



Report – Planning and Transportation Committee

Fenchurch Street - Compulsory Purchase Order

To be presented on Thursday, 12th June 2014

*To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

Summary

On 29 April 2014, your Planning and Transportation Committee considered and approved a proposal to make a compulsory purchase order ("CPO") pursuant to section 226(1)(a) of the Town and Country Planning Act 1990 (the "1990 Act"), in order to facilitate the carrying out of development/redevelopment or improvement of land at 10 Fenchurch Avenue, 14 Fenchurch Avenue, 116 Fenchurch Street and 14 Billiter Street, 117 Fenchurch Street, 118/119 Fenchurch Street and 6 Hogarth Court, 120 Fenchurch Street, 4-5 Hogarth Court, London, EC3M shown edged and hatched in black on the site location plan in Appendix 1 (the "Site"). This report seeks the approval of the Court of Common Council to the proposal.

On 30th March 2012, the City Corporation granted conditional planning permission to develop the Site under reference 11/00854/FULEIA (the "Development"). The Development was approved because it is in substantial compliance with the development plan policies that relate to it and will provide a significant increase in flexible office and retail space on this site, which would support the financial and business services of the City.

Saxon Land BV (the "Developer") has advised that the provision of the Development in order to meet the requirements of a major international asset manager is now at risk due to its inability to agree terms for disposal with Linville Limited. They are the owner of the leasehold property at 118 to 119 Fenchurch Street (the "Linville Land"). The Linville Land is shown on Appendix 1.

The Developer has advised that it has agreed in principle terms or is in the final stages of agreeing commercial terms with the owners of the freehold interests and various long

leasehold, and that the majority of the other interests (occupational, rights of light and utilities interests) in the Site, are capable of rapid resolution once site assembly of the whole is assured. The Developer entered into an agreement for a pre-let with a major international asset manager on 30th April 2014 to secure the commitment of a major occupier to the scheme.

The Linville Land is therefore the key outstanding property interest in respect of which the Developer has been unable to negotiate terms for its acquisition. Certainty is also required that any and all outstanding interests in the Site will have been acquired to enable commencement of the Development to be carried in time to meet the requirements of future occupiers.

The Developer has asked if the City Corporation would be prepared to facilitate the Development by exercising its powers under S226(1)(a) of the 1990 Act to acquire the Site compulsorily, including the Linville Land. The Development is not capable of being brought forward without acquisition of all of the land within the Site.

The acquisition would be on terms that the Developer will indemnify the City Corporation in full for the costs of, and associated with, the compulsory acquisition of the Site and will carry out the Development within a reasonable timescale, with step-in rights in the City Corporation's favour should the Developer be unable to achieve this.

It is considered that compulsory acquisition of the Site would facilitate its development/redevelopment or improvement providing much needed high quality office space to satisfy known demand, additional retail space and contribute to the improvement of the environment by providing a world class mixed use building on the Site, an improved public realm, significant open space and other benefits. Such redevelopment will contribute to the achievement of the promotion or improvement of the economic, social and environmental well-being of the City.

Before exercising its powers under section 226(1)(a) of the 1990 Act, the City Corporation must be satisfied that the inevitable interference with property and other rights, including rights that are protected under the European Convention on Human Rights, is outweighed by the public benefits which will be derived from the Development.

Your Planning and Transportation Committee was satisfied that (subject to prior completion of the indemnity agreement referred to at (d) below):

- (a) The Site shown attached in Appendix 1 be acquired compulsorily for the purpose of facilitating the carrying out of development/redevelopment or improvement through the construction of the Development (or a substantially similar scheme of development);
- (b) It is necessary that the whole Site be acquired compulsorily in order to provide certainty that all and any outstanding interests in the Site will have been acquired at the commencement of the Development (or similar development);
- (c) Acquisition of the Site by the City Corporation under section 226(1)(a) of the 1990 Act and its subsequent disposal to the Developer (or an associated

company) under section 233 of the Town and Country Planning Act 1990 is justified in the public interest;

- (d) the Town Clerk be delegated authority in consultation with the Chairman and Deputy Chairman of the Planning and Transportation Committee to approve the terms on which the acquisition and disposal referred to above are to be made including settling the appropriate terms of the indemnity agreement with the City;
- (e) The making of a Compulsory Purchase Order be recommended to Court of Common Council.

The matter was reported to Policy & Resources Committee on 8th May 2014 for information. Following discussion at that Committee, and ongoing correspondence with Linville Limited's (the objector) solicitor, the Developer and Linville have been invited to set out any additional representations and these are annexed as appendices to this report. The Comptroller and City Solicitor remains satisfied, having carefully considered the various criticisms and challenges raised by Linville's solicitors in the additional representations, that the criticisms are not well-founded (some are indeed inaccurate) and that his recommendation to Planning and Transportation Committee and that Committee's recommendation to this Honourable Court are lawful and appropriate. It is considered that the benefits significantly outweigh the interference with rights complained of and that there is therefore a compelling case in the public interest for making the Order.

Recommendation

We **recommend** that Members of Court of Common Council concur with the resolution and recommendation of Planning and Transportation Committee and authorise the making of a Compulsory Purchase Order in respect of all interests in the Site.

MAIN REPORT

Background

1. This report seeks your approval to the making of a compulsory purchase order pursuant to section 226(1)(a) of the Town and Country Planning Act 1990 (the "1990 Act"), in order to facilitate the carrying out of development/redevelopment or improvement of land at 10 Fenchurch Avenue, 14 Fenchurch Avenue, 116 Fenchurch Street and 14 Billiter Street, 117 Fenchurch Street, 118/119 Fenchurch Street and 6 Hogarth Court, 120 Fenchurch Street, 4-5 Hogarth Court, London, EC3M shown edged and hatched in black on the plan in Appendix 1 (the "Site").
2. On 20th March 2012, the Planning and Transportation Committee resolved to grant conditional planning permission to develop the Site under reference 11/00854/FULEIA. The Permission was issued on 30th March 2012 and an agreement under section 106 of the Act was entered into on the same day. The Development is for demolition of existing structures on the Site and redevelopment to provide a mixed use building of 15 storeys, plus mezzanine, lower ground, two basements and a publicly accessible roof garden, to provide Class B1 office use and Class A retail uses including a

restaurant at 14th floor level, together with associated public space and landscaping, motorcycle, car and bicycle parking, servicing and plant accommodation (62,643sq.m). The Development was approved because it is in substantial compliance with the development plan policies that relate to it (namely the London Plan, the Unitary Development Plan and the Core Strategy) and in particular it supports the strategic objective of promoting the City as the leading international financial and business centre. The Development will provide a significant increase in flexible office and retail space on this Site, which would support the financial and business services of the City.

3. The Site comprises 0.42 ha (1.05 acre) of land in the heart of the financial district and the EC3 insurance district, currently occupied by a number of dated low rise buildings comprising some 14,825 sq.m. NIA of offices and retail accommodation. The Site is bounded by Fenchurch Street to the south, Fenchurch Avenue to the north, Billiter Street to the east and Fen Court to the west. The present buildings on the Site are unsuited to the current office market for the kinds of occupiers the City Corporation seeks to attract because the buildings have reached the end of their physical and economic life, with outmoded specification and have small irregular floorplates which do not meet current day requirements.
4. The Site is in the following freehold ownership: 54% is owned by the Developer, 42% by the Clothworkers and 4% by the City Corporation.
5. There are very few development sites capable of accommodating buildings of the scale and quality proposed by the Development in the City's core, and which can be completed during 2017. Indeed the only other development within EC3 of this scale, which is planned for delivery within a similar timescale, is 52-54 Lime Street (for which the City Corporation has also granted planning permission); but this will have smaller floors than the Development and will be partly occupied by the owner of the site (WR Berkley).
6. The Developer has demonstrated the unique opportunity presented by this Site by agreeing a pre-let with a major international asset manager to lease a significant proportion of the Development on completion. The major international asset manager fits the profile of the kind of businesses the City Corporation wishes to attract to it as a world financial hub. The combination of building design, size and location which could be provided by the Development would make it attractive to potential tenants and it would make a significant contribution to the stock of prime commercial property in the City of London. The Developer and a major international asset manager entered into an agreement for lease on or about 30th April 2014. The major international asset manager requires agreement to be reached in order to be able to secure space in the Development by 2017 and demolition on the Site will need to take place within a reasonable timescale in order to achieve this.
7. The Developer has been in negotiations with the owners of the freehold interests and various long leasehold interests in the Site. It has made reasonable progress with these owners, including negotiating terms to relocate one occupier (NatWest Bank) within the Development during construction. The City Corporation is advised that the Developer fully expects to reach final settlement with the owners of these freehold and leasehold

interests in accordance with its site assembly requirements. It has presently entered into option agreements or agreed commercial terms with Clothworkers, Young & Co Brewery plc, Davy's, NatWest and the City Corporation.

8. Rights of Light issues are raised by the Development, and the Developer has agreed terms (but not yet executed final documents) with six neighbouring landowners (one of whom is the City Corporation) to the Site to settle various potential Rights of Light claims. Discussions with these landowners are advanced and it is expected that final documents will be executed in accordance with the Developer's site assembly requirements. A further nearby landowner has been identified as having a potential Rights of Light claim and the Developer has indicated that it has approached the landowner to open discussions.
9. There are a large number of occupational interests in the Site and the City Corporation has been informed that those interests are largely held on the basis that they can be terminated by the Developer on three or six months' notice (one interest, Davy's, requires longer (11 months' notice) but is subject to agreed terms with the Developer), the Linville (and related) interests are referred to below) and that once site assembly in relation to the freehold and long leasehold interests has been realised, the Developer will terminate those occupational interests so as to enable the Development to proceed.
10. There are various utilities with interests in the Site, and further details on these are contained in the Non-public report on your Agenda.
11. The Developer has advised that the timing for commencement of the Development is now at risk due to its inability to agree terms for disposal with Linville Limited. Linville Limited is the owner of the leasehold property at 118 to 119 Fenchurch Street under an Underlease dated 28th October 1957 for a term of 99 years from 29th September 1953 as Registered under title number LN158383 (the "Linville Land").
12. The City Corporation has been informed that the Linville Land is the key outstanding property interest in respect of which the Developer has been unable to negotiate any form of terms for its acquisition. Linville Limited occupies its building under an underlease for an unexpired term of 38 years and 6 months from the Clothworkers. The Linville Land comprises a purpose built office and a public house built on basement, ground and five upper floors, totalling approximately 684m². It occupies a small (but crucial) part of the Site by area (5%) and is situated on the southern side of the Site fronting Fenchurch Street.
13. The Linville Land is located in a key part of the southwest quadrant of the consented scheme. The Development requires all of the buildings on the Site to be demolished. Without the Linville Land, any development of the Site would be smaller, providing less new floorspace overall, and could not provide the large regular floorplates of the type presently demanded by the market and in particular by the kind of large scale businesses of the type the City Corporation wishes to attract, such as the major international asset manager. There is a real risk that without an early resolution to this site assembly issue the opportunity to secure the major international asset manager's occupation of the Site will be in jeopardy. The Development as

envisaged cannot therefore proceed within the current site assembly timetable without the Linville Land.

14. Linville Limited is not opposed to the Development nor to its land being acquired, but disputes the sums so far offered to acquire that interest. The City Corporation has obtained its own independent valuation advice on the appropriate range of prices that a developer of the Site might be expected to pay to acquire Linville Limited's leasehold interest in the Property following open market negotiations between willing participants (so as to enable the Development, or equivalent development, to be carried out and in order to assist the City Corporation's consideration whether it is appropriate to make a compulsory purchase order in respect of the Site.) The independent valuation indicates that an offer made to Linville is within the appropriate range and that the sum sought is about twice the appropriate range. Further information is contained in the Non-public report on your Agenda.
15. The Linville Land is needed in order for the Development to be carried out and the Development cannot proceed unless it is acquired. Certainty is however also required that all and any outstanding interests in the Site will have been acquired to enable commencement of development. The report to your Planning and Transportation Committee did not refer to an interest recently created by Linville Limited (31st January 2014) of a sublease of its third floor to a related company, Alumina Limited, (which has shared directors with Linville). The creation of this interest is not believed to be of significance to the decision before Members, however, officers confirm that this interest has been created. For completeness, officers also note that Alumina has recently created a further sublease to company called Exsus Travel Limited (31st January 2014), similarly with shared directors with Linville. Both interests are for a period of some eight years. The directors of Alumina and Exsus (being shared) are aware of the proposed making of the Compulsory Purchase Order and the matters highlighted in this report as to the considerations material to the decision are the same for both of these interests, as for any other interests in the Site. The effect of the Compulsory Purchase Order if made and confirmed would be to ensure that these interests in the Site will have been acquired to enable commencement of the development.
16. As set out in the City Corporation Planning Officer's report to the Planning and Transportation Committee dated 20th March 2012, the proposed Development was considered to be in compliance with the policies that related to it and in particular supported the strategic objective of the City Corporation to promote the City as the leading international financial and business centre. The Development would provide a significant increase in flexible office space (155% – 35,104 sq.m including plant and ancillary) and retail space (4,857 sq.m) on the only development site in this area of the City capable of accommodating buildings with such large floor plates and capable of being completed in 2017. This substantial increase in high quality floorspace would provide significant employment opportunities both during construction and post completion. It offers the redevelopment of outdated buildings on an underutilised brownfield site and would provide a world class mixed use building (as evidenced by the Development winning the Future Projects - Office category at the World Architecture Festival in 2012) adding to the City's stock of prime commercial property. It would provide public

- realm improvements, public amenity space additional retail provision and other benefits.
17. The City Corporation considers that the whole of the Site is required to deliver this Development (or similar development) and that the Development is not capable of being brought forward without all of the land within the Site. Although the negotiations undertaken by the Developer are far advanced, there is no certainty that all the outstanding interests can be acquired by negotiation in order to secure the major international asset manager's commitment to pre-let space in the Development, and therefore the CPO is necessary to ensure the delivery of the proposed Development (or similar development) within the timescale required to achieve the major international asset manager pre-let.
 18. The Developer has asked if the City Corporation would be prepared to facilitate the Development by exercising its powers under S226(1)(a) of the 1990 Act to acquire the Site compulsorily, including the Linville Land. The City Corporation considers that the whole Site is required to deliver the Development (or similar development) and the Development is not capable of being brought forward without all of the land within the Site. Acquiring the whole Site by means of compulsory purchase would provide the Developer with certainty that, provided the Order is confirmed, all the interests necessary for the Development to proceed (not just the Linville Land) will have been acquired by the commencement of the Development and that it will therefore have vacant possession of the whole Site at the commencement date.
 19. It is considered that the Development is in accord with, and would further key objectives of, both the Mayor of London's and the City Corporation's planning policies. The compulsory acquisition of the Site will facilitate its development/redevelopment or improvement through the carrying out of the Development (or similar development), which will provide much needed high quality office space to satisfy known demand, and specifically, for the purposes of securing space for the major international asset manager within the required timescales; provide additional retail space and contribute to the improvement of the environment by providing a world class mixed use building on the Site; an improved public realm; significant open space, and other benefits.
 20. Before exercising its powers under section 226(1)(a) of the 1990 Act, the City Corporation must be satisfied that the inevitable interference with property and other rights, including rights that are protected under the European Convention on Human Rights, which will result from the proposed exercise of powers of compulsory acquisition, is outweighed by the public benefits which will be derived from the Development. It is considered that the benefits significantly outweigh the interference with others' rights in this case, and that there is therefore a compelling case in the public interest for making the Order.
 21. The City Corporation has been assured that, save in respect of Linville Limited's interest, there are unlikely to be substantial objections to the scheme.
 22. It should be noted that Linville Limited would be entitled to object to the confirmation of the Order and in the event of objection a public inquiry would

need to be held to consider the objection and in advance of any confirmation of the order by the Secretary of State. This would have an impact on the timescales.

Considerations:

Acquisition for Planning Purposes

23. Pursuant to section 226 of the 1990 Act the City Corporation may acquire compulsorily any land in its area:
 - s226(1)(a): if it thinks that the acquisition will facilitate the carrying out of development/re-development or improvement on or in relation to the land; or
 - s226(1)(b): where it is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated.
24. It is considered that the more appropriate power to use in the present case is s226(1)(a).
25. Before exercising this power, the City Corporation must think that the development, re-development or improvement proposed is likely to contribute to the achievement of certain objects, namely the promotion or improvement of the economic, social or environmental well-being of their area: s226(1A).
26. Circular 06/2004: *Compulsory Purchase and the Crichton Down Rules* (the "Circular") gives advice on the approach that should be taken, and the matters that should be considered, when a local authority and the Secretary of State are deciding whether to make or confirm a compulsory purchase order ("CPO"). The main points are:
 - i) Before embarking on compulsory purchase and throughout the CPO preparation and procedural stages, the City Corporation should seek to acquire land by negotiation wherever practical. Compulsory acquisition is intended as a last resort where attempts to acquire land by agreement have failed, although it may often be sensible for formal CPO procedures to be initiated in parallel with continuing negotiations; There should be clear evidence that the public benefit from making the CPO will outweigh the private loss. A CPO must only be made where there is a compelling case in the public interest;
 - ii) The City Corporation should be sure that the purposes for which it is making the CPO sufficiently justify interfering with the affected human rights of those with an interest in the land;
 - iii) It will be difficult to show that the making of the CPO is justified in the public interest if the City Corporation does not have a clear idea of how the land acquired will be used and cannot show that the necessary resources are likely to be available to achieve that end use within a reasonable timeframe;
 - iv) The City Corporation should be satisfied that there is a reasonable prospect of the Development going ahead, and that its implementation is unlikely to be blocked by financial, physical, legal, planning or other impediments;
 - v) When considering whether to confirm the order the Secretary of State will consider the following (amongst other) factors:

- whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area;
 - the extent to which that purpose will contribute to the s226(1A) objects;
 - the financial viability of the scheme for which the land is being acquired – “A general indication of funding intentions, and of any commitments from third parties, will usually suffice to reassure the Secretary of State that there is a reasonable prospect that the scheme will proceed”;
 - whether the purpose for which the City Corporation is proposing to acquire the land could be achieved by any other means.
27. It should be noted that it is immaterial by whom any activity or purpose mentioned in s226(1) is to be undertaken or achieved. There is no need therefore for the City Corporation to undertake that activity or to achieve that purpose itself (s226(4)).

Indemnity

The Developer has agreed to indemnify the City Corporation in full for the costs of and associated with the compulsory acquisition of the Site and the indemnity would need to be on terms that the Developer undertakes to:

- enter into the pre-let with the major international asset manager;
- carry out the Development within a reasonable timescale, and
- in default of the Development being carried out by the Developer, the City Corporation could itself acquire the Site pursuant to the Compulsory Purchase Order in order to secure its implementation, or implementation of a similar scheme.

The acquisition would be on terms that, following acquisition, the City Corporation will dispose of the Site to the Developer (or other agreed party) for the planning purposes of securing the Development (or for similar development) (other than where the City Corporation itself secures the Development in default).

Public Interest/Planning framework

28. The Developer and Linville Limited have been in negotiations for the Developer to acquire the Linville Land for some time. The City has also urged Linville Limited to settle the consideration for its interest through alternative disputes resolution This has not been taken up as Linville Limited relies on its own valuation. Further information regarding negotiations is contained in the Non-public report on your Agenda.
29. It is therefore considered that without the City Corporation’s intervention, the Development, will not be achieved within a reasonable timescale. In particular, City Corporation has been informed that if the Development is not commenced in time to provide office accommodation in 2017, the opportunity to secure the major international asset manager as an occupier will be lost.
30. While agreement has been reached (or substantially reached) in relation to the owners of other affected interests, it is considered appropriate in all the circumstances of the case to make a CPO in relation to the whole Site to ensure single ownership and achieving delivery of the Development by 2017.
31. Both the City Corporation and the Developer still wish to achieve acquisition of the Site by private treaty, and the Developer will continue negotiations with

Linville Limited and the owners of other affected interests throughout the CPO process.

32. The consented scheme would provide a significant amount of new, high quality floorspace with an increase of 155% over the current provision. The existing buildings have reached the end of their physical and economic life, with outmoded specification and small irregular floorplates which do not meet current day requirements. It would also provide a significant number of jobs, both pre and post completion. During the construction phase it is anticipated that 429 construction jobs will be created. Post-construction, the Development is expected to generate 3,183 jobs once operational – a net increase of 2,319¹ jobs. It would provide new retail space of some 4,857 sq.m GEA and substantial public realm improvements including publically accessible roof space/garden. The roof garden is a significant new amenity provided for the public in this part of the city, where employment numbers are increasing significantly and where opportunities to create open and green space are limited. Its provision for the public was an important consideration in balancing the benefits of the Development to the city. New public highways will also be provided through the Development fronted by retail units. Financial contributions of £1,290,470 will be made towards local community facilities and the environment and £129,047 will be paid towards training, jobs brokerage and skills. The Development is therefore considered to be in substantial compliance with the Plan policies that relate to it, and in particular, supports the strategic objective of the City Corporation to promote the city as the world's leading international financial and business centre.
33. The most relevant planning policies are:
- i) **The London Plan:**
- Policy 2.10: (Central Activities Zone)** – Strategic Priorities sets out the following strategic priorities for the CAZ:
- (a) *Enhance and promote the unique international, national and London-wide roles of the CAZ, supporting the distinct offer of the Zone based on a rich mix of local as well as strategic uses and forming the globally iconic core of one of the world's most attractive and competitive business locations.*
- (b) *In appropriate quarters bring forward development capacity and supporting infrastructure and services to sustain and enhance the CAZ's varied strategic functions without compromising the attractions of residential neighbourhoods where local uses predominate.*
- (c) *Sustain and enhance the City of London (and, although formally outside the CAZ (see para. 2.55 of the London Plan), the Isle of Dogs) as a strategically important, globally-oriented financial and business services centre.*
- Policy 4.1: (Developing London's Economy)** states that the Mayor will work with partners to:
- (a) *Promote and enable the continued development of a strong, sustainable and increasingly diverse economy across all parts of London, ensuring the availability of sufficient and suitable workspaces in terms of*

¹ From the planning application - the Environmental Statement stated that the Development would generate 3,183 jobs and the Transport Assessment stated that the current site is home to 864 jobs. Hence a net increase of 2,319 jobs.

type, size and cost, supporting infrastructure and suitable environments for larger employers and small and medium sized enterprises; and

(d) Support and promote the distinctive and crucial contribution to London's economic success made by central London and its specialist clusters of economic activity; and

(g) Promote London as a suitable location for European and other international agencies and businesses.

Policy 4.2 (Offices) states that stakeholders should:

support the redevelopment of office provision to improve London's competitiveness, and recognise and address strategic as well as local differences in meeting this policy to meet the distinct needs of the central London office market including by sustaining and developing the dynamic clusters of "world city" and other specialist functions and business environments, should encourage the renewal and modernisation of the existing office stock in viable locations to improve its quality and flexibility, and seek increases in the current stock where there is local evidence of sustained demand for office based activities in the context of offices.

ii) **The City of London Core Strategy:**

Strategic Objective 1 – To maintain the City's position as the world's leading international financial and business centre

Policy CS1 - *To ensure the City of London provides additional office development of the highest quality to meet demand from long term employment growth and strengthen the beneficial cluster of activities found in and near the City that contribute to London's role as the world's leading international financial and business centre, by:*

(i). Increasing the City's office floorspace stock by 1,500,000 m2 gross during the period 2006 – 2026 to meet the needs of projected long term economic and employment growth, phased as follows:

2006 – 2011: 750,000 m2

2011 – 2016: 250,000 m2

2016 – 2021: 250,000 m2

2021 – 2026: 250,000 m2

A pipeline of at least 750,000 m2 gross office floorspace with planning permission but not yet commenced will be maintained to provide office occupier choice.

(ii). Encouraging the assembly and development of large sites, where appropriate, to meet the accommodation needs of the City's biggest occupiers, protecting potential large office sites from piecemeal development and resisting development that would jeopardise the future assembly and delivery of large sites.

(iii) Encouraging the supply of a range of high quality office accommodation to meet the varied needs of City office occupiers.

(iv) Promoting inward investment and encouraging developers and businesses to invest and locate in the City.

(v) Managing short-term over supply in the office market through a flexible approach to alternative temporary uses for vacant offices and sites, where such uses would not prejudice the eventual return of the site to office use.

Under Policy CS1: "Who will Deliver – how will we make it happen" it is stated that "the City may use development management, **compulsory**

- purchase powers**, land ownership and joint working with developers to assist in site assembly, where appropriate....”
34. Draft Policy DM1.3 in the City Corporation’s proposed Local Plan seeks to protect accommodation suitable for small and medium sized businesses. Draft Policy DM1.3 aims:
To promote small and medium sized businesses in the City by encouraging:
- *new accommodation suitable for small and medium sized businesses or occupiers;*
 - *office designs which are flexible and adaptable to allow for sub-division to create small and medium sized business units;*
 - *continued use of existing small and medium sized units which meet occupier needs.*
35. Consideration is to be given to the fact that the proposal would lead to the loss of such accommodation and replace the same with a new large floor plate office scheme. The report to the Planning and Transportation Committee of 20th March 2012 pre-dated DM1.3 and the issue was not considered at that time. Notwithstanding Draft Policy DM1.3, this Site, located as it is in the eastern cluster and in the heart of the insurance sector which has been identified as suitable for tall buildings, is one where the (limited) opportunity for new high quality large floorplates should be exploited in the interests of Policy CS1, and Draft Policy DM1.3 should be given more weight in other parts of the City. It is therefore considered to be in the public interest to make the CPO, notwithstanding the loss of smaller lower grade office units.
36. In the light of the above policies, the key public benefits of the Development which need to be weighed against the private loss, including interference with the human rights of those with an interest in the land affected, which will be caused by the compulsory acquisition of the Site are that:
- i) it replaces outdated offices with world class high quality modern attractive office space offering state of the art accommodation of the highest institutional standard;
 - ii) it provides a net floor area of internal accommodation of some 39,704 sq.m. (nearly 3 times more than the existing) and comprised of regular flexible floorspace on large floorplates of the type strongly favoured by business and financial service users. It includes floor areas of up to 2,800 sq. m per floor. Floor plates of this size are in demand and are hard to find in the City;
 - iii) it has secured a pre-let by a significant occupier of the space (a major international asset manager) which is exactly the type of entrant the City’s policies seek to attract;
 - iv) better and more efficient use will be made of a significantly under-utilised site;
 - v) it will generate 3,183 jobs - a net increase of 2,319 employees than are currently accommodated in the existing buildings, or could be – making it suitable for a major occupier and/or other users;
 - vi) the Permission is accompanied by an appropriate package of planning obligations, which includes significant contributions to Crossrail £2,307,446, local community facilities and the environment of £1,290,470, local job training skills and job brokerage payments of £129,047, and enhancements

to the street environment, as set out in the Planning Committee Report dated 20th March 2012 and Section 106 Agreement dated 30th March 2012. If the Development does not proceed, the benefits identified above will not be delivered.

Justified Interference with rights

37. The Development would involve interference with property and other rights, including those protected by the European Convention on Human Rights. A CPO should not be made unless the interference is proportionate to, and is outweighed by, the public benefits to be achieved. The criteria are therefore examined below.
38. In this context, the following matters need to be taken into account:-
- i) Whether compulsory purchase will facilitate the carrying out of the Development, and whether there are any other means to achieve this;
 - ii) Whether interference with property rights is necessary in order to allow the Development to be carried out and, in particular, whether agreement can be reached for the release of those rights and on what terms;
 - iii) Whether the benefits of the Development could be achieved without giving rise to all or some of the interference;
 - iv) Whether the Development will contribute to one or more of the objects of promoting or improving the economic, social or environmental well-being of the area;
 - v) Whether the public benefits arising from the CPO are proportionate to the interference with private rights, and in particular to any interference with rights guaranteed by the European Convention on Human Rights ("Convention Rights");
39. These five matters are addressed below.
- (i) Whether compulsory purchase will facilitate the carrying out of the Development, and whether there are any other means to achieve this*
40. The Site has planning permission for redevelopment. The Developer has access to sufficient resources to carry this out, and intends to commence demolition this year and commence build in early to mid-2015, provided that the Site can be assembled in time to allow this to happen. At the present time, the only means of achieving certainty in terms of the timing and delivery of the Development is if the City Corporation makes a CPO. If the CPO is confirmed, the City Corporation will dispose of the Site to the Developer to carry out the Development, however the City proposes that the making of the CPO be on terms that the Developer carry out the Development within a reasonable timescale, and grant the City step-in rights should it be unable to achieve this.
41. Full funding for both the Development and the CPO will be provided by the Developer, which is a wholly owned subsidiary of The Generali Group. The Generali Group is one of the largest global insurance providers with a 2013 total premium income of €66 billion. With 77,000 employees worldwide serving 65 million clients in more than 60 countries, the Group occupies a leadership position on West European markets and an increasingly important place in markets in Central Eastern Europe and Asia.

42. The Developer has concluded an agreement for a pre-let with a major international asset manager for the Development, but requires certainty that all of the relevant interests in the Site can be acquired so that the Development can take place. The protracted negotiations to acquire Linville Limited's rights have not resulted in the parties reaching terms, and this now jeopardises the whole Development and its timescales. Compulsory acquisition of the Site will therefore clearly facilitate the carrying out of the Development.
43. The anticipated programme for the Development is for demolition to commence immediately the outstanding acquisition issues have been resolved with a target date for completion to shell and core at the end of September 2017.
44. Unless the City Corporation exercises its powers of compulsory acquisition, therefore, the Development will not be able to proceed within the timescale required in order to provide office accommodation in 2017 and thereby provide premises for the pre-let. Negotiations with a view to completing acquisition of all the necessary interests by agreement, including with Linville Ltd, will continue, but (as the Circular advises may be appropriate) officers consider that the formal CPO procedures should be initiated in parallel with negotiations, not only in order to secure the carrying out of the Development within a more certain timescale but also to encourage those affected "to enter more readily into meaningful negotiations".
- ii) Whether interference with property rights is necessary in order to allow the Development to be carried out and, in particular, whether agreement can be reached for the release of those rights and on what terms;*
- iii) Whether the benefits of the Development could be achieved without giving rise to all or some of the interference;*
45. It is clear that it would not be possible to carry out the Development without the acquisition of the Linville Land, which is located in the southwest quadrant of the site. The Development in fact requires demolition of all of the existing buildings on the Site, and therefore the acquisition of all of the interests included in the draft CPO.
46. Furthermore, were the Development to be reduced in scale by excluding the Linville (or other) land, a significant amount of floorspace would be lost and it would not be possible to achieve the large floorplates which are a key feature of the Development.
47. Interference with property rights is therefore necessary in order to facilitate the carrying out of the Development. It is not possible to redesign the Development so as to reduce or avoid the interference to any appreciable extent.
48. Aside from Linville, in principle agreements have been reached as detailed above and are close to being finalised, with all those with an interest in the affected properties for the acquisition of their interests. Interference with their property rights has therefore been sanctioned through the agreement of the relevant owners.
49. The City Corporation is advised that the occupational interests are largely on terms that the interests can be determined on 3 or 6 months' notice, and accordingly it is not considered that the making of a CPO is likely to lead to

any, or any significant, interference with the property rights of the owners of these interests.

50. Given the advice of the City's independent valuer, it is considered that reasonable attempts to reach agreement with Linville have been made. Officers have reviewed the course of negotiations and are of the view that the offers made by the Developer (including the offers to settle appropriate consideration for acquisition by ADR) are reasonable and appropriate in the circumstances, being based on a significant uplift in existing use value. The powers of compulsory acquisition under section 226(1)(a) are therefore being exercised as a last resort as it has not been possible for the Developer to reach agreement with Linville Limited and is therefore not able to carry out the Development for which planning permission has been granted. The Developer will continue to negotiate for the acquisition of Linville's interest by private treaty after any CPO has been made.

(iv) Whether the Development will contribute to one or more of the objects of promoting or improving the economic, social or environmental well-being of the area;

51. The use of section 226(1)(a) powers will facilitate the carrying out of the Development, and this will contribute to:
- i) the promotion and improvement of the economic well-being of the city as a whole, through the provision of new offices, significant employment generation and retail provision, likely occupation by a major financial institution, and by providing jobs during the construction phase;
 - ii) the promotion and improvement of the environmental and social well-being of this part of the city, through the proposed improvements to the public realm and provision of open space, the productive use of an underutilised brownfield site, and the securing of other benefits including the enhancement of the streetscape of this part of the city.

(v) Whether the public benefits arising from the CPO are proportionate to the interference with private rights, and in particular to any interference with rights guaranteed by the European Convention on Human Rights ("Convention Rights");

52. The Circular advises that compulsory acquisition under section 226 of the 1990 Act, which has the effect of infringing convention rights:

"... should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes sufficiently justify ... interfering with the human rights of those with interests in the land affected...."

53. The Human Rights Act 1998 obliges the City Corporation to act in a way that is compatible with rights conferred by the European Convention on Human Rights (ECHR). Article 1 of the First Protocol of the ECHR provides that every natural or legal person is entitled to peaceful enjoyment of their possessions. Acquisition of interests in land through the exercise of powers of compulsory acquisition necessarily involves interference with a person's rights under this Article. Corporate bodies as well as individuals are entitled to the protection conferred by Article 1 of the First Protocol.

54. The right to peaceful enjoyment of possessions under this Article is a qualified rather than an absolute right. The wording of Article 1 of the First Protocol permits the deprivation of an individual's possessions where it is in the public interest and subject to conditions provided for by law.
55. There is therefore a balancing exercise to be undertaken between the public interest and a person's rights, so that any interference in a person's rights must be necessary and proportionate. "Proportionate" in this context means that the interference must be no more than is necessary to achieve the identified legitimate aim. A "fair balance" must be struck between the rights of the individual and the rights of the public. It is for Members to consider the issues raised in this report and to strike that "fair balance" in coming to a decision.
56. In the present case, it is considered that the public interest in facilitating the Development within a reasonable timescale, and in facilitating occupation by a significant occupier which falls within the category of businesses which the relevant planning and other policies seek to support, outweighs the interference with the rights of those affected by the CPO to peaceful enjoyment of their possessions, and that the proposed exercise of section 226(1)(a) powers amounts to a proportionate interference in all the circumstances. The availability of statutory compensation to those who are deprived of their possessions is also of relevance to the issue of proportionality. Were the outstanding interests not to be acquired by private treaty so that the City Corporation has to proceed to acquire the interests concerned, compensation would be payable to the owners of those interests in accordance with the compensation code.

Financial Implications

57. The Developer has agreed to be responsible for any costs, expenses and compensation liabilities incurred in connection with the compulsory purchase and the subsequent Development. Further the Developer will enter into an indemnity agreement with the City Corporation in respect of costs arising in connection with the CPO.

Legal Implications

58. All legal implications are included in the body of the report.

Consultation

59. The City Corporation has been in correspondence with Linville Limited regarding the CPO proposal and in summary Linville Limited has made representations that it considers the use of CPO powers to be disproportionate and premature in the light of the negotiations which have taken place. Further information about this is contained in the Non-public report on your Agenda.
60. Your officers do not believe the use of CPO powers to be disproportionate or premature - the public interest in facilitating the Development within a reasonable timescale, and in facilitating occupation by a significant occupier, which the relevant planning and other policies seek to support, justifies the proposed exercise of section 226(1)(a) powers and is proportionate in all the circumstances; the figure sought by Linville Limited is not within a reasonable

range as advised by the City Corporation's valuer; the City Corporation is satisfied that a CPO is justified in this case; Linville Limited will be able to object and be heard on the issue of confirmation and negotiations between Linville Limited, the Developer and the City Corporation will continue throughout the process in order to seek to achieve acquisition of the interest by private treaty.

61. The other parties with interests likely to be significantly affected by any CPO have been made aware of the proposal.
62. Those parties who hold occupational leases or enjoy Rights of Light over the Development Site have not been given specific notification of the proposals by the City Corporation, however this report is available for them to consider. In the case of occupational tenants it is understood that their interests can be terminated on short notice and it is therefore unlikely that they would be significantly affected by any CPO. As regards Rights of Light, these would only be over-ridden in the event of acquisition of the whole site by the City pursuant to the proposed CPO.
63. All parties with qualifying interests would have to be served with Notice of Making of the CPO and would have an opportunity to object at that stage.
64. The matter was reported to Planning and Transportation Committee on 29th April 2014, which Committee was satisfied that (subject to prior completion of an indemnity agreement) the Site shown attached in Appendix 1 be acquired compulsorily for the purpose of facilitating the carrying out of development/redevelopment or improvement through the construction of the Development (or a substantially similar scheme of development), and in order to provide certainty that all and any outstanding interests in the Site will have been acquired as at the commencement of the Development (or similar development). The Committee recommended the making of a Compulsory Purchase Order to Court of Common Council.
65. The matter was reported to Policy & Resources Committee on 8th May 2014 for information. Following discussion at that Committee and ongoing correspondence with the objector's solicitor, additional representations from the Developer and Linville have been annexed as appendices to this report. It is not proposed to detail in the body of this report the various letters to the City and the City's responses. All the correspondence is available to Members by request to the Comptroller and City Solicitor. However, as regards points made by the objector's solicitors about the conduct of officers in processing this matter, the following corrections should be noted:
 - i) It is said that officers have refused to allow the objector's solicitor's various correspondence to be put before Members because officers wish to 'dilute' the points and fear Members may agree with them. This is not the case. There has been numerous correspondence with Linville's solicitors. It is common practice to distil correspondence for the benefit of Members. Any other approach would render the administration of a local authority impractical and unworkable. The Comptroller and City Solicitor's reference to Linville's correspondence is recorded in the minutes of 29th April Planning and Transportation Committee, Linville's Counsel made his own representations to that Committee and the opportunity to make any additional points has been taken up by both parties;.

- ii) It is said that Draft Policy DM1.3 was not mentioned to the Planning and Transportation Committee (draft Policy DM1.3 encourages “continued use of small and medium sized units”). The Comptroller and City Solicitor specifically referred to this Policy, as recorded in the minutes of the 29th April Committee meeting.
66. The Comptroller and City Solicitor remains satisfied, having carefully considered the various criticisms and challenges raised by Linville’s solicitors in the additional representations, that the criticisms are not well-founded and that his recommendation to Planning and Transportation Committee and that Committee’s recommendation to this Honourable Court are lawful and appropriate. It is considered that the benefits of the proposal significantly outweigh the interference with rights complained of and that there is therefore a compelling case in the public interest for the making of the Order.

Conclusions

67. It is considered that the making of a CPO in order to facilitate the development/redevelopment or improvement of the Site should be approved on the following basis:-
- The existing Site buildings are outdated and the Development will replace these with modern attractive offices and retail space in a core city location;
 - The new office floorspace will be nearly three times larger than the existing and will enable the employment of 2,319 more people than the current offices could accommodate.
 - The size and configuration of the new office space would be of the kind now required by those who wish to occupy space in the City of London, and will assist in the promotion of the city as the world’s leading international financial and business centre, thereby contributing significantly to the achievement of the City Corporation’s strategic policies.
 - The Development will secure benefits to the area in terms of the appearance of the new world class building, the additional retail floorspace, public realm improvements and other environmental enhancements.
 - All the considerations the City Corporation is required to take into account have been addressed and it has been concluded that there is a compelling case in the public interest in favour of making the CPO.
 - Terms have been negotiated with the majority of those whose interests would be affected by the proposed acquisition, and the making of the CPO will ensure that the Site will be developed within a more certain timescale and not prevented by the Developer’s inability to acquire all the interests required by agreement.
 - The acquisition of those interests by compulsion is proportionate and justified in the circumstances of the case.

It is therefore recommended that Members of Court of Common Council concur with the resolution and recommendation of Planning and Transportation Committee and authorise the making of a Compulsory Purchase Order in respect of all interests in the Site.

Appendices

Appendix 1 – Site Location Plan

Appendix 2 – Illustrations

Appendix 3 – Representations

All of which we submit to the judgement of this Honourable Court.

DATED this 29th day of April 2014

SIGNED on behalf of the Committee.

Deputy Michael Welbank, M.B.E.
Chairman, Planning and Transportation Committee