could potentially be dealt with by way of non-material amendment approval, or through a minor material amendment section 73 planning permission or possibly even another permission, depending on the materiality of the changes. The Council would at that point need to assess what changes were proposed and whether they were acceptable from a planning

perspective. Given the development plan allocations for the site and the fact that tall buildings are already considered acceptable on the site and have been granted planning permission, and any changes would be necessitated by positive improvements to the scheme, it is considered likely that any such planning approval (if required) would be granted and this is unlikely to represent any impediment to the Scheme.

- 12.5 Agreements between the Developer and TfL and the Developer and the Council under section 278 and/or 38 of the Highways Act 1980 will be required in respect of proposed highway works. However, such agreements are routinely entered into in respect of all manner of development proposals and the Council does not envisage any problems in these agreements being concluded. Some of those agreements have already been entered into in connection with the East Site.
- 12.6 Licences may be required under the Highways Act 1980 for oversailing the highway, any scaffolding over the highway or hoarding affecting the highway. Again, though, such licences are routinely granted in all manner of developments and have already been entered into in respect of the development to date of East Site.
- 12.7 Stopping-up orders for both East and West Sites were made in summer 2020 and came into effect once demolition began on the East Site. Accordingly no further stopping-up orders are required.
- 12.8 In summary, the Council is satisfied that there are no physical or legal impediments to the Scheme proceeding and there is at the very least a reasonable prospect it will proceed to completion if the Order is made and confirmed.

### **13. STEPS TAKEN BY THE COUNCIL TO NEGOTIATE FOR THE ACQUISITION OF LAND**

- 13.1 EC has been acting in collaboration with the Council in making offers to third parties, with the common aim of acquiring the necessary land interests by agreement wherever practicable and reducing the areas required to be compulsorily acquired. Officers have been kept regularly apprised of negotiations by EC. The Council is satisfied that genuine and reasonable attempts to acquire interests by agreement have been made. Credible and reasonable offers have been made by EC to acquire land interests over several years. The extent of agreements already reached with various other parties over several years is further evidence that EC has been acting reasonably.
- 13.2 EC is obliged to continue to negotiate for acquisitions by agreement under the CPO indemnity agreement. The Council will also take an active role, in collaboration with EC, in making offers and to facilitate negotiations. The making of the Order will assist in these negotiations as it will make all parties aware of the seriousness of the Council's intentions, as is recognised in the Guidance. The Order is being used as a last resort to underpin the remaining negotiations that need to be concluded to enable the full implementation and completion of the Scheme.
- 13.3 Details of the discussions to date with the remaining parties were included in the Cabinet papers of December 2022 (including Appendix F thereof) and October 2023

(including Appendix F thereof), which are available as part of the documentation associated with the Order. By way of summary, discussions with the Arch Co for its long leasehold interest were taking place for some considerable time before the Cabinet meeting of April 2020. The offers put to Arch Co included a range of options which include, but went beyond, simply acquiring what is included in the CPO. Since the making of the Previous Order the negotiations have focused on just those interests and rights which were included in the Previous Order and which are replicated within the Order. Negotiations have been conducted on a without prejudice basis both via Arch Co's agent, Gerald Eve, and directly with Arch Co. EC put forward an improved offer in April 2023 and a further improved offer in July 2023 with a detailed set of Heads of Terms setting out the proposed structure of the offer. EC is currently awaiting a response to the most recent offer.

- 13.4** Heads of terms were agreed by EC and DistriAndina for the acquisition of its interest as far back as summer 2020, and documentation settled to acquire that interest at an agreed price, but the documents were not signed. Accordingly, an alternative proposal was put to DistriAndina on the basis of a relocation into a unit within the Scheme, fronting Walworth Road. The offer was on the basis that DistriAndina would not be required to vacate their existing premises until they had relocated into their new premises, ensuring no loss of trading.
- 13.5** In January 2023 DistriAndina decided to change advisors and instructed Winbourne Martin French. EC provided an undertaking to pay their new advisors fees. Negotiations subsequently progressed on the basis of the proposed relocation. During these negotiations DistriAndina has expressed an interest in relocating to the Walworth Road unit. In March 2023 Heads of Terms were issued to DistriAndina's agent setting out proposed lease terms on the proposed relocation unit providing greater security of tenure than their existing lease and on affordable rent terms. The Heads of Terms included an agreement to pay compensation at a sum to be agreed or determined in accordance with the 'compensation code'.
- 13.6** By July 2023 it became increasingly likely that a solution could be found which would enable Corsica to remain in 4/5 Farrell Court, meaning that arches 113A/120 and 113B/121 could be made available on the basis that they would not be required for Corsica. Accordingly, a relocation to 113A/121 has been offered to DistriAndina as an alternative to the unit on Walworth Road, although that unit also remains on offer to DistriAndina.
- 13.7** Negotiations are progressing with DistriAndina's agent on the basis of the proposed relocation into one of these two properties. It is understood their preference would be to take the unit in the new block fronting Walworth Road.
- 13.8** A reasonable offer to acquire Beset's occupational tenancy interest in 7 Farrell Court was made in February 2021 but was rejected by the tenant, due to the difficulty in finding another site which meets its requirements. Accordingly, in 2022 an alternative proposal was put to Beset on the basis of a relocation into 4 and 5 Farrell Court as at that time it was envisaged that Corsica would relocate from that property to other arches 113A/120 and 113B/121. The offer was on the basis that Beset would not be required to vacate their existing premises until they had relocated into their new premises, ensuring no loss of trading.

- 13.9** In January 2023 Beset decided to change advisors and instructed Winbourne Martin French. EC provided an undertaking to pay their new advisor's fees. Negotiations subsequently progressed on the basis of a relocation to 4 and 5 Farrell Court. During these negotiations Beset has expressed a willingness to relocate to 4 and 5 Farrell Court. In March 2023 Heads of Terms were issued to Beset's agent setting out proposed lease terms on the proposed relocation unit providing greater security of tenure than their existing lease and based on a rent to be capped in line with their existing unit. The Heads of Terms included an agreement to pay compensation at a sum to be agreed or determined in accordance with the 'compensation code'.
- 13.10** A requirement of the relocation offer was that Beset would offer relocation accommodation within the relocation arches to all of their existing occupiers who wished to relocate with Beset and that such offer would be made on reasonable terms. Beset agreed to this request. As with Beset, the Beset occupiers would not be required to vacate their existing premises until they had relocated to the new premises to ensure no loss of trading.
- 13.11** By July 2023 it became increasingly likely that a solution could be found which would enable Corsica to remain in 4/5 Farrell Court, meaning that it would no longer be available as a relocation opportunity for Beset. However, this would mean that arches 113A/120 and 113B/121 could be made available on the basis that they would not be required for Corsica. Accordingly, a relocation to 113B/121 was proposed to Beset. It is considered that a relocation to this arch is actually preferable as the increased size and headroom is sufficient to enable Beset to relocate into a single arch which is more comparable to their existing operation. Beset have confirmed they are interested in relocating to this arch.
- 13.12** All other terms of the offer are the same as was previously offered in respect of 4 and 5 Farrell Court including the compensation provisions, continuity of trade and the requirement to offer comparable accommodation on comparable terms to the existing subtenants. Negotiations are progressing with Beset's agent on this basis.
- 13.13** 7 Farrell Court occupiers – the Council's and EC's intention is to recreate for the 7 Farrell Court occupiers a trading unit on a like for like basis at one of the arches 113A/120 or 113B/121 (probably the latter), with Beset being the tenant and the other occupiers being given licences to occupy the new unit on comparable terms and with comparable floorspace to which they have now. Positive meetings have been held between EC, the Council and the occupiers in September 2023 to address concerns raised by some of the occupiers. Although some of the occupiers objected in March 2023 to the then proposed relocation to 4-5 Farrell Court as part of the Previous Order, the Council and EC are of the view that the revised relocation proposal, to relocate Beset and their occupiers to arches 113B and 121, is a suitable relocation opportunity, objectively judged, and one which better suits Beset's preferred arrangements (and which would more accurately reflect the current trading arrangements) than the previously identified solution of their relocation to 4-5 Farrell Court. If for any reason Beset did not take up the offer of a lease in 113B and 121 then (assuming the CPO was confirmed to enable the Council and thus EC to acquire 113B and 121) EC is content to offer floorspace in the new unit to the other occupiers on the basis that EC would become their direct landlord.

- 13.14** 4-5 Farrell Court (Corsica) – at the time of the December 2022 Cabinet report an offer had been put to Corsica based on a relocation to arches 113A/120 and 113B/121. Discussions progressed with Corsica on the basis of the proposed relocation and Heads of Terms were issued to Corsica's agent in February 2023 setting out proposed lease terms on the proposed relocation arches providing greater security of tenure than their existing lease and based on a rent to be capped in line with their existing arches. The Heads of Terms included an agreement to pay compensation at a sum to be agreed or determined in accordance with the 'compensation code'. The offer was on the basis that Corsica would not be required to vacate their existing premises until they had relocated into their new premises, ensuring no loss of trading.
- 13.15** However, after further consideration by Corsica, it became clear that Corsica's preference was to find a solution that would enable them to remain in their existing arches. Corsica assembled a professional team including a surveyor, solicitor, licencing specialist and acoustician whose fees are all being reimbursed by EC. Corsica's professional team have been working with EC's professional team and together a workable solution has been devised that will enable Corsica to operate from their existing arches. This will require the construction of the sound mitigation lobby together with internal reconfiguration works.
- 13.16** Corsica will need to vacate the arches whilst the works are undertaken (envisaged to be around 9 months), but they are aware of this and that it will facilitate the solution of a long term future for them in these arches. Negotiations are being conducted on a without prejudice basis, but based on a compensation agreement for the acquisition of the existing interest in conjunction with an option to return under a new lease, with greater security of tenure than their existing lease, on completion of the works. Negotiations are at an advanced stage and Heads of Terms have been issued.
- 13.17** The Tabernacle has appointed a surveyor to act on its behalf and the parties are in discussion to address various practical aspects that the Tabernacle has raised in respect of EC's request to obtain some relatively minor new rights to facilitate the demolition of the adjacent LCC building and crane oversail. Negotiations are progressing with the Tabernacle's agent and Heads of Terms were issued in June 2023. Whilst it is hoped that these discussions will result in an agreement by private treaty, and EC is working towards that objective, the CPO is required in case agreement cannot be reached.
- 13.18** EC is currently negotiating an agreement with Network Rail to acquire the requisite new rights envisaged by the Order to facilitate the works to the railway arch premises and to complete the pedestrian access to the railway station, and to acquire the tiny fragment of land (parcel 37).
- 13.19** Accordingly, the making of the Order and its confirmation by the Secretary of State is necessary to acquire the outstanding land interests and rights for the Scheme.
- 14. DETAILS OF ANY RELATED ORDERS ETC. WHICH MAY REQUIRE A CO-ORDINATED DECISION BY THE CONFIRMING MINISTER**
- 14.1** No such orders are required.

**15. EXTENT OF THE SCHEME TO BE DISREGARDED FOR THE PURPOSES OF ASSESSING COMPENSATION IN THE "NO SCHEME WORLD"**

- 15.1** The Scheme is described above. It covers the Order Land, the Shopping Centre Site, 26-32 New Kent Road, the LCC Site, and part of Elephant Road and the railway station where a proposed heating network pipe will be located. The extent of the Scheme Land is shown on the plan at **Annex 2**.

**16. OVERALL JUSTIFICATION - WHETHER THERE IS A COMPELLING CASE IN THE PUBLIC INTEREST FOR THE ORDER**

- 16.1** The need for comprehensive redevelopment of the Order Land and the Scheme Land is acknowledged and supported in the adopted national, London and local planning policy framework. Delivery of the Scheme would fulfil key planning policy objectives and transform Elephant and Castle town centre and its retail and housing offer. It would contribute very significantly to the improvement of the economic, social and environmental well-being of the area as outlined above. Given that work under the July 2021 Permission is well underway, there are good prospects that the Scheme will proceed further. There are no likely realistic alternatives to compulsory purchase to achieve the purposes of the Order.
- 16.2** It is genuinely a matter of last resort that the Council and EC are pursuing compulsory acquisition. Whilst the Scheme is already well underway, through the work on the Shopping Centre Site and 26-32 New Kent Road, that has occurred because EC has been able to acquire titles on New Kent Road and third party leases in the Shopping Centre by agreement. The Order is needed to enable the Scheme to continue and be completed. The Order is essential to the successful implementation and conclusion of the Scheme. The fact that development has commenced means it is all the more important that the Order is made and confirmed so as to complete the Scheme, and shows that the Council and EC are genuinely committed to the Scheme. EC would not have begun the works if it was not intending to complete the Scheme. Many of the numerous benefits will not be realised if the Scheme cannot continue and be completed as envisaged, so the Order is necessary to unlock those benefits.
- 16.3** As vacant possession of the Shopping Centre and the New Kent Road properties were obtained by agreement, confirming the Order will not have many of the potential adverse impacts that may otherwise have been caused, as the Council had originally envisaged. And in any event, the impacts of obtaining vacant possession of those areas by agreement is being satisfactorily mitigated. In other words, there is less private loss to be outweighed by the numerous public benefits than may have otherwise been the case.
- 16.4** The impacts on the human rights of those likely to be affected by the Order and under the Equality Act 2010 have been considered and the Council concludes that the considerable public benefits to be derived from the Order outweigh the harm caused by interference with the human and other rights of those likely to be affected by compulsory purchase.

**16.5** A full assessment of the justification for the Order, including analysis of the key statutory tests and the requirements of the Guidance, was contained in Appendix J to the Council's Cabinet report of 17 October 2023 and is reproduced at **Annex 5**.

**16.6** In the Council's view, there is a compelling case in the public interest to justify making the Order.

**17. FURTHER INFORMATION FOR PERSONS AFFECTED BY THE ORDER**

**17.1** Those parties affected by the Order who wish to discuss matters with a representative of the Council should contact:

Catherine Brownell, Programme Manager, Sustainable Growth, North  
(general queries)  
(Tel: 020 7525 3625)  
E-mail: [catherine.brownell@southwark.gov.uk](mailto:catherine.brownell@southwark.gov.uk)

*OR*

Alexander Gillott, Solicitor  
(legal queries)  
(Tel: 020 7525 4878)

E-mail: [alexander.gillott@southwark.gov.uk](mailto:alexander.gillott@southwark.gov.uk)

Both at the Council.

**17.2** Owners and tenants of properties affected by the Order who wish to negotiate a sale and/or relocation or discuss matters of compensation should contact:

Richard Palmer  
Development Director  
Delancey  
Lansdowne House  
Berkeley Square  
London W1J 6ER

E-mail: [Richard.Palmer@delancey.com](mailto:Richard.Palmer@delancey.com)

Tel: 020 7448 1482

*OR*

Catherine Brownell at the Council (as above).

**18. INSPECTION OF THE ORDER AND ORDER DOCUMENTS**

**18.1** A copy of the Order and Order Map (and accompanying location plan) may be seen at:

- 18.1.1 the Council's offices at 160 Tooley Street, Southwark, London SE1 2QH on Monday to Friday between 9am to 4pm; and
- 18.1.2 Southwark Heritage Centre and Walworth Library, 145-147 Walworth Road, London SE17 1RW on Monday to Friday between 10am and 8pm, on Saturday between 10am and 5pm, and on Sunday between 12pm and 4pm; and
- 18.1.3 on the Order website at <https://gateleyhamer-pi.com/en-gb/elephant-and-castle>

## **19. FURTHER REFERENCE DOCUMENTS TO BE REFERRED TO OR PUT IN EVIDENCE IN THE EVENT OF AN INQUIRY**

- 19.1** Documents referred to below may be inspected at the Council's offices at 160 Tooley Street at the same times as referred to in paragraph 18.1.1 above. They are also available to view on the Order website as referred to in paragraph 18.1.3 above.

### **19.2 List of Documents**

- 19.2.1 The Order including the Order Schedule
- 19.2.2 Spanish translation of the Order including the Order Schedule (extract)
- 19.2.3 Order Map and Location Plan
- 19.2.4 Spanish translation of this Statement
- 19.2.5 London Borough of Southwark Cabinet Report for 17 October 2023 Cabinet meeting
- 19.2.6 Minutes from Cabinet meeting of 17 October 2023
- 19.2.7 London Borough of Southwark Equality Act 2010 impact assessment for the Order, 2 October 2023
- 19.2.8 High level viability review by Avison Young for the Council, 4 October 2023
- 19.2.9 CPO Indemnity Agreement (redacted) dated 1 February 2023
- 19.2.10 Deed of variation to CPO Indemnity Agreement (redacted) dated 29 December 2023
- 19.2.11 Funding Intentions Letter (redacted) dated 25 September 2023
- 19.2.12 Section 226 Town and Country Planning Act 1990
- 19.2.13 The Acquisition of Land Act 1981
- 19.2.14 Section 13 Local Government (Miscellaneous Provisions) Act 1976
- 19.2.15 Compulsory Purchase Act 1965
- 19.2.16 Compulsory Purchase (Inquiries Procedure) Rules 2007



- 19.2.17 MHCLG Guidance: Compulsory Purchase Process and the Crichel Down Rules (July 2019)
- 19.2.18 Planning permission 16/AP/4458 dated 10 January 2019 and associated application documents
- 19.2.19 Listed building consent 16/AP/4525 dated 10 January 2019 and associated application documents
- 19.2.20 Section 73 minor material amendments planning permission 20/AP/3675 dated 12 March 2021 and associated application documents
- 19.2.21 Non-material amendment approval 21/AP/1064 dated 8 April 2021
- 19.2.22 Section 73 minor material amendments planning permission 21/AP/1104 dated 29 July 2021 and associated application documents
- 19.2.23 Non-material amendment approval 21/AP/3848 dated 2 December 2021
- 19.2.24 Non-material amendment approval 21/AP/4180 dated 4 February 2022
- 19.2.25 Non-material amendment approval 22/AP/0109 dated 4 February 2022
- 19.2.26 Non-material amendment approval 22/AP/1090 dated 1 June 2022
- 19.2.27 Section 106 Agreement dated 10 January 2019 and related deeds of variation
- 19.2.28 Discharge of obligation to notify the Council of "implementation" works under permission 21/AP/1104 pursuant to section 106 agreement 28 June 2022
- 19.2.29 Planning permission 21/AP/4628 dated 10 June 2022 for heating network pipe and approved drawings
- 19.2.30 Planning permission 20/AP/0681 dated 29 July 2020 for underground link tunnel works and associated application documents
- 19.2.31 Discharge of obligation to notify the Council of “substantial commencement” works on the East Site under permission 21/AP/1104 pursuant to the section 106 agreement, 12 January 2023
- 19.2.32 Non-material amendment application 23/AP/2759 documents in respect of permission 21/AP/1104, September 2023
- 19.2.33 London Plan 2021
- 19.2.34 Southwark Plan 2022
- 19.2.35 National Planning Policy Framework
- 19.2.36 2012 Elephant & Castle Supplementary Planning Document

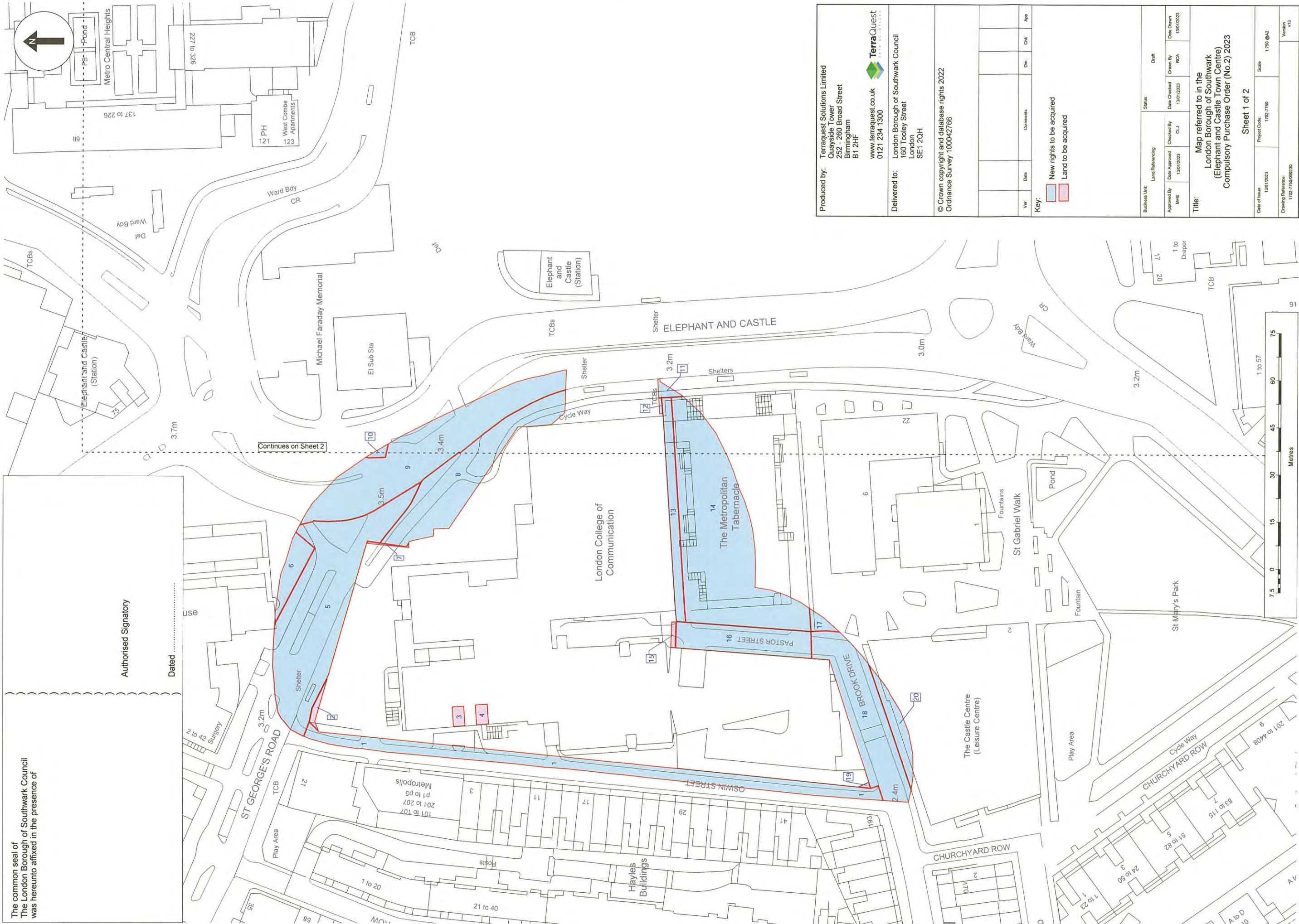
- 19.2.37 London Borough of Southwark Cabinet Reports for 6 December 2022 Cabinet meeting
- 19.2.38 Minutes from Cabinet meeting of 6 December 2022
- 19.2.39 London Borough of Southwark Cabinet Reports, for 7 April 2020 Cabinet meeting
- 19.2.40 Minutes from Cabinet Meeting of 7 April 2020

**Dated 29 December 2023**

## **ANNEX 1**

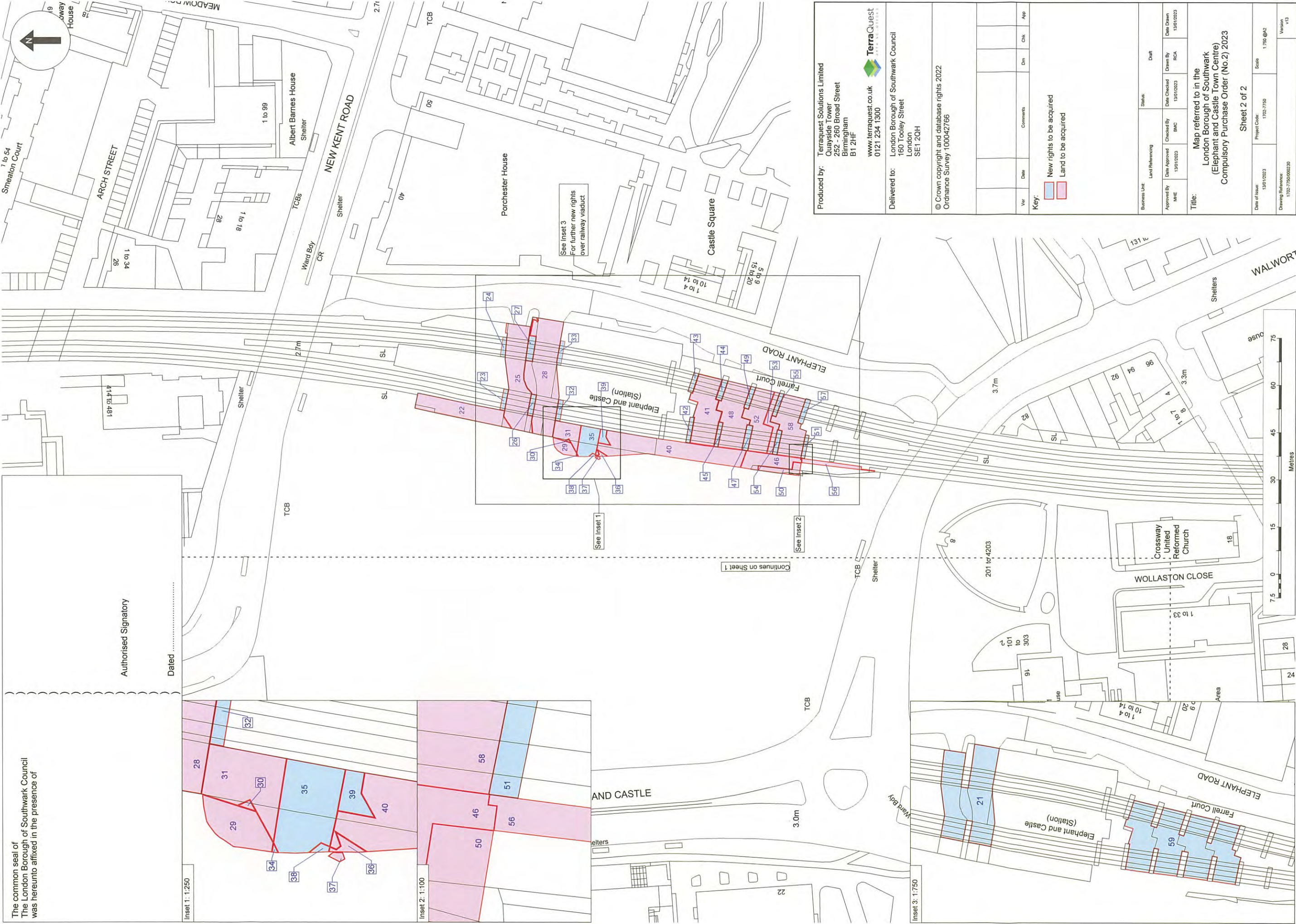
### **CPO MAP AND LOCATION PLAN**





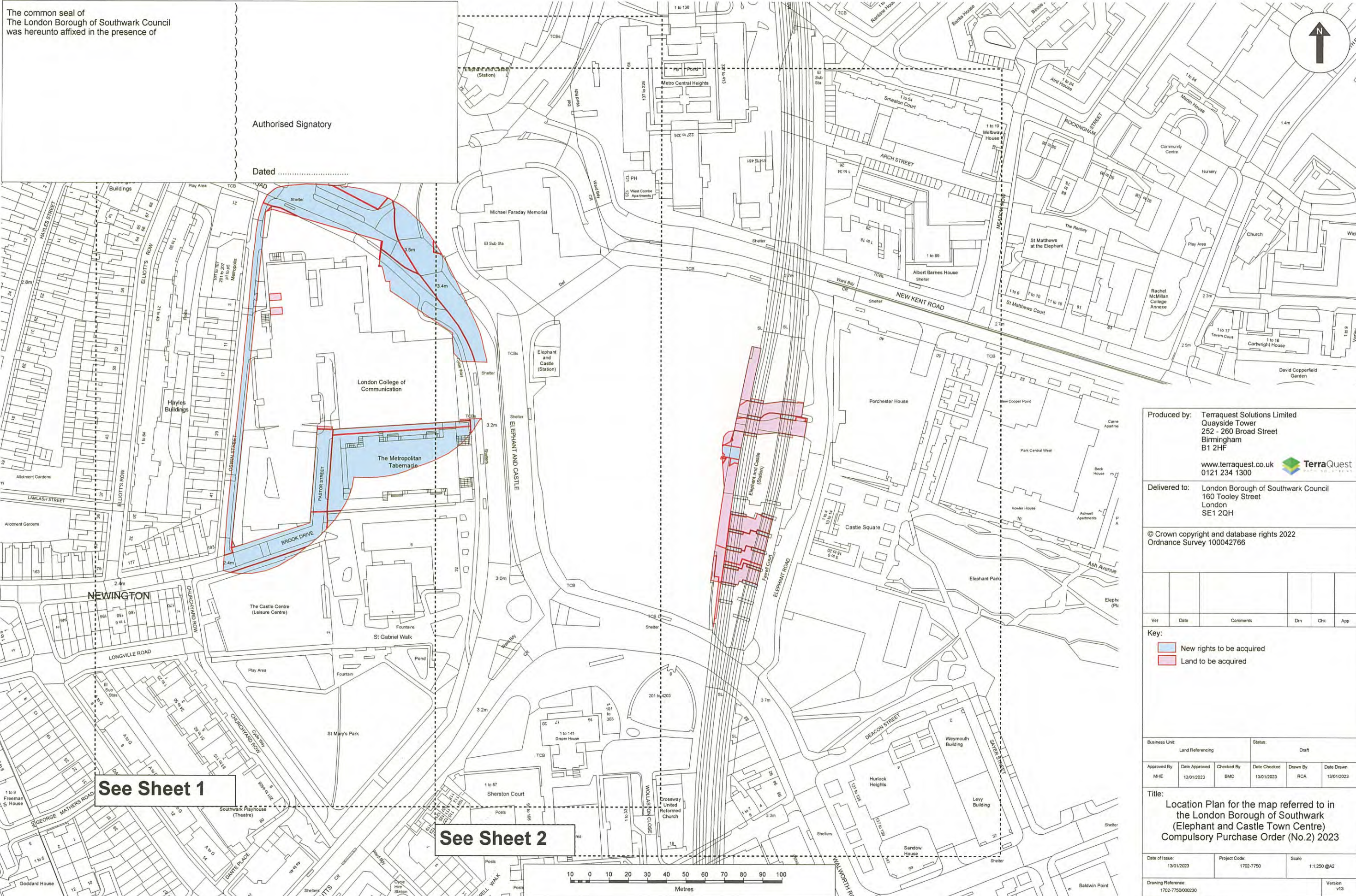


Map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order (No.2) 2023





Location Plan for the map referred to in the London Borough of Southwark (Elephant and Castle Town Centre) Compulsory Purchase Order (No.2) 2023



The common seal of  
The London Borough of Southwark Council  
was hereunto affixed in the presence of

Authorised Signatory

Dated .....

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Ordnance Survey 100042766

Ver	Date	Comments	Dm	Chk	App

Key:

- New rights to be acquired
- Land to be acquired

Business Unit:	Land Referencing	Status:	Draft		
Approved By:	Date Approved:	Checked By:	Date Checked:	Drawn By:	Date Drawn:
MHE	13/01/2023	BMC	13/01/2023	RCA	13/01/2023

Title:

Location Plan for the map referred to in  
the London Borough of Southwark  
(Elephant and Castle Town Centre)  
Compulsory Purchase Order (No.2) 2023

Date of Issue:	Project Code:	Scale:
13/01/2023	1702-7750	1:1,250 @A2
Drawing Reference:	Version	
1702-7750/000230	v13	



## **ANNEX 2**

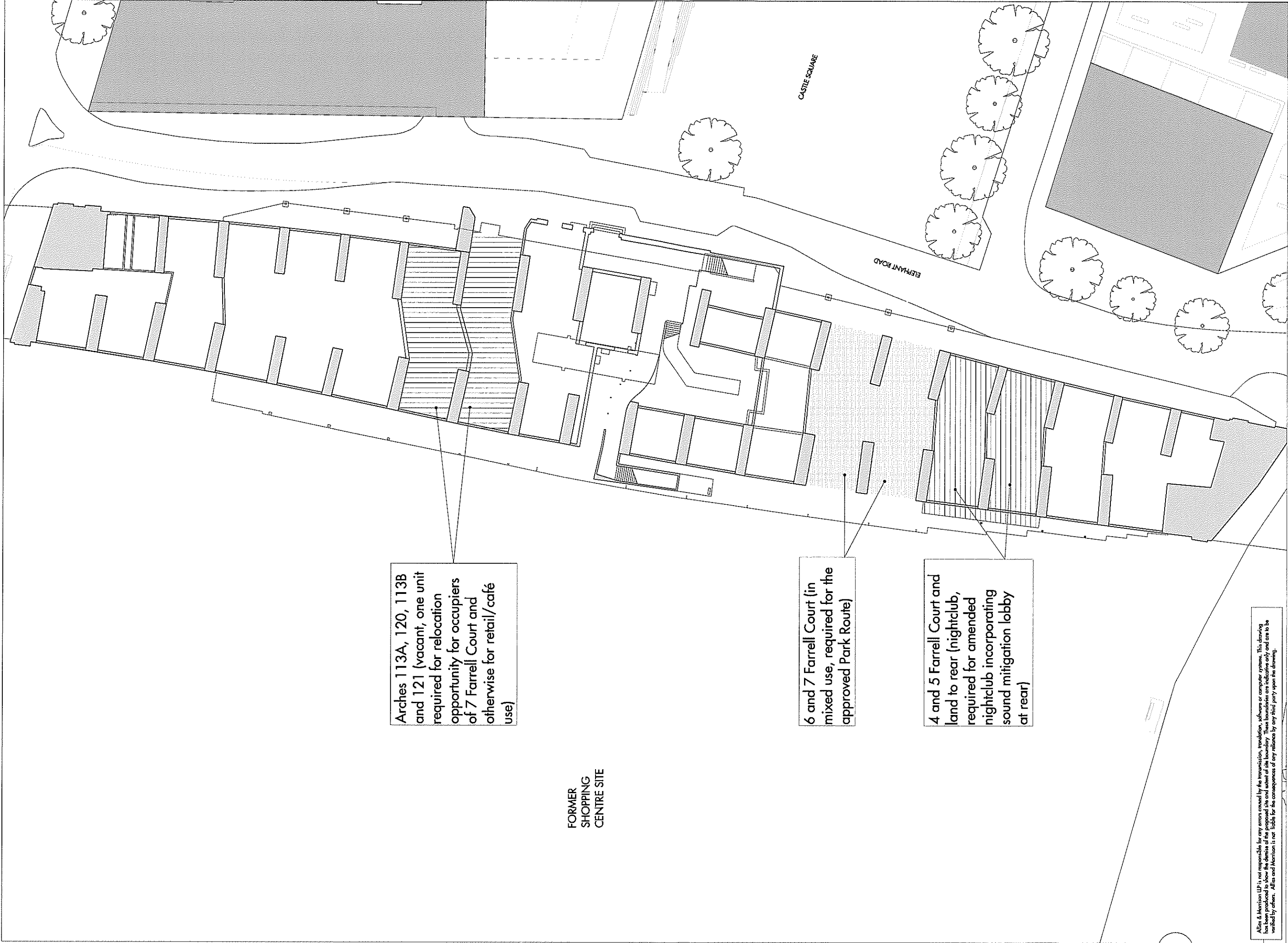
### **PLAN OF THE SCHEME LAND**





## **ANNEX 3**

### **UPDATED ARCH UNITS INDICATIVE PLAN**



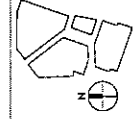
Arches 113A, 120, 113B and 121 (vacant, one unit required for relocation opportunity for occupiers of 7 Farrell Court and otherwise for retail/café use)

6 and 7 Farrell Court (in mixed use, required for the approved Park Route)

4 and 5 Farrell Court and land to rear (nightclub, required for amended nightclub incorporating sound mitigation lobby at rear)

FORMER SHOPPING CENTRE SITE

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REV	DATE	DESCRIPTION
1	12/07/22	ISSUED FOR INFORMATION
2	12/07/22	ISSUED FOR INFORMATION
3	12/07/22	ISSUED FOR INFORMATION
4	12/07/22	ISSUED FOR INFORMATION

## **ANNEX 4**

### **APPENDIX H TO CABINET REPORT OCTOBER 2023**

## APPENDIX H

## ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

## ADVERSE EFFECTS ARISING FROM PROPOSED NEW CPO

1. The use of CPO powers in relation to the two railway arches to the north of the railway station to which EC already has long leasehold title, so that control can be achieved to turn one arch into a relocation premises for Beset and their occupiers, and another for DistriAndina (if that is their preference), and otherwise for retail/café uses including retail kiosk units, will deprive Arch Co of its long leasehold title to those arches. Similarly the acquisition by the Council under the new CPO of 4 and 5 Farrell Court, and 6 and 7 Farrell Court, and the corridor of land to the immediate west of the railway viaduct, will deprive Arch Co of its long leasehold title to those premises. Arch Co is a large commercial concern with many railway arch units across the country. It is not considered that the acquisition of these areas will cause serious detriment to it. In Arch Co's objection to the February 2023 CPO, there was no suggestion that it would suffer any material detriment from the loss of their interest in these arches.
2. The occupiers of 6 and 7 Farrell Court will be displaced if their interests were compulsorily acquired to facilitate the creation of the Park Route. In a worst case scenario, they might cease trading as a result of an acquisition through the new CPO. However, the Council's and EC's intention is that arch 113B/121 will be acquired and developed as a relocation opportunity within the Scheme for the tenant and occupiers of 7 Farrell Court, thus mitigating adverse impacts on them. The tenant of 6 Farrell Court, DistriAndina, is also being offered the opportunity to relocate within the Scheme, to a new unit on the East Site or to arch 113A/120 (whichever is their preference). Again, it is envisaged this would mitigate the adverse impact of the new CPO on them. In their objections to the February 2023 CPO, whilst Beset and DistriAndina explain why they should be allowed to remain, they do not suggest that they would suffer significant adverse effects if they had to move to the relocation premises.
3. The tenant of 4 and 5 Farrell Court, Corsica Studios, would be displaced if its interest was simply compulsorily acquired in a worst case scenario and might cease trading as a result of that. However, the Council and EC's intention is that they should be offered the opportunity to occupy 4-5 Farrell Court on a long term basis under a new lease once the sound mitigation lobby has been constructed to the immediate rear of those units, with the unified and enlarged floorspace (i.e. inclusive of the sound mitigation lobby) being the subject of the new lease, thus safeguarding the future of this venue. The proposed works to 4 and 5 Farrell Court would potentially take around 9 months to complete and in that time the venue would cease trading to enable the works to take place. This would result in some short term loss of trade to the nightclub but this is understood by Corsica and it would facilitate the longer term future of the venue and Corsica's preferred solution.
4. Any party that has their interest acquired pursuant to the new CPO will be entitled to statutory compensation for the loss of their interest. Where only part of the land is taken, there is the opportunity to claim compensation for severance or injurious affection in respect of the retained part. Furthermore, and independent of statutory compensation, the section 106 agreement has a relocation fund for eligible local independent traders on the East Site.

5. The new CPO would also see new rights created over the land shown shaded blue on the plan at Appendix A. The new rights to carry out works to the sides and undersides of the viaduct in connection with the creation of the walk-through in what is currently 6 and 7 Farrell Court (including removing the existing shopfronts) would apply against Network Rail, as would the additional new right to affix the sound mitigation lobby to the viaduct (to the rear of 4-5 Farrell Court), but these are considered to be relatively minor in nature. No works would be carried out which would affect the operation of the railway. The same is true of the new rights that are sought in respect of (i) a right of way to/from the East Site over Network Rail's adjacent land to the railway station (and related right to pave and maintain that area), and (ii) the sides and undersides of the viaduct arches 113A/120 and 113B/121 currently owned long leasehold by EC, so that they can be brought into beneficial use for the relocation premises for Beset and their occupiers, and potentially for DistriAndina if they wish to relocate there, and otherwise for retail/café uses (including the right to install frontage and rear elevations). A right is also sought to pave under an external staircase adjacent to the railway station and to maintain such paving.
6. The rights being sought over the Tabernacle will result in some minor inconvenience to the Tabernacle for a relatively short period, as explained in the December 2022 report but the Tabernacle will remain open to its congregation throughout the duration of any such works and disabled access will be maintained at all times whilst the Tabernacle is being used. It is considered that such an adverse effect (if mitigation cannot fully remove it) is minor. The Tabernacle's objection to the February 2023 CPO suggests that their concerns could be overcome by the registration and completion of a working agreement, and EC is seeking to agree matters with the Tabernacle.
7. The acquisition of crane oversail rights over various pieces of land is considered to be relatively minor in effect.
8. The owner of any land interest affected by the new rights will be entitled to statutory compensation in respect of those new rights.
9. As explained in Appendix D of the December 2022 report, within Appendix K to this report, in accordance with the Cabinet resolution of April 2020, the Council has already conducted a process which overrides rights of light and other rights held by third parties in respect of all areas of the East and West Site on which new buildings will be erected. This removes the ability of eg rights of light holders to obtain an injunction or to hold the developer to ransom, with the rights holders entitled to compensation on a diminution in value basis. It is not considered that there are any such rights in respect of the areas that will now be subject to acquisition under the new CPO which would be problematic, but any such rights as exist will be overridden by way of the implementation of the new CPO in any event.
10. The tall buildings proposed as part of the Scheme will result in adverse day light and sunlight effects on a number of nearby properties, including residential properties, particularly those in Oswin Street, Hayles Buildings and Metro Central Heights. The tall buildings on the East Site can be constructed without the new CPO but the new CPO is required to build those on the West Site. Cabinet is referred to the Planning Committee report in the background papers – the Planning Committee considered light amenity and overshadowing in detail as part of the planning application process and it was considered that those adverse effects were outweighed by the benefits of the Scheme.
11. As set out in the Planning Committee report, there would be harm to the setting of the Metropolitan Tabernacle. Cabinet will note, though, that notwithstanding the substantial

weight given to that harm, the Planning Committee concluded that such harm would be outweighed by the significant public benefits accruing from the Scheme.

12. Without mitigation, there are likely to be some adverse equality impacts as discussed in detail in Appendix I of this report in respect of the tenants and occupiers of the affected railway arches and the Tabernacle. However, as explained in Appendix I, mitigation is proposed by way of the proposed relocations for the affected arch tenants, plus the construction of the sound mitigation lobby to benefit Corsica Studios's premises, and measures will be taken to mitigate the effects of construction on the Tabernacle, including maintenance of disabled access. It is considered all that can reasonably expected to be done to mitigate impacts on these parties has been and is continuing to be done.

**ANNEX 5**

**APPENDIX J TO CABINET REPORT OCTOBER 2023**





## APPENDIX J

## ELEPHANT AND CASTLE TOWN CENTRE - COMPULSORY PURCHASE ORDER

## WHETHER THE USE OF THE COUNCIL'S POWERS IS JUSTIFIED – THE NEW CPO

1. Firstly, sections 226(1)(a) and 226(1A) of the 1990 Act are considered.
2. Section 226(1)(a) gives the Council power to acquire compulsorily any land in their area if the Council thinks that the acquisition will "facilitate the carrying out of development, re-development, or improvement on, or in relation to, the land". The making of the new CPO will facilitate the carrying out of development, re-development, or improvement on, or in relation to, the land covered by the new CPO. The Scheme has already begun on part of the East Site, adjacent to the new CPO land, and EC has shown through all of its progress its continued intention to proceed with the Scheme so as to complete the East Site redevelopment and then carry out the West redevelopment if CPO powers are utilised. Without the use of the new CPO powers, it will not be possible to deliver key areas of public realm on the East Site, nor to complete the East Site redevelopment of the Scheme. Moreover, the title and new rights sought in respect of the West Site are necessary to enable demolition and construction in respect of the West Site. Also, the acquisition of title to certain railway arch premises and related new rights over the viaduct structure is required to deliver the relocation opportunity for the tenant and occupiers of 7 Farrell Court in arch 113B/121, and 113A/120 potentially for DistriAndina if they wish to move there, and otherwise to bring those units into retail/café use. The new CPO will also enable the construction of the sound mitigation lobby to the rear of 4-5 Farrell Court and associated works in 4-5 Farrell Court, and leasehold title to the unified floorspace of 4-5 Farrell Court and the sound mitigation lobby to be acquired by the Council, thus allowing for the offer of a new long term lease to Corsica and if they do not wish to take up that option to another operator. So the new CPO will facilitate the carrying out of redevelopment on, or in relation to, the land included in the new CPO and thus the test in section 226(1)(a) is satisfied.
3. In addition to section 226(1)(a), section 226(1A) applies, so the Council must not exercise the power under section 226(1)(a) unless it thinks that the development, re-development or improvement is likely to contribute to the achievement of any one or more of the following objects: (a) the promotion or improvement of the economic well-being of their area; (b) the promotion or improvement of the social well-being of their area; and (c) the promotion or improvement of the environmental well-being of their area. In this case, the Council thinks the development, re-development or improvement is likely to contribute to the improvement of all three well-being objects.
4. The Scheme is likely to result in *economic* well-being improvements, including a material increase in the quantity and quality of town centre uses, including providing additional and better quality retail, leisure, education and office provision, consistent with the long term strategy to regenerate the Town Centre and enhance its vitality and viability. The Scheme will create enhanced linkages, and assist in the regeneration of the wider centre. The Scheme includes the provision of affordable retail and office floorspace. The education facility will secure LCC's long-term future in the area.
5. The Scheme will create around 1,300 construction jobs per year during peak times over the 10 year build programme. The completed Scheme will generate up to 2,085 gross new full time equivalent jobs, depending on the exact nature of the commercial uses which will ultimately come forward, an increase of over 600 when compared with the estimated 1,418

full time equivalent jobs on the East and West Sites before the development commenced. Measures to secure jobs for unemployed borough residents are contained in the section 106 agreement and will deliver significant economic benefits to the local population.

6. The Scheme will secure key new transport infrastructure, including a new station entrance, create enhanced linkages between existing transport provision, and provide a comprehensive package of measures to enhance the connectivity of the new town centre. These measures will make the town centre more competitive, better able to retain and attract trade from within its catchment, including meeting the needs of the additional local residents, workers and students, and encourage the use of sustainable means of transport.
7. As regards the fitting out and opening of the underground station box, the amendments made to the section 106 agreement due to TfL's funding position means that there is an increased chance (as compared to the position in April 2020) that the new station box will not be fitted out and come into operation, but the likelihood of the new station being fitted out and becoming operational at a reasonable point in the future is still high. Even if reduced weight was given to the new station box due to the TfL funding uncertainty, the new CPO would still be justified for all the other economic, social and environmental well-being improvements that the Scheme would bring.
8. The new residential population (up to 1,880 people) is expected to have a total household expenditure in excess of £28 million per annum, some of which would be spent locally on goods and services, thereby contributing to the local economy and supporting new jobs locally. It is estimated that Council Tax revenue could be up to £2.1 million per annum, based on 2020-21 Council Tax bands and assuming all units are fully occupied and no rebates or discounts are offered. The Scheme will generate estimated CIL payments (assuming social housing relief is applied) of £4,278,679 Mayoral CIL and £11,230,308 Southwark CIL.
9. The Scheme will deliver significant *social* well-being improvements. These include the creation of a more balanced mix of uses, creating quality homes, offices, education and community facilities, including the provision of affordable retail, workspace and homes. The Scheme includes the provision of cultural and community facilities, including new and enhanced public realm and public toilets which will benefit all sections of the community. It will include the opportunity for Corsica Studios to take up a new lease of 4-S Farrell Court, with the sound mitigation lobby incorporated, thus giving the opportunity to safeguard the longer term future of this cultural venue on Elephant Road whilst also ensuring that there will be no adverse noise effects on the new residential population. The noise mitigation will also help protect the venue against future noise complaints which might otherwise arise from other sources (e.g. future new uses or development) and therefore helps secure the future of the venue in that sense also. It will also include relocation premises for the small, local businesses which will be displaced by the creation of the Park Route.
10. The Scheme will also deliver significant *environmental* well-being improvements. In addition to providing well designed buildings and well connected spaces, the Scheme will contribute to securing more sustainable travel patterns, by better serving the needs of current and future residents, workers and students. The Scheme includes improved pedestrian permeability, increased site wide cycle facilities and public realm improvements, including additional landscaping and tree planting. The Scheme will also provide a sound mitigation lobby on the rear of 4-S Farrell Court, thus alleviating noise amenity concerns.

11. Notwithstanding that there will be some negative effects to those affected by the new CPO, as referred to in this report, and having taken those negative effects into account, the development, re-development or improvement is likely to contribute to the achievement of all of the well-being objects in accordance with section 226(1A) of the 1990 Act.
12. The specific economic, social and environmental well-being improvements that the new CPO will deliver directly are in themselves sufficient to satisfy section 226(1A) of the 1990 Act. Firstly, without the new CPO, the Park Route as shown in the planning permission approved drawings cannot be delivered. It has been a key aspect of the Council's planning vision for a long time that the redeveloped Shopping Centre site should be opened up for pedestrians to what is now Elephant Park, thus facilitating the connection of these two key sites. EC is under an obligation in the section 106 agreement to use reasonable endeavours to open the Park Route prior to the East Site opening. Although the section 106 agreement allows for an alternative route for the Park Route through one of the arches that EC has some long leasehold to, or such other alternative route that the Council may approve, the July 2021 planning permission only shows the route through 6 and 7 Farrell Court, so that is the approved route under the permission. That route was chosen for the planning application, after analysis of likely pedestrian footfalls, and what would be the optimum route through the East Site because it forms a natural pedestrian "desire line", as it aligns with a boulevard from Elephant Park and so represents the optimum connection to Elephant Park and Lendlease's new redevelopment around it. From the chosen Park Route, pedestrians will be able to continue west through the new town centre to Elephant & Castle highway with its bus services (and Brook Drive beyond), or to move northwest to the new Underground station. This route is also close to Castle Square and Walworth Road. By contrast the arch EC has some long leasehold title to is situated further away from Walworth Road and Elephant Park and so would be inferior as a direct pedestrian link to those areas. In addition, it is located close to (and opposite) the proposed new building for the LCC, Building E1, and for pedestrians to emerge opposite Building E1 and close to the railway station, when considered along with users of the rail station, risked creating a pinchpoint. Building E1 would likely have had to have been smaller to accommodate additional pedestrian circulation space, losing mass from its south eastern corner. Reduced footprint of that building would be problematic, due to UAL's requirements for the new educational facility to achieve critical mass in order to retain the LCC at Elephant & Castle. Shifting Building E1 to the west would have impacted on the Station Route, making it too narrow and affecting the clear and permeable route through the East Site to the Elephant & Castle peninsula.
13. Secondly, areas of new public realm (and the pedestrian connectivity they bring) adjacent to the railway viaduct are also at risk of not being delivered without the new CPO, including the ability to complete the Station Route from the new Underground station box to the railway station for pedestrians, via the new right sought in that respect. Again, this is a key aspect of the East Site.
14. Thirdly, the use of the new CPO powers will facilitate a practical solution for the retention of the nightclub use in this location, as explained in more detail in the main body of the report.
15. Fourthly, the use of the new CPO powers will facilitate the redevelopment of arch 113B/121 to provide a suitable and immediately adjacent relocation opportunity for the tenant and occupiers of 7 Farrell Court, and arch 113A/120 potentially for DistriAndina too if they wish to move there, thus mitigating adverse impacts on them.

16. Fifthly, the new CPO elements being sought in relation to the West Site itself are all necessary for the West Site redevelopment to proceed, thus the new CPO unlocks all the benefits associated with the West Site, including 498 residential units (165 of which are to be affordable), new retail floorspace (including affordable retail) and a new cultural venue.
17. The new CPO is therefore essential to the successful implementation and completion of the Scheme and many of the well-being improvements it will bring.
18. Accordingly the statutory test in 226(1A) is met.
19. The key paragraphs from the Guidance are now considered.

*Acquiring authorities should use compulsory purchase powers where it is expedient to do so*

20. Given the conclusions in relation to the tests under section 226(1)(a) and section 226(1A) above, it is clearly expedient to make the new CPO to facilitate this very important redevelopment. For the reasons explained above, the new CPO is essential to the successful implementation and completion of the Scheme. The only change as to expediency (as compared to December 2022) is the fact that the redevelopment has progressed further, which makes it even more expedient than was previously the case that the Council supports the Scheme through CPO powers so that the Scheme can continue and be completed.

*However, a CPO should only be made where there is a compelling case in the public interest*

21. The Scheme will transform the town centre. Although there are some adverse effects, as referred to elsewhere in this report, it is considered that these are relatively minor and in any event need to be weighed against the very significant and numerous public benefits that will accrue from the Scheme. This is considered to be the case even in relation to the specific benefits that would be directly delivered through the use of the new CPO powers (as detailed above). The new CPO is necessary to unlock these benefits of the Scheme. The public benefits arising from the use of the new CPO powers amount to sufficiently compelling reasons for powers to be sought and outweigh the loss and any overriding of property interests to individuals and businesses arising from the new CPO. As vacant possession of most of the East Site was obtained by agreement, confirming the new CPO will not have many of the potentially adverse impacts it could have caused as originally envisaged in April 2020, so there is now less private loss to be outweighed by the public benefits. There is an increased need for the redevelopment to proceed and be completed given that the East Site has been demolished and cleared and the construction is well underway. So, the case for a CPO is now more compelling than ever.

*The acquiring authority will be expected to demonstrate that it has made reasonable offers to acquire land and rights by agreement*

22. It is considered that this part of the Guidance has been satisfied to date and will continue to be so. EC, acting in collaboration with Council officers, has been making reasonable efforts to acquire outstanding land interests and new rights by agreement over a significant period of time. Council officers have been kept regularly appraised of, and have been consulted in respect of, the ongoing negotiations. The Council's officers have also been directly involved with discussions with Arch Co, seeking agreement. This approach has generally worked well, as evidenced by the fact that EC has concluded various acquisitions and agreements with third parties already, thus avoiding the compulsory acquisition of various interests, but the new CPO is now required to give impetus to negotiations with the

remaining affected parties. EC is continuing its attempts to acquire by agreement and is obliged to continue to do so under the CPO indemnity agreement. The Council is taking an active role, in collaboration with EC, to take those negotiations forward and in making offers to the remaining parties. The discussions with Corsica, the Council and EC are an example of how the Council and EC have been putting very considerable effort into attempting to resolve matters by agreement to the greatest extent possible.

*Compulsory purchase is intended as a last resort; but it may be sensible for the acquiring authority to plan a compulsory purchase timetable as a contingency measure and initiate formal proceedings to mitigate loss of valuable time and to encourage those whose land is affected to enter into meaningful negotiations*

23. The making of the new CPO will assist in the remaining negotiations as it will make all parties aware of the continued seriousness of the Council's intentions, as is recognised in the Guidance. It is fair to say the making of the February 2023 CPO gave added impetus to negotiations. The new CPO is being used as a genuine last resort to ensure the land assembly needed to continue and complete the Scheme. The new CPO will underpin the remaining negotiations that need to be concluded to enable the Scheme. The use of the new CPO as a last resort is evidenced by the considerable reduction in land that has been included in the CPO as compared to that in April 2020 (because much of the necessary land has been acquired by agreement). The fact that development has commenced makes it all the more important to have the new CPO to complete the development. Delaying the new CPO risks being unable to complete the Scheme in accordance with the development programme, or at all.

*When making ... [a CPO] acquiring authorities ... should be sure that the purposes for which the CPO is made justify interfering with the human rights of those with an interest in the land affected.*

24. The Council's purpose in making the new CPO is to facilitate the development, redevelopment or improvement on or in relation to the new CPO land, namely the Scheme. The Scheme represents a vital, comprehensive redevelopment of the town centre. The very considerable benefits that will arise from the Scheme have been summarised elsewhere in this report. These public benefits outweigh, and justify interference with, human rights, and such interference is proportionate to the large level of public benefits that would arise from the Scheme. The purpose to be achieved by the new CPO would justify interference with human rights even if the interference was a lot wider or more severe than considered in this report, given the benefits of the Scheme. The public benefits of the Scheme outweigh the private losses. This is the case even if the specific benefits that would be directly delivered by the new CPO are considered in isolation and weighed against the interference with the human rights of the affected parties.

*In order to reach early settlements, public sector organisations should make reasonable initial offers, and be prepared to engage constructively with claimants about relocation issues and mitigation and accommodation works where relevant.*

25. Please refer to paragraph 22 above as to offers to date and the intention for the Council and EC to actively pursue further negotiation. The Council has sought to engage constructively with those affected, as evidenced by Council officers addressing affected traders as to the proposals, the appointment of Tree Shepherd to assist affected parties with relocation advice and the other measures in the agreed relocation strategy under the section 106 agreement. The Council and EC are also seeking to constructively work towards

arch 113B/121 being redeveloped as a relocation opportunity for displaced occupiers of 7 Farrell Court as part of the Scheme, and arch 113A/120 potentially for DistriAndina too if they wish to move there, and to allow for the long term future of Corsica Studios at 4-5 Farrell Court. The proposed new arrangements for Corsica demonstrate the lengths to which the Council and EC are going to engage constructively about mitigation and relocation issues, as does the ability to offer relocation opportunities with the Scheme to Beset and its occupiers and to DistriAndina.

*The acquiring authority must be able to demonstrate that there are sufficiently compelling reasons for the powers to be sought at this time... [the acquiring authority should] have a clear idea of how it intends to use the land which it is proposing to acquire and [should be able to] show that all necessary resources are likely to be available to achieve that end within a reasonable time-scale.*

26. The Council plans to use the new CPO acquisitions and new rights to facilitate the carrying out of the Scheme, to enable the Scheme to continue and be completed. The powers need to be sought now, otherwise the East Site will not be able to be completed in accordance with the development programme, or at all. Title to certain areas and new rights are also required for the West Site redevelopment. The Council and EC, with the best of intentions, have sought to be patient in allowing time for private treaty negotiations to bear fruit but the new CPO is needed to ensure the Scheme can continue and be completed. Resources are dealt with below.

*The acquiring authority should address (a) sources of funding ... available for both acquiring the land and implementing [the Scheme] ... and (b) the timing of that funding - funding should generally be available now or early in the process ... evidence should be ... provided to show that sufficient funding could be made available immediately to cope with any acquisition resulting from a blight notice.*

27. The Council now has the benefit of the CPO indemnity agreement with EC (backed by a guarantee from Get Living Plc). Some minor variations to this will be required but importantly these will not affect the position that the Council will receive a complete indemnity in respect of all compensation to be paid pursuant to the new CPO and/or through blight notices under section 137 of the 1990 Act. All other costs associated with the new CPO will be borne by EC too (again, guaranteed by Get Living Plc). The Council is satisfied that Get Living Plc has good covenant strength to meet its obligations in the unlikely event that EC defaulted. As a minor update to paragraph 17 of the December 2022 report, one of the three "Triangle Partnership" shareholders in Get Living, QD UK Holdings Limited Partnership, has sold its 22% stake in the Triangle Partnership to the Australian pension fund Aware Super. This is considered to have no effect on the ability of Get Living to meet any liabilities under the CPO indemnity agreement.

28. In addition, further details of funding have been provided by EC which has been reviewed and officers are satisfied that the funding is either already available, for East Site, or is likely to be available in good time to commence the West Site redevelopment as envisaged. It is anticipated that around 40% of the West Site redevelopment cost (including land acquisition) will be financed by equity payments from the Triangle partners and a further affordable housing grant in respect of the West Site, with around 60% being provided through debt funding. Understandably, the developer will not seek that debt funding for the West Site until closer to the time that the West Site redevelopment is begun, otherwise it would incur significant and unnecessary interest charges in the interim period. (By way of example, the East Site debt funding for the construction of new buildings on East Site

was put in place in December 2021, and piling began in March 2022). As to whether the West Site debt funding is likely to be obtainable on reasonable commercial terms to the developer, it is considered that this is likely to be the case given: the identity of EC's backers; the central London location and prestige of the redevelopment, with which lenders are likely to wish to be associated; that Delancey, who advise EC, are experienced in and have obtained significant debt funding on other large scale redevelopment projects for their clients; and the fact that EC was able to procure debt funding to fully fund the East Site redevelopment. These details have been re-confirmed by EC to officers in the run up to this Cabinet meeting.

29. As regards non-financial resources, EC has procured a professional team from all disciplines to advise in respect of the Scheme. It is advised by Delancey, an experienced property development and asset management company. The Triangle partners (EC's backers) have developed large schemes before, as referred to in the April 2020 Cabinet report. Officers are satisfied the developer has the expertise and the ability to attract the funding to deliver the West Site. It has already demonstrated its commitment by at considerable expense securing a planning consent, acquiring much of the land needed to deliver the Scheme, securing funding for the construction phase of the East Site and commencing on the East Site. This is therefore not an impediment. There are no known external factors that may frustrate delivery of the Scheme. Further comfort can be taken from the progress made with the development of the East Site to date.

*Acquiring authorities will need to demonstrate that the scheme is unlikely to be blocked by any physical or legal impediments. These include:*

- (a) *the programming of any infrastructure accommodation works or remedial work which may be required*

30. It is considered there are no such impediments. LUL has planning permission for its connecting tunnel works for the new station box and the revised planning permission allows for the new station box to be larger, thus accommodating the Northern and potentially the Bakerloo Line too.

- (b) *any need for planning permission for the scheme or other consent or licence.*

31. The vast majority of the Scheme has been granted planning permission. The conversion of arch 113B/121 as a relocation premises for Beset and their occupiers (commercial, business and services use), and arch 113A/120 potentially for DistriAndina if they wish to move there, and otherwise for retail/café use, including kiosks, will require planning permission (for change in use and physical works). Subject to the imposition of suitable conditions, there is no reason why such planning permission would not be granted, as this would be in keeping with the current uses on Elephant Road and the policies applicable to the Opportunity Area. The proposed sound mitigation lobby to be constructed to the immediate rear of 4-5 Farrell Court and associated works and internal alterations will also require planning permission. There is no reason why such planning permission would not be granted given that it would help to meet the Agent of Change planning policy requirements and produce overall environmental improvements. In each case, EC has advised that it has instructed its planning consultants to prepare the necessary planning applications, in the case of 4-5 Farrell Court once the final form has been agreed with Corsica.

32. The Government intends to bring into operation revised building regulations to require second staircases in new, tall residential buildings. EC's representatives are of the view that even if the West Site tall buildings are not caught by the proposed regulations (because they form part of a permission which has already been begun), they may well choose to put second staircases in the West Site tall buildings. Similarly, they are also considering whether the energy strategy for the West Site could be enhanced by changing the currently consented gas based system to an all-electric supply. These positive changes, if pursued, would require some form of planning approval from the Council, because pursuant to the planning permission the Scheme is to be built in accordance with the approved planning drawings and they do not currently show such second staircases or an all-electric based energy supply. The form of such planning approval would depend on the level of materiality of any change to the West Site buildings and could potentially be dealt with by way of non-material amendment approval, or through a minor material amendment section 73 planning permission or possibly even another permission, depending on the materiality of the changes. The Council would at that point need to assess what changes were proposed and whether they were acceptable from a planning perspective. Given the development plan allocations for the site and the fact that tall buildings are already considered acceptable on the site and have been granted planning permission, and any changes would be necessitated by positive improvements to the scheme, it is considered likely that any such planning approval (if required) would be granted and this is unlikely to represent any impediment to the Scheme.
33. The April 2020 Cabinet report stated that the listed building consent for the minor works to the façade of the Tabernacle only had a 3 year period in which to begin works. This was an error. The consent has, in fact, a 10 year implementation period and so there is no need to seek a longer consent as was envisaged in that report. This is beneficial.
34. Planning permission was also obtained by EC on 10 June 2022 in respect of a heating network pipe which will run from 50 New Kent Road (owned by EC's group company) under Elephant Road into the East Site. An easement has been completed with Network Rail to facilitate this.
35. Highway stopping-up orders in respect of both East and West Sites have already come into operation and so there are no further stopping-up orders required in respect of the Scheme.
36. One or more agreements under the Highways Act 1980 with TfL and the Council, as highway authorities, will be required for highway works. Agreement will very likely be reached on these, as they are, routinely, on many different types of development. The section 106 agreement imposes restrictions on certain milestones in the development programme until the highways agreements, and their respective works, are completed. The Council's consent, as highway authority, would also be required if the highway layer is to be disturbed to facilitate the heating pipe network works referred to above. Again, there is no reason why that consent should not be forthcoming.
37. Licences will be required under the Highways Act 1980 for oversailing the highway, any scaffolding over the highway or hoarding affecting the highway. Again, though, such licences are routinely granted in all manner of developments. Such licences are already in place in respect of the works to date on East Site.
38. There are no physical impediments which are known which will prevent the Scheme from proceeding.



39. The CPO legislation affords special protection to statutory undertakers' operational land. Statutory undertakers can make representations to their appropriate minister (i.e. the minister who is responsible for that undertaker) against the inclusion of their operational land, as well as objecting to the Secretary of State in the normal manner. If such a representation is made and not withdrawn, generally the Secretary of State will not confirm a CPO as regards that interest in land unless the appropriate minister gives a certificate that the land can be taken without serious detriment to the statutory undertaker.
40. There is some operational land of statutory undertakers within the new CPO area, notably the railway viaduct and the area of land immediately to the west of the railway station over which a new pedestrian right of way (and related right to pave and maintain that area) is sought. Network Rail have made a representation to the Department for Transport against the inclusion of their land in the February 2023 CPO. However, in doing so, they also made clear that their representation and objection could be withdrawn if an agreement was reached between EC and Network Rail, and specified what their requirements for such an agreement would be. EC is content in principle with those requirements and is seeking to progress the agreement with Network Rail. It is not the intention of EC or the Council to interfere with the operational running of the railway. Discussions are progressing between EC and Network Rail in these respects and EC is confident that agreement shall be reached on all matters. EC has been keeping the Council apprised of progress and given confidence that agreement can be reached, thereby bringing Network Rail into the Scheme by agreement. Nevertheless, the new CPO is needed as a backstop. Although crane oversail will take place over some highway areas administered by TfL and the Council, there should be no operational impact on TfL and the Council as highway authorities.
41. There are also electricity sub-stations within the new CPO area, held leasehold by London Power Networks. Again, this is operational land and EC will work towards procuring their agreement to bring the leases to an end but the new CPO is needed as a backstop.
42. The new CPO land also includes statutory undertaker and telecommunications operator apparatus and EC is already in discussions with the utility companies and the telecommunications operators to reach agreement with them.
43. There are no areas of land which attract special protection under section 19 Acquisition of Land Act 1981 (common land, open space or allotments).
44. Therefore, there are unlikely to be any impediments to the Scheme if the new CPO is made.

*Acquiring authorities are expected to evidence that meaningful attempts at negotiation have been pursued or at least genuinely attempted.*

45. This is addressed above at paragraph 22 and in Appendix F.

*Whether the purpose for which the land is being acquired fits with the adopted Local Plan for the area or, where such no up to date Local Plan exists, with the draft Local Plan and the National Planning Policy Framework.*

46. The Council's purpose in making the new CPO is stated above. It fits with the adopted development plan, which supports the regeneration envisaged by the Scheme. The new CPO is necessary to implement the Council's and the Mayor's objectives as specified in the Southwark Plan 2022 and the London Plan 2021. Both of these documents had been

envisaged by the Cabinet report in April 2020 and the policies in both were considered by the Council at Planning Committee for the revised planning application on 6 July 2021.

*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.*

47. This is addressed at paragraphs 3 -18 above.

*Whether the purpose for which the acquiring authority is proposing to acquire the land would be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land or any other persons, for its reuse. It may also involve examining the suitability of any alternative locations for the purpose of which the land is being acquired.*

48. The prospects of acquiring all the relevant land interests by agreement to enable the comprehensive redevelopment within a reasonable timescale are unlikely. The Council has already, with the best intentions, allowed ample time for negotiations to reach fruition. If the Council does not act now then the completion of the East Site, and the West Site redevelopment, will be entirely dependent on the owners and occupiers of the outstanding land interests. Although Arch Co have raised the possibility (in their objection to the February 2023 CPO) that they would be willing to grant a licence, on appropriate terms, in respect of some of the aspects sought by the Council and EC under the February 2023 CPO, such a licence (if agreed) would not for example, enable the Council to secure vacant possession of 6 and 7 Farrell Court for the purposes of creating the Park Route, nor would it secure the Park Route fully and permanently or give any long term control of the site to the Council or EC.

49. Consideration has been given to whether the Council's objectives might be achieved by individual landowners within the land separately carrying out development of their land. This would be likely to result in poorly co-ordinated redevelopment of parts of the new CPO land, in a piecemeal fashion, which will contrast badly with the comprehensive vision of the Scheme. Any proper redevelopment needs the interests/rights covered by the new CPO and certainly any redevelopment in line with planning policy does. The Scheme, as per planning policy, is an holistic concept which cannot be delivered on a piecemeal basis and any attempt by third parties to redevelop parts of the land on a piecemeal basis without the use of CPO powers would destroy the additional benefits that come from a co-ordinated, holistic regeneration in line with planning policy.

50. The Council has considered whether there are alternative proposals for this land and whether such proposals would be appropriate. There are no known alternative proposals that the Council is aware of, and even if there were, such alternatives would not (1) meet the objectives of planning policy for a comprehensive redevelopment of the Scheme Land and (2) provide the benefits of the Scheme.

51. Consideration has been given to whether the Council's objectives in making the new CPO can be achieved at a different location. The scope for any alternative location in the context of the particular objectives here is absent. The Scheme is to regenerate this area of land, which cannot be achieved on another area of land.

52. Consideration has also been given to whether an alternative alignment for the Park Route, through Arches 113A/120 and 113B/121, to the north of the railway station, would have avoided the need to acquire the leasehold title to 6 and 7 Farrell Court and associated new

rights. For the reasons given at paragraph 12, that alternative alignment would have been significantly inferior to the chosen route, such that 6 and 7 Farrell Court do need to be acquired. Consideration has also been given to whether it is necessary to acquire arch 113B/121 as a relocation premises for Beset and their occupiers, and 113A/120 potentially for DistriAndina if they wish to move there, and otherwise for retail/café use, and whether there are any alternatives to doing so. No suitable alternative off site relocation opportunity which meets Beset's requirements has been found. Recent decisions on CPOs have highlighted the importance of seeking where possible to provide relocation opportunities for occupiers within the scheme area. Beset have expressed a preference to take one railway arch unit which can accommodate a mezzanine floor, thereby recreating their arrangements in 7 Farrell Court. Although 4-5 Farrell Court had previously been envisaged for their relocation, those units do not possess the height to include a mezzanine floor across them which would be big enough and compliant with building regulations. Arch 113B/121 does have sufficient height. In addition, it is now proposed to retain the nightclub use within 4-5 Farrell Court and in particular to give Corsica Studios the option to have a longer term occupation of 4-5 Farrell Court. It would be preferable to retain the nightclub use in situ, which means 4-5 Farrell Court would not be available for the relocation of Beset and its occupiers (or DistriAndina). EC does not have the necessary title to bring about the beneficial use and works in arches 113A/120 and 113B/121, so the acquisition of greater leasehold title and associated new rights is necessary to achieve this. Consideration has also been given to whether it is necessary to acquire the leasehold title to 4 and 5 Farrell Court and the land to the immediate rear of those units where the sound mitigation lobby is to be sited, and associated new rights against the viaduct. The leasehold title to the rear area is required to build the lobby and then offer the new longer term lease of it to Corsica along with 4 and 5 Farrell Court as a unified space; new rights are required to affix the lobby to the viaduct and for associated physical works. The leasehold title to 4 and 5 Farrell Court and the bisecting fire escape accessway is required to facilitate these works and to obtain control of the unit so as to offer a longer term lease of the unified space (i.e. with the sound mitigation lobby) to Corsica. If Corsica choose not to take up that option then the leasehold title is still required to ensure that a longer term lease of the unified floorspace (i.e. with the sound mitigation lobby) can be offered to other operators to seek to retain the use.

*The potential financial viability of the scheme for which the land is being acquired. A general indication of funding intentions, and of any commitment from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed. The greater the uncertainty about the financial viability of the scheme, however, the more compelling the other grounds for undertaking the compulsory purchase will need to be.*

53. Funding intentions are dealt with above. The potential viability of the Scheme has been examined as part of the planning application process in the context of the maximum level of affordable housing the Scheme can provide. Discussion took place during the original planning application process as to what the appropriate level of developer profit should be to reflect the risk and complexity of the Scheme. The relevant expression of profit level for a developer for a build to rent housing scheme is the internal rate of return ("IRR"). EC's target rate of return is 11%. Viability assessment work was carried out during the planning application process in the context of the maximum amount of affordable housing that can reasonably be supported by the Scheme. The viability experts appointed by EC concluded that the then current IRR was 7.51% but both they and the experts appointed by the Council nevertheless both agreed, as part of the viability work for the planning application, that a full target return of 11% is achievable over the lifetime of the development, having regard to market forecasts which have been adopted from residential and commercial agents, as

well as costs advice from cost advisors. The advice from GVA (now Avison Young), advising the Council, was that all current forecasts at that time suggested that this growth in IRR over the construction period is achievable and possibly conservative.

54. In June 2021, as part of consideration of the revised planning application, DS2 (advising EC) concluded that there had been a notional increase in viability so that the ungeared IRR had risen to 10.23% but pointed out this was derived only from the fact that the East Site value had reduced due to the demolition of buildings, and that in real terms there was a reduction in retail values due to the COVID-19 pandemic, and the general decline in high street retailing, increased construction costs and the pandemic's effect meant that development economics were extremely challenging. Avison Young concurred that the target level of profit was not predicted to be met with the requisite level of affordable housing.
55. Prior to the December 2022 Cabinet, the viability position was the subject of further expert work by Avison Young for the Council. They carried out a high level review of the viability of the Scheme. The exercise took the form of a review of the updated proposed Scheme appraisals and commentary upon whether the inputs are reasonable at this point in time. This high-level review was undertaken on a desktop basis to inform the Council's decision making. Avison Young advised that this exercise would likely have to be reviewed again in the run up to a CPO inquiry. The review also included a sensitivity analysis of the IRR, commercial rents and yields.
56. On the basis of their high level analysis, Avison Young concluded that the Scheme is viable. They advised that the following points further reinforce their conclusion that the Scheme is viable: the East Site works have been procured under a fixed price Design and Build Contract with a major building contractor, Multiplex; full funding for the East Site has been secured; the existence of the contractual agreement with UAL/LCC; the Scheme has commenced and is proceeding; whilst the current macro-economic situation is challenging, there nevertheless remains underlying demand for high quality professionally managed residential stock, and rental forecasts remain positive.
57. In the run up to this Cabinet meeting, Avison Young have provided further high level analysis for the Council which is to the effect that the position remains much as it was in December 2022, and that the scheme is viable.
58. Viability is a moot point in respect of the East Site because EC has chosen to proceed, has funded it and has a contractor appointed and on site to build it (subject in the case of the CPO areas to being able to do so). As regards the West Site, the reality is that once the new university campus building has been completed on the East Site for UAL, the completion of the sale of the LCC site is triggered, albeit UAL will have some time in which to move across to the East Site. So, having paid a very considerable sum to acquire the West Site at that point, it is highly likely that EC's group company, Elephant Three Properties Limited, would then proceed with the West Site redevelopment (subject to the new CPO enabling it to do so), to recoup a return on its investment. The Guidance points out that a CPO can still be confirmed if there is uncertainty over financial viability if the case for it is very compelling. In this case, though it is noted the target rate of return is not currently forecast to be met, officers do not consider there is any real uncertainty that the West Site will proceed given the factors above but, even if there was such uncertainty, the confirmation of the new CPO will still be justified because the case for the new CPO is so very compelling.
59. In terms of the CPO indemnity agreement, all interests to be acquired by the Council, whether by agreement or by CPO, will be acquired for planning purposes. Under section

233(3) of the 1990 Act, the Council needs to achieve best consideration when disposing of land under this provision. This however needs to be judged in the context of the totality of the arrangements for the transfer of interests pursuant to the CPO indemnity agreement. The Council will only be acquiring interests from third parties or creating rights over their land on the basis that funding for the initial acquisitions or rights (at market value) is coming from EC and on the basis that it will thereafter dispose of any acquired land to EC or EC's group company. As such, there is no realistic prospect of the Council obtaining consideration in respect of the disposals to EC (or its group company) under the CPO indemnity agreement beyond the indemnity arrangements, such that these arrangements are still the best consideration that can reasonably be obtained in the circumstances.

60. The Council is required to exercise its power under section 233 in a manner which, so far as practicable, secures that relevant occupiers of that land are provided with a suitable opportunity to obtain accommodation on the land in question (section 233(5)). Relevant occupiers for these purposes means residents and those carrying on business on the land that wish to obtain accommodation. The Council and EC's intention is to offer relocation opportunities to the affected occupiers. Corsica Studios (4-5 Farrell Court) are being offered the opportunity to take a new lease of those premises, unified with the sound mitigation box once it is built. Beset and its occupiers (7 Farrell Court) are being offered the opportunity to relocate within arch 113B/121. DistriAndina (6 Farrell Court) are being offered the opportunity to relocate into the Scheme, either within a new unit on the East Site or arch 113A/120 (whichever is their preference). It is envisaged that Beset (and its occupiers) and DistriAndina will not need to cease trading nor suffer any material delays in re-opening. Corsica will have some short term cessation of trading (potentially around 9 months) whilst the works to their unit take place but they fully understand that situation and the works would facilitate the solution which they have sought, with an offer to take up a longer lease of the new unit complete with the sound mitigation lobby. The indemnity agreement between the Council and EC requires EC to offer relocation opportunities in accordance with section 233 in respect of any land that is acquired by the Council and disposed of to EC pursuant to the CPO arrangements. Accordingly it is concluded that the duty under section 233(5) will be satisfied.
61. In addition, the section 106 agreement relocation strategy requires that 10% of the new retail floorspace pursuant to the July 2021 planning permission will be affordable retail floorspace and will be offered in the first instance to eligible businesses displaced from the East Site. Similarly, 10% of the commercial floorspace pursuant to the July 2021 permission will be provided as affordable workspace, again offered in the first instance to eligible businesses from the East Site displaced by the redevelopment.
62. In respect of the statutory duty under section 66(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings, in the exercise of the powers of disposal under section 233, the Metropolitan Tabernacle is a listed building and some minor works to that building are required and have received listed building consent. The Council will acquire new rights over the land under the new CPO and EC will be able to utilise those new rights. Cabinet will note that notwithstanding the substantial weight given to harm to the setting of the Tabernacle, the Planning Committee concluded that such harm would be outweighed by the significant public benefits accruing from the Scheme. Any effects the Scheme may have on the other designated heritage assets in the locality, including the Faraday Memorial and Metro Central Heights listed buildings, listed buildings at West Square and the West Square and Elliott Row Conservation Areas, and any undesignated heritage assets, were fully considered by the Planning Committee. Officers

consider that there is no breach of this statutory duty by reason of the proposals set out in this report.

*That the correct statutory procedures have been correctly followed*

63. It is considered that the relevant statutory procedures have been correctly followed to date. It will be necessary for the Council to follow the correct statutory procedures in making the new CPO and publicising the same and serving notice of it on the affected parties, and to follow the Guidance policy on (among other things) providing a Statement of Reasons to affected parties. Thereafter the Council will need to adhere to the statutory procedures as regards the proposed confirmation of the new CPO, including adhering to the inquiry rules.