

BODY	CABINET
DATE	5 February 2014
SUBJECT	Eastbourne Town Centre – Update on Use of Compulsory Purchase Powers
REPORT OF	Senior Head of Development

Ward(s)	Devonshire, Meads and Upperton
Purpose	To update Members on the position regarding the need for a Compulsory Purchase Order (CPO) for the compulsory acquisition of properties and interests in the town centre, to facilitate the development of the extension to the Arndale Centre.
Contact	Jefferson Collard, Senior Head of Development, 1 Grove Road, Eastbourne Tel no: (01323) 415240 E-mail: jeff.collard@eastbourne.gov.uk
Recommendations	<ol style="list-style-type: none">1. That Cabinet note planning application 131071, which is to be determined by the Council's planning committee, and Cabinet confirm that in the event that the application is granted, with or without modifications, the authority delegated to the Senior Head of Development on 6 February 2013 to make a CPO will continue to apply. The authorisations previously granted provided that: Cabinet delegate to the Senior Head of Development, in consultation with The Chief Finance Officer and the Leader, authority to: (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 (as may be amended) either by agreement or compulsorily;

- (e) negotiate with any landowner or occupier;
 - (f) set out the terms for the 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.
2. In addition, that Cabinet delegate to the Senior Head of Development, in consultation with the Chief Finance Officer and The Leader, authority to exercise its powers of appropriation and powers under S237 of the Town and Country Planning Act 1990, if required.
 3. That the revised plan at Appendix 1 is the area to be used to make the Compulsory Purchase Order (subject to any further variations).

1.0 Introduction

- 1.1 Members will recall that at the Cabinet meeting on 6 February 2013, it approved the making of a CPO subject to the completion of an indemnity agreement with PRLP to facilitate the redevelopment of the extension to the Arndale Centre. Cabinet authorised officers to negotiate and enter into a CPO indemnity agreement with PRLP (the developer) to indemnify the Council against all costs and compensation awards associated with the Council making a CPO, and also granted delegations to officers to carry out all steps necessary to obtain the CPO.
- 1.2 PRLP submitted a new application in December 2013 for revised proposals to the Arndale Centre extension which includes leisure uses. This application has yet to be determined by the Council's planning committee. If approval is forthcoming then it is the revised scheme which will become the underlying scheme for the proposed CPO.
- 1.3 Since the last report the boundary of the land needed for the development has been slightly adjusted. Although the scheme to be implemented will now include the leisure offer there is little change in

the land needed for the proposal. However for the avoidance of doubt a revised plan showing the CPO area is attached at Appendix 1.

2.0 Update

2.1 Following Cabinet's authorisation to proceed with the CPO process, the decision was referred to Full Council to be endorsed. The Cabinet's decision was duly endorsed by Full Council on 20 February 2013. Members should note that there is no legal requirement for Full Council to endorse Cabinet's resolution in relation to this matter. Cabinet has full authority delegated to it under the Constitution. While Cabinet wanted to highlight to Full Council the decision it had made last time, however it is not necessary to do so again following this further Cabinet resolution.

2.2 On 30 May 2013, the Section 106 Agreement was completed and planning permission issued for PRLP's development proposals for the Arndale Centre's extension, consisting of:

"demolition of existing buildings to provide an extension to the existing shopping centre for class A1, A2, A3, A4 and A5 (retail use) at ground and first floors plus second floor ancillary space; a 2 storey extension to existing car parking deck and pedestrian access including new shop fronts onto Terminus Road and associated highway works." (Council ref 120904)

The proposal is in accordance with the Council's local policy objectives for the redevelopment of Eastbourne Town Centre.

2.3 Members are advised that on 19 December 2013, PRLP submitted a revised application for an extension to the Arndale Centre, this being the same location as that comprised in the May 2013 permission. The scheme does not differ significantly from the originally approved scheme, other than proposing the additional leisure element of a 9 screen cinema and 7 restaurants. This application has not yet been determined by the Council's planning committee. If approval of the revised scheme is forthcoming then this will form PRLP's preferred scheme and will be the underlying scheme on which the CPO is promoted.

2.4 Since the Cabinet's decision on 6 February 2013, the Council has also adopted the Eastbourne Town Centre Local Plan (November 2013) (TCLP). The regeneration of the town centre remains a key objective within the TCLP, in particular the area of land to be subject of the CPO, which is identified within the TCLP as Development Opportunity Site One (Policy TC18). The TCLP anticipates the Council will consider using CPO powers to enable key proposals in the TCLP. The scheme proposed in the planning application referred to above at 2.3 will be assessed against the TCLP.

2.5 Over the past year, officers have negotiated the CPO Indemnity Agreement with PRLP. The CPO Indemnity Agreement is now almost

in an agreed form and will be entered into shortly. Officers are satisfied that the CPO Indemnity Agreement secures appropriate indemnities from the developer to cover all relevant costs incurred by the Council in making and proceeding with the CPO through to confirmation, together with all compensation claims arising from acquiring land and interests pursuant to the CPO (if confirmed).

2.6 Officers understand that PRLP has sought to separately negotiate with some of the third party landowners in order to secure land required for the Arndale Centre extension, by agreement. Whilst good progress has been made, there remain a number of interests which have not been secured by private treaty and officers are satisfied that a CPO is required to facilitate land assembly; in the context of the regenerative benefits this will have for the town, there is a compelling case in the public interest to use its CPO powers accordingly. Albeit PRLP will be encouraged by the Council to continue to negotiate with third parties once the CPO process commences. Under the CPO Indemnity Agreement, the Council may be required to take a transfer of the land required for the development, which would include land presently owned by PRLP. The Land would need to be appropriated for planning purposes in order to utilise the Council's powers under S237 the Town and Country Planning Act 1990. This section enables private rights in land, which could act as a constraint on development, to be *interfered* with where development is carried out in accordance with a planning permission; in this instance this will principally include the interference with any rights of light interests (amongst others). The main effect of this section is to reduce the remedy of a third party wishing to enforce its right by injunction to that of compensation, thereby allowing development to proceed.

2.7 More recently, the land referencing exercise to identify all interests and rights to be acquired, has been commenced on behalf of the Council. Requisitions for Information will be served on all occupiers, owners and others known to have interests in land; this requires each individual served, to provide to the Council information regarding the respective land interests. The Schedule of Interests which will form part of the CPO will then be finalised to ensure that all necessary interests and rights are properly identified.

3.0 The Key Issues in considering the use of CPO Powers

3.1 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 Council's costs exposure to the costs of the CPO Process and compensation claims**

The Borough Council will not be exposed to costs 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. The CPO Indemnity Agreement is also structured to ensure that the Council's liability for compensation payments is minimised until such time the Developer has put the Council in funds (including a contingency) to meet such liabilities.

3.2 ***Key benefit***

The implementation of the scheme requires the acquisition of land, property interests and new rights. 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 ready to be used where necessary.

4.0 Financial Implications

4.1 As the costs associated with any necessary Compulsory Purchase Order will be met by PRLP via the CPO Indemnity Agreement. The Council already has an undertaking from PRLP to meet the costs of land referencing and the CPO will not be made until the CPO Indemnity Agreement is in place. Accordingly, there are no financial implications for the Council.

5.0 Human Resource Implications

5.1 With the help of external specialists, existing council staff across the relevant services can manage the process within existing resources. External legal advisors have already been appointed to advise and act on behalf of the Council in respect of the CPO process. Their costs are being fully met by the developer.

6.0 Human Rights

6.1 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.

7.0 Equality and Fairness

- 7.1 It has not been possible to carry out an equality analysis prior to this report being prepared because the outcomes of PRLP's private negotiations are, as yet, unknown. However as almost all the property is in commercial use, the developer's intention is to seek relocations for their businesses, or reach a settlement that has been agreed between the parties, so that those affected are in no worse a position after the development is in place. Nevertheless, it is intended to analyse the effects of the decision to make a CPO against equality when the full scope of the community that is affected 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.

8.0 Conclusion

- 8.1 The Cabinet has already made the decision to pursue a CPO and has granted all appropriate authorities to officers to enable officers to proceed with making the CPO and to carry out necessary related steps once the CPO is confirmed. Cabinet's decision and delegations have been endorsed by full Council. The purpose of this report is to note for the avoidance of doubt that the authorisations previously granted also apply in the context of PRLP's new development proposals, if approved in their current or substantially similar form. Additional authority is sought for the Council to use its powers of appropriation and pursuant to S237 of the Town and Country Planning Act 1990, to *interfere* with any third party interests, if required.
- 8.2 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 submitted a revised planning application for a major expansion to the town centre and are actively negotiating to assemble the development site.

Jefferson Collard
Senior Head of Development

Background Papers:

Report to Cabinet - 6 February 2013
Minutes of Cabinet Meeting of 6 February 2013

Report to Full Council - 20 February 2013
Minutes of Full Council - 20 February 2013

Planning application 120904 - Original application with planning permission

Planning Committee report - 23 August 2012 in relation to application 120904
S106 Agreement dated 30 May 2013 for planning application 120904
Planning Permission dated 30 May 2013 - reference 120904

Planning application 131071 – new application currently being processed

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

Appendix 1 – Revised Plans Showing the Extent of the Potential CPO

- **App 1a - Ground Floor**
- **App 1b - First Floor**