

BODY	CABINET
DATE	6 February 2013
SUBJECT	Eastbourne Town Centre – Use of Compulsory Purchase Powers
REPORT OF	Senior Head of Development & Environment

Ward(s)	Devonshire, Meads and Upperton
Purpose	To seek Cabinet support for the Borough Council to proceed with all necessary procedures to obtain a Compulsory Purchase Order (CPO) for the compulsory acquisition of properties and interests in the town centre, where appropriate, to facilitate the development of the retail extension to the Arndale Centre.
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Recommendations	<ol style="list-style-type: none">1. That Cabinet recommend to Full Council that subject to the completion of an indemnity agreement with PRLP they resolve to authorise the making of a CPO under Section 226(1)(a) of the Town and Country Planning Act 1990 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 in respect of the land and interests and new rights within the area shown edged red on the plan attached for securing the development of the Arndale Centre in Eastbourne Town Centre.2. That Cabinet delegate to the Senior Head of Development and Environment, in consultation with The Chief Finance Officer and The Leader, authority to :-<ol style="list-style-type: none">a. take all necessary steps to secure the making, confirmation and implementation of the CPO including the publication of all notices to give effect thereto;b. complete an indemnity agreement with PRLP to provide for the reimbursement of costs incurred by the Borough Council in processing the CPO;

- c. make minor or technical amendments to the boundary of the delineated area, if necessary;
- d. acquire all necessary interests in the delineated area either by agreement or compulsorily;
- e. negotiate with any land owner or occupier;
- f. set out the terms for withdrawal of objections to the CPO;
- g. make arrangements to assist with any relocation as required;
- h. to confirm the CPO if granted power to do so by the Secretary of State;
- i. make arrangements for the presentation of the Borough Council's case for confirmation of the CPO at any public inquiry;
- j. exercise the compulsory purchase powers authorised by the CPO by way of general vesting declaration and/or notice to treat.

1.0 Introduction

- 1.1 The Borough Council has had a long standing ambition to see the town centre developed to create a more vibrant and sustainable retail offer. This ambition is captured under the Prosperous Economy theme in the Corporate Plan. It is also supported by consultation with the local community who has consistently listed improvements to Eastbourne town centre as a top priority for action from the Borough Council.
- 1.2 The Council's ambition is fully supported by formal policy statements both nationally and locally. At national level the National Planning Policy Framework (NPPF) clearly requires local planning authorities to support and positively plan for regenerating their town centres. The NPPF provides key guidance on the role of town centres and it states they should be recognised as being at the heart of their communities and it requires local planning authorities to "pursue policies to support their vitality and viability".
- 1.3 In terms of formal local policy, the regeneration of the town centre is a key objective of the Eastbourne Plan – the strategic planning policy document recently found 'sound' by the government and discussed elsewhere on this agenda. The Council has also prepared a specific action plan covering the town centre directing positive regeneration based policies to key sites within the area to encourage owners to come forward with development proposals. The latest version of the

Eastbourne Town Centre Local Plan is also discussed elsewhere on this agenda as it moves to the final stages of adoption as formal planning policy.

- 1.4 Finally Members will be recall that Performance Retail Limited Partnership (PRLP), the owners of the Arndale Centre, received a conditional planning consent from the Borough Council on 23 August 2012. Officers are currently negotiating the legal agreement before issuing the formal decision notice.
- 1.5 It is within this context that attention is now focussed on delivery of the scheme. A project of this size and complexity has a number of work strands to be completed to bring about its implementation. One piece of work is the assembly of the land on which to build the new extension. PRLP do not own all the land that is needed to build the scheme and are currently negotiating with the land owners to acquire and assemble the development site by private treaty. As PRLP cannot require land owners to sell, and in instances where a scheme has significant community benefit and leads to the better planning of a town, the legislation allows a local authority to compulsorily purchase land and property on the developers behalf. This would be a last resort after the developer has exhausted all other reasonable routes to acquire the land. In these instances local authorities have the power to acquire land compulsory and then immediately pass on to the developer.
- 1.6 When a local authority is considering resolving to use its compulsory purchase powers it is very important that the local authority is not put at financial risk. This report discusses the issues that Members need to be aware of when making this important decision together with the mechanisms that are put in place to minimise the risk to the Council.

2.0 Justification for the use of a CPO

- 2.1 Compulsory purchase is essential to enable the scheme to take place and for the Borough Council to achieve its policy objectives within a realistic timescale. As PRLP do not own all the land required for the scheme, and although all reasonable efforts will be made to acquire the land and interests by negotiation, it is clear that a CPO is required to ensure that there is sufficient certainty that the scheme will progress within a reasonable time period.
- 2.2 The land as shown in the delineated area on the Plan (Appendix 1) is vital to the delivery of the scheme with the benefits that the scheme will secure for the town and surrounding district.

3.0 The CPO Powers and Process

- 3.1 Under section 226 (1)(a) of the Town and Country Planning Act 1990, (as amended by section 99 of the Planning and Compulsory Purchase Act 2004) a local authority may be authorised to compulsorily acquire any land in its area which is suitable for and required in order to

secure the carrying out of development, redevelopment or improvement. This power is designed to facilitate regeneration projects and is the most appropriate power available to the Borough Council in the context of the proposed scheme.

- 3.2 Section 226(1)(a) enables a local authority to exercise its CPO powers if it thinks that the land in question will facilitate the carrying out of development, redevelopment, or improvement on, or in relation to, the land being acquired and it is not certain that it will be able to acquire it by agreement.
- 3.3 The Council, in exercising its power under this Section must have regard to Section 226 (1)(A) which states:
"But a local authority must not exercise the power under paragraph (a) of subsection (1) unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:-
(a) the promotion or improvement of the economic well-being of their area;
(b) the improvement of the social well-being of their area;
(c) the promotion or improvement of the environmental well-being of their area".
- 3.4 It is considered that the use of this Section is most appropriate having regard to the aims sought to be achieved by the scheme and as previously identified.
- 3.5 It is necessary for the Council to resolve formally to use compulsory purchase powers before it can make a CPO. The final decision on the CPO rests with the Secretary of State for Communities and Local Government who will decide whether to confirm the CPO having considered the justification for the CPO given by the Borough Council and any objections, if necessary by way of public inquiry.
- 3.6 The acquisition procedure is governed by statute. The CPO must be advertised locally and copies served on any owners, tenants, occupiers and any other person interested in, or having power to sell, release or transfer the land subject to the CPO. In addition the CPO must also be served on all persons whose land is not acquired under the CPO but nevertheless may have other interests in the land, such as owners of rights of access to and from the public highway across the land or anyone with the benefit of a covenant over the land. Officers will prepare a detailed Statement of Reasons setting out the justification for the compulsory acquisition.
- 3.7 If any duly made objections are not withdrawn, the Secretary of State must hold an Inquiry and consider the conclusions and recommendations of the Inspector appointed for the Inquiry before confirming the CPO.
- 3.8 Before and during the compulsory acquisition process, negotiations must continue with the persons affected by the CPO to seek to acquire

the land and interests by negotiation and private agreement.

3.9 Any dispute over compensation to be paid is referred to the Upper Tribunal Lands Chamber.

4.0 The Key Issues in considering the use of CPO Powers

4.1 Risk Management

The identified risk management issues are:-

(a) **The failure to follow procedural guidelines in the making and seeking confirmation of the CPO or the failure of the Secretary of State to confirm the CPO**

The Borough Council's risks will be managed via the existing strategic risk management process. Procedural risk with regard to the confirmation of the CPO will be minimised by the use of external legal and commercial advisers and working in partnership with a similar team employed by PRLP;

(b) **The scheme does not proceed after the CPO has been made and confirmed**

The Borough Council will not be left out of pocket by proceeding with the CPO as the CPO will not be made until PRLP has entered into the CPO Indemnity Agreement referred to in section 5 below under which the Borough Council will be indemnified for any costs it incurs.

4.2 Key benefit

The implementation of the scheme requires the acquisition of land and property interests. Negotiations for the acquisition of these interests by PRLP are ongoing and will continue. However, it is clear, that if implementation of the scheme is to be achieved within a realistic timescale then the powers available to the Borough Council to compulsorily acquire these interests must be employed.

5.0 Financial Implications

5.1 As the costs associated with any necessary Compulsory Purchase Order will be met by the developer, there are no financial implications for the Council. Costs covered by PRLP will include:

- All advice and help given to the Council by appointed specialist advisors;
- legal costs of the Borough Council (including any time spent by external solicitors, as well as any other agents, advisors etc);
- compensation payments to include acquisition costs and disturbance payments to all affected landowners which arise from the CPO and are a natural and reasonable consequence of the property being acquired; and
- other relevant CPO related costs, including the costs, fees and expenses relating to any public inquiry in respect of the CPO.

The Borough Council and PRLP will enter into a CPO Costs Indemnity

Agreement under which PRLP will indemnify the Borough Council against all costs arising from the use of the CPO powers.

6.0 Human Resource Implications

6.1 With the help of external specialists, existing council staff across the relevant services can manage the process within existing resources.

7.0 Human Rights

7.1 The Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights. The Borough Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. While certain Convention rights may be relevant to the CPO (such as the "right to peaceful enjoyment of possessions") interference with such rights by public authorities will be justified where the public interest outweighs the interest of the private individual. It is considered that any interference with the Convention rights caused by the CPO will be justified and proportionate in the wider public interest in order to secure the economic, social, physical and environmental regeneration of the town centre.

8.0 Equality and Fairness

8.1 It has not been possible to carry out an equality analysis prior to this report being prepared because the outcome of PRLP's private negotiations are, as yet, unknown. However, it is intended to analyse the effects of this decision against equality when the full scope of the work is known. The outcomes of the analysis will be reported through the council's agreed processes and referred to Cabinet should further decision-making be required.

9.0 Conclusion

9.1 The regeneration of Eastbourne town centre has been a long standing ambition of the Borough Council and the local community. The expansion of the town's retail offer is supported both nationally and locally in formal planning policy statements. Developers have now achieved planning consent for a major expansion to the town centre and are actively negotiating to assemble the development site. The developers need assurance that should they fail to acquire the land and property by private treaty, within a reasonable timeframe, the local authority will use its CPO powers to facilitate the development.

9.2 Cabinet are requested to recommend to Full Council to resolve to use its CPO powers, where appropriate, to facilitate the regeneration of the town centre. It is also recommended that authorisation is delegated to the Senior Head for Development and Environment to complete any appropriate land and property acquisitions in meeting the objective of bringing forward the regeneration of the town centre. It will be important that this is carried out in consultation with the Chief Finance

Officer and The Leader.

Background Papers:

None

To inspect or obtain copies of the background paper, please refer to the contact officer listed above.

Appendix 1 – Plan Showing the extent of the potential CPO