



Notice of KEY Executive Decision containing exempt information

This Executive Decision Report is part exempt and Appendices A & B are not available for public inspection as they contain or relate to exempt information within the meaning of paragraph 3 of Schedule 12A to the Local Government Act 1972. They are exempt because they refer to information relating to the financial or business affairs of any particular person (including the authority holding that information), and the public interest in maintaining the exemption outweighs the public interest in disclosing the information

Subject Heading:	Settlement of a Rainham & Beam Park Compulsory Purchase Order No.1 Compensation Claim
Decision Maker:	Neil Stubbings – Strategic Director Place
Cabinet Member:	Councillor Graham Williamson Cabinet Member for Regeneration.
SLT Lead:	Neil Stubbings – Strategic Director Place
Report Author and contact details:	Harry Scarff Commercial Manager (Regeneration) Harry.Scarff@havering.gov.uk
Policy context:	This decision is made in the context of the promotion of the policy to regenerate the area defined by the Rainham and Beam Park Housing Zone. The property in question forms part of a key strategic site identified for residential redevelopment as part of the proposed regeneration of Rainham and Beam Park Housing Zone. Its acquisition was subject to compulsory purchase regulations then in progress, by the Council

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Financial summary:	<p>This Executive Decision sets out information relating to the funding of the Rule 6 business disturbance and professional fees compensation agreement.</p> <p>Following an executive decision in March 2021, the Council acquired and is in possession of the property. This decision required further agreement on business disturbance compensation and professional fees in accordance with the CPO rules.</p> <p>The Council is currently seeking a new tenant in anticipation of development once the entirety of the strategic site has been assembled either through private treaty or by CPO. The costs, funding and associated implications are set out in the exempt Financial Implications and Risks sections below.</p>
Reason decision is Key	Expenditure or saving (including anticipated income) of £500,000 or more
Date notice given of intended decision:	November 21, 2023
Relevant Overview & Scrutiny Committee:	Place Overview & Scrutiny Sub-Committee
Is it an urgent decision?	Yes. This decision would allow the Council to make an interim payment by way of partial compensation for costs incurred by the claimant incurred as part of their business relocation as part of this Rule 6 claim. An earlier decision would mitigate further statutory and other interest charges accruing to the Council
Is this decision exempt from being called-in?	Yes – it is a decision by a Council officer

The subject matter of this report deals with the following Council Objectives

People - Things that matter for residents X

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Place - A great place to live, work and enjoy X

Resources - A well run Council that delivers for People and Place. X

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

The Strategic Director Place is asked to

1. agree to the partial settlement of the Rule 6 claim, business disturbance and professional fees compensation in respect of the acquisition of the property by the Council, as set out in Exempt Appendices A & B of this report;
2. Take all necessary steps to agree the remaining claim for disturbance costs under – Rule 6 Section 5 Land Compensation Act 1961 (“the Act”) and professional fees incurred by the owner/occupier, subject to the satisfactory conclusion of negotiations.
3. Consult with the S151 Officer and the Director of Legal and Governance, and after undertaking any necessary further legal and property due diligence, prepare and enter into all necessary legal documentation to bring into effect the proposed financial and legal arrangements in action 1 above including the making of agreed interim payments as set out in Exempt Appendices A & B, pending an agreed independent assessment of costs.

AUTHORITY UNDER WHICH DECISION IS MADE

Part 3 of the Constitution [Responsibility for Functions] Powers of Members of the Senior Leadership Team Section 3.3 (a) – To take any steps necessary for proper management and administration of allocated portfolios.

“This report is further to the recommendation made in the Key Decision of 25th March 2021 (under the report dated January 22, 2021) regarding the claim for disturbance, loss and fees, and therefore in accordance with that Key Decision made under Part 3, section 2.5 (t), of the Constitution.”

The Executive Decision dated 25 March 2021 to approve the purchase of the Property gave authority to:

Take all necessary steps to agree any claim for disturbance, loss and fees to the freeholder and tenant, subject to the satisfactory conclusion of the acquisition of the Property pursuant to action 1 above and subject to a further report and decision.

A further Key Executive Decision dated 28th June 2022 gave authority to:

In the event of the open market value being agreed take all necessary steps to agree any further claim for disturbance costs under – Rule 6 Section 5 Land Compensation

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Act 1961 and professional fees incurred by the owner/occupier, subject to the satisfactory conclusion of negotiations pursuant to action 1 above.

STATEMENT OF THE REASONS FOR THE DECISION

The Council acquired the freehold interest of the property via an agreement that provided for the acquisition of the property at an agreed price plus business compensation, which is defined as disturbance compensation payable as if the property had been acquired using compulsory purchase powers and an occupier's loss payment.

The property was acquired on 30 September 2021 and an advance payment was made based on the Council's valuation figure. The valuation of the property was subsequently agreed by both parties.

The Key Executive Decision of 28th June gave authority to conclude negotiations with the previous owner/occupier and to settle compensation claims arising from the contract to purchase the Property in respect of the agreed open market value under Rule 2, Section 5 Land Compensation Act 1961, Basic Loss Payment - under Section 33 of the Land Compensation Act 1973 and the Occupier's Loss Payment- under Section 33c Land Compensation Act 1973 and professional fees incurred.

Subsequently two payments, taking account of the agreed valuation were made including payment in settlement of the Rule 2 claim for a basic loss payment and an occupier's loss payment.

Authority was also given to take all necessary steps to agree any further claim for disturbance costs under – Rule 6 Section 5 Land Compensation Act 1961 and professional fees incurred by the owner/occupier.

The Rule 6 Disturbance Compensation relating to the costs associated with establishing the claimant's business in its alternative location is yet to be agreed.

The outstanding claims are in respect of the additional costs incurred in the relocation of the business, in particular the additional costs of Directors time and interest payments in respect of bridging loans taken out to finance the relocation.

These are currently in dispute and negotiations have stalled (details are set out in Exempt Appendix A). The recommended mechanism for resolution by means of an interim payment and adoption of alternative dispute resolution (ADR) by an independent expert determination is the subject of this report.

OTHER OPTIONS CONSIDERED AND REJECTED

To act in breach of the sale contract and not to agree or proceed with the financial settlement of the heads of compensation claims in respect of the purchase of the Property and leasehold interest – **Rejected**

In the event that parties are unable to agree the Rule 6 compensation settlement then either party may refer to the Upper Tribunal Lands Chamber (UTLC). In the event of

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parties going to UTLC, the general rule is that the unsuccessful party will pay the costs of the successful party. The tribunal will have regard to all circumstances of the case even where the other party has only succeeded on part of their case.

PRE-DECISION CONSULTATION

N/A

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: : Harry Scarff

Designation: Commercial Manager (Regeneration)

Signature:

Date:

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The Compensation Code is used to calculate compensation where land has been acquired pursuant to or under the threat of a CPO. This is made up of rules in various Acts augmented by case law and the Compulsory Purchase guidance. It requires acquiring authorities to compensate freeholders and occupiers in accordance with the heads of claim as follows:

Section 33 of the Land Compensation Act 1973 In the event of a compulsory acquisition the claimants as freehold owners are entitled to a Basic Loss Payment equivalent to 7.5% of the value of the Property subject to a maximum of £75,000.

Occupier's Loss Payment- Section 33c Land Compensation Act 1973 In the event of compulsory acquisition the claimants as owner occupiers are entitled to an Occupier's Loss Payment equivalent to 2.5% of the value of the Property subject to a maximum of £25,000.

Assessment of these heads of claim are subject to agreement by both purchaser and vendor of the Open Market Value - Rule 2 Section 5 of the Land Compensation Act 1961.

Rule 2 states that: "The value of land shall, subject as hereinafter provided, be taken to be the amount which land if sold in the open market by a willing seller might be expected to realise" . This is based on the principle of equivalence in which a land owner must not be left worse off or better off.

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Under Rule 6 of Section 5 of the Act a claimant is also entitled to additional compensation usually referred to as 'disturbance'. Disturbance compensation includes any related costs incurred by the claimant on account of being displaced. This can include relocations costs, loss of business and costs of professional advisers. The Rule 6 compensation settlement is the subject of this report.

Where acquiring authorities decide to arrange to acquire land by agreement, they are required to pay compensation as if it had been compulsorily purchased, unless the land was already on offer on the open market, which in this case it was not.

In view of above, the Council as the acquiring authority has fulfilled its obligation to take reasonable steps to acquire the Property through private treaty negotiations and has clearly been engaging with the owner and tenant over a period of time through Ardent resulting in the purchase of the freehold.

It is prudent for the Council to see through the final Rule 6 compensation settlement in line with the earlier executive decisions to proceed with the acquisition and agree reasonable compensation.

In the event that dispute about the compensation figures are unresolved, either party can refer the dispute to the Upper Tribunal (Lands Chamber) ("UTLC") for a binding decision within six years of the acquisition date. However, in view of the laborious procedure associated with this option, it is often undesirable to adopt this approach. There is also a risk of costs exposure.

The conduct which may be taken into account in awarding costs will include conduct before the proceedings; whether the Council/the claimant has acted reasonably in pursuing or contesting the issue and the manner in which they have conducted the case. Ardent has estimated that costs to be incurred by the Council in the event of a referral to the UTLC will be significant.

Ardent's professional opinion is that this interim settlement is reasonable and will put the Council in a favourable light when the remaining heads of claim are being considered by the Expert. A challenge by the Council may have a high risk of not being upheld. This may result in litigation with a high probability of a finding in favour of the claimant. This could adversely impact on the general credibility and reputation of the Council in its potential role as the Acquiring Authority for any future CPO (s) and could materially impact and jeopardise the prospects of any future CPO(s) being confirmed. It could also impede successful private treaty negotiations potentially and the future of development in the area as a whole.

Making an advance payment to the claimant is likely to reduce the accrued statutory interest payable by the Council ultimately.

FINANCIAL IMPLICATIONS AND RISKS

The Open Market Value of 199 New Road has been assessed by Ardent, advising the Council, along with the owner/occupier's compensable interest, including Basic Loss,

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Occupiers Loss and reasonable professional fees and these have been agreed with the claimant in accordance with CPO guidance and regulations.

The outstanding and final compensation settlement following Rule 6 of the CPO procedures outlined above, is currently under negotiation and will be presented when sufficient evidence is provided by the claimant and the expert determination has been made. This claim will relate to the costs associated with establishing the claimant's business in its alternative location.

1. Follow the recommendation that the settlement of the compensation heads of claim is agreed and that the funds are then made available to make an interim payment and then to complete the settlement with the previous vendor/occupier of 199 New Road.

2. To use budgets approved and phased in 2020/21, 2021/22, 22/23 and 23/24 The increased cost of this transaction will reduce budgets available for future acquisitions and matters will be managed accordingly.

3. Whilst further land assembly is necessary to complete the assembly of the remaining parts of the strategic site and whilst conditions for development improve, it is recommended that the property is advertised with a view to attracting and securing a tenant on suitable commercial terms.

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

The Rainham and Beam Park project will require continued involvement of officers from the Regeneration Department and other Council services and external resources. The Rainham and Beam Park Housing Zone forms part of the Council's overall regeneration programme and a separate report setting out the Director of Regeneration's proposed arrangements was presented to Cabinet and approved in Oct 2020.

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- i. the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- ii. the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and.
- iii. foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

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The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce.

In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio economic and health determinants.

In respect of the proposed decision to acquire the subject property there are no adverse implications or risks associated with the Councils statutory duty.

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HEALTH AND WELLBEING IMPLICATIONS AND RISKS

This decision in itself presents no health and wellbeing implications. Ensuring that this matter is settled will contribute to the on-going realisation of the Council's regeneration vision for the Rainham and Beam Park Housing Zone, the health and wellbeing implications of which have been considered and described in previous executive decision reports.

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

This report does not give rise to adverse environmental or climate change implications or risks.

The Regeneration plans for the strategic site, of which this property is a part, will enable the council to build new affordable homes and homeless provision that will be

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targeted at high levels of energy performance for the entire development as well as for individual units.

The new development's design, will carefully consider energy requirements, the surrounding environment and animal habitats. The gardens will include bat boxes, bird boxes and insect hotels to create safe animal habitats.

The scheme will be aligned with the Havering Biodiversity Action Plan. The proposed development will introduce electric vehicle charging and cycle storage; it will facilitate improved access to walking and cycling routes to encourage modal shift, reducing car journeys

BACKGROUND PAPERS

None

APPENDICES

Appendix A	Report detail	Exempt
Appendix B	Ardent compensation report	Exempt

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Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed

Name:

Cabinet Portfolio held:

CMT Member title:

Head of Service title

Other manager title:

Date:

Lodging this notice

The signed decision notice must be delivered to Committee Services, in the Town Hall.

For use by Committee Administration

This notice was lodged with me on _____

Signed _____