

DEPARTMENT FOR SOCIAL DEVELOPMENT

VICTORIA SQUARE, BELFAST

INTERIM DECISION STATEMENT ON THE MAKING OF A VESTING ORDER

1 BACKGROUND

- 1.1 On the 13 January 2003 the Department for Social Development ("the DSD") adopted a Development Scheme for Comprehensive Development Area 136 Victoria Square, Belfast. This followed consideration of the Planning Appeals Commission ("PAC") and the presiding Commissioner's report dated 12 April 2002 into representations made in relation to the Development Scheme and Notice of Intention to make the Vesting Order ("the Vesting Notice") and further representations which were made in relation to the DSD's Interim Decision Statement ("IDS") on the Development Scheme and all other relevant considerations. A total of 19 objections were made to the Vesting Notice within the period prescribed in that notice. Six of these objections were subsequently withdrawn.
- 1.2 The Public Inquiries into the Development Scheme and Vesting Notice opened on the 22 January 2002 and concluded on 31 January 2002. In the Final Decision Statement for the Development Scheme it was indicated that the DSD did not propose to reach a decision on the PAC recommendations or the Commissioner's comments in respect of the Vesting Notice at that time. Consideration has now been given to the PAC recommendations and the Commissioner's comments on the Vesting Notice.
- 1.3 The Vesting Notice was made pursuant to Article 87(1)(a) of the Planning (Northern Ireland) Order 1991 ("the Planning Order"). The DSD is empowered by virtue of Article 87(1)(a) to "*..... by agreement or compulsorily, acquire any land where it is satisfied that the land is required in connection with a development scheme*". It was for this reason that objections to the Development Scheme and Vesting Notice were considered at conjoined inquiries. The DSD decision making process in

relation to each procedure has been separated. This has enabled consideration to be given to the Vesting Order having regard to the likelihood of the scheme proceeding. In the light of recent events, including the grant of planning permission for MDC's proposal, the 'in principle' acceptability of its specific proposals for the redevelopment of the site and the absence of any challenge to DSD's decision to adopt the Development Scheme as amended, it is now considered appropriate and in the public interest to reach an interim decision on the making of the Vesting Order. The DSD believe that MDC, the developer associated with the Development Scheme site, is now able to deliver the scheme in accordance with the Development Scheme. The DSD has given careful consideration to the question of whether or not the amendments to the Development Scheme affect the justification for the Vesting Order and has concluded that they do not.

- 1.4 In adopting the Development Scheme as amended in January, the DSD concluded that the Development Scheme was expedient and in the public interest providing an impetus to the revitalisation of Belfast City Centre as a whole, consistent with DSD's statutory purpose of promoting and overseeing the regeneration of Belfast. In order to achieve its statutory purpose, the DSD considered that the Development Scheme promoting a major and comprehensive retail led mixed use scheme in Victoria Square would benefit the whole of the City Centre.
- 1.5 In light of the adoption of the Development Scheme, the question which DSD must address is whether or not each of the interests and rights in land encompassed in the proposed Vesting Order are required for the purposes of the adopted Development Scheme and that a compelling case in the public interest exists to acquire each of those interests by compulsion.

2 **THE PLANNING APPEALS COMMISSION REPORT**

- 2.1 DSD has considered the PAC's and the Commissioner's report on the case for and against the making of the Vesting Order. It notes that the Commissioner observed at paragraph 5.61 of his Report that the Development Scheme should not proceed. From that conclusion, it followed, he concluded, that he did not endorse the acquisition of any property in connection with the Development Scheme. He then considered objections which "*...have merit in their own right, additional to the arguments relating to the scheme as a whole.*" In light of the DSD's adoption of the Development Scheme, the Commissioner's observations in relation to the Vesting Notice have been of limited assistance to DSD in assessing the objections. They have nevertheless been taken into account.

2.2 DSD believes that the approach of the Commissioner, and the PAC's endorsement of it, is deficient in that the PAC and the Commissioner should have assessed:

2.2.1 all the objections on the same basis and explained fully their conclusions on the objections made; and

2.2.2 considered the objections in light of the possibility that a different conclusion on the adoption of the Development Scheme to that recommended could properly be reached by DSD.

2.3 DSD has, therefore, carefully considered whether or not, having regard to the human rights of those affected and specifically the rights embodied in Article 6 of the Human Rights Convention, the public interest would best be served by re-opening the public inquiry into the objections not individually addressed by the Commissioner in his report or made subsequent to the close of the public inquiry in correspondence with DSD. On balance, DSD is of the view that the public interest would be best served by proceeding now to make a decision on the Vesting Order in order to remove uncertainty and, subject to the consideration of representations received in response to this interim decision statement, to promote the urgent regeneration of Victoria Square consistent with the Development Scheme. No final decision will be reached, however, until all further representations received in respect to this Interim Decision Statement have been taken into account.

2.4 DSD wishes to emphasise that all representations, including those received after the close of the public inquiry, have been fully considered in formulating this Interim Decision Statement.

3 **GROUNDS OF OBJECTION**

3.1 In considering all of the objections submitted and the PAC's assessment of them, a number of common grounds of objection emerge. These relate to the following matters:

- Compliance with the Human Rights Act and the European Convention on Human Rights;
- The extent of the proposed Vesting Order area and the requirement for individual properties to be compulsorily acquired;
- The extent to which attempts have been made to acquire interest by private treaty;

- Consequences of business relocation; and
- The loss of the opportunity to develop various interests on an individual basis.

Human Rights

3.2 In reaching its decision, the DSD has had regard to the Human Rights Act and the European Convention on Human Rights. The European Court on 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 been struck between the competing interests of the individual and of the community as a whole"*. DSD recognise that both public and private interests are to be taken into account in the exercise of DSD's powers and duties as the regeneration authority. It also recognises that any interference with Article 8 rights to respect the private and family life, must be necessary in a democratic society. DSD, in reaching its decision on the Vesting Order, has carefully considered 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 the Development Scheme and the associated proposed vesting of interests will facilitate.

The extent of the proposed Vesting Order Area and the Requirement for Individual Properties

3.3 DSD notes that one of the Development Scheme's key objectives is the promotion of comprehensive and integrated solutions for the re-development and renewal of Victoria Square in the context of a major, high quality retail led mixed use development. The Development Scheme also makes it clear that the DSD considers that ad hoc, incremental or un-coordinated development would not deliver the regeneration objectives of the Development Scheme nor enhance the vitality and viability of the City Centre as a Regional Centre nor deliver the quality of the scheme which is necessary to achieve those objectives. The interests included in the proposed Vesting Order boundary are required to deliver the objectives of the Development Scheme, including creating the necessary critical mass of development and facilitating on a comprehensive basis qualitative improvements to the area of the Development Scheme.

Acquisition by Private Treaty

- 3.4 DSD notes the concern that there were no genuine or sufficient attempts to acquire interests by DSD or MDC by private treaty. In the period prior to the publication of the Vesting Notice, MDC entered into discussion with a number of landowners, but DSD recognises that MDC's approach to landowners may not have been comprehensive. In publishing the Vesting Notice, DSD recognised MDC's lack of success in acquiring interests, by agreement and had come to the view that given the number and extent of the interests to be acquired to achieve the objectives of the Development Scheme it was unlikely that all the interests could be acquired by private treaty within a reasonable time period. Such progress as has been made in this respect falls far short of what would have been necessary to avoid the need for compulsory acquisition.
- 3.5 DSD invites all those with an interest in the land to enter discussions for acquisition by agreement before considering the making of the final decision on vesting and without prejudice to that decision. Such discussions will be on the basis that the compensation for such interests will be in accordance with the statutory provisions that apply to vesting.

Consequences of business relocations

- 3.6 DSD note the concern of certain objectors of the difficulties associated with relocating to other sites within the city centre. Compensation payable to those owners would be made in accordance with the statutory provisions that apply to vesting including, where appropriate, costs associated with disturbance.
- 3.7 DSD will also appoint an independent property adviser to assist owners and occupiers with relocations elsewhere in the City and will ensure that consideration is given to facilitating relocations within the completed development where this is practicable.

Loss of opportunity to develop sites on an individual basis

- 3.8 In adopting the Development Scheme, DSD concluded that it was expedient and in the public interest providing an impetus to the revitalisation of Belfast City Centre as a whole. Loss of opportunity to develop sites on an individual basis will be considered in assessing compensation entitlement.

- 3.9 As noted in paragraph 3.3, the Development Scheme makes it clear that the DSD considers that ad-hoc, incremental or uncoordinated development would not deliver the regeneration objectives of the Development Scheme, enhanced vitality and viability of the city centre as a regional centre or deliver the quality of scheme which is necessary to achieve those objectives.

4 **CONCLUSIONS**

- 4.1 DSD has considered all representations and the PAC and Commissioner's report and for all the reasons set out in this Statement, DSD is now minded to make the Vesting Order. On the balance of all relevant considerations, it is at this stage satisfied that all the land, which is the subject of the proposed Vesting Order, is required in connection with the now adopted Development Scheme. Before making a final decision, however, DSD is seeking and will fully consider any views received from interested parties in writing within 28 days from the date of this Interim Decision Statement.

- 4.2 In reaching this conclusion DSD has taken due account of the Government's statutory Equality of Opportunity obligations and new Targeting Social Need ("TSN") considerations.

- 4.3 Written comments should be addressed to:

Mrs Roisin Alexander
Victoria Square Team
McKelvey House
25 Wellington Place
Belfast
BT1 6GD

To arrive no later than 9th July 2003.