

Executive

Bicester Town Centre Redevelopment – compulsory purchase proposals

5 July 2010

Report of Head of Regeneration and Estates, Head of Legal and Democratic Services and Head of Development Control and Major Developments

PURPOSE OF REPORT

1. To advise the Executive of the possible need to use compulsory purchase powers to secure the necessary land and rights to complete the Bicester town centre redevelopment
2. To seek Executive approval to the recommendation to Council to the use of compulsory purchase powers to facilitate the implementation of the redevelopment as proposed by Town Centre Retail (Bicester) Ltd in planning permission 07/00422/F, as amended in relation to the central part of the redevelopment site by planning permission 09/01687/F, to assemble the land interests required for the redevelopment, such land interests being shown for indicative purposes only edged red and, in the case of new rights, hatched red and hatched blue on the plan at Appendix One
3. To approve the appropriation of the land edged blue on the plan at Appendix Two, being land in the Council's ownership, for planning purposes.
4. To approve the acquisition of the existing service yard to the Crown Walk shopping centre shown edged green on the plan at Appendix Three for planning purposes so that, if necessary, the powers in section 237 of the Town and Country Planning Act 1990 may be relied upon to override legal interests which might impede the implementation of the redevelopment.

This report is public

Recommendations

The Executive is recommended to forward to Council for approval the following:

- (1) To confirm that Council is minded to make a compulsory purchase order in respect of:
 - (a) the land shown edged red on the plan attached at Appendix One under Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) because it thinks that the acquisition will facilitate the carrying out of the redevelopment, and the redevelopment is likely to contribute to the promotion or improvement of the economic, social and environmental well-being of Bicester and the surrounding district; and

- (b) new rights in relation to the land shown hatched red and blue on the same plan as are required to facilitate the redevelopment under Section 13 of the Local Government Act (Miscellaneous Provisions) Act 1976
- (2) To authorise the Head of Legal and Democratic Services to take all necessary steps as considered appropriate to secure the making of a compulsory purchase order including the publication and service of all relevant notices
 - (3) To authorise the Head of Regeneration and Estates to approve the terms for the acquisition of legal interests by agreement including for the purposes of resolving any objections to the compulsory purchase order
 - (4) To confirm the appropriation of the land edged blue on the plan attached at Appendix Two for planning purposes as described in section 226 and 246 of the Town and Country Planning Act 1990 (as amended) on the commencement of Phase 2 of the redevelopment scheme (i.e. following the initial highway and other enabling works within Phase 1) in accordance with Section 122 of the Local Government Act 1972.
 - (5) To authorise the acquisition of the land edged green on the plan attached at Appendix Three for planning purposes in accordance with section 227 of the Town and Country Planning Act 1990 (as amended).

Executive Summary

- 1.1 The proposed redevelopment of Bicester town centre will improve the range of facilities available. It will provide better shopping, leisure and car parking facilities. Over the last 15 years or so, Bicester has experienced very substantial population growth, but this has not been matched by any growth in town centre facilities. There is a significant unsatisfied demand for additional retail space, and in particular an additional foodstore. Applications have been received to provide this on the edge of the town, but these have been refused as the opportunity exists to locate the required facilities in the town centre. In addition, Bicester is poorly served with leisure facilities, and in particular has no cinema. Since 2005 the Council has been working to secure a town centre redevelopment scheme which will address these deficiencies.
- 1.2 The development is one of the key priorities for the Council and complements the development of the eco-town on the edge of Bicester. The development of the eco-town will reinforce the need for a town centre with a scale and range of facilities to match the enlarged area of the town and ensuring that the needs of that population are better met locally without the need for car-borne travel.
- 1.3 Given that there are a number of land interests still to be acquired, it is appropriate that the Council should signal its resolve to make a compulsory purchase order to facilitate the redevelopment. This is consistent with the advice of the Secretary of State, which gives positive encouragement to local authorities to use their compulsory purchase powers to ensure real gain for

residents and the business community without delay.

- 1.4 It is expedient to appropriate land in the Council's ownership and to acquire the Crown Walk service yard (both for planning purposes) in order to rely upon the power in Section 237 of the 1990 Act to override existing interests and rights.

Background Information

2.1 History

On 3 November 2003 the Executive resolved to progress the redevelopment of Bicester town centre by retaining consultants to undertake a study, in order to establish the capacity of the site identified in the draft Local Plan to accommodate the proposed redevelopment, and the financial viability of such a scheme. It also instructed officers to prepare draft supplementary planning guidance (SPG) for these proposals for public consultation.

On 4 May 2004 the Executive approved the conclusions of the consultants' viability study and authorised officers to proceed with public consultation on the draft SPG.

On 1 November 2004 the Executive considered the outcome of the public consultation and approved the final version of the SPG for formal adoption.

Also on 1 November 2004 the Executive considered a report setting out proposals suggesting how this redevelopment might be brought forward and approved a development brief to be issued to potential development partners, setting out a proposed legal framework under which a scheme could be delivered. The Executive confirmed at that time that, if the chosen development partner were not to be able to secure all the necessary land and property for the scheme, having used reasonable endeavours to do so, subject to any pre-conditions having been satisfied, the Council would be willing to consider making a Compulsory Purchase Order to enable the redevelopment to proceed.

2.2 Tender process and Development Agreement

The Council undertook a two stage process to choose a development partner for this project. A Project Board was established early in 2005, in accordance with the Council's normal project management procedures. The Board originally comprised the Portfolio Holder for Property and Regeneration Schemes, the Leader of the Council, the Portfolio Holder for Resources, the Chief Executive, and the Head of Planning and Development Services, with the Property and Technical Services Manager acting as project manager. Since being established, Executive Portfolios have changed, and officer posts have been subject to restructuring, but the Board continues to comprise the equivalent positions.

Early in 2005 the development opportunity was advertised in the property press, and details were mailed to a list of potential developers and agents by the Council's retained retail development consultants. Over 100 copies of the SPG and development brief were sent to companies responding to this

marketing. Eleven companies responded to the development brief by submitting initial proposals for redevelopment of the site, and these were considered by the Project Board on 21 March 2005. The Project Board shortlisted four developers, who were invited to submit detailed proposals for the Council's consideration. One of these developers subsequently decided to withdraw, and consequently three detailed submissions were received.

The detailed schemes and associated financial proposals were considered by the Project Board on 22 July, when presentations were made by the three developers. The outcome was that the Board recommended that Stockdale Land/Sainsbury's be appointed as the Council's development partner.

Stockdale Land and Sainsbury's formed a company, Town Centre Retail (Bicester) Ltd (TCR) to undertake the redevelopment. TCR is now owned by Sainsbury's whilst Stockdale Land continue to act as development manager. TCR then embarked on the process of working up their proposals, taking on board feedback made by the Council, whilst negotiating the terms of a formal development agreement with the Council.

A Development Agreement was completed earlier this year. It is conditional on all the land interests required for the scheme being acquired, and permits TCR to request the Council to consider making a CPO, in the event that TCR is unable to acquire any of these land interests on reasonable terms. A significant part of the site was owned at the outset by the Council and by Sainsbury's. Other properties have been acquired or options secured by TCR over the period since they were appointed. However, a number of land interests essential for the delivery of the scheme remain to be acquired. The land affected is shown on the plan at Appendix One, but this is presently subject to review involving a detailed land referencing exercise.

The Development Agreement provides for the freehold of part of the site, currently owned by Sainsbury's/TCR, to be transferred to the Council, and leased back to TCR for a term of 999 years. Other properties are to be held by TCR freehold. The site is affected by various rights of way which must be terminated or diverted in order for the scheme to proceed. If it is not possible to reach agreement for the termination or variation of all these rights, they can be extinguished by compulsory acquisition under Section 236 of the Town and Country Planning Act 1990. However, if it transpires that it is not necessary to complete the process of making a CPO, because all necessary freehold and leasehold interests are secured by agreement, the rights can be overridden under the power contained in Section 237 of the 1990 Act. In the event that the CPO is not required as described above, it is proposed that this power be relied upon. In order to ensure that this power is available, it is necessary to appropriate the Council's existing land ownership for planning purposes.

The existing service yard to Crown Walk shopping centre is affected by rights which must be varied in order for the entire scheme to be delivered. In order that the Council and, in turn, TCR can rely upon the power in Section 237, it is necessary for this land to be acquired by the Council for planning purposes. As this land is not part of the area to be transferred under the Development Agreement, it will be transferred to the Council at nil cost and then transferred back to TCR, also at nil cost, prior to commencement of the redevelopment.

2.3 Planning Policy Context

The planning policy context for town centre redevelopment has evolved over the past few years. Set out below is the relevant planning policy guidance framework.

At a national level, guidance on town centre uses is provided by the recently published PPS4 “Planning for Sustainable Economic Growth”. This replaces early guidance on retail development contained in PPS6. PPS4 contains town centre policies relating to retail development, leisure and entertainment facilities (including cinemas, restaurants and health and fitness centres) offices and arts, culture and tourism development. The policies still require a sequential assessment for applications of the above types with a focus on providing the development as centrally as possible in the interests of sustainability and ease of access.

Other relevant national guidance is contained in PPS9 Biodiversity (with regards to the intended re-alignment of the Town Brook), PPS5 Planning for the Historic Environment (which provides advice/policies with regards to development affecting heritage assets i.e. listed buildings and Conservation Areas) and the archaeology, PPG13 Transport (town centre location and parking levels), and PPS25 Development and Flood Risk.

At the time of writing the South East Plan remains in place. It contains policies which state that the prime focus for development in the South East should be urban areas; in a sustainable way; and with retail development concentrated in town centres; and that community facilities should be located to reduce travel impacts. The specific policy for Central Oxfordshire in the South East Plan identifies Bicester as a main location for development.

The adopted Cherwell Local Plan contains a policy (S15) relating to the northern end of the site (Franklins Yard) promoting comprehensive redevelopment of that area for retail financial and professional services.

The Non-Statutory Cherwell Local Plan contains Policy S14 which states:

(a) **SITES IN THE TOWN CENTRE WITH REDEVELOPMENT POTENTIAL**

S14 LAND TO THE WEST OF SHEEP STREET AND EAST OF MANORSFIELD ROAD, AS DEFINED ON THE PROPOSALS MAP WILL BE SAFEGUARDED TO FACILITATE THE PROMOTION AND IMPLEMENTATION OF A COMPREHENSIVE MIXED-USE DEVELOPMENT THAT COMPRISES USES FALLING INTO CLASS A1, A2, B1, D1 AND D2 OF THE TOWN AND COUNTRY PLANNING USE CLASSES ORDER 1987 (AS AMENDED) THAT WILL ENHANCE THE STATUS, VITALITY AND VIABILITY OF BICESTER TOWN CENTRE. DEVELOPMENT THAT PREJUDICES THE IMPLEMENTATION OF THIS POLICY, PARTICULARLY PIECEMEAL DEVELOPMENT WITHIN THE AREA WILL NOT BE PERMITTED.

The policy is explained as follows

It is acknowledged in this chapter that the Town Centre serves the day to day needs of the local population who also travel to neighbouring centres for higher order comparison goods, higher order services and leisure facilities. The rate of residential growth in the town over the last two plan periods has significantly overtaken the rate of commercial investment. This issue was raised at consultation meetings with the public prior to the preparation of the deposit draft plan. Many local people consider that further residential development should be restricted until improved shopping and leisure facilities have been provided.

To address the imbalance, land between Sheep Street and Manorsfield Road, and anchored by Franklin's Yard to the north and Crown Walk to the south, will be promoted for redevelopment for a mix of uses comprising, inter alia, food and comparison shopping, cinema, library and art centre, offices, and improved car parking, bus station and shopmobility facilities. This mix of uses and improvements is consistent with the Council's consultant's recommendations as set out in the Urban Design Study (1996), Bicester shopping and commercial leisure study (1998) and Bicester Integrated Transport and Land Use Study (2000). The Council commissioned further studies during 2003 and 2004 to confirm the feasibility and viability of the proposals set out in Policy S14.

The area is in multiple ownership, and about 50% of it is owned by the Council. The Council reserves the right to exercise its compulsory purchase powers to implement the regeneration of the area.

The redevelopment must accommodate all buildings fronting Sheep Street between Tesco and Crown Walk. Elsewhere a selective approach to retention and development will be considered.

The redevelopment must protect and improve the network of lanes between Sheep Street and Bure Place. Where appropriate the lanes will be extended to Manorsfield Road, constructed to accommodate cyclists and adopted as public highway. The development must be outward looking providing positive frontages with public access to Sheep Street, St John Street and Manorsfield Road.

Supplementary planning guidance will be prepared by the Council to establish detailed land use planning, transport and design requirements. The Council will aim to have granted planning permission for a comprehensive development and attain all the necessary consents by the end of the plan period.

In November 2004 the Council adopted a supplementary planning guidance (SPG) document with regard to the redevelopment of this area. This document promotes a comprehensive redevelopment including additional retail floorspace (comparison and convenience) a cinema, improved bus facilities, library, car parking, relocated shopmobility and pop-in centres, residential and public space.

2.4 Planning Position

In July 2007 the South Area Planning Committee considered TCR's initial application for planning permission (ref no. 07/00422/F) for a supermarket, cinema, civic building including library, bus interchange, 25 shops/restaurants 526 car parking spaces, 19 residential units and the division of Town Brook. The Committee decided to grant planning permission subject to a legal agreement in respect of off-site infrastructure. That permission was issued following the completion of the agreement in September 2009.

A revised application for the central part of the site (ref no 09/01687/F) was submitted in November 2009. That application was for a food store, further non-food retail units, cinema, car parking and other general town centre uses. At their meeting held on 17 February 2010 the Planning Committee resolved to approve that proposal subject to necessary and appropriate amendments to the previous legal agreement. ~ A revised agreement is in the process of being concluded and planning permission should be granted shortly.

3 Compulsory Purchase Powers

- 3.1 The Council has the power in section 226 of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004) to make a compulsory purchase order for any land in their area if the Council thinks that the purchase of the land will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land.
- 3.2 The Council may not exercise the power unless it considers that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:
 - The promotion or improvement of the economic well-being of their area
 - The promotion or improvement of the social well-being of their area
 - The promotion or improvement of the environmental well-being of their area.
- 3.3 It is immaterial that the development, redevelopment or improvement may be carried out by a third party.
- 3.4 Section 13 of the Local Government (Miscellaneous) Provisions Act 1976 enables the Council to compulsorily acquire new rights.
- 3.5 ODPM Circular 06/2004 (Compulsory Purchase and the Crichel Down Rules) provides guidance to acquiring authorities in England on the use of compulsory purchase powers. Paragraph 1 states:

“Ministers believe that Compulsory Purchase Powers are an important tool for local authorities and other public bodies to use as a means of assembling the land needed to help deliver social and economic change. Used properly, they can contribute towards effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life. Bodies possessing compulsory purchase powers – whether at local, regional or national level – are therefore encouraged to consider using them proactively wherever appropriate to ensure real gains are brought to residents and the business community without delay”.

- 3.6 Particular guidance on orders made by local authorities under Section 226 of the Town and Country Planning Act 1990 is contained in Appendix A of the Circular. Paragraph 2 states:
- “the powers in Section 226 as amended by Section 99 of the Planning and Compulsory Purchase Act 2004 are intended to provide a positive tool to help acquiring authorities with their planning powers to assemble land where this is necessary to implement the proposals in their community strategies and Local Development Documents. These powers are expressed in wide terms and can, therefore, be used by such authorities to assemble land for regeneration and other schemes where the range of activities or purposes proposed means that no single specific compulsory purchase power would be appropriate.”*
- 3.7 Importantly, this Circular requires that a compulsory purchase order should only be made where there is a compelling case in the public interest.
- 3.8 A compulsory purchase order to which there are objections will require confirmation by the Secretary of State to become effective. The Circular provides that any decision by the Secretary of State about whether to confirm an order under Section 226 will be made on its own merit, but the factors that the Secretary of State can be expected to consider include:-
- (a) whether the purpose to which the land is being acquired fits in with the adopted planning framework for the area;
 - (b) 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;
 - (c) the potential financial viability of the scheme for which the land is being acquired; and
 - (d) whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by other means, for example any alternative proposals put forward by the owners of the land.
- 3.9 The Circular also requires the Council to have regard to the following when considering making a Compulsory Purchase Order;
- (a) that the purposes for which the Order is being made sufficiently justify interfering with human rights of those with any interest in the land affected;
 - (b) the degree to which other bodies (including the private sector) have agreed to make financial contributions to underwrite the scheme and on what basis such contributions or underwriting is to be made;
 - (c) evidence relating to financial viability; and
 - (d) where the scheme is likely to be blocked by other impediments to implementation.
- 3.10 The Circular looks to acquiring authorities to seek to acquire land by agreement wherever practicable. However, the Circular recognises that it may be sensible for acquiring authorities to start formal compulsory purchase procedures in parallel with their efforts to acquire by agreement. The Circular

notes that this has the advantage of making the seriousness of the acquiring authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

4 Case for Making a Compulsory Purchase Order

- 4.1 As set out above, it is an important policy objective of the Council to secure the redevelopment of Bicester town centre and in particular the part of the town the subject of TCR's proposed redevelopment scheme.
- 4.2 Besides the encouragement given to local authorities to exercise their compulsory purchase powers in the CPO Circular to promote effective and efficient urban regeneration schemes, paragraph EC5.6 of Planning Policy Statement 4 (PPS4) Planning for Sustainable Economic Growth, states:
- "Local authorities should make full use of planning tools to facilitate development, including compulsory purchase orders...."*
- 4.3 With reference to the statutory criteria for the exercise of compulsory purchase powers, it is considered that use by the Council of its compulsory purchase powers to facilitate the TCR scheme will contribute to the achievement of the promotion or improvement of the economic, social and environmental well-being of the Council's area.
- 4.4 In particular, it is considered that the proposed scheme will provide a high quality extension to the town centre including greater food and non-food retail floorspace, an efficient new bus interchange facility, all of which will contribute to the centre and complement its conservation area status.
- 4.5 As set out in Section 3 above, the scheme accords directly with national, regional and local policies. Planning permission has been granted for the scheme and it is not considered, therefore, that there would be any planning or other impediments to the implementation of the scheme.
- 4.6 Importantly, the scheme will fulfil the Council's specific aspirations for redevelopment of the site in accordance with the Council's development brief and the approved SPG.
- 4.7 As explained above, in deciding to make a CPO, the Council should be satisfied that there is sufficient justification for interfering with human rights of those with an interest in the land affected. In this respect the Human Rights Act 1998 incorporates certain provisions of the European Convention on Human Rights, namely:

Article 1 – the right of everyone to peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international laws.

Article 8 – private and family life, home and correspondence. No public authority can interfere with these rights except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of a country.

Article 14 – the right to enjoy rights and freedoms in the Convention free from discrimination on any ground such as sex, race, colour, language, religion,

political or other opinion, or national or social origin.

In the case of each of these articles under the Convention the Council should be conscious of the need to strike a balance between the rights of the individual and the interests of the public. In the light of the significant public benefit which would arise from the implementation of the proposed redevelopment scheme, it is considered that the use of compulsory purchase powers is necessary and proportionate. In particular, it is considered that the CPO would not constitute any unlawful interference with individual property rights. The CPO process provides the opportunity for representations to be made and the holding of a public inquiry in the case of statutory objections. Those directly affected would be entitled to compensation proportionate to the loss which they incur as a result of the acquisition of their interest.

- 4.9 In light of the facts and considerations set out above it is concluded that there is a compelling case in the public interest for the exercise by the Council of its compulsory purchase powers.

5 Appropriation

- 5.1 As explained at 2.2 above, it is expedient to appropriate the land owned by the Council for planning purposes in order to be able to rely on the power in Section 237 of the 1990 Act to override existing interests or rights, notably rights of way over the site.
- 5.2 Section 237 authorises a local authority (and its successors in title – here TCR) to erect, construct or carry out or maintain any building or works on land which has been acquired or appropriated for planning purposes, notwithstanding that a third party interest or rights may be interfered with,
- 5.3 The effect of the use of the power in section 237 is to override such interests or rights and to convert them into an entitlement to compensation.
- 5.4 As in relation to its decision to make a CPO, the Council should take into account the fact that appropriation of land may lead to existing interests or rights being overridden. The human rights of affected parties should therefore be considered, as set out in paragraph 4.8 above.

6 Acquisition of Crown Walk Service Yard

- 6.1 Again as explained at 2.2 above, it is expedient to acquire this service yard by agreement in order to rely upon the power in Section 237.
- 6.2 The acquisition would be at nil cost with the land being transferred back to TCR, also at nil cost prior to commencement of the redevelopment.
- 6.3 Again, because private interests or rights may be overridden, the Council should take account of human rights considerations, as set out at paragraph 4.8 above.

7 Key Issues for Consideration/Reasons for Decision and Options

- 7.1 Negotiations with landowners, and those with the benefit of rights affected by the development, are continuing. The Council hopes to be able to reach agreement. However, in order to be confident of taking this redevelopment

forward in a reasonable timescale the Council needs to consider the use of compulsory purchase powers at this stage. The Development Agreement also obliges the Council to consider the use of compulsory purchase powers, if necessary.

- 7.2 Appropriation of the land owned by the Council for planning purposes within the development site is a key step in land assembly. Acquisition of the Crown Walk Service Yard is also expedient.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

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| Option One | To recommend that Council agree, in principle, to use its compulsory purchase powers to facilitate this redevelopment |
| Option Two | To delay a decision on compulsory purchase in the hope that negotiations will progress and agreement can be reached |

Consultations

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| General public | Consultation has taken place on this scheme in the context of the planning policies referred to at 2.3 above and the planning applications referred to at 2.4 above. |
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Implications

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| Financial: | The Development Agreement provides that all costs associated with the compulsory purchase will be reimbursed by the developer

Comments checked by Eric Meadows, Service accountant PH&E, 01295 221552 |
| Legal: | The Council must be satisfied that the public interest in taking forward this redevelopment outweighs expropriation of private interests including human rights.

Comments checked by Liz Howlett, Head of legal and Democratic Services 01295 221686 |
| Risk Management: | The risk of not pursuing a CPO is that the redevelopment scheme may not then proceed.

Comments checked by Rosemary Watts, Risk Management and Insurance officer 01295 221566 |

Wards Affected

All Bicester wards

Corporate Plan Themes

**All
Executive Portfolio**

**Councillor Norman Bolster
Portfolio Holder for Economic Development and Estates**

Document Information

Appendix No	Title
Appendix One	Plan showing land edged red and rights hatched red and blue subject to compulsory purchase
Appendix Two	Plan showing Council owned land edged blue being Council land to be appropriated for planning purposes
Appendix Three	Plan showing land edged green to be acquired by the Council for planning purposes
Background Papers	
Planning Committee report 18 th February Planning Application Ref No 07/00422/F Planning Application Ref no 09/01687/F PPS4 Planning for Sustainable Growth PPS9 Biodiversity and Geological Conservation PPG13 Transport PPS25 Development and Flood Risk South East Plan Cherwell Local Plan (1996) Non-Statutory Cherwell Local Plan (2004) SPG "Land between Sheep St. and Manorsfield Rd	
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