

COUNCIL

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AGENDA ITEM No.

9

TITLE OF REPORT: COMPULSORY PURCHASE ORDERS – THE WYND, LETCHWORTH GARDEN CITY

REPORT OF THE STRATEGIC DIRECTOR OF PLANNING, HOUSING AND ENTERPRISE
PORTFOLIO HOLDER: COUNCILLOR TOM BRINDLEY

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2. SUMMARY

- 2.1 The purpose of this report is to update Members on progress with land assembly in preparation for the proposed redevelopment of the area of land known as the Wynd, Letchworth Garden City **(which is shown edged red on the layout plan attached as appendix 1)**. This report also asks Members to endorse the Officer recommendation set out in paragraph 17.1 of this report. The Officer recommendation is detailed, but in summary, is that the Full Council authorise the use of compulsory purchase powers to make and pursue a compulsory purchase order (CPO) to assist with the land assembly needed to achieve the redevelopment of the Wynd and its adjoining road network (the Scheme).

- 2.2 At the meeting of the Letchworth Area Committee held on 1 March 2010 Members agreed the following recommendation:

That Members strongly endorse the proposed Officer Recommendation to Full Council which is that on the basis of current evidence on land referencing and negotiations with those potentially affected by a Compulsory Purchase Order (position to be updated as evidence gathered), Members agree to authorise the use of the Council's powers of compulsory purchase under section 226 (1) (a) of the Town and Country Planning Act 1990 (as amended) to facilitate the delivery of the Wynd redevelopment scheme.

- 2.3 This matter is also being reported to the meeting of Cabinet to be held on 30 March 2010. An update on the decision of Cabinet will be presented at the meeting of Full Council.

3. FORWARD PLAN

- 3.1 The potential use of CPO powers in order to assist land acquisition for the delivery of the Scheme has been entered on the Forward Plan of Key Decisions as a continuous rolling programme since 1 December 2008.

4. INTRODUCTION

- 4.1 Section 16 is a summary of the whole of this report for ease of reference. The full report sets out the issues that Members will need to be familiar with in order to determine whether or not the Council should make and pursue a CPO and seek to exercise its statutory powers of compulsory purchase, however the summary may be useful to assist debate and highlight the key points. The following paragraphs in this section introduce the key legal and procedural issues relevant to compulsory purchase and the Scheme before briefly introducing the Officer recommendation.

4.2 Summary of the Council's Legal Powers and Recommendation

Section 226(1)(a) of the Town and Country Planning Act 1990 (the Act) (as revised), and as now amended by the Planning and Compulsory Purchase Act 2004 provides that a local authority may, on being authorised to do so by the Secretary of State, exercise power to acquire compulsorily any land in their area subject to certain criteria. These are that the authority think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land, and that the authority think that the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of their area. This is the legislative provision under which the Council may seek to exercise its powers of compulsory purchase. The Government has issued Central Government Circular advice (06/2004) (the Circular) which provides guidance and advice for acquiring authorities on procedural and substantive issues relating to the use of compulsory purchase powers generally, and section 226 in particular. The legislation and Circular guidance are discussed in sections 6 and 7 of this report.

- 4.3 Following extensive discussions between Officers, their appointed external legal and planning policy advisers, the Letchworth Garden City Heritage

Foundation (the Foundation) (which is seeking to deliver the Scheme and is the freehold owner of the Wynd), and the Foundation's consultant planning and legal advisers, Officers are satisfied that there is a compelling case in the public interest for the Council to make and pursue a CPO.

- 4.4 In summary, the recommendations set out under section 17 of this report advise Full Council to endorse the Officers' conclusions and to decide to make and pursue a CPO to assist in the compulsory acquisition of the outstanding land interests in the Wynd, to enable the Scheme to be delivered.

5. BACKGROUND

5.1 Introduction to Section 5

This section of the report sets the context for the substantive issues discussed in later sections leading into the recommendations set out in Section 17.

- 5.2 Members will be familiar with the planning history which is relevant to the Scheme. The brief summary of the planning history, discussed under paragraphs 5.3 to 5.12, refers to the rather complex planning history that has led to the current position. The paragraphs under the next sub-heading briefly highlight the key elements of the central and local policy support for the use of CPO powers to assist in the delivery of important town centre redevelopment schemes, before reference is also made to the Council's strategic priorities. Paragraphs 5.20 to 5.22 briefly explain the role of the Foundation which is promoting, financing, and planning to deliver the Scheme. This section of the report refers to the previous decision of the Full Council (25 September 2008) to agree to use CPO powers for the Scheme in principle, before introducing the terms of the Indemnity Agreement that has been established between the Council and the Foundation, which frames the terms of reference for the making, pursuit, confirmation and implementation of a CPO. The final part of this section introduces the Council's appointed external independent advisers who have been employed to assist in advising Members on the decision as to whether to make and pursue a CPO and exercise CPO powers, and to assist in managing the process in the event that a CPO is confirmed.

5.3 Planning History of the Scheme

The Foundation is the applicant for the relevant planning and conservation area consent applications which relate to the Scheme. These set out details of the proposed demolition of buildings at the Wynd and a comprehensive redevelopment scheme (refs. 07/02428/1 and 07/072431/1CAC). Copies of relevant Planning Control Committee reports are available for inspection in the Members room.

- 5.4 The proposed redevelopment of the Wynd, an area of land between Leys Avenue and Station Road, accessed off Openshaw Way, in Letchworth town centre, **(shown edged red on the location plan attached as appendix 1)** is part of phase 1 of a 2 phase programme known as the Letchworth Garden City town centre revitalisation plan which has been promoted by the Foundation since 2005. Phase 1 consists of two linked projects starting with the street scene enhancement scheme for Leys Avenue and Eastcheap (planning permission nos. 07/02433/1 and 08/02025/1), which as Members will know is currently under construction (due for completion in May 2010).

The second part of phase 1 is the proposed redevelopment of the Wynd consisting of the following elements:

- 5.5 **Demolition Proposals** - Along Leys Avenue the proposal includes the total demolition of nos. 26-28. Moving further east along Leys Avenue the scheme involves the total demolition of nos. 30 and 30a Leys Avenue. Next is no. 32 Leys Avenue (currently Argos) and the Scheme would involve the total demolition of this building also. Next are nos. 34-36 Leys Avenue where the Scheme proposes to retain the original part of the building as seen from the frontage (not just the façade the whole original frame) and the demolition of the rear wings of the building which currently project as far as Openshaw Way (30m projection from the rear of the original building). A similar arrangement is proposed for nos. 38, 40 and 42 Leys Avenue whereby the original street frontage element of the building is retained and the rear wings (25-30m) would be demolished.
- 5.6 The extent of demolition proposed along the Station Road frontage is more extensive than Leys Avenue. Firstly, the proposal would involve the total demolition of nos. 39-41 Station Road. No. 43 Station Road would also be completely demolished as well as the single storey link building, no. 45 Station Road. The prominent gable dominated building nos. 45a-49a Station Road would be largely retained except the original one and half/single storey wings on either side of the main body of the building would be demolished. The standalone building no. 51 Station Road (dated 1906) would also be demolished. Behind the main street frontage of nos. 53-73 Station Road the rear wings and all outbuildings within the curtilage of these properties would also be demolished but the frontage buildings retained.
- 5.7 Away from the main street frontages of Leys Avenue and Station Road, within the Wynd, the proposal would involve the complete demolition of all existing buildings. None of the existing buildings within this area are proposed for retention and/or adaptation. Planning permission and conservation area consent has been granted for all the above works subject to numerous conditions. Related to the Scheme is the proposed development at Broadwater Dale for 8 no. affordable housing units (planning permission no. 08/00327/1), this would deliver part of the affordable housing requirement of the Scheme.
- 5.8 **Redevelopment Proposals** - This Scheme is a mixed use redevelopment proposal which involves the following elements: A 2615sqm retail foodstore and 23 no. separate small and medium sized retail units; 113 no. one and two bedroom residential apartments above the ground floor retail units, which includes 10 no. affordable units as homebuy (shared ownership), together with roof top communal gardens/amenity space above the retail units; a children's play centre which would be 700 square metres (a single storey building with considerable roof void above); car parking spaces totalling 356 spaces, mostly within a two storey car parking building (312 spaces), with further smaller car parking areas for St Michael's House off Norton Way South (15 spaces) and further allocated spaces for the large retail service area proposed close to the Openshaw Way/Norton Way South junction (39 spaces).
- 5.9 As well as a large vehicle service/delivery area accessed off Openshaw way the Scheme includes a separate service area for the proposed foodstore, with an access off Station Road. The main vehicular access points for the two

storey main car park would be off Station Road and Norton Way South. The Scheme also includes large pedestrian/public realm spaces within the centre of the Scheme, based around a new and upgraded pedestrian thoroughfare which, similar to the existing situation, would provide a pedestrian only link from Leys Avenue to Station Road. Plans illustrating the Scheme will be displayed at the Committee. In advance hard copies are available on the second floor of the District Council Offices.

- 5.10 The planning and conservation area consent applications associated with this proposed redevelopment were reported to the Council's Planning Control Committee held on 30 June 2008. Members resolved to grant planning permission and conservation area consent subject to the applicant entering a Section 106 Obligation with the Council to deliver a number of elements (**see appendix 2 which contains the planning permission, conservation area consent and heads of terms of the Section 106 Obligation**).
- 5.11 After the meeting of the Planning Control Committee of 30 June 2008, Officers and the Council's appointed solicitors began the process of drafting and negotiating with the applicant and Hertfordshire County Council this complex Section 106 Obligation. During this process the applicant requested that the terms of any planning permission be altered to allow a five year period within which to commence development rather than the standard three years. In order to authorise this change to the original terms of the draft planning permission the planning application was reported back to the Planning Control Committee meeting held on 18 June 2009 and at that meeting Members agreed to extend the time period of the planning permission. At the same meeting Members also granted a further conservation area consent (ref. 09/00748/1CAC) to extend the period for the commencement of the associated demolition works to five years in order to coincide with the terms of the planning permission. Following this decision the associated Section 106 Obligation was signed by all parties and planning permission was granted.
- 5.12 Members will note that the planning permission was granted on 27 July 2009 which provides a cut off point for commencement of the Scheme of 26 July 2014. The conservation area consent was granted on 18 June 2009 therefore demolition works associated with the Scheme must commence before 17 June 2014. The terms of the planning permission and conservation area consent also require that the demolition can only take place as part of a continuous contract for the demolition and redevelopment of the whole site.
- 5.13 On 15 September 2009, an application was made to the Secretary of State for the stopping up of the whole of Openshaw Way (from its junction with Station Road to its junction with Norton Way South) and the whole of the pedestrian through route (between Station Road and Leys Avenue).
- 5.14 The application has been subject to public consultation by way of publication of a notice in a local paper and the London Gazette as well as site notices. It is anticipated that if appropriate, any objections to this application will be considered together with any objections to the proposed CPO in the event that an inquiry is arranged.

5.15 Planning Policy Support for the use of Compulsory Purchase Powers

The current central government policy framework for planning in town centres is set out in Planning Policy Statement (PPS) 4 'Sustainable Economic Growth' (published 2009). This PPS, which supersedes PPS 6 'Planning for Town Centres', continues to encourage Local Planning Authorities (LPAs) to plan and manage growth and change in their town centres. It also advises LPAs to plan positively to ensure the delivery of growth and change in order to assist sustainable physical and economic development and expansion of town centres. To enable development schemes in town centres, LPAs are required to fully understand the need and capacity for new retail floor space, new housing and other commercial opportunities with the goal of maintaining vibrant town centres. As well as allocating sites to promote new development opportunities LPAs should seek to assist in land assembly and delivery of development more proactively:

'Local authorities should make full use of planning tools to facilitate development, including compulsory purchase orders and other planning tools including area action plans, simplified planning zones and local development orders.' (PPS4, Policy EC5.6).

5.16 In accordance with the advice contained within former PPS6 and reiterated in PPS4, Members will be aware that the Council has adopted Town Centre Strategies as Supplementary Planning Documents (SPDs) to the current District Local Plan as a means to identify opportunity sites for growth and to plan and manage change in the District's four main town centres. As part of this process the Council adopted the Letchworth Town Centre Strategy in January 2007. This document has been of considerable benefit as a means of guiding and managing new development in Letchworth town centre since its adoption. In particular Officers and Members of the Planning Control Committee ensured that the design evolution of the Scheme was heavily influenced by the policy guidance and mini-development brief contained in the Letchworth Town Centre Strategy. The Wynd area is identified in this document as one of the prime 'Opportunity Sites' for redevelopment for mixed use, retail and residential led purposes.

5.17 In terms of delivery, the Letchworth Town Centre Strategy sets out a clear commitment to planning positively to assist in the delivery of new development on key opportunity sites. Whilst acknowledging that Letchworth is unique in that the Foundation is the freehold landowner for much of the town centre, the supporting text to and Policy Guidance 34 of the Strategy support the use of CPO powers in the following terms:

'Positive planning powers [including the use of CPO powers] will be used pro-actively, where necessary in particular with landowners and developers, to ensure the timely delivery of opportunity sites...' (Policy Guidance 34, p79, Letchworth Town Centre Strategy).

5.18 The Council's Strategic Priorities

Members will be aware of the Council's three Priorities set out in the Corporate Plan 2010-2011 relating to town centres, green issues and sustainable development and the specific action relating to the Letchworth regeneration proposals.

5.19 Planning for growth and change in the District's four main town centres has been given considerable emphasis over recent years. The adoption of the four town centre strategies provides important policy support as outlined above. In terms of major redevelopment opportunities, as well as seeking to deliver a scheme for new development at Churchgate in Hitchin, assisting the delivery of development on opportunity sites in Letchworth town centre (including the Wynd) represents a key element of the Council's delivery on town centres as part of the three strategic priorities identified in the Corporate Plan.

5.20 The Role of Letchworth Garden City Heritage Foundation

As well as being the applicant for the planning and conservation area consent applications referred to above, the Foundation is also the freehold owner of the entire application site (save for the public highway). The Foundation is an Industrial and Provident Society with charitable objects. One of its primary functions is the management of its approx. 5,500 acre property estate in Letchworth Garden City. As is referred to above, over recent years the Foundation has promoted their Letchworth Town Centre Revitalisation Plan, formally launched in 2005.

5.21 The Scheme is a major part of the Revitalisation Plan which the Foundation is now seeking to deliver. It has entered into a collaboration agreement, with Discovery Properties Limited, its selected developer under the agreement. The Foundation is attempting to secure all the leasehold interests by private treaty. The vast majority have already been acquired through negotiation or are in an advanced stage of acquisition. A CPO will only be needed to complete the land assembly where negotiations with individual tenants have failed. Members should note that even though negotiations have been successful in the main, the whole of the Wynd will be included in the CPO to ensure that all remaining interests are capable of being compulsory acquired, extinguished or overridden.

5.22 After the first resolution to grant planning permission and conservation area consent for the Scheme, agreed by the Planning Control Committee in June 2008, Officers and their appointed legal representatives negotiated an Indemnity Agreement with the Foundation and their appointed solicitors. This Agreement was completed on 4 December 2008 and whilst the terms of the Agreement are discussed further below, the Agreement sets out a clear procedure for when the Foundation considers that it may need the Council to exercise its compulsory purchase powers to assist in the completion of land assembly at the Wynd. The Agreement requires the Foundation to serve notice on the Council requesting that it considers the use of CPO powers following the receipt of a satisfactory planning permission (i.e. a planning permission that the Foundation is satisfied can be implemented). As is mentioned above, formal planning permission for the Scheme was granted on 27 July 2009 following the completion of the s.106 agreement. The commencement notice to request that the Council formally considers exercising its powers of compulsory purchase was served on the Council on 18 August 2009.

5.23 Previous Council Decision Agreeing to use CPO Powers in Principle

After the first Planning Control Committee resolution to grant planning permission for the Scheme in June 2008, a report was prepared by the then

Head of Planning and Building Control and the Head of Finance for the meeting of the full Council held on 25 September 2008 (**copy of report and minute attached as appendix 3**). This report sets out the background to this issue at a high level, it also introduces the Indemnity Agreement, the terms of which were at that time being negotiated by Officers and the Foundation and sets out a broad recommendation that the Council agree in principle to use its compulsory purchase powers in relation to the area of land known as the Wynd, Letchworth Garden City. The recommendation was agreed by full Council.

- 5.24 Members should note that the CPO red line boundary has changed between resolution in Sept 08 and now accords with planning permission red line boundary for the Scheme (accept the adjoining road network).
- 5.25 As can be seen from the full Council report, it was envisaged at the time (and the final terms of the Indemnity Agreement confirm) that in order for the Council to fully endorse the process and detail of any CPO in relation to the Wynd, a further Full Council resolution would be required following further consideration by the Council of the merits of taking this action. This report is part of the process towards a second full Council resolution to agree the specific details of a CPO to help facilitate this important town centre redevelopment proposal.

5.26 The Indemnity Agreement

The Indemnity Agreement between the two parties sets out a clear process as to how any CPO would be pursued from the moment a commencement notice is served on the Council by the Foundation. However, one of the main purposes of the Agreement which is clearly achieved is to indemnify the Council against all liabilities through the CPO process, including internal (Officer time) and external technical and legal costs (consultants and legal fees) made in pursuit of a CPO.

- 5.27 The Council has the most appropriate CPO powers in this instance and the Foundation is unable to compulsorily acquire land itself. The Foundation must however pay the costs of all land acquisition which the Council would need to do in order to deliver the complete land assembly as part of the CPO exercise. The intention of the Indemnity Agreement is that once all the leases are acquired compulsorily by the Council they would be immediately surrendered to the Foundation (ie. a “back” to “back” arrangement). Although the Foundation will meet the full costs of the CPO in accordance with the terms of the Indemnity Agreement, the document also clearly stipulates that the Council must exercise complete procedural autonomy over the formal CPO process as a responsible publicly accountable organisation. However, the Agreement requires that the Council consult the Foundation in relation to all important decisions, and particularly those which have a cost implication.
- 5.28 In terms of timing, the Indemnity Agreement requires that the Council must confirm formally in writing whether or not it is prepared to use its powers of compulsory purchase within three months following the date that the commencement notice is served. The Agreement also confirms that such a decision must be made by the Full Council. As is mentioned above the commencement notice was served on 18 August 2009 and the Foundation has formally agreed in writing to extend the period for a decision to be made

up to the date of the appropriate Full Council meeting to be held on 8 April 2010.

5.29 The three month period for consideration set out in the Indemnity Agreement needed to be extended to allow for the submission of additional evidence by the Foundation in support of their application. The three month consideration period did not provide sufficient time to explore and test the evidence base for making and pursuing a CPO. Since the commencement notice was served, Officers and their appointed legal and planning advisors have been carrying out a due diligence exercise to identify and review the case for promoting a CPO. This has involved reviewing supporting evidence provided by the Foundation along with the planning policy position to ensure that the legislative framework and issues raised in the Circular guidance are satisfied and that there is a compelling case in the public interest for making and pursuing a CPO. It has taken some time to obtain all the information necessary to properly carry out this exercise. The Foundation acknowledge and support this approach and therefore agreed to extend the period of notice accordingly. Such evidence is discussed in detail under sections 8, 9 and 10 of this report.

5.30 The Council's Appointed Advisers

In order to advise on and assist with the delivery of any CPO in this case, Officers have employed the services of Eversheds Solicitors who have considerable experience of advising both public and private sector clients on CPO matters. To advise on the retail and planning case for the CPO Officers have employed a planning consultant from Nathaniel Litchfield and Partners (NLP) who are renowned experts in retail planning. Indeed, Members may be aware that NLP have produced the Council's retail capacity study (2006) which formed the basis of the Core Strategy Retail chapter and policies. The study was recently updated by NLP in 2009. This background knowledge has been invaluable in examining the Foundation's evidence and understanding and articulating the retail planning case relating to a CPO.

5.31 As well as advising on drafting the Statement of Reasons for delivering a CPO (**see appendix 4**), Eversheds Solicitors have been advising Officers and have led a due diligence exercise with the Foundation over the supporting evidence for the CPO. On behalf of the Council, Eversheds have also employed a land referencing company (Persona), to undertake a separate land referencing exercise for the Council in preparation for any CPO. Should Members be minded to support the Officer recommendation and the CPO proceedings are undertaken, Eversheds will continue to advise and assist the Council in the delivery of the CPO and any resultant public inquiry. Should there be a need for a public inquiry the Council can also call upon NLP as a specialist retail and planning expert witness to support the case for a CPO at that inquiry, as well as putting forward its own planning witness. The question of witnesses will be a matter to decide, on advice, if a public inquiry into objections to the CPO proves necessary.

5.32 In accordance with the terms of the Indemnity Agreement, the Council's on-going costs in employing Eversheds Solicitors, NLP and Persona are being met by the Foundation together with costs of Officer time devoted to the process.

5.33 Summary of Section 5

This section has set out details of the Scheme for the redevelopment of the Wynd which is being promoted by the Foundation. It provides Members with a full description of the development proposal based on the details of the planning application and the contents of the planning permission and related Conservation Area consent. The planning policy framework for the use of compulsory purchase powers is then identified, before reference is made to the town centres being one of the Council's strategic priorities. The role of the Foundation as applicant, promoter of the Scheme and freehold owner of the Wynd is explained as well as their participation in preparing the Indemnity Agreement and how this process coincided with the first full Council resolution to exercise CPO powers to assist in the delivery of the Wynd redevelopment in principle. The last section of the report sets out the role of the Council's externally appointed advisers who have been working closely with Officers to facilitate the making, pursuit, confirmation and implementation of a CPO should Members resolve to endorse the recommendation.

6. ISSUES

6.1 LEGISLATIVE FRAMEWORK FOR COMPULSORY PURCHASE

6.2 Introduction to Section 6

It is essential for Members to understand the statutory basis upon which they are being asked to consider the use of the Council's powers of compulsory purchase of land. This small section of the report highlights the relevant parts of the Planning Acts which form the basis for the use of CPO powers. It is important for this to be understood in light of the analysis set out in later sections.

6.3 Powers under Section 226 Town and Country Planning Act 1990

Section 226 of the Act as re-affirmed and amended by the Planning and Compulsory Purchase Act 2004 provides local authorities with powers of compulsory acquisition of land in their area. Section 226(1) states as follows:

'A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area:

- (a) If the authority think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land**
- (b) which 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.'**

In this case, Officers are recommending that the Council exercise its powers under section 226(1)(a).

Section 226(1A) goes on to state that **' . . . a local authority must not exercise the power under paragraph (a) of subsection (1) unless they**

think that the development or redevelopment or improvement is likely to contribute to the achievement of any or one or more of the following:

- (a) the promotion or improvement of the economic well-being of their area;**
- (b) the promotion or improvement of the social well-being of their area;**
- (c) the promotion or improvement of the environmental well-being of their area.'**

- 6.4 When determining whether to utilise the powers afforded by Section 226(1)(a) of the Act, a local authority as an acquiring authority (for the purposes of CPO) should also have regard to the interpretation of the powers as set out in the Local Government Act 2000. Government guidance on these powers was issued by the then Office of the Deputy Prime Minister (ODPM), now Department of Communities and Local Government (DCLG), in 2004 and this is reflected at paragraph 8 to Annexe A of the Circular 06/2004. This states that the purpose of the well-being test (as set out in S226(1A) above) has been:

'to relax the traditionally cautious approach to the use of compulsory purchase powers adopted by many local authorities and their partners to improve the qualities of the life of those living, working or otherwise involved in the community life of their area'.

Paragraph 10 of the same Annexe adds that the powers can be used to help with **'tackling social exclusion, promoting regeneration initiatives and improving local environmental quality'**, advising that a pro-active approach from local authorities is sometimes needed to facilitate these wider benefits where such action can be justified in the public interest.

6.5 Summary of Section 6

For the purpose of exercising this Council's powers of compulsory purchase under statute, Members must be satisfied that in addition to demonstrating that section 226 (1)(a) is satisfied, the Scheme will satisfy the social, economic or environmental well being tests laid out under section 226(1A) of the Act. An analysis of these tests as relating to the Scheme is discussed under Section 10 of this report.

7. **CENTRAL GOVERNMENT CIRCULAR ADVICE (06/2004)**

7.1 Introduction to Section 7

The then ODPM produced detailed circular advice to guide local authorities through the process of compulsory purchase in 2004. The full title of the Circular is 'Compulsory Purchase and the Crichel Down Rules' Circular 06/2004. Whilst the relevant statutory provisions can be explained rather briefly as is outlined in Section 6 of the report, in determining whether to confirm a CPO, the Secretary of State will take into account the Government's advice and guidance set out in the Circular. In order for Members to gain an understanding of the process and the arguments in favour of using CPO powers in this case, extracts of the Government's advice in the Circular are quoted and examined in detail under this section of the report.

7.2 Circular Advice to justify the use of CPO Powers

The Circular offers guidance on how local authorities can construct a case for the use of compulsory purchase powers afforded under Section 226(1)(a) of the Act. The importance of a properly reasoned justification for the use of CPO powers (**see the draft Statement of Reasons attached as appendix 4**) is highlighted under paragraph 16 of the Circular as follows:

‘It is for the acquiring authority to decide how best to justify its proposals for the compulsory acquisition of any land under a particular power. It will need to be ready to defend such proposals at any Inquiry (or through written representations) and, if necessary, in the courts.’

- 7.3 If compulsory purchase powers are exercised this will interfere with the rights of individuals and businesses at the Wynd. Therefore it is important to put together a robust case to demonstrate that this interference is justified by a compelling public benefit (**see later discussion of the Human Rights Act under Section 10**). The Secretary of State must be satisfied that there is a compelling case in the public interest to support the exercise of powers of compulsory purchase, in order to justify potentially displacing people from their homes or businesses and acquiring their interests in land.

7.4 Financing the Scheme and Scheme Delivery

The Circular goes on to discuss substantive issues which the Council should consider as part of its justification for making a CPO. The Council should be satisfied that any resultant redevelopment proposal has a reasonable prospect of being delivered within a reasonable and identifiable timeframe. Paragraph 20 of the Circular advises on this in the context of financing a redevelopment scheme:

‘It may be that the scheme is not independently financially viable, or that the details cannot be finalised until there is a certainty about the assembly of the necessary land. In such instances, the acquiring authority should provide an indication of how any potential shortfalls are intended to be met. This should include the degree to which other bodies (including the private sector) have agreed to make financial contributions or to underwrite the scheme, and on what basis such contributions or underwriting is to be made.’

- 7.5 To avoid a case where a CPO is instigated too early, the Circular also advises that the Council must have a proper understanding about the timing of the delivery of any scheme. Paragraph 22 of the Circular advises that:

‘In demonstrating that there is a reasonable prospect of the scheme going ahead, the acquiring authority will also need to be able to show that [the development scheme] 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. These include the programme of any infrastructure accommodation works or remedial work which may be required and any need for planning permission or other consent or licence.’

The planning framework justifying the CPO is set out in sections 1 and 7 of the draft Statement of Reasons. Officers are of the view that if a CPO is

confirmed, the delivery of the Scheme is unlikely to be blocked by any planning impediments (it already has planning permission) or legal or physical factors. Consideration of scheme delivery and funding is set out in Section 8.

7.6 Negotiations with Landowners

Given the significant nature of such powers, the Circular makes it clear that the exercise of powers of compulsory purchase is intended as a last resort, when reasonable efforts to acquire by agreement have failed, although the Circular states that it may often be sensible for an acquiring authority to undertake negotiations in parallel with the promotion of a CPO. With this in mind it is clear that the Council has a responsibility to satisfy itself that reasonable efforts have been made to acquire land interests by negotiation before seeking to use its powers under Section 226(1)(a) of the Act. The Circular sets out practical guidance on a negotiation strategy at paragraph 24:

‘Before embarking on compulsory purchase and throughout the preparation and procedural stages, acquiring authorities should seek to acquire land by negotiation wherever practicable. The compulsory purchase of the land is intended as a last resort in the event that attempts to acquire by agreement fail. Acquiring authorities should nevertheless consider at what point 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. 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 the 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.’

7.7 Appendix A to the Circular

Appendix A sets out further advice for local authority’s on the exercise of their powers under Section 226 of the Act. It provides further advice on issues relating to CPOs made under the Act, including consideration of planning matters and the well being powers referred to above. It gives guidance on the factors which the Secretary of State will take into account when deciding whether or not to confirm an order made under section 226. These issues have also been considered in Section 10.

7.8 Summary of Section 7

This section informs Members of the Circular advice that guides local authorities in the exercise of their powers of compulsory purchase. The Guidance requires acquiring authorities to demonstrate a compelling case in the public interest for exercising CPO powers and interfering with the rights of individuals and businesses. As part of this, the main aspects of the Guidance that can be applied to the Scheme relate to the acquiring authority needing a thorough understanding of the prospects of the Scheme being delivered, including the timing and financing of the Scheme and any impediments to its delivery, and being satisfied that reasonable efforts have been made to acquire the outstanding land interests by negotiation before resorting to the use of compulsory purchase powers. The following sections of the report

examine the case for CPO in relation to the Wynd redevelopment scheme in light of the Circular tests and the well being tests set out in statute.

8. THE WYND, EVIDENCE OF SCHEME DELIVERY

8.1 Introduction to Section 8

The proposed redevelopment of the Wynd is a complex scheme not only in terms of land assembly, demolition, road closures and wider infrastructure provision. The economics of development in terms of viability and timing of delivery are also important issues.

8.2 As is advised within the Circular (see section 7 above), the acquiring authority when deciding whether to exercise powers of compulsory purchase needs to be satisfied that there is a 'reasonable prospect' that the resultant development scheme will go ahead within a reasonable period of time. The Circular offers more detailed advice on the factors that need to be addressed under the general 'reasonable prospect' test and many of these are discussed under Section 7 of this report. The following paragraphs under this section examine the evidence that the Foundation have presented on scheme delivery in order to assist Members in deciding whether there is a reasonable prospect that should the Council decide to exercise its powers of compulsory purchase to complete the land assembly exercise the Scheme will be delivered within a reasonable timeframe.

8.3 Overall Time Framework

Before considering the evidence surrounding how the Scheme can be funded and implemented, it is necessary to set this within an overarching framework. As is mentioned under section 5 of the report, full planning permission and conservation area consent have been granted by the Council's Planning Control Committee for this development proposal. The full planning permission was granted on 27 July 2009 and as is detailed in section 5, the planning permission imposes a five year time limit within which work must commence, rather than the standard three years. The Planning Control Committee agreed to extend the normal time period in response to a request from the Foundation in order to set a more flexible time framework within which to implement the Scheme. The need for a five year planning permission was driven largely by the uncertainty of timing of any CPO process which the Council may have decided to carry out subsequent to that date. Given the slightly different timescales contained in the five year conservation area consent, work must commence on site before June 2014. Before work can commence, approval of all the pre-commencement conditions of the planning permission must be secured together with the securing of any Traffic Regulation Orders (TROs), Road Closure Orders and legal agreements with Hertfordshire County Council in relation to works within the public highway. The summer 2014 deadline sets an overall milestone within which work must commence on site.

8.4 In relation to the timing and implementation of any CPO, **attached as part of appendix 5** is a provisional timeline prepared by Eversheds solicitors. Members will note that this timeline carries a realistic assumption that any CPO will, following submission to the Regional Office, be referred to a public inquiry by the Secretary of State in response to any formal objections to the CPO from affected parties. In accordance with the proposed dates of the

Letchworth Area Committee, Cabinet and Full Council, should Members agree to make and pursue the CPO and assuming the need for a public inquiry, it is estimated that a realistic date for the completion of land assembly and for land to be handed to the Foundation would be during June/July 2011. This is well before the summer 2014 expiry of the planning permission. On this basis there would appear to be more than sufficient time within which to secure confirmation of the CPO, implement the CPO, complete the land assembly, achieve technical approval of all pre-commencement conditions and other legal procedures in relation to highway matters to enable the applicant to comfortably implement the Scheme before the planning permission lapses. Officers are satisfied that there is sufficient time within this overall framework for Members to be satisfied that the Scheme can be commenced before the planning permission lapses.

8.5 Letchworth Garden City Heritage Foundation's Evidence on Delivery

In accordance with the advice in the Circular, Officers and their appointed advisors carefully examined the Foundation's case and evidence of scheme delivery. As a result of extensive discussions with the Foundation, Officers and their external legal advisers consider that there is an evidence base relating to delivery which supports the making, pursuit and confirmation of a CPO.

8.6 The Board of the Foundation continue to maintain a strong commitment to deliver the Wynd redevelopment scheme as a major part of the Letchworth Town Centre Revitalisation plan established in 2005. Since the commencement notice was served on the Council to consider exercising CPO powers in August 2009, Officers and their appointed external advisers requested that the Foundation seeks a specific commitment from its Board in order to assist the case for the CPO and help to demonstrate that there is a reasonable prospect that the Scheme would go ahead should the CPO be confirmed. During this period leading up to the forthcoming Council committee dates, the Foundation's Board have approved a letter written by the Chairman of the Board to demonstrate their continued commitment to deliver the scheme. **A copy of this letter is attached as appendix 6. Appendix 6 also includes a letter from the Foundation setting out a more up to date position on the delivery of the Scheme.**

8.7 Members will note from this letter that the Foundation's Board remains on track to deliver the Scheme. There are however three pre-conditions which the Board state must be satisfied before they will agree for the Foundation to fund and deliver the Scheme. These pre-conditions are as follows:

- 1) The Foundation secures an anchor tenant;
- 2) The Foundation is able to acquire all the interests in the Wynd;
- 3) The Foundation is satisfied that the project provides a sound investment in meeting its objectives in the town as a whole.

In order to assist Members in their understanding of the prospects of whether the Scheme will be delivered within a reasonable period of time of confirmation of the CPO, it is necessary, in Officers' view, to examine the current and projected position on each of these three pre-conditions.

8.8 The Need for an Anchor Tenant

Members who are familiar with the Scheme (as described in section 5 of this report) will know that the proposed 2,500sqm plus foodstore is the keystone to the success of the Wynd redevelopment proposal. Without a secure anchor tenant to occupy the largest of the 24 proposed retail units, the Scheme is unlikely to succeed as a commercial venture. The Scheme is designed to facilitate a medium sized foodstore, with a car parking and access arrangement around the Station Road frontage, a designated service yard and other smaller retail units centring onto the position of the proposed foodstore.

- 8.9 At the time of writing this report the Foundation is in the process of implementing its programme to secure an anchor tenant for the Scheme. **This indicative programme is attached as appendix 7.** The Foundation has employed the services of retail consultants from King Sturge, who together with the selected developer under their collaboration agreement, Discovery Properties, are actively marketing the Scheme to seek primarily a foodstore anchor tenant. This process has resulted in the identification of 5 suitable anchor store operators. Negotiations are progressing with these operators in line with the programme.
- 8.10 The Foundation and their specialist retail consultants have indicated that it is difficult to secure a pre-let for a foodstore without a clear programme for securing the land required to deliver the Scheme of which a foodstore forms part. The Foundation state that it will be easier to secure a suitable anchor tenant once the Council has confirmed its willingness to exercise CPO powers to facilitate the assembly of the Wynd. Due to the commercial sensitivity of this issue the Foundation is understandably reluctant to reveal details of individual negotiations or names of particular companies. However, having reviewed the programme and received updates from the Foundation as to their progress and considering current market conditions, Officers and their external advisers are satisfied that the Foundation is likely to secure an anchor tenant by the end of 2010 to satisfy their own Board Members pre-condition and offer more certainty on scheme delivery. Progress is continuing on this part of scheme delivery and an update can be provided at the meeting should the position change.
- 8.11 If the Council takes a rigid line on the need to secure delivery, the Council could argue that there is no reasonable prospect of scheme delivery until the Foundation secure an anchor tenant, particularly when the Foundation Board have marked this point as a pre-condition to their commitment to deliver the Scheme. Whereas the Foundation argue that the anchor tenant cannot be secured before the Council has confirmed its willingness to support the land assembly process with compulsory purchase powers. Having discussed this paradox at length with the Foundation and its external specialist retail advisers, Officers are satisfied that sufficient progress is being made to secure an anchor tenant. As a conclusion on this point, officers do not see the current lack of an anchor tenant as a justifiable reason to withhold the use of CPO powers for the reasons set out above, and in Officer's judgement the Foundation's case on this point does accord with the 'reasonable prospect' test set out in the Circular.

8.12 Secure the Land Interests

The Foundation needs to secure all leasehold and other interests in the Wynd to complete the Scheme. If all interests in the Wynd can not be acquired by agreement, this pre-condition ultimately rests in the Council's hands with the use of its powers of compulsory purchase. However, the Foundation has made extensive progress on acquiring the leasehold interests on the Wynd and it continues to negotiate with tenants that remain. The next section of the report deals with the issue of negotiation and the current position on land assembly in more detail.

8.13 The Development Needs to be a Sound Investment

This is perhaps the most challenging of the Foundation's pre-conditions since it offers no precise yardstick to enable an independent judgement of what the Board would consider a sound investment to be. The issue relates to an analysis of the deliverability of the Scheme and whether the Scheme represents a sound investment by the Foundation in meeting its objectives in the town as a whole.

8.14 Members of the Planning Control Committee will recall that when the planning application for the Wynd redevelopment was considered, the Foundation presented evidence in the form of a recognised viability model to demonstrate that the economics of the Scheme at the time meant that it was an economically unviable development proposal to the tune of approximately £2million (difference between development cost and return). Members will also recall that Officers sought to test this viability analysis independently and the result was that the independent expert agreed with the conclusions of the model. This analysis was presented as a means of negotiating less onerous heads of terms for the Section 106 Obligation and as is described in section 5 of the report, the scheme delivers only 15% affordable housing (both on and off site) rather than the 35% that would normally be secured. This reduced affordable housing contribution was judged to be acceptable by the Planning Control Committee as a mechanism to assist the viability of the Scheme and therefore help with scheme delivery.

8.15 This viability analysis which is on public record, as part of the Wynd planning application, was carried out during late 2007/early 2008. Needless to say the Foundation has confirmed that since this time the economics of the Scheme have deteriorated still further. Under **current** market conditions if development were to commence the Foundation and their market experts predict that the Scheme would deliver a greater loss than was envisaged at the time that the planning application was determined. However, the Foundation is of course unlike normal commercial developers and as a result of the considerable resources and vast property estate, it is able to take a much more long term view of their investments. The Foundation's unique position in relation to its commitment to the delivery of developments in Letchworth is explained in more detail in Section 8 of the draft Statement of Reasons. The Foundation has expressed a commitment that it will fund a shortfall in the commercial return of the Scheme, although that gap funding is not unlimited. As mentioned above the Foundation has confirmed that **at present** it does not consider the Scheme to be a sound investment and if all the technicalities were in place, in the current market, it may choose to delay the delivery of the Scheme. In order to meet the sound investment test therefore it is necessary for there to be a wider improvement in the

commercial and residential property market and therefore a wider economic recovery.

8.16 It is of course difficult to accurately predict the pace of an economic recovery although I am sure Members will agree there are at least tentative signs of a recovery in the housing market. The Foundation and their specialist advisors predict a continued decline in retail rental income into 2012 with a likely upturn from 2012/2013. The proposed delivery timetable for the Scheme seeks a commencement on site in early 2011 with a completion during 2013, a period when the Foundation and their advisers anticipate the retail market will be in a sound recovery period. By taking a long term view of their investment, the Foundation also feels that this timing has the advantage of being delivered before other large town centre schemes in surrounding towns (e.g. Hitchin Churchgate and Stevenage town centre) are underway, thereby boosting Letchworth's position in the retail hierarchy at a crucial time.

8.17 It is clear from this analysis that the Foundation is fully aware of the current market position, it has employed suitably qualified independent experts to track the changes in the retail market in Letchworth and the sub-region and given their market projections, the Board are likely to be satisfied that the Scheme represents a sound investment if the market recovers over the coming period in accordance with their specialist advisor's projections and advice. As with the anchor tenant issue, the Circular guidance does not require a test of certainty on delivery, it requires the acquiring authority to demonstrate that there is a reasonable prospect of scheme delivery. On this important issue of timing and market recovery, Officers and their appointed advisers are satisfied that should Members be minded to agree to exercise the Council's powers of compulsory purchase, there is a reasonable prospect that the Foundation's Board will be satisfied that the Scheme represents a sound investment so as to satisfy the Board's criterion.

8.18 Funding and Examples of Other Projects

As is mentioned above, the Foundation is able to take a long term view of its investment decisions due to their wider property estate interests, covering 5,500 acres. These assets include land and buildings, with a mix of residential and commercial uses which the Foundation continually maintain and refurbish to maximise their financial return. The revenues generated from this process enable the Foundation to fund major infrastructure projects and it is through this revenue stream and the capital that is already available that the Foundation is able to fund the Wynd redevelopment scheme.

8.19 The Foundation can also point to an excellent track record of delivering major schemes funded through their portfolio revenue stream, such as the refurbishment of the Spirella Building and the £10 million investment which the Foundation has recently made in the improvements to the street scene of Leys Avenue and Eastcheap, a project which arguably generates no direct financial return to the Foundation.

8.20 For the Wynd redevelopment proposal, the Foundation has entered into a collaboration agreement with a company called Discovery Properties Limited who are the selected developer under the collaboration agreement and will assist in the delivery of the Scheme. Discovery Properties have considerable experience of mixed use redevelopment schemes and also have links to

potential anchor store tenants **(a copy of a supporting letter from Discovery Properties is attached as appendix 8).**

8.21 Officers and their appointed external advisers consider that the Foundation's revenue streams, derived from a large property estate, their track record of delivery on a wide variety of refurbishment and infrastructure projects and their commitment to working with a suitably experienced and qualified developer under their collaboration agreement, are factors that can add weight to the delivery case for the development proposal. Members can therefore be reassured that if the CPO is confirmed, the Council can be reasonably satisfied at this time that every effort is being made to ensure a timely delivery of the Scheme following the acquisition of all remaining land interests on the Wynd.

8.22 Summary of Section 8

This section of the report focuses on the ability of the Foundation to deliver the Scheme should Members resolved to authorise the making and pursuit of the CPO. To assist Members in their understanding of whether there is a reasonable prospect of the Scheme going ahead, this section sets out the Foundation's position on timing of delivery before focusing on the Foundation's Board pre-conditions before they will agree to deliver the Scheme. The pre-conditions of the need to secure an anchor tenant, assemble land and the sound investment tests are set out and considered. Finally, this section explains how the Foundation are working with Discovery Properties and briefly sets out the Foundation's recent track record of delivery on infrastructure and refurbishment projects. The section concludes by stating that Officers and their external advisers are satisfied that there is a reasonable prospect that the Scheme will be delivered should Members authorise the making and pursuit of the CPO.

9. **TENANT NEGOTIATIONS**

9.1 Introduction to Section 9

Members of the Planning Control Committee who made the decision to grant planning permission and Conservation Area consent for the proposed redevelopment of the Wynd will be aware that the issue of tenant relocation was an important factor in the determination of the application. Indeed, as is outlined in Section 7 of this report, Central Government in their Circular advice on the use of compulsory purchase powers also places emphasis on the need to seek to acquire land by agreement wherever practicable in order to assemble land to deliver development schemes without resort to compulsory purchase powers.

9.2 This section of the report outlines the background to and the Foundation's evidence of, its comprehensive tenant relocation strategy. It sets this process within the context of the decision to grant planning permission and conservation area consent before updating Members on progress to date and the strategy moving forward, whereby negotiations will be progressed in full consultation with the Council even when simultaneously preparing for the making and pursuit of the CPO. The process whereby Officers commissioned an independent land referencing exercise on behalf of the Council will then be explained. The section concludes by explaining how Officers and their appointed external advisers are satisfied that considerable effort has been

and continues to be made by the Foundation to attempt to secure all the outstanding land interests in the Wynd by agreement.

9.3 Tenant Relocation Strategy

The planning application for the Scheme was accompanied by an Environmental Statement (ES) which is effectively a comprehensive report setting out the findings of the associated Environmental Impact Assessment (EIA) which was required under the relevant regulations as a result of the scale, complexity and environmental effects of the proposal. Chapter 12 of the ES contained an analysis of the potential socio-economic impacts of the development proposal and perhaps the most significant of these was the displacement of existing businesses on the Wynd that would be needed in order to demolish the buildings and carry out the Scheme. The Foundation and their consultants put forward a mitigation strategy to address this potential negative socio-economic impact known as the Wynd tenant relocation strategy.

9.4 At the time that the planning application was determined by the Planning Control Committee, the Foundation had made considerable progress towards finding alternative accommodation for existing businesses at the Wynd who wished to be relocated. At the time that the planning application was first reported to the Planning Control Committee in June 2008, the Foundation had managed to relocate or were in the process of agreeing terms for relocation with 25 of the 68 businesses in the Wynd directly affected by the Scheme. A further 30 businesses did not require relocation. This is for various reasons including the Foundation only requiring a limited area of their land (meaning that the relocation of their business is not necessary), or because they have agreed a financial settlement with the Foundation through private treaty and did not require relocation, or because they entered into leases with the Foundation on terms without security of tenure protection under the Landlord and Tenant Act 1954 allowing the Foundation to terminate their interest when it needs to secure vacant possession of the Wynd. In addition, 10 businesses have taken on short term leases in full knowledge of the Foundation's redevelopment plans. At this time the Foundation was in active negotiation with 16 businesses whereas negotiation had not proceeded with 3 businesses.

9.5 When the Planning Control Committee resolved to grant planning permission in accordance with Officer recommendation, they were satisfied that sufficient progress had been made by the Foundation through their tenant relocation strategy to address this potential negative socio-economic impact enough to agree to grant planning permission for the Scheme. However, in order to check progress on this important element of the overall development and again in accordance with officer recommendation, the agreed planning permission contains the following condition, no. 28:

'Prior to the commencement of the development hereby permitted full details of an updated tenant relocation strategy shall be submitted to and approved in writing by the Local Planning Authority. The approved tenant relocation strategy shall thereafter be carried out in accordance with a timetable which shall have been agreed in writing by the Local Planning Authority, unless otherwise agreed in writing by the Local Planning Authority.'

Reason: In the interests of business continuity and to minimise the negative socio-economic impacts of this development proposal identified in Chapter 12 of the Environmental Statement.'

The Planning Control Committee also resolved that the requirements of this condition must be discharged by the Planning Control Committee and not by officers under delegated powers.

- 9.6 Whilst the Foundation has not formally submitted an updated tenant relocation strategy in order to discharge the requirements of this condition, Officers and their appointed external advisers have been regularly discussing with the Foundation and checking progress of the strategy as part of the discussions on the CPO process. **A letter and table setting out a list of all those affected business and the negotiations to date is set out as appendix 9 attached.**
- 9.7 From this table Members will note that the latest position as presented by the Foundation from February 2010 sets out the following:
- * 68 businesses were on site in 2008;
 - * 30 businesses did not require relocation, have reached the end of their tenancies, or have been/will be bought out by private treaty or through landlord and tenant powers;
 - * 10 businesses took tenancies on a temporary basis with an awareness of the Scheme;
 - * 28 businesses needed to be relocated;
 - * 25 businesses have either moved, have set move dates or are agreeing alternatives through their acting solicitors;
 - * 1 business has a relocation site identified and remains in active negotiations with the Foundation; and
 - * 2 businesses are yet to agree relocation offers but both have been offered premises.
- Officers have carried out investigations, as part of the land referencing exercise (see below), and the results of these concur with the Foundation's summary by indicating that only three businesses are still seeking relocation.
- 9.8 There are three occupied residential units within the Wynd which are affected in their entirety by the Scheme. Two are let by the Foundation on short-term assured shorthold tenancies, which were entered into by the tenants in the full knowledge that they were entering into a short-term arrangement with a one month break clause. There is one residential tenant who needs to be relocated from the remaining residential flat that is affected in its entirety by the Scheme. An offer of relocation has been made, but this was not accepted and negotiations continue between the parties. One further residential flat is within the Wynd and is situated above an area of land upon which the Foundation is seeking to implement the Scheme. The Foundation is in the process of identifying whether the Scheme can be delivered without interfering with this interest. Given the nature of the works being carried out as part of the Scheme, it is entirely possible that the delivery of the Scheme will interfere with this interest and therefore, at present, Officers propose that it is included within the proposed CPO.
- 9.9 The Wynd includes an electricity sub-station and negotiations have taken place between the Foundation and EDF Energy Networks (EPN) plc, in relation to the Scheme and future energy requirements. The Scheme includes the provision of three new electricity sub-stations and the Foundation intend

to enter into an agreement with EDF to relocate EDF's interest in the existing sub-station to the new sub-station as part of the delivery of the Scheme.

- 9.10 In addition to the business and residential interests in the Wynd referred to above there are a number of other parties with interests at and within the edge of the boundary with the Wynd. Often only a small parcel of their land is required allowing them to retain the use of the remainder of their interest. The Foundation has confirmed that negotiations have taken place with these interests. In relation to these interests, Officers' investigations indicate that there are currently five parcels of land where deals have not been agreed. In addition, Officers understand that deals have been agreed, but further negotiations continue in relation to three further parcels of land.
- 9.11 Of the 98 business, residential and other lessees, tenants and occupiers originally identified in the Wynd, the Foundation has indicated that it has agreed or completed terms for acquisition and/or relocation of 89 interests. As set out above, Officer's current records indicate that slightly fewer deals have been agreed or completed, but a very substantial number have been agreed or completed.
- 9.12 The holders of other rights at the Wynd, which would be affected by any CPO are technically known as table 2 interests for the purposes of CPO legislation. These interests do not constitute freehold or leasehold interests in the Wynd (ie they are not an owner, lessee, occupier, etc in the Wynd) but they do have other rights over the Wynd (e.g. they are mortgagees or persons with legal rights of access for refuse collection, vehicular and pedestrian access rights etc). The number and nature of these interests is being confirmed by the land referencing exercise referred to below, but they may amount to a number of additional interests to those referred to above. The Foundation has informed officers that they intend to offer all persons whose land is severed (ie. partially acquired) by the proposed CPO and all persons who have rights over the Wynd (which the Foundation and the Council are aware of) alternative rights which will be equivalent to those affected in a timely manner.
- 9.13 It is clear that the Foundation has made considerable progress towards acquiring all the outstanding interests at the Wynd and relocating businesses. Members will be aware that recent planning decisions have also assisted in this process. An example is the granting of a temporary five year planning permission for Halifax Building Society at no. 1 Commerce Way which has enabled the successful relocation of this business from Leys Avenue.
- 9.14 **Attached as appendix 10 is a letter from the Head of Property Management at the Foundation** which explains why the outstanding tenancies have not been dealt with under landlord and tenant powers. Essentially, the terms of the remaining leases which have no break clauses are so long that they will not expire and cannot be terminated in time to deliver the Scheme within the timescales that are set out above. It is largely as a result of this impasse that the Foundation has requested that the Council considers the use of its CPO powers to assist in the land assembly exercise to enable the delivery of the redevelopment scheme.

9.15 Land Referencing

Under Schedule 3 of the Indemnity Agreement (see paragraphs 5.26 to 3.29 above) which has been agreed between the Council and the Foundation in relation to the CPO process, paragraph 1.1 reads as follows:

'In order to facilitate the making of the CPO the Council will as soon as reasonably practicable after confirming its willingness to make the CPO: (a) carry out and complete the referencing of outstanding interests and the adverse interests and thereafter submit drafts of the CPO and notice of making and supporting statement of reasons (together with the "Drafts") to the Developer for comment, and if the Developer so requests, to the relevant Government Office for technical examination and in order to secure compliance with the relevant requirements as to the form and contents of the CPO.....'

- 9.16 This process anticipates that the Council as the acquiring authority will undertake its own land referencing exercise to corroborate the records produced by the Foundation discussed above, after the Council has confirmed its agreement to exercise its CPO powers. During the discussions which have taken place between the officers, their appointed external advisors and the Foundation, following the serving of the commencement notice on August 18 2009, it was agreed by both parties that this process should take place before the Council confirm its decision to use CPO powers for these reasons: first, as is set out in paragraph 5.23 of this report, the Council have already agreed to exercise its CPO powers in principle in relation to the delivery of the Scheme. Secondly, if the land referencing exercise is undertaken before the full Council decision on whether to exercise its CPO powers, Members will be able to make a more informed decision on the basis of a full understanding of the outcomes of the land referencing exercise before deciding whether to exercise its CPO powers. Finally, the process would be foreshortened by enabling the making of the CPO shortly after a Council resolution.
- 9.17 Eversheds Solicitors have appointed Persona to act on behalf of the Council to undertake the land referencing exercise and at the time of writing this report the process is near completion. The purpose of this exercise is to gather information on all land interests relating to the Wynd. The information presented by the Foundation's own land referencing can then be independently corroborated by the Council before a CPO is made. The process started with the issuing of over 200 introductory letters from the Council sent on 25 January 2010 to all those businesses and individuals who have or may have a legal interest in the land (so far as the Council and the Foundation were aware), be this a tenancy, lease or other interest such as a right of way. Following these introductory letters, formal requisition notices were served by Persona on 27 January 2010. A requisition notice places a legal obligation on the recipient to confirm the extent of any legal interests they have over the land and should be replied to within 14 days (i.e. by 11 February 2010). Failure to reply is technically an offence however Persona sent reminder letters on 11 February to all those who have not replied and will follow this up with door to door inquiries on site.
- 9.18 Where anomalies or misunderstandings between the Foundation and any affected parties have been revealed, these have been individually pursued and any further negotiations are being tracked by officers.

9.19 As set out above, the Foundation has confirmed that it has made offers for alternative locations to the remaining tenants requiring relocation, but that each offer has been rejected. Officers are in the process of dialogue with those affected parties to establish their position and this negotiation process remains on going. At the time of writing this report, meetings have been held with all those who have requested an appointment with officers and their position has been considered.

9.20 The land referencing exercise is an on-going process as changes may occur to the interests in the Wynd (for example, a tenant may relocate etc). The land referencing process will be locked down prior to the making of a CPO (if a CPO is authorised by full Council). The results of the investigations carried out by Officers, in conjunction with the land referencing exercise, are referred to in paragraphs 9.7 to 9.13 above. On the basis of the investigations carried out by Officers as part of the land referencing process, Officers are satisfied that all relevant interests within the Wynd have now been identified and that the Foundation has taken reasonable steps to acquire all the land interests by private negotiation.

9.21 Summary of Section 9

This section sets out the context for and the details of the Foundation's tenant relocation strategy. It explains how, in most instances, the Foundation have continued to successfully negotiate with those affected to acquire their leases and relocate any displaced business and residents that require relocation. The Foundation confirm that negotiations continue with affected parties. This section goes onto explain how the terms of the Indemnity Agreement have been altered with the consent of both parties to enable the Council to undertake its own independent land referencing exercise to seek to corroborate the Foundations' records.

9.22 Officers recommend that the case for the use of CPO powers in relation to the issue of negotiation is sound as the Foundation appear to have gone to considerable lengths in their attempts to acquire the interests by private negotiation and where this has not been possible, a CPO can be justified.

10. THE PUBLIC INTEREST CASE FOR THE CPO

10.1 Introduction to Section 10

As well as the need to demonstrate that there is a reasonable prospect that the Scheme will be delivered and that the use of CPO powers is intended as a last resort following reasonable attempts to secure land interests by negotiation, legislation and Circular guidance set out general public interest tests to justify the use of CPO powers. This section of the report runs through the other considerations that Members will need to assess in making a decision to endorse the CPO process. At the heart of this are the economic, social and environmental well being tests set out Section 226 of the Act. Any impact on the human rights of the individuals affected by the CPO must be justified by public interest considerations such as these. These points are examined in this section of the report.

10.2 Statement of Reasons

The Circular advice recommends that the justification for the CPO should be explained in a non statutory 'statement of reasons'. Paragraph 35 of the Circular reads as follows:

'When serving notice of the making and effect of an order [CPO] on each person entitled to be served, the acquiring authority is also expected to send each one a copy of the authority's statement of reasons for making the order. A copy of this statement should also be sent, where appropriate, to any applicant for planning permission in respect of the land. This non statutory statement of reasons should be as comprehensive as possible. It ought therefore to be possible for the acquiring authority to use it as the basis for the statement of case which is required to be served under Rule 7 of the 1990 Inquiries Procedure Rules where an inquiry is to be held.' [i.e. any public inquiry held as a result of formal objections to the CPO].

- 10.3 A copy of the draft Statement of Reasons is attached as **appendix 4**. The reasons have been compiled over a considerable period following extensive discussions between Officers, their appointed external advisers, the Foundation and their consultants. The draft Statement has also been reviewed by an independent Counsel appointed by Officers to advise on whether the case for making and pursuing the CPO is robust. Members are referred specifically to section 6 of the draft Statement of Reasons which explains the problems facing Letchworth and the Wynd, and the benefits that the redevelopment scheme will achieve.

10.4 Section 226 of the Act, Well Being tests

Officers are satisfied, in accordance with its duties under Section 226(1A) of the Act, that the CPO, which is to enable the delivery of the Scheme, satisfies the various well being tests set out in this section of the Act. As is set out in paragraph 6.3 of this report and worth repeating here, the CPO will facilitate the carrying out of the redevelopment of the Wynd and the Council thinks this is likely to contribute to the achievement of:

**'the promotion or improvement of the economic well-being of their [i.e. the District] area;
the promotion or improvement of the social well-being of their area; or
the promotion or improvement of the environmental well-being of their area;'**

- 10.5 Without repeating the contents of the draft Statement of Reasons but in order to provide a useful explanation of the case, the following paragraphs under this section of the report set out a summary of how Officers and their appointed external advisors are satisfied that the well-being tests are met.

10.6 Economic Well Being

Evidence to assist Members in their understanding of the economic well being case for the Scheme is set out in the Nathaniel Litchfield and Partners (NLP) 2009 North Hertfordshire Town Centre and Retail Study. This study, commissioned by the Council, updates earlier work undertaken in 2004 and 2006 to assist the LDF Core Strategy policy evolution. Based on extensive

survey analysis the study identifies current comparison retail shopping patterns in seven separate study areas within the District. Letchworth and its immediate surrounds is classified as one area on its own. Even though Letchworth has the second widest and most extensive retail offer in the District after Hitchin, the study reveals the following evidence:

10.7 Comparison Shopping Patterns in the Letchworth Study Zone

- * Total annual comparison goods shopping expenditure within the zone - £95.36million;
- * Of which 44% is spent in Letchworth (£41.96million);
- * 24% is spent in Stevenage, 7% in Welwyn, 7% in Hitchin and 18% elsewhere;
- * This leads to a total annual comparison shopping expenditure outflow (or leakage) of £53.40million.

10.8 These figures demonstrate that for comparison retail shopping (i.e. non food) there is a significant expenditure leakage from the Letchworth population to other centres. This means that Letchworth town centre is not attracting local shoppers to any significant degree and in order to do so there needs to be a considerable increase in comparison retail capacity, quality and consumer choice. The NLP study estimates that for the period up to 2016 there needs to be an increase in comparison retail floor space (all floor space figures are gross external) of 2,800sqm (8,300sqm needed by 2021) in order to maintain current market share (i.e. to prevent further leakage and maintain a static position on retail vitality and vibrancy). The Scheme proposal offers a total of 2,044sqm net additional comparison (i.e. proposed new retail floor space minus the existing on site to be demolished) retail floor space which can be delivered by 2013 (according to the Foundation's delivery programme set out in section 8 of this report), which goes a long way towards addressing the need for additional comparison retail floor space.

10.9 This clear analysis which is referred to extensively within the draft Statement of Reasons is an important part of the economic well being case for the Wynd redevelopment proposal. For convenience shopping (i.e. food/supermarkets) the NLP study estimates a need for an additional 2,300sqm of convenience retail floor space up to 2016 (3,900sqm by 2021) in order to maintain current market share. The Scheme would exceed this capacity estimate through the delivery of a food anchor store at 2,615sqm. Members should be mindful that for Letchworth town centre the capacity floor space figures set out in the NLP study represent a realistic minimum level needed to maintain the current health of the retail market in Letchworth, the slight increase above the capacity estimate up to 2016 for convenience retail floor space does not mean there would not be sufficient customers shopping in the food anchor, it may however mean that more shoppers would visit Letchworth town centre from within the local population than at present, representing a positive economic benefit.

10.10 The slightly more nuanced arguments presented within the draft Statement of Reasons as part of the economic well being case for the Scheme relate to the need for Letchworth to expand its customer profile, to improve the retail offer to attract more affluent sectors of the community who through survey analysis appear to shop elsewhere on the whole. The design of the Scheme is such that it would seek to attract additional retail operators to expand the diversity of consumer choice in Letchworth town centre, which would attract higher

spenders from within the local population, improving the overall vitality and economic well being of Letchworth town centre.

- 10.11 Taking account of this retail and economic analysis which is clearly set out in the draft Statement of Reasons, officers and the appointed external advisers are satisfied that the economic well being case for the Wynd redevelopment proposal is sound and satisfies the requirements of Section 226(1A) of the Act.

10.12 Social Well Being

Arguments relating to the social well being case for the Scheme are strongly linked to the economic case outlined above, the environmental case set out below, and the need to improve the retail vitality and vibrancy of Letchworth town centre. By catering for the shopping needs of all sectors of the community, providing on and off-site affordable housing and local employment opportunities, officers and their appointed external advisers are satisfied that the Scheme would improve the social well being of Letchworth town centre and the wider area.

10.13 Environmental Well Being

The Scheme is a highly sustainable development proposal, not only in terms of the proposed methods of construction (including Eco Homes Standards and other sustainability elements of construction) but in the pattern of land use and location. The Scheme is in the centre of Letchworth Garden City, on previously developed land and it will deliver 113 no. new homes close to services and public transport links offering a highly sustainable location for households. By increasing the capacity and the range of the retail offer, the Scheme will attract more local visitors to Letchworth town centre. If expenditure leakage is reduced from the current very high levels of comparison retail shopping at over half of all expenditure from within the Letchworth zone being spent outside the town, this will lead to more sustainable patterns of travel, less car borne trips to out of centre and out of town shopping destinations, which will reduce carbon emissions.

- 10.14 In terms of the local environment, the character of the Wynd, internally, is poor and degraded. The physical condition of the public realm is poor and as a sense of place it lacks coherence. The buildings and the space are clearly under utilised for a town centre location. The Scheme represents a significant up scale in the size of development, but offers high quality architecture and public spaces integrated around buildings delivering a more efficient and sustainable use of the available space. The physical regenerative benefits of the Scheme are considerable. Taking account of this and the arguments set out above, officers and their appointed external advisers are satisfied that the environmental well being test is met for this development proposal.

10.15 Decision to Confirm the CPO

Appendix A to Circular 06/2004 offers guidance on the factors that the Secretary of State would take into account when considering whether or not to confirm a CPO and are therefore issues which the Council must address before deciding to make and pursue a CPO. Paragraph 16 of Appendix A to the Circular advises that whilst the Secretary of State would judge the case on its merits, the following factors would need to be addressed:

‘(i) whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area.....

(ii) the extent to which the proposed development will contribute to the achievement of the promotion or improvement of the economic, social or environmental well being of the area;

(iii) the potential 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.....

(iv) whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means. This may include considering the appropriateness of any alternative proposals put forward by the owners of the land, or any other persons, for its re-use. It may also involve examining the suitability of any alternative locations for the purpose for which the land is being acquired.’

10.16 Points (i) to (iii) are addressed within this report and within the draft Statement of Reasons attached as **appendix 4**. Officers and their appointed external advisers are satisfied that a compelling case for the Council to use its powers of compulsory purchase can be presented to the Secretary of State on these points.

10.17 It is however worth considering point (iv) of Annexe A to Circular 06/2004 in this section of the report. Whilst there are clearly no alternative proposals for the Wynd that would be able to achieve the economic, social and environmental benefits of the Foundation’s proposals, there are other proposals within the general locality that may have a bearing. The Foundation has publicised details of their proposed redevelopment of Arena Parade, Phase II of the Letchworth town centre Revitalisation Scheme. The delivery of the Foundation’s proposed redevelopment of Arena Parade would undoubtedly offer similar positive economic and social benefits to the Wynd redevelopment scheme. However, analysis set out in the NLP study assists with the case in this respect. The Arena Parade scheme is clearly a much longer term project. No detailed scheme has been prepared and the cost of pursuing a scheme for Arena Parade is considered greater. There is no Arena Parade scheme at present that is ready for submission as a planning application, and whilst the Foundation has not abandoned the longer term Arena Parade project it is not considered realistic to expect that it can be delivered before 2016.

10.18 Moreover, the proposals for the Wynd and those for the future redevelopment of Arena Parade are complimentary rather than alternatives. The NLP analysis discussed in paragraph 10.7 above states that for the period beyond 2016 up to 2021 a total of 8,300sqm (includes the 2,800sqm required up to 2016) of additional comparison retail floor space is required within Letchworth town centre in order for the centre to maintain its current market share. Any scheme for the redevelopment of Arena Parade is clearly a longer term objective, and if delivered as well as the Wynd redevelopment but completed after 2016, both schemes would be required in order to maintain the current market share of Letchworth town centre and boost its vitality and vibrancy. On this basis, the only realistic and known alternative development proposal would be complementary to the Wynd redevelopment scheme, it would not achieve all that the Wynd scheme offers and there is a convincing economic and retail case can be made for both schemes. Indeed, the Arena Parade

scheme as currently presented is wholly comparison retail and leisure based, therefore it is only through the Wynd redevelopment that the additional convenience retail floor space can be delivered. On this basis officers and their external advisers share the vision of the Foundation which is to say that both the Wynd redevelopment proposal and a potential future redevelopment of Arena Parade are important components of the same overall strategy and both schemes will be needed to ensure the long term economic health of Letchworth town centre.

10.19 Implications of the Human Rights Act 1998

Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the European Convention on Human Rights.

10.20 The position is summarised in paragraph 17 of Part 1 of the Memorandum to the Circular , which states that a CPO should only be made where there is ‘a compelling case in the public interest’. The Circular makes it clear that an acquiring authority should be sure that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land affected. In making this assessment, an acquiring authority should have regard, in particular, to the provisions of Article 1 of the First Protocol and Article 6 of the Convention and, in the case of a dwelling, Article 8 of the Convention. These are summarised and considered in the following paragraphs and in section 11 of the draft Statement of Reasons.

10.21 Article 1 of the first protocol states that:

‘...Every natural or legal person is entitled to peaceful enjoyment of his possessions . . . ’

and

“no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law...”

10.22 Whilst occupiers and owners in the Wynd will be deprived of their property if the CPO is confirmed and then implemented, this process will be carried out in accordance with the law. The CPO is being pursued in the public interest as required by Article 1 of the First Protocol. The public benefits associated with the development are set out earlier and in the draft Statement of Reasons **at appendix 4**. In deciding whether to exercise the Council’s powers of compulsory purchase, Members must consider whether the CPO will strike a fair balance between the public interest in the implementation of the Scheme and those private rights which will be affected by the CPO.

10.23 Article 6 of the Convention provides that:

‘In determining his civil rights and obligations...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’.

10.24 There has been extensive public consultation and community engagement in relation to the proposed redevelopment including with the known parties that

will be affected by the CPO (see Section 15 on public involvement). All those affected by the CPO will be notified, will have the right to make representations and/or objections to the Secretary of State, and objections may be heard at a public inquiry. The statutory processes and associated rights for those affected to pursue remedies in the High Court where relevant, are compliant with Article 6.

10.25 Article 8 of the Convention states that:

‘Everyone has the right to respect for his private and family life, his home and his correspondence...interference is justified however, if it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for its prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.’

10.26 Any interference with article 8 by the CPO will be in accordance with the law, pursue a legitimate aim, namely the economic, social and environmental well-being of the area and be proportionate having regard to the public benefits that the proposed redevelopment will bring.

10.27 Those who suffer loss from the exercise of the compulsory purchase powers will also be entitled to compensation which will be payable in accordance with the compulsory purchase compensation code (a body of statute and case law which sets out rules for determining the level of compensation a person is entitled to if their interest is compulsorily acquired).

10.28 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 the community as a whole’. Both public and private interests must be taken into account in the exercise of the Council’s powers and duties. Similarly, any interference with Article 8 rights must be ‘necessary in a democratic society’.

10.29 If Members resolve to make and pursue the CPO, the Council must carefully consider the balance to be struck between the effect of acquisition on individual rights and the wider public interest in the redevelopment of the Wynd. Is the interference with Convention rights justified here in order to secure the economic, social, environmental and public benefits which the development will bring?

10.30 The Council must satisfy itself that the redevelopment of the Wynd will have a positive impact on the environmental, social and economic well-being of the area. Officers consider that redevelopment will provide an improvement in the environmental, social and economic conditions identified in the Wynd and the wider locality and will provide an overall improvement in the quality of life for local residents. Compulsory acquisition of individuals’ property situated within the Wynd is necessary to allow this comprehensive redevelopment to proceed and for these benefits to be delivered. Officers and their appointed external advisers are satisfied that there is a compelling case in the public interest to justify interfering with the rights of individuals through the CPO.

10.31 The Case for the CPO/Summary of Section 10

The analysis presented in this section of the report rounds up outstanding issues that have not been addressed under the previous sections. It sets out how in the opinion of officers and their appointed external advisers there is a compelling case in the public interest for Members to agree to exercise the Council's powers of compulsory purchase under section 226 of the 1990 Town and Country Planning Act. There will be clear economic, social and environmental benefits derived from the Scheme which is facilitated by the CPO. There is a reasonable prospect that the Scheme will be delivered within a realistic timescale following the confirmation of the CPO. Following the separate land referencing exercise that was undertaken on behalf of the Council and further investigations carried out by Officers, Officers and their appointed external advisers are satisfied that the Foundation has explored reasonable avenues of negotiation in attempting to acquire all outstanding interests in the Wynd by private treaty and therefore the use of a CPO, which will interfere with certain peoples homes and businesses and acquire, override or extinguish their rights in land, is justified in this case.

11. THE PROGRAMME FOR THE CPO

11.1 CPO Procedure

Attached as part of appendix 5 is a diagram which outlines the process of a CPO should Members resolve to use the Council's powers to make and pursue a CPO. Also contained within this appendix is a timeline for the likely course of the CPO. These steps show that if there are formal objections within the 21 day notice period which runs from receipt of notice of the making of the CPO and a public inquiry is called, it is unlikely that the CPO can be confirmed until mid 2011. However, in parallel with making these steps the Foundation with the assistance of Council officers will continue to negotiate with affected parties to seek to acquire the remaining interests in the Wynd by private treaty and where appropriate, provide alternative rights of access, or other equivalent rights over the land. It may well be the case that should Members resolve to exercise the Council's powers of compulsory purchase, sending out a strong signal of intent to those remaining leaseholders, currently stalled negotiations will resume and the Foundation will be able to acquire the interests without recourse to the CPO.

11.2 Either sequence of events described above should not prevent the timely delivery of the Scheme, since the planning permission expires in July 2014 and upon confirmation of the CPO following a public inquiry, there should be a three year period (i.e. by mid 2014) within which the CPO can be implemented. Notwithstanding these coincidental long stop dates it would seem entirely possible that the Scheme could be completed towards the end of 2013 at the earliest subject of course to the Foundation's own pre-conditions being satisfied.

12. LEGAL IMPLICATIONS

12.1 The relevant statutory powers, including guidance on their use, are set out in detail within the body of the report in sections 4.2, 6 and 7. In short a local authority may, on being authorised to do so by the Secretary of State, exercise power to acquire compulsorily any land in their area subject to certain criteria. Full Council has already agreed, on 25 September 2008, to

the principle of using compulsory purchase powers for the Scheme. A further Full Council resolution is required to confirm the detail of the proposed Compulsory Purchase Order.

- 12.2 A Compulsory Purchase Order is a statutory procedure which allows NHDC to compulsorily acquire (on behalf of a developer) all of the property required for the redevelopment proposals. Under the Council's constitution the terms of reference of Full Council state that "Only the Full Council will exercise the following functions....to make, amend or withdraw Compulsory purchase orders".

13. FINANCIAL AND RISK IMPLICATIONS

13.1 Financial Risks

There are minimal financial risks associated with the CPO process up to now and moving forward into a potential public inquiry. All the Council's liabilities, both officer time and appointment of external advisers are covered by the terms of the Indemnity Agreement. If the CPO is confirmed the Foundation will also fully costs associated with the compulsory land acquisitions and compensation payments in accordance with the terms of the Indemnity Agreement.

13.2 Consequences of a Council decision not to use CPO powers

The recommendation set out in Section 17 of this report, is for Members to authorise the exercise of the authority's powers of compulsory purchase in order to facilitate the delivery of the Wynd redevelopment scheme. It is however worth considering the potential consequences of any Council decision not to make the CPO, or to defer such a decision. The following paragraphs briefly consider the consequences of such a decision.

- 13.3 Notwithstanding a negative decision by Members, the Foundation, with the support of officers of the Council, would continue to negotiate with affected parties in an attempt to acquire their interests by private treaty and if appropriate, assist in their relocation. However, the CPO provides certainty for land assembly within a fixed timescale and without the power to compulsorily acquire interests in the Wynd, delivery cannot be guaranteed. If the CPO is not made, pursued and then confirmed, this process may be frustrated as the existing tenants may feel under less need to relocate and may seek to frustrate any further negotiations. Meanwhile, since, according to the Foundation's records, 65 of the 68 original businesses on site have either closed, been relocated, or are aware of the need to and in the process of closing/relocating, this could potentially leave 3 remaining original businesses on site operating in a locality which continues to degrade awaiting redevelopment.

- 13.4 Ultimately, if the Foundation is unable to acquire all the land interests at the Wynd, it would effectively be unable to implement the Scheme. The positive economic, social and environmental benefits set out in this report and within the draft Statement of Reasons would not be delivered. As presented within the 2009 NLP Town Centre and Retail Study, if the Scheme is not delivered, Letchworth would miss an important opportunity to increase its retail floor space capacity and improve consumer choice within the town centre. If retail capacity is not increased Letchworth town centre may continue to lose market

share, particularly if other nearby towns deliver on their ambitious town centre redevelopment projects and expand their own capacity, such as within Stevenage town centre or even Churchgate in Hitchin. The current level of expenditure outflow or leakage is already high and this problem could be exacerbated without the delivery of the Wynd redevelopment, to the long term detriment of the economic health of Letchworth town centre.

13.5 Whilst this analysis paints a rather negative picture and it could well be possible that the Foundation is able to acquire the remaining interests (although the negotiations to date indicate that this is unlikely), the balance of risk is such that it would seem prudent at this stage for Members to pursue the CPO option and take it to the next stage in order to positively support the Foundation in the delivery of this important town centre redevelopment scheme.

13.6 Risk of Secretary of State Not Confirming the CPO

Officers and their appointed external advisers have worked very closely with the Foundation and their consultants in carrying out a due diligence process, to ensure that the CPO option is only intended as a last resort, to test the evidence on scheme delivery and to construct a well argued public interest case for the use of CPO powers. Officers are confident that this case is robust and can be successfully made at a public inquiry. With this objective in mind the Foundation has enabled these further discussion by agreeing to extend the period within which the Council needs to reach a decision as to whether or not to make and pursue a CPO from the three month period originally set out in the Indemnity Agreement to almost eight months from the initial notice being served on 18 August 2009. This extension of time has enabled officers and their appointed external advisers to prepare a robust case for a public inquiry and arguably the Council is now in a stronger position having had more time to consider the evidence and carefully construct the case. Nonetheless, if the CPO is not confirmed by the Secretary of State, the same negative consequences outlined above are possible, in that without an effective CPO the scheme may not be able to be delivered.

13.7 However, if Members support the officer position on the robust case for the CPO, the reputational risk of this decision being overturned would seem worth taking in order to assist the delivery of this important redevelopment scheme. The positive consequences of pursuing the CPO appear to clearly outweigh the risks of erring on the side of undue caution and letting the Foundation continue to try and acquire the remaining land interests on site without recourse to the Council's positive planning powers.

14. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

14.1 In terms of Human Resource implications, these are currently contained within existing work plans. Specialist skills have been obtained to deal with matters such as legal support and valuation advice, the costs for which are being met by the Heritage Foundation under the terms of the CPO Indemnity Agreement.

14.2 The Council recognises the changing nature of equality legislation and incorporates national legislation and regulations into its scheme and services as appropriate, as set out in the Council's Corporate Equality Strategy. The Race Relations (Amendment) Act 2000 marked a very significant innovation

in the legal framework. It placed much of what was previously only advisory and voluntary on to a statutory footing. The Act extends the provisions of the Race Relations Act 1976 to cover all the activities of all public authorities. It makes important extensions to public authority duties. Equivalent statutory duties have been created for disability by the Disability Discrimination Act 2005 and for gender by the Equality Act 2006. These duties divide into a general duty and specific duties.

- 14.3 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups. However communication issues may need to be considered if any of those being served with a CPO are blind, or speak another language.

15. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

15.1 Introduction to Section 15

Members will be aware that public participation is an important element of the planning system. This section of the report briefly reassures Members of the public involvement that has taken place to date in relation to the delivery of the Wynd redevelopment scheme, instigated by the Council and indeed by the Foundation.

15.2 The Town Centre Strategy

Together with extensive public consultation that takes place through the LDF process, it is worth mentioning here the locally specific public consultation exercise that the Council undertook to establish the Letchworth Town Centre Strategy, that was adopted in January 2007. Page 9 of the Strategy includes the following:

'Involved in the preparation of this Town Centre Strategy for Letchworth has been the town centre stakeholder group, which comprises individuals who represent various voluntary and commercial interest groups, as well as local residents, district councillors, landowners and members of the Garden City Town Council. Also involved have been members of the Bytes Youth Centre and Fernhill School Council.'

- 15.3 The extensive public involvement in the preparation of the Town Centre Strategy is important in setting the context to the policy justification for the Opportunity Site designation for the Wynd, LTC2, which sets out a mini-brief making it clear that the Council supports a significant redevelopment of this site in principle, prior to any planning applications being submitted.

15.4 Planning Application Statutory Consultation

The planning application for the redevelopment of the Wynd (ref. 07/02428/1) was received by the Council on 24 October 2007. In accordance with statute the Foundation as applicant served notice of this planning application on all applicable tenants within the Wynd. On this basis all those who have a direct land interest in the Wynd were made aware of the planning application through this process.

15.5 After registering the planning application the Council notified the occupiers of all properties that adjoin the Wynd in writing that the planning application had been received, advising how representations could be made in relation to the Scheme. Statutory site notices were also displayed in prominent positions around the Wynd as well as a press notice in the Comet newspaper.

15.6 This extensive public consultation exercise generated considerable interest in the planning application, with over 2,500 individual representations received in response to the public consultation exercise.

15.7 Public Involvement in the CPO Process

Paragraph 9.15 to 9.21 sets out the process that has been undertaken to date in relation to land referencing on behalf of the Council. Following the issuing of over 200 introductory letters to all those households, businesses and other organisations who may have an interest in the Wynd, Persona are carrying out a detailed land referencing exercise to establish exactly what interests remain at the Wynd. Further letters have been dispatched to the same businesses and households who were informed of the land referencing exercise, setting out the timetable for the various Council committees and explaining the public involvement that can take place at these meetings.

15.8 In response to the introductory letters and land referencing, the CPO programme officer, Simon Ellis (Principal Planning Officer, Planning Control) has held a series of discussions with any affected parties who have expressed concerns about the current position of their interest in the Wynd and the CPO process in general and who have requested a meeting. These meetings have been an important part of the evidence gathering exercise through the land referencing process. The meetings and subsequent discussion with the Foundation have also provided officers and their appointed external advisers with an opportunity to enquire as to the current position of negotiations between the Foundation and their tenants and those with other interests in the Wynd. As a result of these meetings and on-going negotiations between the Foundation and those with interests in the Wynd officers and their appointed external advisers are satisfied with the current position on negotiations.

15.9 Comprehensive Public Involvement

On the basis of the comprehensive level of public consultation on the planning application and engagement with those who would potentially be directly affected by a CPO, should Members agree to exercise the Council's powers of compulsory purchase, Officers are sure Members will agree that officers and their appointed external advisers are making every effort to ensure that this process is as open and transparent as possible. Moreover, by making these enquiries and undertaking an independent land referencing exercise in advance of the relevant Committee meetings, Members will also be able to consider any representations received from interested parties prior to deciding whether to make and pursue the CPO.

15.10 The Foundation's Public Consultation Exercise

The Foundation initially set out its proposals for the regeneration of the Wynd in November 2005. This was in a document called 'Letchworth Garden City – The Next Steps for the Town Centre'. The Foundation's initial concepts for

the town centre, including The Wynd were then published for consultation by the Foundation from December 2005 to February 2006. Following this initial consultation, the Scheme was formulated in more detail and consultation took place with various statutory agencies and the Council's Planning Department, leading to a pre-application submission to the Council in April 2007 and a formal planning application being submitted in August 2007. As referred to earlier in this report, the planning application was then the subject of public consultation.

15.11 Following the resolution to grant planning permission in June 2008 to the present day, the Foundation has confirmed that it continues to seek to ensure each of the businesses and householders affected by the development are contacted, to enable options for re-location to be discussed and in order to secure the ownership of the land required to deliver the Scheme. The Foundation has confirmed that those other parties (of whom the Foundation are aware) who have interests in the Wynd such as rights of way, a licence to park a vehicle or a way leave over the Wynd were contacted by the Foundation at the end of 2009/early 2010, to inform them of the Scheme and to discuss alternative arrangements.

15.12 Summary of Section 15

This section of the report briefly explains how meaningful and comprehensive public engagement has been undertaken in relation to policy development that is directly of relevance to the Wynd redevelopment scheme, notably as part of the Letchworth Town Centre Strategy. It also outlines how successful the public consultation was in relation to the determination of the planning application, generating over 2,500 individual representations. It then goes on to explain the current position of public involvement in the preparation of a CPO, in advance of the relevant Committee meetings, should Members resolve to make and pursue the CPO.

16. REPORT SUMMARY

16.1 Summary of Section 4.0 'Introduction'

Section 4.0 is the introduction to the report. It outlines the recommendation which is for Members to endorse the officers current proposed recommendation that Full Council authorise the use of its powers of compulsory purchase to bring about the comprehensive land assembly of the Wynd and enable the Scheme to go ahead. This section then goes on to introduce the legislative framework for the use of compulsory purchase powers contained within Section 226(1)(a) of the 1990 Town and Country Planning Act.

16.2 Summary of Section 5.0 'Background'

This section of the report focuses mainly on the planning history of the Scheme. It outlines the development proposal and describes how the Planning Control Committee resolved to grant planning permission and conservation area consent for the Wynd redevelopment proposal.

16.3 After explaining the planning history of the Scheme, this section of the report focuses on the policy position in relation to the use of CPO powers. In

particular highlighting central government support for the use of positive planning powers, such as a CPO in this context, before describing the policy support set out in the Council's adopted Letchworth Town Centre Strategy which also refers to the use of positive planning powers to assist delivery on key Opportunity Sites, identified in the Strategy.

16.4 As well as the clear policy support for a CPO, this section of the report briefly refers to the Council's three key strategic priorities set out in the Corporate Plan 2010/11, namely town centres, green issues and sustainable development.

16.5 This section of the report then turns to the role of Letchworth Garden City Heritage Foundation, as freehold owner of the Wynd, promoters of the Scheme, applicant for planning permission and its role in delivering the Scheme.

16.6 This section also details the role of the Council's externally appointed legal and specialist planning advisers.

16.7 Summary of Section 6.0 'Legislative Framework for Compulsory Purchase'

Section 6 sets out the relevant parts of legislation which afford this Council powers of compulsory purchase in this case. Section 226 of the Town and Country Planning Act 1990 enables a local authority to make and pursue a CPO, subject to the authorisation of the Secretary of State. Of relevance is section 226(1A) which enables a local authority to make and pursue a CPO when the CPO will facilitate the carrying out of the redevelopment of the Wynd and the Council thinks this will contribute to the achievement of the economic, social or environmental well being of their area.

16.8 Summary of Section 7.0 'Central Government Circular Advice (06/2004)'

Relevant Circular advice which guides local authorities on how to exercise their powers of compulsory purchase and advises on the approach that the Secretary of State will take to the confirmation of a CPO is analysed within section 7 of the report.

16.9 Summary of Section 8.0 'Evidence of Scheme Delivery'

In light of the Circular advice described in section 7, the Foundation's case on scheme delivery and financing is examined in section 8. It is highlighted that in order to justify the use of a CPO there needs to be a 'reasonable prospect' that the Scheme will be delivered and not absolute certainty. Nonetheless, the Foundation's evidence on scheme delivery, focussing on its funding arrangements, anchor store programme and recent track record is critically examined within this section of the report before concluding that officers are satisfied that there is a reasonable prospect that the Scheme will be delivered should Members authorise the making and pursuit of the CPO.

16.10 Summary of Section 9.0 'Tenant Negotiations'

As with the section 8, in light of the Circular guidance whereby a CPO is intended to be used as a last resort where efforts of negotiation with those affected have failed, this section outlines details of the Foundation's on going tenant relocation strategy and negotiations with affected parties. It details how

there are now only three businesses and one residential occupier who still require relocation. The Foundation has provided evidence that they have made considerable effort to seek alternative accommodation for these few remaining tenants but that at presents negotiations are not proving effective.

- 16.11 This section of the report then provides details of the Council's own separate land referencing exercise which is currently being undertaken by a company (Persona) employed by the Council's appointed firm of solicitors (Eversheds). The purpose and scope of the land referencing exercise is set out, with the clear aim of confirming the nature and extent of all remaining land interests on the Wynd, including table 2 interests (i.e. rights of way/access over land, etc).
- 16.12 The conclusion of this section of the report is that Officers are satisfied that considerable efforts have been made by the Foundation to acquire the land interests by negotiation and that resorting to a CPO is justified under the terms of the Circular advice.
- 16.13 Summary of Section 10.0 'The Public Interest Case for the CPO'

Section 10 largely provides an overview of the draft Statement of Reasons, which is an important but non statutory document setting out the Council's case for pursuing the CPO. If Members resolve to make a CPO, the Statement of Reasons will be sent to all individuals affected by and served notice of the CPO.

- 16.14 Section 10 provides a brief summary of the case for the CPO contained within the draft Statement of Reasons. It focuses mainly on the economic, social and environmental well being tests set out in Section 226 of the Town and Country Planning Act 1990 (as amended). Using analysis from the Council's NLP Town Centre and Retail Study 2009 which provides clear evidence of the need to expand retail floor space and consumer choice in Letchworth town centre, the economic and social well being case is clearly set out with up to date statistical evidence. The environmental well being case, which is less quantifiable, largely rests on the sustainable nature of the proposed development and the local regenerative benefits of the Scheme.
- 16.15 This section then goes on to explore Appendix A to Circular 06/2004, which sets out the factors the Secretary of State would take into account when considering whether or not to confirm a CPO made under section 226. These factors include the economic, social and environmental well being issues referred to above, compliance with the Council's planning policy framework, the scheme viability and delivery case and whether there are feasible alternative development proposals on the Wynd or within the locality which may achieve similar aims to the Scheme.
- 16.16 These factors are examined within section 10 of the report concluding that officers and their appointed external advisers are satisfied that there is a compelling case for a CPO to be made to the Secretary of State in light of the factors set out in Annexe A to Circular 06/2004.
- 16.17 The remaining part of Section 10 focuses on the implications of the Human Rights Act 1998 on the delivery of a CPO. It refers to various parts of the Human Rights Act, setting out how a CPO can be compatible with the Act provided the public interest case is sound.

16.18 Summary of Section 11.0 'The Programme for the CPO'

Section 9 deals with the mechanics of the CPO process should Members confirm the use of these powers. It sets out a sequence of events and a realistic timetable for the confirmation of the CPO, factoring in time for a likely public inquiry, and then sets this programme within the context of the Foundation's scheme delivery aspirations.

16.19 Summary of Section 12.0 'Financial and Risk Implications'

Section 12 examines the possible consequences of the Council refusing to endorse or deferring a decision on the use of CPO powers. It concludes by stating officers' position that the balance of risks lies on the side of Members agreeing to exercise the Council's powers of compulsory purchase. Not to do so is likely to impede the delivery of the Scheme and therefore preventing the economic, social and environmental benefits of the redevelopment.

16.20 Summary of Section 15.0 'Public Involvement'

This section of the report effectively reassures Members that there has been extensive public consultation on relevant planning policy that relates to the Wynd redevelopment scheme, the planning application itself and indeed in the lead up the potential use of compulsory purchase powers by the Council. The section also examines the Foundation's own extensive public consultation exercise relating to the promotion and delivery of the Scheme.

17. RECOMMENDATION

- 17.1 That the Council makes a Compulsory Purchase Order (CPO) (to be known as the North Hertfordshire District Council (the Wynd, Letchworth Garden City) Compulsory Purchase Order 2010) under Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended by section 99 and Schedule 9 of the Planning and Compulsory Purchase Act 2004) for the acquisition of the land known as the Wynd, Letchworth Garden City within the area shown edged red and coloured pink on the Plan attached at Appendix 1 being land which it thinks, if acquired, will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land, and that such development, redevelopment or improvement is likely to contribute to achieving the promotion and/or improvement of the economic, social and environmental well-being of the area, as described in this report.**

That the Strategic Director of Planning, Housing and Enterprise and the Corporate Legal Manager and Monitoring Officer, in consultation with the Portfolio Holder for Planning and Transport be authorised to:

- 1. make minor modifications, amendments or deletions to the CPO Plan should this be necessary;**
- 2. take all necessary steps to finalise and secure the making, confirmation and implementation of the CPO including (but not limited to) updating the draft Statement of Reasons as deemed appropriate, the publication and service of all notices and the presentation and promotion of the Council's case at any Public Inquiry;**

3. **acquire land and interests within the boundary of the CPO either by agreement or, subject to the confirmation of the CPO, compulsorily;**
4. **approve agreements with landowners and any objectors to the CPO setting out the terms for the withdrawal of any objection, including where appropriate seeking agreements effecting the delivery of any part of the development and/or making arrangements for the rehousing or relocation of occupiers;**
5. **dispose of any land and interests acquired by agreement or compulsorily within the boundary of the CPO to the Foundation in accordance with the terms of the Indemnity Agreement dated 4 December 2008; and**
6. **take all necessary steps to secure all necessary orders to extinguish or divert existing public rights of way and highways necessary to achieve the Wynd redevelopment scheme underpinning the CPO.**

18. REASONS FOR RECOMMENDATIONS

18.1 Scheme Delivery and Negotiations

It is clear from the analysis set out in this report that the Foundation is fully committed to the delivery of this important town centre redevelopment scheme. The Board of the Foundation has understandably set out a series of sensible pre-conditions which need to be met before they confirm that the Scheme can go ahead.

- 18.2 In order to decide whether or not to authorise the use of the Council's compulsory purchase powers, the statutory framework and Circular guidance does not require absolute certainty of delivery, and in the current economic climate such certainty would be unrealistic to expect in any event. Nonetheless, the Foundation has undertaken a land acquisition and tenant relocation strategy, it is actively marketing the Scheme to seek an appropriate anchor tenant, and it has entered into a collaboration agreement with a suitably experienced developer. Taking account of this evidence and considering the Foundations' recent track record, including the near completion of a multi-million pound street scene enhancement project in Leys Avenue and Eastcheap, Officers consider that Members can be satisfied that there is a reasonable prospect of the Scheme being delivered within a reasonable time frame following the confirmation of a CPO.

- 18.3 On tenant negotiations in most instances the leasehold interests have been acquired by negotiation and business relocations agreed where required. A small number of remaining businesses and other interests are still in discussion with the Foundation and progress may be made with these on-going discussions in parallel with a Council decision to exercise its powers of compulsory purchase. On this sensitive issue of tenant negotiations, officers and their appointed external advisers will continue to monitor the discussions that are going ahead and test the reasonableness of the approach. It is however clear that the Foundation has attempted to resolve these matters

through reasonable negotiations and that recourse to a CPO is justified. The position on other interests is also being monitored in a similar manner.

18.4 The Public Interest Case for the CPO

The attached draft Statement of Reasons sets out the public interest case for the CPO. It focuses specifically on the planning, economic, environmental and social benefits of the Scheme and in particular how there is a clear need for an improved retail offer in Letchworth town centre and physical environmental improvements within the locality of the Wynd. The positive case for the development proposal is clear and in endorsing the CPO process, Members will be using positive planning powers to assist the delivery of this important town centre redevelopment project. In Officers' view there is a compelling case in the public interest which out-weighs any interference and negative consequences that may result for the limited number of individuals, business and other occupiers who will be adversely affected by the CPO process.

20. **ALTERNATIVE OPTIONS CONSIDERED**

- 20.1 Other alternative options, essentially not confirming the CPO or delaying the decision, were discounted for the reasons set out in the report.

21. **APPENDICES**

APPENDIX 1 – ORDER LAND PLAN

APPENDIX 2 – THE SCHEME PLANNING PERMISSION, CONSERVATION AREA CONSENT AND SECTION 106 HEADS OF TERMS

APPENDIX 3 – IN PRINCIPLE CPO FULL COUNCIL REPORT (25.09.08)

APPENDIX 4 – DRAFT STATEMENT OF REASONS

APPENDIX 5 – CPO TIMELINE AND PROCESS

APPENDIX 6 – LETTER FROM THE FOUNDATION'S BOARD CHAIRMAN AND UPDATED POSITION ON SCHEME DELIVERY

APPENDIX 7 – ANCHOR STORE DELIVERY PROGRAMME

APPENDIX 8 – LETTER FROM DISCOVERY PROPERTIES

APPENDIX 9 – TENANT RELOCATION STRATEGY

APPENDIX 10 – LETTER FROM HEAD OF PROPERTY MANAGEMENT AT THE FOUNDATION

22. **CONTACT OFFICERS**

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