

BELOW FIND A REPORT ENTITLED "USE OF COMPULSORY PURCHASE POWERS – LETCHWORTH GARDEN CITY TOWN CENTRE REGENERATION SCHEME" WHICH WAS PRESENTED TO COUNCIL ON 25 SEPTEMBER 2008.

TITLE OF REPORT: USE OF COMPULSORY PURCHASE POWERS - LETCHWORTH GARDEN CITY TOWN CENTRE REGENERATION SCHEME

JOINT REPORT OF THE HEADS OF PLANNING & BUILDING CONTROL AND FINANCE

PORTFOLIO HOLDERS: COUNCILLORS R.A.C. THAKE AND T.W. HONE

1. SUMMARY

- 1.1 This report seeks Council's approval for the use of Compulsory Purchase Powers in order to facilitate The Wynd redevelopment scheme in Letchworth within a reasonable period of time. The report sets out the background to the request for the Council to use these powers by the Letchworth Garden City Heritage Foundation and the proposed arrangements for indemnification of the Council through the use of these powers.

2. FORWARD PLAN

- 2.1 This report does not contain a key decision and has therefore not been included on the Forward Plan.

3. BACKGROUND

- 3.1 The Council has prepared Town Centre Strategies now for each of its four town centres. The Town Centre Strategy for Letchworth was prepared in 2006 and adopted by Council in January 2007. The Letchworth Town Centre Strategy was subject to widespread consultation and this involved, amongst others, significant discussions with the Letchworth Garden City Heritage Foundation who own large sections of the town centre and had themselves started consultation on a number of redevelopment proposals within the town. Representations from the Foundation and from other bodies and individuals were considered through the production of the Town Centre Strategy, which was eventually adopted by the Council in January 2007 as a supplementary planning document. The Strategy has reference to implementation arrangements and the Strategy makes reference to the potential use of Compulsory Purchase Powers in order to facilitate acceptable redevelopment schemes coming forward within a reasonable period of time.
- 3.2 Subsequent to the adoption of the Letchworth Town Centre Strategy, applications were received from the Letchworth Garden City Heritage Foundation for major works in the Street Scene (Leys Avenue and Eastcheap) and for the redevelopment of The Wynd area of the town centre). A third scheme relating to the redevelopment of the Arena Parade area is currently being prepared by the Heritage Foundation. Essentially these comprise the three phases of regeneration for Letchworth Town Centre.
- 3.3 The applications for works on the Street Scene have been granted conditional planning permission by the Council. The application for the redevelopment of The Wynd area came before the Planning Control Committee in June 2008, they resolved to grant permission, subject to completion of a section 106 agreement to deal with various matters related to the application.

- 3.4 The works to the Street Scene comprise of land either within the control of the Heritage Foundation or the control of Hertfordshire County Council and there is no direct involvement from this Council other than as Local Planning Authority into the implementation of this scheme.
- 3.5 In respect of The Wynd development, the Heritage Foundation have made an approach to the Council for the Council to use its Compulsory Purchase Powers in order to secure any interests in that area that the Heritage Foundation is unable to negotiate. It is understood that the majority of leases and other interests have now been acquired within The Wynd area, however, a number remain outstanding. In addition, there are some areas where rights of way exist, which could inhibit the development unless these are acquired.

4. ISSUES

- 4.1 The Council's immediate priorities include as one of three items the wellbeing of our town centres. The Council has taken a long term vision about how it sees the town centres developing and these are incorporated now within Adopted Town Centres Strategies for each of the four main towns. In Letchworth, the three phases of regeneration envisaged by the Garden City Heritage Foundation fall within that vision in general terms. Detailed proposals have been agreed for the Street Scene and The Wynd (subject to appropriate Section 106 Agreements being entered into) and Officers are in discussion over the Heritage Foundation's ideas regarding the Arena development.
- 4.2 The regeneration proposals of the Heritage Foundation are covered by Environmental Impact Assessments, which relate in general terms to all three schemes together. However, it is possible to implement each of these schemes on its own as well as in combination.
- 4.3 With specific regard to the use of Compulsory Purchase Powers, this was first raised by the Heritage Foundation as a possible request at the time that the Council embarked upon its Town Centre Strategy. The use of Compulsory Purchase Powers has become more widespread over the past decade with a simplification of the process for undertaking Compulsory Purchase Orders and also, with the increased emphasis on the use of brown field sites and the benefits that flow from regeneration within urban areas. It is reasonable to assume that brown field sites can be assembled even when they are in multiple ownership. However, the timescales for such assembly is often protracted and in many cases, the majority of land holdings can be assembled within a short period of time, but there are often residual rights of way or a small number of interests who resist land assembly. It is with this in mind that the Heritage Foundation have approached the Council to seek a resolution for the Council to use its Compulsory Purchase Powers in order to facilitate the redevelopment scheme coming forward within a reasonable period of time.
- 4.4 The Council cannot transfer its CPO powers to a third party, it would consider whether or not it wished to use those powers and the circumstances under which it may seek to exercise them.
- 4.5 In many instances Councils take resolutions to use Compulsory Purchase Powers. The existence of such a resolution often means that it is unnecessary to resort to the use of Compulsory Purchase Powers as outstanding land ownership matters are then negotiated. Appendix 1 to the report sets out the Compulsory Purchase Order process in general terms. Before entering into any use of Compulsory Purchase Powers the Council

should satisfy itself that the use of those powers is reasonable and necessary in order to bring about a redevelopment proposal. In this particular case the Council has resolved to grant permission for a mixed used redevelopment scheme within a town centre and, unless all interests in that area can be acquired, the redevelopment proposal will not proceed. It may be possible to negotiate all interests, however, regard must be had to the time that this may take and the threats to the economic viability and sustainability of Letchworth town centre given the competition from nearby town centres and the redevelopment proposals that are contemplated in those centres. It is particularly important to note the impact that the redevelopment of Stevenage town centre may have on the surrounding areas and the increased draw to that town centre and leakage of expenditure from Hitchin and Letchworth in particular. Empirical research has been undertaken to show the relative decline of Letchworth town centre in relation to its near neighbours and this, together with the currently fragmented ownership of the site, would form part of the basis for the Council using Compulsory Purchase Powers.

- 4.6 Following the indication by the Foundation that it would wish the Council to exercise its powers to assist in the regeneration of Letchworth town centre, discussions have been taking place between Officers of the Council and Foundation and specialist legal advisers for both parties regarding the formulation of an agreement to set out the circumstances in which the Council may exercise its powers. The draft Agreement sets out the relationship between the Council and the Foundation in the use of those powers and the indemnification of the Council in relation to financial costs and responsibility in the use of Compulsory Purchase Powers. The draft Agreement is being finalised and Officers and specialist Solicitors appointed by the Council consider that (subject to all matters being resolved) the Indemnity Agreement should provide a robust arrangement and protects the Council's interests.

5. LEGAL IMPLICATIONS

- 5.1 The Terms of Reference for Council confirm that the power to make amend or withdraw a compulsory purchase order is reserved for Council
- 5.2 Section 226 of the Town and Country Planning Act 1990 sets out the legislative framework for the Council to use Compulsory Purchase Powers. Under Section 226 of the Act the Council can use its compulsory purchase powers:
- if the Council think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to land; or
- where the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area.
- 5.3 It is only the Local Planning Authority that can exercise such powers it is not possible to delegate these powers to a third party. However, it is lawful for those powers to be exercised in order to promote and facilitate a redevelopment scheme which is advocated by a third party.
- 5.4 The Council has engaged specialist Solicitors to advise on the content and drafting of the Indemnity Agreement. Following extensive dialogue and negotiations it has been concluded that the draft Indemnity Agreement satisfactorily deals with the Council's financial liabilities and ensures that the Council would retain all appropriate controls in the exercise of its statutory powers.

- 5.5 Officers have satisfied themselves that the conditions that exist meet the reasonable tests for a Compulsory Purchase Order to be made if required to assemble the site and for it to come forward in a timely fashion. The circumstances around the economic viability of Letchworth town centre add weight to the use of the Compulsory Purchase Powers.
- 5.6 The Council must show that the use of CPO powers is necessary and proportionate to secure the Scheme. Any CPO which does not satisfy this requirement is unlikely to be a justifiable interference with individuals' property rights under the Human Rights Act 1998.
- 5.7 If the Compulsory Purchase Order were to be challenged by way of objection, this would result in a Compulsory Purchase Order Inquiry taking place. The process of undertaking a Compulsory Purchase Order is shown at Appendix 1 to this report and if a Compulsory Purchase Order Inquiry took place, it is estimated that the duration of this process would be approximately two years.
- 5.8 In the event that this initial Report to Council obtains an "in principle" resolution, a further report will follow as a second resolution from the Council will be required to confirm approval to make the CPO in its final form. A further resolution will include a copy of the Order, Order Map, Schedule of Interests and the Statement of Reasons.

6. FINANCIAL AND RISK IMPLICATIONS

- 6.1 There are both financial and risk implications associated with the use of Compulsory Purchase Powers. The financial implications of these Compulsory Purchase Powers are managed through the Council entering into a robust Indemnity Agreement with the Heritage Foundation which ensures that all the external costs involved with the progression of the Compulsory Purchase Order are repaid in full by the Heritage Foundation.
- 6.2 There are risk implications (in terms of reputational risk) associated with the use of Compulsory Purchase Powers, particularly if there are objections to the use of such powers.
- 6.3 However, both the potential financial risk and reputational risk need to be set against the risks associated with not seeking to assist a major redevelopment scheme within one of the four main towns. In line with the Council's immediate priority of town centres and having regard to the management of the financial risk associated with the use of Compulsory Purchase Powers, it is concluded that the proposed Indemnity Agreement and background of the Letchworth Town Centre Strategy (including the extensive consultation which took part in the formulation of that strategy) to provide a solid basis on which to make the recommendations contained within this report.

7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS

- 7.1 There is clearly considerable work associated with the use of Compulsory Purchase Powers to bring about this major redevelopment scheme and the indemnification of the Council financially enables external resources to be employed by the Council to progress these matters. These external costs will be met in full by the Heritage Foundation.
- 7.2 There are no equalities implications directly arising from this report and the redevelopment proposals that are being considered by the Planning Control Committee have been the subject of full examination in regard to design and access issues.

8. CONSULTATION

- 8.1 The Letchworth Town Centre Strategy was subject of widespread consultation in 2006 including a number of workshops and widespread publicity in the media. The planning applications for the redevelopment of The Wynd area and for the refurbishment of Leys Avenue and Eastcheap Street Scene were themselves the subject of Statutory Consultation and widespread publicity in the local media. A special meeting to the Planning Control Committee was convened to consider The Wynd applications in June 2008 and there was widespread local interest and attendance at that Committee.

9. RECOMMENDATIONS

- 9.1 That Council resolves in principle to use its Compulsory Purchase Powers in respect of the area shown in the plan attached to Appendix 2 to this report, subject to the Head of Legal and Democratic Services first being fully satisfied with the draft Indemnity Agreement and entering into the Agreement with Letchworth Garden City Heritage Foundation to indemnify the Council's liabilities associated with the use of such powers under the Town and Country Planning Act 1990.

10. APPENDICES

- 10.1 Appendix 1 – Process for Use of Compulsory Purchase Powers.
Appendix 2 – Map showing extent of area for potential CPO relating to the Letchworth Garden City Town Centre Regeneration Scheme.

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1. Introduction

1.1 This summary covers the key procedural requirements and considerations for consideration in order to progress a compulsory purchase order (“CPO”). In practice most of the obligations will fall on the Heritage Foundation as the Developer, however the Council must be satisfied on the points set out because it is the Council who will be using its compulsory purchase powers.

2. The Council’s Compulsory Purchase Powers

The Council has a number of statutory powers to acquire land by compulsory purchase to enable it to assemble land and rights. The Town and Country Planning Act 1990 (“the Act”) provides the Council with the power to acquire land either by agreement or compulsorily and is relevant for this situation.

2.1 Under Section 226 of the Act the Council can use its compulsory purchase powers:

2.1.1 if the Council think that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to land; or

2.1.2 where the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area.

The power set out in paragraph 2.1.1 is most relevant to these circumstances. The Council must not use this power unless they think¹ that it is likely to contribute towards the achievement of the promotion or improvement of the economic, social, or environmental well-being of the area.

2.2 The Council then can use its compulsory purchase powers and can justify their use provided that one of the purposes identified above can be satisfied. In almost all circumstances, the CPO will need to be confirmed by the Secretary of State for Communities and Local Government (“Secretary of State”) and it is very likely that the Council will need to successfully navigate the CPO through a public inquiry².

2.3 Appendix 1 details the key steps to making, confirming and implementing a CPO.

2.4 The Council has negotiated a draft indemnity agreement with the Heritage Foundation. This sets out the obligations on the Heritage Foundation to deliver the

¹ This is a very wide ranging power, the Council only has to think that it is likely to lead to this and so long as it does not come to this view unreasonably, or fails to take into account material considerations which are relevant, or takes into account non material considerations which are not relevant, it is unlikely to be successfully challenged by way of judicial review

² In certain limited circumstances, if there are no objections to an order or all relevant objections are withdrawn, an acquiring authority may confirm its own order.

Scheme and provide that the Heritage Foundation will be responsible for the costs of assembling the land and paying compensation for land and rights compulsorily acquired (including any costs associated with making and implementing the CPO). The Agreement will need to be completed.

2.5 Land ownership and Special Interests

2.6 Land referencing will be required to accurately identify the parties with interests in all the land forming part of the Scheme (see paragraph 3.30 below).

2.7 Certain types of land/interests in land are protected for the purposes of compulsory acquisition. In relation to these, the Council's powers of compulsory acquisition are restricted or the procedural requirements to successfully acquire the land are extended.

2.8 From the outset these interests/areas of land will need particular attention. The following are special risk areas:

- Land owned by the Crown.
- Land owned by Statutory Undertakers.
- Land subject to restrictive covenants in particular covenants on title which restrict the use of the land.

A CPO will generally crystallize any covenants or easements affecting the land into a right to claim compensation for the person whose land benefits from the covenants and whose land has been injuriously affected by the loss of the benefit of the right or easement.

There is a risk that covenants restricting the use of land will not be overridden by the CPO, but will continue to bind the land and potentially restrict the Council or its development partner's ability to use the land for the Scheme. By way of interest the Government has proposed legislation to remedy this problem, however, at present it still remains an issue;

If the Council sells land which it acquired by CPO for a purpose other than that for which the land was acquired, there is also a risk that the covenants will be reactivated and bind the title on sale.

The Heritage Foundation will need to identify the full extent of any special land interests (if any).

3. **Implications of starting a CPO process**

3.1 The Report recommends an In Principle Resolution for the Council to use its CPO powers. As part of proceeding with any CPO the Council will need to consider the issues discussed in this paper to satisfy itself that it can defend a challenge on these issues raised by third party objectors.

3.2 If the Council pursues a CPO before it is ready, it risks maximising objections and having to withdraw the CPO (because amendments to certain aspects of the CPO are required which will not stand up to public scrutiny at an Inquiry). Furthermore once the Council has decided to proceed with a CPO it will in practical terms blight the land to which it relates.

3.3 If the Council is forced to withdraw a CPO it is likely to result in cost consequences. In particular, this may result in claims for costs from objectors and the Council will also have to cover the cost of starting the compulsory purchase process afresh.

4. **The key requirements for using Compulsory Purchase Powers**

These issues are often at the centre of objections and disputes between affected owners/occupiers and acquiring authorities. They will have considerable impact on the Council's CPO strategy. These issues are also likely to dictate the timetable for progressing the Scheme, the key requirements can be summarised as follows:

The Basis of the CPO

4.1 In order for the Council to make a CPO, the CPO must have a clear strategic framework justifying the regeneration scheme. This framework is in the form of two planning consents and the Town Centre Strategy which have been subject to public consultation.

4.2 Before the Secretary of State confirms the CPO, the Council must be able to successfully argue that there is a compelling case in the public interest. To satisfy this test, it is not enough to show that the Scheme is simply better than current proposals, there must be compelling reasons why it is in the public interest to bring the land into public ownership through the use of compulsory purchase powers. The more certainty attached to the Scheme's proposals, the easier it will be to convince the Secretary of State of the benefits of the Scheme to the public, and the less the risk of the CPO being challenged on this issue.

Planning Matters

- 4.3 The Council will also need to demonstrate to the reasonable satisfaction of the Secretary of State that there will be no planning barriers to the Scheme. Two of the three Phases have a resolution to grant planning permission subject to the requirement to enter into a s106 Agreement. It also accords with adopted planning policy.

Economic Viability and Delivery

- 4.4 The Secretary of State will normally wish to know that there is at least a reasonable prospect of the Scheme proceeding. Funding will obviously be a key part of this. If an objector challenges the Scheme on the issue of viability, the Council must be prepared to set out a detailed analysis of the funding for the Scheme to show that adequate funding will be available to enable the Council to complete the compulsory acquisition within the statutory period following confirmation of the Order³.
- 4.5 It should also be demonstrated to the Secretary of State that there is a mechanism for delivering the Scheme. This is best achieved through showing that the Developer is legally committed to progress the development when the land is acquired.

The need for CPO powers

- 4.6 To enable the Secretary of State to confirm a CPO, she must be convinced that the public benefits of the Scheme outweigh the hardship which will be caused to the individuals and bodies who are having their land compulsorily acquired. The Council must show that the use of CPO powers is necessary and proportionate to secure the Scheme. Any CPO which does not satisfy this requirement is unlikely to be a justifiable interference with individuals' property rights under the Human Rights Act 1998.
- 4.7 Whilst any decision whether to confirm the Order will be based on its own merits, the Secretary of State will consider in addition to the planning merits as already discussed above the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area.
- 4.8 The Secretary of State will also have regard to whether the purpose for which the land is being acquired could be achieved by other means. For example this could include suggested alternative schemes put forward by the current owners or alternative locations to meet the needs of the Scheme.
- 4.9 The Council must be able to show that, in the absence of CPO powers, the Scheme will be substantially delayed or will not occur at all. The Council must be able to show that reasonable attempts have been made to negotiate a voluntary purchase

³ normally three years

of the land, and/or must show that the site will not be assembled other than through the use of CPO powers.

- 4.10 The Heritage Foundation will need to keep full and complete records regarding all attempts to acquire voluntarily. This is particularly important if the relevant owner tries to deny that the Council and or Developer has made reasonable attempts to secure the land before resorting to the use of CPO powers and in consequence argues that the use of CPO powers is disproportionate and/or argues that his land is not required to deliver the Scheme.
- 4.11 It must be demonstrated that all of the land included in the CPO is necessary to achieve the Scheme. The Council must distinguish between land which is “desirable” and land which is actually necessary for the Scheme (see below).

Relocation

- 4.12 The Council will need to consider what will happen to any existing owners and occupiers who are displaced.
- 4.13 The issue of relocation has an important effect on compensation levels. If a business can be successfully relocated elsewhere, then the compensation payable will include relocation costs, expenses, and temporary loss of profits. On the other hand, if there is no prospect of relocating a business, the compensation claim could be much higher and cover the total extinguishment of the business.
- 4.14 These issues are considered as part of the Environmental Impact Assessment submitted by the Applicant.

Compensation

- 4.15 The level of compensation is a matter for negotiation or determination by the Lands Tribunal. It is not a matter for consideration at public inquiry and will not impact on the merits of the CPO (other than viability).
- 4.16 The level of compensation for owners/occupiers who are displaced is calculated using established compensation principles from statute and case law, a key point of which is that compensation is to be assessed in relation to the market value of the property in a “no scheme world” ie. the impact of the scheme is not taken into account in the valuation process.
- 4.17 The extent of the Scheme for the purposes of valuation is determined on a case by case basis, but will take into account the proposed works and the purpose for which they are carried out.

- 4.18 The Council will also need to consider the potential impact of blight on the compulsory purchase process. If the Council's proposals result in prospective purchasers of properties within the CPO boundary being deterred from purchasing a property, the property may be deemed to be blighted. The owner of the property may then serve a notice on the Council requiring it to purchase the property. This means that during the CPO process, The Council may in certain circumstances be required to purchase properties at an early stage (ie prior to the confirmation of the CPO). The Council will need to have sufficient funding available early on in the process to make any acquisition resulting from a blight notice. We can advise more fully on the impacts of blight in due course.

Authority/Committee Approval

- 4.19 In the event that the initial Report to Council obtains an "in principle" resolution, a further report will follow as a second resolution from the Council will be required to confirm approval to make the CPO in its final form. The further resolution will include a copy of the Order, Order Map, Schedule of Interests and the Statement of Reasons.

Securing an "in principle" Council resolution at this stage will also enable the more constructive negotiations with landowners, as the existence of the resolution can be used as a negotiation technique to encourage landowners to either sell or make their land available voluntarily.

Land Referencing

- 4.20 This process involves a detailed investigation into the identity of all owners, tenants, occupiers and others with legal interests in the CPO land. It is vital for this exercise to be carried out correctly and thoroughly, as omitting an interest could result in a "ransom" situation at a later stage in the regeneration process. A schedule of all owners, tenants, occupiers, etc. will be prepared and the CPO land will be divided into plots. A plan illustrating the plots must be produced and this will correspond with the schedule of owners and occupiers. The schedule and plan will be attached to the CPO itself. The exercise involves searches of the Land Registry and other public property records, direct approaches to owners/occupiers for title information, and possibly serving requisitions on the owners - the Council has the power to serve "title requisitions" on owners and occupiers requiring them to provide title information and details of their interests.
- 4.21 In carrying out the land referencing exercise, the Council must demonstrate that it has used all reasonable endeavours to complete the schedule of owners and occupiers correctly, and there are procedures set out for dealing with land where the owners cannot be traced or identified.

4.22 Discussion will take place with the Heritage Foundation as to whether external land referencers should be used to undertake this task.

5. **Highways Orders**

5.1 It is important to ensure that any ancillary highways orders such as highway stopping up and diversion orders are made at the same time as the CPO to ensure that any objections to these can be dealt with at the same time as the CPO Inquiry.



