

**REPORT TO THE MEETING OF THE EXECUTIVE
BOARD
OF 21 MARCH 2003**

**PARADISE STREET DEVELOPMENT AREA
AND
ST ANNE STREET LIVERPOOL 3**

**PROPOSED USE OF THE COUNCIL'S POWERS
OF COMPULSORY PURCHASE**

REPORT NO. EDR/79/03

1 Introduction

1.1 This report concerns the proposed use of compulsory purchase powers by the Council in order to assemble land necessary to achieve the comprehensive redevelopment of the area of Liverpool City Centre known as the Paradise Street Development Area (PSDA).

1.2 Linked to redevelopment of PSDA is a need to relocate the Fire Station at Canning Place. This report will consider these proposals in more detail and advise on the circumstances where it is considered appropriate for the Council's powers of compulsory purchase to be used to facilitate the relocation of the Fire Station.

1.3 As referred to in paragraph 2.6 below, the Council has already approved the principle of the making of a compulsory purchase order to facilitate the redevelopment of the PSDA.

1.4 The Executive Board is reminded that compulsory purchase orders should only be made if there is "*a compelling case in the public interest*" (Paragraph 14 of ODPM Circular 02/03) – in other words, that:

"An acquiring authority should be sure that the purposes for which it is making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affect..."

1.5 This report seeks to:

- provide the Executive Board with up to date information as to steps which have been undertaken to satisfy the terms of the resolution of 13 December 2002; and
- obtain authority to proceed to make both the PSDA compulsory purchase order (PSDA CPO) and a compulsory purchase order in respect of proposed Fire Station site at St Anne Street (St Anne Street CPO).

1.6 Maps showing the proposed boundaries of the PSDA CPO and the St Anne Street CPO are enclosed at **Appendix 1**.

2 **PSDA CPO**

2.1 The scheme for the redevelopment of PSDA (the PSDA Scheme) is being promoted by Grosvenor Limited, through its wholly owned UK subsidiary, Liverpool PSDA Limited, ("the Developer") in partnership with the Council.

2.2 Planning application number 01O / 0115 in respect of the PSDA Scheme was submitted in January 2001, seeking permission for the comprehensive mixed-use development of the PSDA providing some 220,000 square metres (gross) of new floor space, including retail (Class A1), food and drink (Class A3), leisure (Classes D1 and D2), residential apartments (Class C3), recording studios, offices (Class B1), Meeting Hall, Gallery (Class D1), ancillary accommodation, two hotels, new bus station, bus layover provision plus ancillary facilities, circa 3,000 car parking spaces, new means of access, public open space including a new public park, and associated servicing, highway works and landscaping. The application was revised on a number of occasions, the most significant amendments were made in October 2001.

2.3 Planning application number 01O / 0115, and the accompanying listed building and conservation area consent applications, were considered and approved by the Planning Committee on 26 September 2002, subject to the completion of a Section 106 Agreement, conditions and prior referral to the Secretary of State.

2.4 By a letter dated 22 October 2002 the Council was informed that the Secretary of State would not be calling-in the application for his own determination.

2.5 The Section 106 Agreement was completed on 19 December 2002 and planning permission and associated listed building and conservation area consents were issued on 23 December 2002.

2.6 At the meeting of the Executive Board on 13 December 2002 it was resolved that:

"The Council approve in principle the making of a compulsory purchase order in respect of all interests and / or new rights, excluding the Council's interest, in the land, the preliminary boundary of which is shown edged on the plan annexed to this report at Appendix 1, for the purposes of carrying out development, redevelopment and improvement pursuant to Section 226 of the Town and Country Planning Act 1990 subject to:

(i) the City Solicitor receiving an assurance from the Developer that all appropriate steps will continue to be taken to effect negotiations with

all owners and occupiers affected by the proposed CPO with a view to acquiring as many interests as possible by way of private treaty; and

(ii) the prior completion of a CPO Costs Indemnity by Grosvenor on terms to meet the approval of the City Solicitor to safeguard the Council's financial position and other interests."

- 2.7 On 19 December 2002 the Council, Grosvenor Limited and the Developer entered into a Development Agreement for the Scheme and a CPO Costs Indemnity. The CPO Costs Indemnity provides that all costs incurred by the Council relating to the CPO, including compensation payments and administrative costs will be met by the Developer and guaranteed by Grosvenor Limited.
- 2.8 During the course of the last 18 months extensive work has been undertaken to ascertain the ownership and interests in every parcel of land within the PSDA. This has included title information from the Land Registry. Section 16 Notices were served on 18 December 2002. Follow-up letters were served on 22 January 2003 and 25 February 2003. Site investigations have also been undertaken. A final letter of notification has been sent to all those parties who are known to have an interest in land within the PSDA informing them of the intention to present a report to the meeting of the Executive Board scheduled to take place on 21 March 2003, seeking authority to make the PSDA CPO.
- 2.9 It has been possible to establish details of ownership, occupation and title details in respect of the majority of the land within the PSDA. There are some 258 known interests, other than those of the Council. There are 63 freeholders in addition to the Council.
- 2.10 Further work has been undertaken to ascertain the precise extent of land which would need to be included within the PSDA CPO Order Land boundary to enable the PSDA Scheme to be constructed and then operate in a commercially acceptable and viable manner. This has resulted in a reduction in the Order Land boundary which was considered by the Executive Board in December 2002.
- 2.11 In line with the decision of the Executive Board, the Developer has continued to seek to negotiate with interested parties with a view to acquiring land by agreement. However these negotiations and land referencing have revealed that:

- certain parties will object to the PSDA CPO as a matter of principle because they are unwilling to agree to move voluntarily;
- some parties have indicated their willingness to negotiate their interests being acquired but only if the right terms can be agreed and it is clear these negotiations could take months, if not years, to complete or may not be capable of completion on reasonable terms;
- the only way in which the Council will be able to deliver to the Developer the necessary clean title to the land within the PSDA which will then enable it to proceed with the PSDA Scheme with confidence that it can be fully built out, is through the making of the PSDA CPO, followed by either a notice (or notices) to treat, or the making of a general vesting declaration.

2.12 The Government in its recently revised policy guidance on promoting compulsory purchase orders published 27 February 2003 (ODPM Circular 02/03) encourages acquiring authorities who are proposing to embark on compulsory purchase to seek to acquire land by negotiation, whenever practicable. The advice adds at Paragraph 21 that:

"although the compulsory purchase of land is intended as a last resort when attempts to acquire by agreement fail, acquiring authorities should consider when the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Indeed, given the amount of time which needs to be allowed to complete the compulsory purchase process, it may often be sensible for the acquiring authority to initiate formal procedures in parallel with such negotiations. 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".

2.13 **Appendix 2** to this report contains a letter from Grosvenor Limited to the Council dated 12 February 2003 setting out the steps which have been taken to negotiate and re-affirming Grosvenor's (the Developer's) intention to continue negotiating through the compulsory purchase orders. The letter invites the Council to proceed with the making and subsequent promotion of the PSDA CPO.

2.14 Although the letter was submitted in advance of publication of Circular 02/03, the request is in line with the Government's old and current advice on the approach

which acquiring authorities should adopt when seeking to promote schemes which clearly require a compulsory purchase order.

- 2.15 The Executive Director is satisfied that the only practical way of facilitating the development of the Scheme not only within a satisfactory timescale, but at all, would be through the Council exercising its powers to make and thereafter promote the confirmation of the PSDA CPO.
- 2.16 The Executive Board's attention is drawn in particular to the Statement of Reasons for making the PSDA CPO which is enclosed at **Appendix 3**. Further the draft PSDA CPO, Order Map and certificates are available for inspection by Members and the public.
- 2.17 The PSDA CPO seeks to acquire all necessary interests within the PSDA, including rights, easements, the benefit of covenants, rent charges, options, etc except where otherwise expressly stated in the Schedule to the PSDA CPO.
- 2.18 The specific rights sought are the right to access adjoining buildings in order to construct, waterproof, maintain, repair, replace and renew foundations, walls and roof structures, to install, connect, repair, replace and renew service conduits and to extend the exposure of existing foundations and to prepare and underpin them as necessary, and also the right to swing the jib of a crane, loaded or unloaded, through the airspace above, in connection with development on adjoining land.
- 2.19 The specific properties referred to in paragraph 2.18 are:

	<i>Plot No.</i>	<i>Location</i>
•	3b	52 Lord Street
•	49a	Bluecoat Chambers
•	49b	Bluecoat Chambers
•	61a	38-46 Church Street
•	85a	Hanover Hotel
•	86b	6-8 Fleet Street
•	99a	Gostins Buildings
•	134a	16 Fleet Street

- 135d 11-13 Seel Street
- 172c Merchants Court
- 206a 18-20 Church Street
- 207a Athenaeum
- 211a Abney Buildings
- 211b Abney Buildings

2.20 The PSDA CPO Order Map enclosed at **Appendix 1** shows the land to be acquired coloured pink and the new rights to be acquired coloured blue.

2.21 The draft PSDA CPO and supporting documentation have been submitted to the Government Office for the North West (GONW) for technical consideration. A meeting has also been held with Officers from the GONW to discuss the draft PSDA CPO in detail.

2.22 Whilst not formally commenting on the merits of draft PSDA CPO, the GONW have provided some very helpful guidance. The draft PSDA CPO and supporting documentation have been amended to take these comments into account.

3 **St Anne Street CPO**

3.1 The PSDA Scheme assumes that the Fire Station at Canning Place will be relocated to a site outside the PSDA.

3.2 The Merseyside Fire and Civil Defence Authority has carried out an extensive analysis and appraisal of suitable alternative site and has identified land and buildings at St Anne Street, Liverpool 3 as its preferred site for the relocation of the existing Canning Place Fire Station. An application for planning permission and listed building consent to secure the relocation has been submitted on behalf of Grosvenor Limited and was received by the Council on 18 February 2003.

3.3 Planning and listed building consent has been sought:

- to erect a new fire station with associated service area and car parking, with new vehicular entrance from Harker Street and St. Anne Street;

- to carry out partial demolition of 24 St Anne Street and 1 Springfield Street, including removal of northern party wall to 24 St Anne Street and rear walls to 24 St Anne Street and 1 Springfield Street;
- to erect new extension to side and rear, and carry out alterations to external appearance of 24 St Anne Street and 1 Springfield Street; and
- to use 9 - 11 Springfield Street as ancillary training centre.

- 3.4 The proposal is referred to in this report as the Fire Station Scheme.
- 3.5 The site includes two Grade II listed buildings, 24 St Anne Street and 1 Springfield Street. Although not listed, English Heritage have indicated that a further building on the rear portion of site, 9 - 11 Springfield Street, is of interest, and should be retained in any scheme for development of the site as a whole. This can be achieved with the proposed Fire Station Scheme.
- 3.6 The application for listed building consent is accompanied by a statement required by PPG15 justifying the proposed partial demolition of the listed buildings.
- 3.7 The site is within an area allocated in the LUDP for primarily industrial purposes.
- 3.8 The land immediately to the rear of the site, bounded by Soho Street / Harker Street / Springfield Street and is designated in the park hierarchy as a Neighbourhood Park.
- 3.9 The Soho Street site referred to in paragraph 3.8 above is identified within the Everton Urban Village Primary Schools Plan as suitable replacement site for a school to be closed elsewhere in the area.
- 3.10 A Fire Station adjacent to a primary school would be an acceptable planning land use but there are however planning policy issues which would need to be considered and addressed prior to granting consent for a school on this site.
- 3.11 Officers within the Fire Authority are aware of the proposals for the school, and are satisfied that operational issues would not arise from proposals to construct a school adjacent to the Fire Station.
- 3.12 The owner of 24 - 26 St Anne Street and the land adjoining which are shown as plot number 503 of the St Anne Street CPO Map in **Appendix 1**, has made known his intention to submit applications for planning permission and listed building

consent for the conversion and residential development of a site comprising of the listed building at 24 St Anne Street and the adjacent cleared land. He is unwilling to sell voluntarily. No application has been submitted at the date of writing this report.

- 3.13 The cleared land was originally occupied by a number of buildings including a listed warehouse and has been vacant for over a decade since demolition of the fire damaged structures.
- 3.14 The Council is concerned about the stability of the buildings at 24 – 26 St Anne Street and 1 Springfield Street and is about to serve Urgent Works Notices pursuant to Section 54(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, giving the respective owners seven days within which to carry out works to make the buildings safe. Failure to comply with these notices will result in the Council carrying out the works in default and then reclaiming the costs incurred from the owners.
- 3.15 The Urgent Works Notices will be served, and the works carried out, irrespective as to whether or not the Members resolve to make the St Anne Street CPO, because urgent works are required in order to make the buildings safe.
- 3.16 Previous applications have been submitted by the same owner for listed building consent to demolish the properties at 24 – 32 St Anne Street and for outline planning permission to develop the resultant cleared site at 24 – 32 St Anne Street for residential purposes. These applications were subsequently withdrawn on 5 December 2001 because of lack of supporting information.
- 3.17 It is understood that the applications for the residential development will not include, or make any provision for, the treatment of the listed building at 1 Springfield Street or for the non listed 9 - 11 Springfield Street. Ownership of the rear of 1 Springfield Street is disputed. However, even if a residential proposal were acceptable for part of this site, this would not preclude the Council from considering and, indeed, approving a proposal for the relocation of the Fire Station which, when considering the objectives of Policy S2 is, clearly, in the wider public interest.
- 3.18 Discussions have taken place between Officers from the Council, English Heritage and Grosvenor to consider whether or not the Fire Station Scheme is acceptable. The comments made by English Heritage have been taken on board by Grosvenor and amendments have been made to the proposal with a view to retaining more of

the listed buildings. English Heritage have now confirmed that the proposals are acceptable in principle subject to approval of the final details. A copy of English Heritage's letter of 7 March 2003 is enclosed at **Appendix 4**.

3.19 The site at St Anne Street is considered by the Merseyside Fire and Civil Defence Authority to be the most suitable alternative site for relocation which is capable of meeting the Authority's operational requirements and objectives.

3.20 Consent is being sought under Section 19 of the Fire Services Act to relocate the Fire Station to St Anne Street. It appears that this consent is likely to be forthcoming.

3.21 Paragraph 19 of Circular 02/03 advises that before making an Order, the acquiring authority should be satisfied, so far as is possible, that the proposed scheme would not be blocked by any impediments to implementation:

"As part of demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account, including the programming of any infrastructure accommodation works or remedial work which may be required, and any need for planning permission or other consent or licence."

3.22 There is clear benefit when seeking to exercise powers of compulsory purchase in having the certainty of extant, implementable planning permission. However this is not always possible and in circumstances where planning permission has not yet been granted, Paragraph 16 of Annex A to Circular 02/03 advises that

"in justifying the compulsory acquisition of private property for planning purposes, there needs to be a degree of certainty that the intended scheme will proceed and the owners will not have been deprived of their property without good reason. This means that, before making a compulsory purchase order under section 226, an acquiring authority with planning powers needs to be satisfied, so far as is possible, that the proposed scheme would not be blocked by planning problems. An extant planning permission would clearly demonstrate that. It is, however, acknowledged that it will not always make sense to have to wait for such a permission before proceeding with an order, and this is not seen by the Secretary of State as an essential requirement to be fulfilled before submitting an order for confirmation....."

- 3.23 Officers are of the view that the proposals are in general accord with policy and applying Section 54A of the Town and Country Planning Act 1990 and Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise. Among the many considerations is the fact that the Fire Station Scheme will enable the relocation of the Fire Station and therefore the PSDA Scheme to proceed in accordance with the LUDP. On the basis of the information currently available, Officers are likely to recommend to the Planning Committee that both applications be approved, subject to conditions.
- 3.24 Referencing work has been undertaken to ascertain ownership of all of the land comprised within the St Anne Street application site boundary. Negotiations have also been undertaken with owners to see whether they are willing to agree to the disposal of their land in order to facilitate the relocation.
- 3.25 The land referencing has indicated that there are two owners whose whereabouts are unknown. Negotiations with known owners have indicated that some are willing to sell. However, as referred to in paragraph 3.12 one particular owner is refusing to sell and is, instead, seeking to promote his own proposal for partial residential development of the site.
- 3.26 Grosvenor have requested the Council to make a compulsory purchase order to acquire the St Anne Street site to facilitate the relocation of the Fire Station. The CPO Costs Indemnity contains a provision which ensures that any costs associated with making the St Anne Street CPO, and the costs of subsequently acquiring the land will be borne by the Developer and guaranteed by Grosvenor.
- 3.27 A copy of the draft St Anne Street Statement of Reasons is enclosed at **Appendix 5**. A copy of the draft St Anne Street CPO, Order Map and certificates are available for inspection by Members and the public.
- 3.28 Notwithstanding the fact that planning permission has not yet been granted and a Section 19 Consent has not yet been issued, the Council is able, nevertheless, to make and promote the St Anne Street CPO in tandem with the PSDA CPO on the basis that:
- despite attempts to locate them, the whereabouts of two of the owners is unknown;
 - one of the owners has indicated that he is unwilling to sell;

- the Developer will continue to ascertain the location of all owners and continue with attempts to acquire all of the Order Land by agreement;
- there are no known planning impediments which are likely to ultimately affect the prospects of securing planning and listed building consent and implementation of the Fire Station Scheme

on the basis that both planning permission and listed building consent are likely to be forthcoming and the Chief Fire Inspector is likely to obtain consent for the relocation.

3.29 This approach is in line with the Government advice referred to in paragraph 2.12 of this Report. Furthermore, there is certainty that the Fire Station Scheme can go ahead which would, in turn, assist the process of redevelopment of the PSDA.

4 **Section 247 Application**

4.1 In tandem with the PSDA CPO, an application will be submitted by Grosvenor to the Secretary of State for an Order to be made pursuant to Section 247 of the Town and Country Planning Act 1990 for the stopping up diversion and creation of new highways in order to facilitate the carrying out of the PSDA Scheme.

4.2 A draft from a Section 247 Order application has been submitted to the GONW and the Council.

4.3 Officers are of the view that the application is in order in that it correctly identifies all of the highways which will need to be stopped up and/or diverted and shows the new highways which are to be created.

4.4 Authority will therefore be sought for the Council to formally support the application for the Section 247 Order including assisting the Developer to promote the Order at a Public Inquiry.

4.5 The Fire Station Scheme does not require a Section 247 Order.

4.6 Work is progressing on completion of the traffic regulation orders which will be required to facilitate the temporary access arrangements whilst the PSDA Scheme is under construction and then the permanent restrictions which will be required in order to enable the PSDA Scheme to operate when the Section 247 Order is confirmed and comes into operation.

- 4.7 Evidence will be submitted to the Public Inquiry in support of the Section 247 application to demonstrate to the Secretary of State that full consideration has been given to the need to minimise disruption to occupiers and businesses within the PSDA and the surrounding area during the construction of the PSDA Scheme, and that once the PSDA Scheme is completed, measures will be in place to ensure that pedestrian and vehicular movement within and around the PSDA are acceptable.

5 **Other Related Orders and Consents**

- 5.1 Paragraph 9 of the PSDA Statement of Reasons (**Appendix 3**) sets out the associated Orders and Consents which are required. Attention is drawn, in particular, to St Thomas' Churchyard and Chavasse Park.
- 5.2 Plot number 115b of the PSDA CPO Map is a disused burial ground at St Thomas' Churchyard. This land comprises some 464.7 square metres and is currently owned by Bishopsgate Parking Limited and used for the parking of motor vehicles. The intention is to acquire this land, lay it out as a soft landscaped area for use as a memorial garden. It is also proposed to erect a monument on it in remembrance of Joseph Williamson. Any remains of human bodies will not be disturbed by the proposed soft landscaping works.
- 5.3 The effect of the proposed works will be to bring the land back into a more suitable and appropriate beneficial use and one which is in accord with the original use of the land.
- 5.4 An associated application will be made pursuant to Section 19 (1) (aa) of the Acquisition of Land Act 1981 to the Secretary of State to issue a certificate confirming he is satisfied that the land is being purchased in order to secure its preservation or improve its management.
- 5.5 The area of open space at Chavasse Park was appropriated by the Council for planning purposes in November 1997 as part of the National Discovery Park proposals. The relevant statutory notices of disposal of public open space were also issued. An Extinguishment Order was also made pursuant to the 1990 Act, extinguishing the footpaths over Chavasse Park. The land has now been the subject of a disposal by the Council.
- 5.6 Notwithstanding the fact that Chavasse Park still remains and is used by the public as open space, the land is not "open space" within the meaning of Section 19(4) of the 1981 Act because it has already been appropriated for a planning purpose and

disposed of. As such, there is no requirement to apply to the Secretary of State for a certificate pursuant to Section 19 of the Acquisition of Land Act 1981 to authorise the acquisition of this land.

- 5.7 Both the PSDA Scheme and the Fire Station Scheme require on and off-site highway works. These works will be secured by agreements made pursuant to Sections 38 and 278 of the Highways Act 1980.

6 **Crown Land**

- 6.1 Section 293 and 296 of the Town & Country Planning Act 1990 apply where an acquiring authority with planning powers proposes to acquire land compulsorily under Section 226 in which the Crown has an interest. The Crown's interest cannot be acquired compulsorily under Section 226, but an interest in land held otherwise than by or on behalf of the Crown may be acquired with the agreement of the appropriate body. This might arise, for example, where a Government department which holds the freehold interest on certain land and agree that a lesser interest, perhaps a lease or a right of way, may be acquired compulsorily and that that interest may, therefore, be included in the compulsory purchase order.

- 6.2 Discussions have taken place with the Courts Services concerning the need to acquire rights over land which is owned by the Crown and managed by the Courts Service. These interests are specifically excluded from the PSDA CPO and it is anticipated that terms will soon be agreed to enable these interests to be acquired by way of agreement.

- 6.3 Discussions have also taken place in respect of other Crown interests at Chavasse Court. It is intended that suitable alternative accommodation will be found and that terms will be agreed to secure the relocation of the relevant Government departments.

- 6.4 It follows that the Crown interests should not be an obstacle to making the PSDA CPO or implementing the PSDA scheme (see Paragraph 19 to Circular 02/02).

7 **Consultations Conducted**

- 7.1 Consultations have also been undertaken with the Government Office for the North West, Liverpool Vision, English Heritage, CABE, Merseytravel, the Merseyside Police Authority, local businesses and key "stakeholders" to ensure that they are fully apprised of the compulsory purchase process. These bodies, as well as all known

interested parties and the general public, will continue to be kept informed and appraised of progress.

- 7.2 The majority of parties, including freehold owners, affected by the proposed compulsory purchase orders have been invited to enter into discussions with the Council and/or the Developer with a view to agreeing appropriate terms for payment of compensation and, where appropriate, to discuss options for relocation. Any remaining affected parties who have not yet been contacted and are understood to have a compensatable interest will be contacted by the Developer with a view to entering into, and hopefully, concluding private treaty negotiations prior to any Inquiry. It is envisaged that any decision to make the compulsory purchase orders will encourage affected parties to become more engaged and actively seek to agree terms for compensation and/or relocation.

8 **Financial Implications**

- 8.1 Paragraph 19 of Annex A to Circular 02/03 advises that *"if the Secretary of State is to be satisfied that the purpose for which the land is to be acquired will be achieved, evidence to establish the financial viability of the scheme will need to be provided in those cases where it is an issue. This does not mean, though, that the acquiring authority will be required as a matter of routine to submit a full financial approval of the proposed scheme in justification for its compulsory purchase proposal."*
- 8.2 The Council's advisors have confirmed that the PSDA Scheme is financially viable. The Developer has confirmed its commitment to the PSDA Scheme and is in the process of finalising an agreement with the Merseyside Fire and Civil Defence Authority to fund the cost of the Fire Station Scheme. The Developer has requested that the Council proceed with both the PSDA CPO and the St Anne Street CPO.
- 8.3 The CPO Costs Indemnity which has been entered into with the Council, the Developer and Grosvenor Limited guarantees that the Council will be reimbursed all expenditure incurred in respect of the promotion and execution of the proposed compulsory purchase orders including payment of compensation.

9 **Human Rights**

- 9.1 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights (ECHR).

Various Convention rights may be engaged in the process of making and considering the compulsory purchase orders, including under Articles 2, 6, 8 and Article 1 of the First Protocol.

9.2 The European Court of Human Rights has recognised in the context of Article 1 of the First Protocol that "*regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole*", i.e. compulsory purchase must be proportionate. Both public and private interests are to be taken into account in the exercise of the Council's powers and duties as a local planning authority. Similarly, any interference with Article 8 rights must be "necessary in a democratic society" i.e. proportionate. In pursuing the compulsory purchase orders, the Council has to carefully consider the balance to be struck between individual rights and the wider public interest. Interference with Convention rights, if there is any, is considered to be justified in order to secure the economic regeneration and public benefits which both the PSDA Scheme and the Fire Station Scheme will bring and to secure compliance with LUDP regional planning policy.

9.3 It is not considered that the PSDA Scheme, the Fire Station Scheme and the proposed compulsory purchase orders will infringe rights under the ECHR:

9.3.1 **Right to life**, the likely health impacts of the proposals have been taken into account in evaluating the proposals (ECHR, Article 2). It is not considered that this right will be infringed by the PSDA Scheme, or the Fire Station Scheme, or the proposed compulsory purchase orders.

9.3.2 **Entitlement to a fair and public hearing** in the determination of a person's civil and political rights (ECHR, Article 6). This includes property rights and can include opportunities to be heard in the consultation process. The statutory procedures, taken with the right to object and judicial review, satisfy the requirements of Article 6.

9.3.3 **Rights to respect for private and family life and home**, such rights may be restricted if the infringement is in accordance with the law, has a legitimate aim and is fair and proportionate in the public interest (ECHR, Article 8). It is considered that such interferences as may occur with the compulsory purchase orders are in accordance with the law, pursue a legitimate aim and are proportionate having regard to the public interest in the schemes referred to in this report.

9.3.4 **Peaceful enjoyment of possessions** (including property), this does not impair the right to enforce such laws as the State considers necessary to control the use of property in accordance with the general interest (ECHR, Article 1 of the First Protocol). It is considered that the proposed compulsory purchase orders will strike a fair balance between the public interest in the implementation of the PSDA Scheme, and the Fire Station Scheme, and those private rights which will be affected by the proposed compulsory purchase orders.

10 **Legal Implications**

10.1 Where the Council embarks upon the compulsory purchase procedure, the liability to acquire statutorily blighted properties could arise immediately. These costs are covered by the CPO Costs Indemnity.

10.2 The CPO Costs Indemnity gives the Council discretion to purchase any of the PSDA CPO land or the St Anne Street CPO land at any time. The Developer will reimburse the Council in respect of these costs. This will enable the Council to deal with cases of genuine hardship where the statutory blight provisions do not apply.

10.3 The Council, as the acquiring authority, needs to be able to satisfy the Secretary of State that there is compelling case in the public interest for the proposed compulsory acquisition. The Secretary of State has to be able to take a balanced view between the intentions of the acquiring authority and the concerns of those whose land is to be expropriated. The more comprehensive the justification which require an authority can present, the stronger its case is likely to be.

10.4 In demonstrating its justification, the acquiring authority should provide as much information as possible about the resource implications both acquiring the land and implementing a scheme which the land is required. The acquiring authority is also required to demonstrate that there is a reasonable prospect of the scheme going ahead and that it is unlikely to be blocked by any impediments to implementation. In addition to potential financial impediments, physical and legal factors need to be taken into account, including the programming of any infrastructure accommodation works or remedial work which might be required, and any need for planning permission or other consent or licence. Where planning permission will be required for the scheme, and has not already been granted, there should be no obvious reasons why it might be withheld.

- 10.5 Before embarking on the compulsory purchase, the acquiring authority should seek to acquire land by negotiation wherever practicable. However, although the compulsory purchase process is intended as a last resort, once attempts to acquire by agreement fail, an acquiring authority should consider when the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations.
- 10.6 As compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the effected land, it is essential that the acquiring authority keeps any delay to a minimum by completing the statutory process as quickly as possible (see Paragraph 25 of Circular 02/03). This means that the authority should be in a position to make, advertise and submit a fully documented order at the earliest possible date after having resolved to make it. The authority should also take every care to ensure that the Order is made correctly and under its terms of the most appropriate enabling power.
- 10.7 An acquiring authority may offer to alleviate concerns about future compensation entitlement by entering into agreement with those whose interests are directly affected. These can be used as a means of guaranteeing the minimum level of compensation which would be payable if the acquisition were to go ahead (but without prejudicing any future right of the claimant to refer the matter to the Lands Tribunal) including the basis on which disturbance costs would be assessed.
- 10.8 The Secretary of State has to be satisfied that the statutory procedures have been followed correctly, even in respect of an unopposed order. This means that the GONW has to check that no-one who has been or will be substantially prejudiced as a result of a defect in the order, or by a failure to follow the correct procedures with regard to such matters as a service of additional or amended personal notices. Authorities are therefore urged to take every possible care in preparing compulsory purchase orders, including recording the names and addresses of those with an interest in the land to be acquired.
- 10.9 Advice has been sought from the Council's external advisors to ensure that all appropriate steps are adhered to in the compulsory purchase process. The Council will continue to take advice to ensure that it complies with the statutory procedures and guidance associated with the promotion of the compulsory purchase orders.

11 **Recommendations**

11.1 The City Solicitor be authorised to make and submit to the Deputy Prime Minister and The First Secretary of State for confirmation, orders made pursuant to Section 226(1)(a) and 226(3)(a) of the Town and Country Planning Act 1990; and the Acquisition of Land Act 1981 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 entitled:

(i) The Liverpool City Council (Paradise Street Development Area, Liverpool) Compulsory Purchase Order 2003; and

(ii) The Liverpool City Council (St Anne Street, Liverpool) Compulsory Order Purchase Order 2003,

for the purpose of acquiring the land which is shown on the maps attached hereto, or lesser areas of land should this in his opinion be appropriate to do so, the said being land within its area which is suitable for and required in order to secure the carrying out of development, redevelopment of improvement and executing works or facilitating the development of land and acquiring new rights within the City of Liverpool, and that the Common Seal be affixed to such orders and to the map(s) submitted therewith.

11.2 The City Solicitor be authorised to advertise the making of the orders referred to in recommendation 11.1 above and take all relevant action thereon to promote the confirmation of the orders.

11.3 The City Solicitor be authorised to finalise and publish the draft PSDA Statement of Reasons and draft St Anne Street Statement of Reasons.

11.4 As soon as the orders have been confirmed by the Deputy Prime Minister and The First Secretary of State and become operative, the City Solicitor be authorised to serve Notices to Treat under Section 5 of the Compulsory Purchase Act 1965, and where necessary, to serve Notices of Entry under Section 11 of the same Act in respect of the land included in the orders, or, at his discretion, to execute general vesting declarations.

11.5 The Executive Director in consultation with the City Solicitor be authorised to:

(i) negotiate with interested parties with a view to agreeing terms for the purchase by agreement or payment of compensation of any of the interests or rights over land included in the orders referred to in

recommendation 1 above and, where appropriate, to agree terms for relocation.

(ii) where necessary, authorisation be given to appoint external consultants to advise on and approve appropriate terms for compensation and/or relocation.

11.6 The City Solicitor be authorised to complete terms for relocation, acquisition of such property interests and rights and their subsequent transfer (referred to in recommendation 11.5 above) to the developer in accordance with terms to be agreed. If the question of compensation be referred to the Lands Tribunal, the City Solicitor be authorised to take all necessary steps in relation thereto including advising on the appropriate uses and compensation payable and issuing the appropriate certificates.

11.7 If the question of compensation be referred to the Lands Tribunal, the City Solicitor be authorised to take all necessary steps in relation thereto including advising on the appropriate uses and compensation payable and issuing the appropriate certificates.

11.8 The City Solicitor shall only exercise his authority to make the compulsory purchase orders referred to in recommendation 11.1 above on the strict understanding that efforts will continue to be made to seek to acquire all land and interests included within the orders by way of private treaty.

11.9 The Executive Director be authorised to support the Developer's application to the Deputy Prime Minister and The First Secretary of State for an Order to be made pursuant to Section 247 of the Town & Country Planning Act 1990 for the stopping up, diversion and provision of new highways within and around the Paradise Street development area in order to enable the development to be carried out and to make and promote any necessary traffic regulation orders and to take all necessary action to secure the implementation of such orders.

11.10 The Executive Director in consultation with the City Solicitor be authorised to prepare and submit such evidence as is necessary to any Inquiry which is convened to consider objections to either the compulsory purchase orders and/or the Section 247 Order and/or any necessary traffic regulation orders, including enlisting the assistance of outside consultants and external lawyers and Counsel to assist in the preparation and presentation of evidence to the Inquiry.

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Appendices

- Appendix 1 :** Maps of proposed PSDA CPO and St Anne Street CPO
- Appendix 2 :** Letter from Grosvenor Limited to the Council dated 12 February 2003 requesting that the Council proceed with the PSDA CPO
- Appendix 3 :** Draft PSDA Statement of Reasons for the making of the PSDA CPO
- Appendix 4 :** Letter from English Heritage to the Council dated 7 March 2003 commenting on the Fire Station Scheme
- Appendix 5:** Draft St Anne Street Statement of Reasons for the making of the St Anne Street CPO