

Planning Committee

10.00 am, 5 December 2013

St James Quarter: Proposed Compulsory Purchase Order

Item number	6.2
Report number	
Wards	Ward 11 – City Centre

Links

Coalition pledges	P8 , P15 , P17
Council outcomes	CO7 , CO8 , CO9 , CO19
Single Outcome Agreement	SO1 and SO4

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Executive summary

St James Quarter – Proposed Compulsory Purchase Order

Summary

The purpose of this report is to seek authority to proceed with a Compulsory Purchase Order (CPO) and draft an Agency Agreement with Henderson Global in respect of the St James Quarter. Henderson Global is ready to proceed with the development of the St James Quarter in accordance with planning permission 08/03361/OUT. In order to enable the site to come forward a CPO is required to assemble all the interested land into single ownership.

To assist in bringing forward a CPO it is necessary to enter into an agency agreement (back to back) to cover the terms of the agreement between the Council and the Developer.

Planning Committee previously agreed to proceed with a CPO and Agency Agreement on 6 August 2009. This agreement has now lapsed and it is necessary to start the process again.

Recommendations

It is recommended that the Planning Committee agrees to:

1. instruct the Council Solicitor to proceed with a Compulsory Purchase Order for the St James Quarter;
2. instruct the Council Solicitor to negotiate a draft Agency Agreement between the Council and the Developer;
3. note that the Agency Agreement will cover arrangements for the reimbursement of all costs and compensation incurred by the Council in relation to the promotion and implementation of the CPO and for the transfer of property compulsorily acquired by the Council to the Developer;
4. note that the Council will continue to seek a negotiated purchase of the properties and interests in parallel with pursuing the CPO;
5. note that the finalised agency agreement will be referred to the full Council for authority; and
6. note that the CPO in its finalised terms will be subject to the approval of the full Council.

Measures of success

The pursuance of this CPO and the continued negotiations will allow the progression of the regeneration of the St James Quarter and the wider city centre retail area. Success will be measured by the quality and sustainability of the new retail led mixed use development and the regeneration of the wider city centre. The delivery of new residential development will also be a measure of success. The improved performance of Edinburgh as a retail destination reinforcing its role as the regional centre for SE Scotland will be a key measure of success.

Financial impact

Redevelopment of the St James Quarter has the potential to secure £850m of new private sector investment to the City. In the current economic climate, raising investment capital remains difficult and is not without its risks. For the developer, funding the essential upfront infrastructure requirements would lead to uneconomic rates of return. As a result, there is a real risk that the city could lose this major investment opportunity. The Council will assist to unlock the development potential of this site through CPO.

The financial implications of progressing with the CPO will be considered within the agency agreement to be drafted between the developer and the Council. The final details of this agreement will be considered by the full Council at the same time as the authority to proceed with the CPO is requested.

Equalities impact

The proposed redevelopment of the St James Quarter has been considered in terms of impact on Equalities. The redeveloped centre will improve connections across the site with improved at grade access to the centre and within the shopping centre.

There will be a negative impact on the human rights of the leasees who will no longer have premises to trade from. However, as detailed above the public benefits of the scheme are considered to outweigh any individual rights. The use of CPO is considered to be a legitimate interference in the human rights of the individual businesses.

Sustainability impact

The impacts of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered, and the outcomes are summarised below. The sustainability impacts of the redevelopment of the St James Centre have been assessed in the determination of the application for planning permission in principle. The proposals are considered to have no significant environmental impacts and comply with the requirements of the Planning Service

Sustainability Assessment. The applications for approval of matters specified in condition will be required to submit updated sustainability appraisal information.

Consultation and engagement

Community consultation on the redevelopment plans took place in the lead up to the submission of the application for planning permission in principle. This was a developer led consultation which was hosted within the St James Centre and included a model of the proposed redevelopment.

Since the planning approval in June 2009 the developers have been negotiating with the tenants within the St James Centre to extinguish the outstanding lease agreements. This process has been extended to work with the occupiers of the units. However, it is now necessary to pursue a CPO in order to extinguish the outstanding leases on the site. This will proceed in parallel with continuing negotiations with the occupiers.

Background reading / external references

Planning Application 08/03361/OUT - Report to Development Management Sub Committee of 25 February 2009

Report to Planning Committee 6 August 2009 – Compulsory Purchase Order St James Edinburgh City Local Plan

St James Centre Development Brief

Proposed Local Development Plan

St James Quarter – Proposed Compulsory Purchase Order

1. Background

- 1.1 On 4 June 2009, the Council approved planning permission in principle (08/03361/OUT) for the redevelopment, refurbishment and demolition works to provide a major mixed use scheme on the site of the existing St James Centre. The permission comprises retail (class 1), leisure and culture (class 10 and 11), hotel (class 7), offices (class 4), food and drink (class 3), residential (class 9), financial, professional and other services (class 2) and other ancillary uses, car parking, servicing, new public realm and the refurbishments of the existing department store. The planning permission approved the detailed siting maximum height of building blocks, points of vehicular access and egress and location of pedestrian routes.
- 1.2 A report was previously presented to the Planning Committee on 6 August 2009 seeking authority to initiate under an agency agreement, compulsory purchase procedures to acquire the various property interests to facilitate the redevelopment of the St James Centre. The Committee agreed to:
- a) instruct the Council Solicitor to negotiate an Agency Agreement between the Council and the developer;
 - b) note that the developer will cover arrangements for the reimbursement of all costs and compensation incurred by the Council in relation to the promotion and implementation of the CPO and for the transfer of property compulsory acquired by the Council to the developer; and
 - c) approve, in principle, the making of the CPO to be contained within the area of application (08/03361/OUT) subject to the approval by Council of the CPO in its finalised terms.
- 1.3 The previously prepared agency agreement has now lapsed. The Agreement set out how the CPO procedure would be managed and the obligations on the Council and the developer throughout the process; how the CPO would be implemented, including how the interests acquired would be transferred to the developer and how the compensation process would be managed. The agency agreement also included an indemnity from the developer to the Council in relation to all compensation and other costs. This included the costs associated with any blight notices incurred as a consequence of the Council promoting and making the CPO and acquiring the necessary interests and set out how these costs would be reimbursed to the Council. The agency agreement also contained termination provisions.

- 1.4 During challenging financial times the developer has been working on solutions to bring forward the development. The developer has now approached the Council to proceed with the development of the St James Quarter and to work towards assembling all the required interests.

2. Main report

- 2.1 This report seeks the Council's authorisation to proceed with the preparation of a CPO and a new draft agency agreement with the developer in respect of the St James Quarter and the properties/ land interests located within. The agency agreement will allow the preparation of a draft CPO which will then be considered by the full Council for authority to proceed. The majority of the interest properties are subject to different lease options with Henderson Global.

Purpose of the CPO

- 2.2 The Strategic Development Plan (SDP) recognises Edinburgh City Centre as the area to be prioritised as a regional centre. The continued development of the Regional Core over the next 20 years is one of the crucial elements of the SDP Strategy.
- 2.3 The Edinburgh City Local Plan (ECLP) identifies that the focus of regeneration within the city centre is around the retail core of Princes Street and the St James Centre. It is essential that redevelopment includes a significant element of retailing which will enable Edinburgh City centre to secure and enhance the quality and breadth of its retail offer. The proposals for the redevelopment of the St James Centre have the potential to make a significant contribution to this aim. Proposal CA 1 further strengthens the role of the St James Centre in the redevelopment of the city centre.
- 2.4 The approval of planning permission in principle provides a strong basis for the progression of the redevelopment of this site. However, in order to bring forward the redevelopment of this large site, the acquisition of a number of outstanding leases is required to bring overall control of the site into one party within a reasonable timescale rather than long, protracted discussions. The use of CPO in this case is a positive and proactive measure to help deliver the scheme.

Appropriate Powers

- 2.5 The CPO is being pursued under sections 188- 191 of the Town and Country Planning (Scotland) Act 1997. This is the appropriate legislative approach to assemble the land package at St James. The proposals are for a mixed use development and there is no other legislative powers that can address such a mix of uses. Scottish Government Circular 6/2011 on Compulsory Purchase Orders provides further guidance for local authorities on CPO powers.
- 2.6 In particular the circular advises that early engagement with those affected is important and where possible agreement should be reached prior to progressing

with a CPO. It is advised that the Authority should be satisfied that all the land that is being acquired is needed for the development. In carrying out an assessment the authority can consider the development plan, supplementary guidance and its single outcome agreement priorities.

- 2.7 The redevelopment of the land as detailed in planning permission 08/03361/OUT is determined to be the most appropriate use of the land as it will delivery key priorities of the City of Edinburgh Council in achieving a key aspiration of the City in delivering a high quality retail offer. The redevelopment of the site is further strengthened with the proposed Local Development Plan incorporating the St James Quarter as a key development proposal.
- 2.8 The area covered by the CPO is required to allow the reintegration of this fragmented part of the city centre into the core area. It will allow a development which responds more appropriately to its context, will integrate into the historic environment, reinstate key street frontages and increase areas of high quality public realm.
- 2.9 The land interest is currently fragmented and is frustrating the delivery of the scheme. By using CPO powers, the Council can act to bring together the outstanding leases and assist in the delivery of a complex development. The assembly of the land will facilitate the regeneration of a key area of the Edinburgh City Centre Retail Core a key strategy identified within the Edinburgh City Local Plan.
- 2.10 The redevelopment of the St James Centre will align with the following Single Outcome Agreement commitments:

SO1 - Edinburgh's economy delivers increased investment, jobs and opportunities for all.

SO4- Edinburgh's communities are safer and have improved physical and social fabric.

In developing the St James Centre there will be a direct link with the creation of new employment, opportunities for new and increased investment and strengthening of the City Centre economy to the benefit of all. The physical fabric of the city centre will be improved with the removal of a building which does not relate well to its context. The new development will improve access, permeability and physical integration with the wider city centre core.

- 2.11 Section 191 of the Act states:

“(1)Where a planning authority— .(a)has acquired or appropriated any land for planning purposes, and (b)holds that land for the purposes for which it was so acquired or appropriated, the authority may dispose of the land to such person, in such manner and subject to such conditions as may appear to them to be expedient for the purposes mentioned in subsection (2).

(2)Those purposes are to secure— .(a)the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it, whether by themselves or by any other person, or (b)the erection, construction

or carrying out on it of any buildings or works appearing to them to be needed for the proper planning of their area.”

- 2.12 In this case, the Council will dispose of the land and rights it acquires to the developer to facilitate the re-development of the St James Quarter. This is subject to the developer meeting certain terms and conditions which are set out in an agency agreement which will be prepared between the two parties. The Council is satisfied that this complies with section 191 of the 1997 Act and that it represents the best terms on which the land could be acquired and developed. The preparation of the back to back agreement will ensure that there is no cost to the public purse
- 2.13 The use of CPO powers is necessary and proportionate to enable the delivery of a key objective of the Development Plan, Single Outcome Agreement commitments and a scheme with the benefit of planning permission. There are no other more specific powers to use to secure the necessary rights for the development. Having regard to the factors set out Section 189(2) of the 1997 Act, it is considered that the making of the CPO complies with the terms of its enabling powers.

Land and Rights to be Acquired

- 2.14 There is existing land within the site boundary which is already within the control of the developer or the Council. Within this, there are a number of sub- leases and other occupational leases. There are just over 100 retail units in the St James Shopping Centre and a number of other leased interests (such as advertising hoardings etc) which may need to be acquired/ surrendered/ extinguished. The majority of the leases will expire prior to intended commencement of development in March 2015.
- 2.15 There are other interests within the area of the outline planning application, but outwith the St James Centre and St James House, which may need to be acquired in order to allow the development to be delivered. These areas include parts of streets adjoining the building, St Andrew’s Hall and car park, variation of access rights to the Omni Leisure Development via the Nottingham Terminal and service access to Multrees Walk.
- 2.16 Outwith the planning permission in principle there are other land interests to be acquired to deliver the public realm improvements associated with the wider St James Quarter within Picardy Place. The Council owns the majority of the land within this area but there are a small number of property interests within this area to be acquired.

Negotiations

- 2.17 The developer has been carrying out negotiations with affected proprietors over the last four years. While the developer owns the heritable interest of both the St James Centre and St James House, as well as the long ground lease interests in both, there are a number of other parties who have ownership or leasehold interests in parts of the St James Centre and St James House.

2.18 Negotiations are ongoing and it is anticipated that agreements will be reached with a number of these parties without the requirement to enact the CPO. There are businesses whose leases will be terminated and which will not be returning to the new centre. It is recognised that there will be some disbenefits to these businesses as a result of the CPO but the overall public benefit outweighs these individual interests.

Public Benefit

2.19 The public benefits of the scheme have been examined in the preparation of the Development Plan. The public benefits are on a city region scale. The development will deliver additional retailing, housing, office space, leisure and ancillary uses. The development as a whole will support the local economy and increase the prospects of additional employment opportunities within the city.

2.20 The public benefits of the scheme are considered to outweigh the private rights of the leasees due to the overall benefits to the city as a whole. There will be a negative impact on human rights of these leases but this is outweighed by the public benefit coming forward from the proposed development.

2.21 Those affected by the CPO may be entitled to compensation under the Land Compensation (Scotland) Act 1963 and the Land Compensation (Scotland) Act 1973. Compensation will be payable in accordance with the Compulsory Purchase Code.

Impediments

2.22 While the following consents may be required to facilitate the re-development, there are no exceptional impediments that are likely to prevent the proposals being fully implemented.

- Approval of Matters Specified in Condition - further applications require to be submitted to address the matters specified on condition on the application for planning permission. The planning permission in principle application provides significant details including setting parameters for building height and positioning thus reducing elements of risk with the final approval;
- Building Warrants;
- Traffic Regulation Orders and Stopping Up Orders;
- Any consents from statutory undertakers.

It is considered that any outstanding consents can be obtained within the development timescale and will not result in delays to the delivery of the scheme.

Alternatives

2.23 A transformed St James Quarter would create a significant new retail quarter for the City. The alternative is a retail sector that fails to realise its potential together with the ongoing deterioration of the existing buildings in the area. In the context of the adjoining developments at Multrees Walk and John Lewis, the development would create a major retail destination within this quarter of the City.

2.24 The site is promoted for development within the Edinburgh City Local Plan and the proposed Local Development Plan. It is considered that there are no reasonable alternatives that would provide the same role in unlocking the potential of the city centre as a key retail destination and attracting the inward investment that this scheme will deliver. Without the progression of the CPO the delivery of the redeveloped St James Quarter would be in doubt and would add significant time delays to its delivery.

3. Recommendations

- 3.1 It is recommended that the Planning Committee agrees to:
1. instruct the Council Solicitor to proceed with a Compulsory Purchase Order for the St James Quarter;
 2. instruct the Council Solicitor to negotiate a draft Agency Agreement between the Council and the Developer;
 3. note that the Agency Agreement will cover arrangements for the reimbursement of all costs and compensation incurred by the Council in relation to the promotion and implementation of the CPO and for the transfer of property compulsorily acquired by the Council to the Developer;
 4. note that the Council will continue to seek a negotiated purchase of the properties and interests in parallel with pursuing the CPO;
 5. note that the finalised agency agreement will be referred to the full Council for authority; and
 6. note that the CPO in its finalised terms will be subject to the approval of the full Council.

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Director of Services for Communities

Links

Coalition pledges

- P8 Make sure the city's people are well housed including encouraging developers to build residential communities, starting with brownfield sites**
- P15 Work with public organisations, the private sector and social enterprise to promote Edinburgh to investors**
- P17 Continue efforts to develop the city's gap sites and encourage regeneration**

Council outcomes	<p>CO7 Edinburgh draws in new investment in development and regeneration</p> <p>CO8 Edinburgh's economy creates and sustains job</p> <p>CO9 Edinburgh residents are able to access job opportunities</p> <p>CO19 Attractive Places and Well maintained – Edinburgh remains an attractive city through the development of high quality buildings and places and the delivery of high standards and maintenance of infrastructure and public realm.</p>
Single Outcome Agreement	<p>SO1 Edinburgh's economy delivers increased investment, jobs and opportunities for all.</p> <p>SO4 Edinburgh's communities are a safer and have improved physical and social fabric.</p>