

APPENDIX – HUMAN RIGHTS

1. Section 6 Human Rights 1998 Act prohibits public authorities from acting in a way, which is incompatible with the Convention on Human Rights.
2. The main articles of the Convention which are of importance in circumstances where the Council is considering making a compulsory purchase order (CPO) are Article 8 – the right to respect for private and family life and his/her home and Article 1 of the First Protocol – the protection of property.
3. The approach to be taken to give effect to rights under the Convention is also reflected in paragraph 17 of ODPM Circular 06/2004:

“A Compulsory Purchase Order should only be made where there is a compelling case in the public interest. 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 affected, having regard, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention”.

4. 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. Similarly, any interference with Article 8 rights must be *“necessary in a democratic society”* i.e. proportionate. In pursuing a CPO, the Council has to carefully consider the balance to be struck between individual rights and the wider public interest having regard also the availability of compensation for compulsory purchase.
5. Article 8(1) provides that everyone has the right to respect for his/her property but Article 8(2) allows the State to restrict the rights to respect for the property to the extent necessary in a democratic society and for certain listed public interest purposes e.g. public safety, economic well being, protection of health and protection of the rights of others.
6. In considering Article 8 in the context of a CPO it is necessary to consider the following questions:
 1. Does a right protected by this Article apply?
 2. Has an interference with that right taken place or will take place as a result of the CPO being made?
7. Clearly Article 8 does apply and therefore it is necessary for the Council to consider the possible justifications for the interference (Article 8(2)) as follows:
 - Is the interference in accordance with law? There is a clear legal basis for making the CPO under section 226(1)(a) of the 1990 Act and section 17 of the Housing Act 1985.
 - Does the interference pursue a legitimate aim? The CPO is necessary to implement the Schemes, which seeks overall redevelopment of the Sites in accordance with planning permission and planning policy.

- Is the interference necessary in a democratic society? This requires a balanced judgement to be made between the public interest and the rights of individuals. The CPOs are considered to be both necessary and proportionate in that the land to be acquired is the minimum to achieve this Schemes' objectives
8. The second relevant article is Article 1 of the First Protocol, which provides that:
- Every natural or legal person is entitled to the peaceful enjoyment of his possessions
 - No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law.
9. In the case of each of these Articles (and indeed other provisions in the Convention) the Council has been conscious of the need to strike a balance between the rights of the individual and the interests of the public. In the light of the significant public benefit that would arise from the implementation of the proposed development the Council has concluded that it would be appropriate to make the Orders. It does not regard that the Orders as constituting any unlawful interference with individual property rights.
10. The opportunity has been given to landowners to make representations regarding the Council planning policies that underpin the proposed Orders, as well as on the planning applications currently being considered. Further representations can be made in the event of any Public Local Inquiry that the Secretary of State may decide to hold in connection with the Orders. Those directly affected by the Orders will be entitled to compensation proportionate to the loss that they incur as a result of the acquisition.