

HOUSING INFRASTRUCTURE FUND (HIF) ISLAND SITE – COMPULSORY PURCHASE ORDER (CPO)

Executive Summary

This report relates to the Council's successful HIF bid to deliver an integrated highways revitalisation project estimated to cost £115 million. There are three key elements to the project: acquisition and demolition of the Island site; A320 highway widening and improvements; and the replacement of Victoria Arch bridge (the Scheme). In order to deliver the scheme the Council must consider the use of its compulsory purchase order (CPO) powers. This report outlines the detailed reasons for using such powers.

On the basis of the analysis set out in this Report, it is recommended that the Council makes a compulsory purchase order ("**Order**") in respect of the Order Land identified within Appendix 1 ("**Order Land**") to facilitate the carrying out of the Scheme.

Recommendations

The Council is requested to:

RESOLVE That

- (i) The Council, being satisfied that there is a compelling case in the public interest for the compulsory purchase of the Order Land (identified within Appendix 1), to facilitate the carrying out of the Scheme, authorise the making of a compulsory purchase order under the relevant statutory powers (being the powers under the Highways Act 1980 or the powers under the Town and Country Planning Act 1990, as appropriate) and that the Council make such Order;
- (ii) the Director of Legal and Democratic Services, in consultation with the Leader of the Council and Portfolio Holder, be authorised to settle the final form and content of the Order and all associated documentation and take all action needed to pursue the Order and secure its confirmation;
- (iii) the Director of Legal and Democratic Services, in consultation with the Leader of the Council and Portfolio Holder, be authorised to negotiate, agree terms and enter into agreements with interested parties including agreements for the withdrawal of objections or undertakings not to enforce the Order on specific terms including where appropriate removing land or rights from the Order or to request the modification of the Order by the Secretary of State; and
- (iv) the Director of Legal and Democratic Services, in consultation with the Leader of the Council and Portfolio Holder, be authorised to implement the Order powers following confirmation of the Order, and so acquire title to and/or take possession of the Order Land.

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The Council has the authority to determine the recommendation(s) set out above.

- Background Papers:** Executive Report – Housing Infrastructure Fund – Funding Allocation of £95million to Woking Town Centre - 6 February 2020
<https://moderngov.woking.gov.uk/ieListDocuments.aspx?CIId=165&MIId=656&Ver=4>
- Guidance on Compulsory purchase process and The Critel Down Rules
<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-critel-down-rules-guidance>
- HIF Recovery Strategy for Woking Town Centre
<https://www.woking.gov.uk/planning-and-building-control/planning/policies-and-guidance/hif-recovery-strategy-woking-town>
- Woking Core Strategy
<https://www.woking2027.info/developmentplan/corestrategy/adoptedcorestrategy>
- Draft site Allocations DPD
<https://www.woking2027.info/allocations>
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- Date Published:** 22 July 2020

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1.0 Introduction

- 1.1 The Council has had a long-held aspiration to improve conditions at Victoria Arch in the town centre. The existing Victoria Arch Bridge has stifled local growth and town centre development for decades. The current single carriageway that runs through Victoria Arch is not sufficient to cope with the busy A320, which is the main arterial road through Woking, resulting in significant town centre congestion at peak times. Pedestrian and cycle access through Victoria Arch is also limited, with connectivity between the north and south of the railway-line restricted by the existing infrastructure which can no longer service the needs of a vibrant and progressive town centre.
- 1.2 In an effort to remedy this situation, the Council, has made a successful Housing Infrastructure Fund bid for £95million. The Government commitment (through Homes England) to invest in Woking Town Centre will fund the replacement of Victoria Arch and critical highway improvements, which will support Woking to meet its housing needs and become a regional focus of economic prosperity. On 18 March 2020, the Council entered into a funding agreement with Homes England to deliver the overall project. The Council committed to bring a report to Full Council in July 2020 in respect of the use of compulsory purchase powers.
- 1.3 The purpose of this report is to enable the Council to consider whether or not the Council wishes to support the Scheme through the use of its compulsory purchase powers and whether there is sufficient public interest justification for doing so. Subject to Member's consideration of matters set out in this report and its appendices it is recommended that the Council makes a compulsory purchase order to facilitate the implementation of the Scheme.

2.0 Compulsory Purchase

- 2.1 The Legal Services Manager has instructed Davitt Jones Bould (DJB) solicitors with expertise in compulsory purchase orders, to act for the Council in preparing and progressing the proposed compulsory purchase order (Order). DJB have prepared a report containing their comments and advice on the proposed compulsory purchase order. A copy of this advice is contained in the addendum .
- 2.2 The purpose of the report is to enable the Council to consider the use of compulsory purchase powers and whether or not there is a compelling case in the public interest for doing so. On the basis of the analysis set out in this report, it is recommended that the Council authorise the preparation and making of an Order to facilitate the carrying out of the Scheme.
- 2.3 This report sets out the background to and need for the Scheme and explains the relevant powers of the Council to acquire the Order Land compulsorily. It also sets out the relevant factors for the Council's consideration in determining whether or not to exercise compulsory purchase powers, including the Scheme's adherence to planning policy, prospects for delivery and, its financial viability and deliverability. This report also includes matters for consideration in relation to the Council's Public Sector Equality Duty and the implications for the Human Rights of those who might be affected by the Order.
- 2.4 The Council has made considerable efforts to voluntarily purchase and relocate owners and tenants on the Triangle to try to secure vacant possession of the land. The site comprises a wide mix of purpose built office buildings, retail units with converted upper parts into several residential flats, retail with upper parts in office use, two small office buildings, a driveway with parking on it and a single long leasehold parking space. There was a wide variety of ownerships whether they be properties owned freehold and let out, long leasehold residential units let on AST's and residents homes.
- 2.5 Good progress has been made in purchasing both commercial properties and residential properties forming part of the Order Land. Lynton House, Jubilee House and Southern House

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have been purchased in their entirety and are scheduled for demolition in August 2020. These three properties make up a significant proportion of the site. To date, around 87% of the Island site has either been acquired or terms have been agreed, and formal negotiations with the remainder of the site are in hand. The freehold footprint of the Island Site is approximately 4,214 sqm of which the Council owns approximately 2,887 sqm. The Council has also made considerable efforts to voluntarily purchase the areas of land needed to facilitate the scheme. The total area of the Order land is 8,840sqm (0.884 hectares).

2.6 As with any acquisition process, it is possible that despite best efforts, land cannot be voluntarily acquired. In this instance the Council will need to commence compulsory purchase order (CPO) proceedings on all land that it has been unable to voluntarily purchase which is required to enable the project to progress. The compulsory purchase of land is intended as a last resort in the event that attempts to acquire the land 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 authorities to initiate the formal procedure 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.

2.7 To date, the Council has made a number of relocation proposals to current occupiers with the Order Land and are currently working on a number of further offers for compensation or relocation. Discussions and negotiations with landowners and occupiers will continue parallel to the compulsory purchase order process if an affirmative decision to use compulsory purchase powers is made. The COVID 19 pandemic has impacted upon the Council's negotiations. It was not possible or appropriate for a reasonable period of time to be in discussion with owners and occupiers to sell and/or vacate their properties.

2.8 The Legal Services Manager has instructed Ardent, a land referencing agent to provide land referencing services to the Council and produce the final CPO schedule and Order Plan(s). A draft map of the Order Land is contained in Appendix 1. The extent of the interests and rights in land proposed to be acquired are listed in the schedule at Appendix 2. The final schedules and plans will be prepared in accordance with the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.

3.0 Financial Information

3.1 The total cost of the project is estimated to be £115m. This is estimated to be financed by £95m awarded from the HIF bid, £10m from WBC, and £10m saving/contribution from Network Rail. There are three key elements to the project:

- Acquisition/demolition of the Triangle site (£32.5m);
- A320 highway widening and improvements (£17.5m);
- The replacement of Victoria Arch bridge (£65m).

3.2 The difference between the £115m project cost and the £95m HIF grant is comprised of a £10m contribution from the Council through a PWLB loan to advance fund infrastructure, and £10m reduction in cost from Network Rail by contribution or value engineering.

3.3 The HIF recovery strategy sets out how the Council will secure developer contributions to repay the £10m PWLB borrowing over 15 years.

3.4 Development in the town centre will be unlocked as a result of the finished Victoria Arch scheme. As a result, housing can be delivered over and above our current commitment, as set

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out in the emerging Site Allocations Development Plan Document (DPD) by 2030. Future developments will benefit from this significant amount of public investment, so it is fair and reasonable that this development also make an appropriate contribution.

3.5 Development will need to make a minimum standard contribution of £2,000 per unit for residential development within the town centre as defined by the proposals map in order for us to achieve sufficient funds to bridge the gap between the total scheme cost and the grant.

3.6 The implementation of the Scheme would contribute to the promotion of the economic social and environmental well-being of the Council's area and would be likely to bring indirect financial benefits in the long term.

4.0 Planning Permission

4.1 From a procedural point of view, a compulsorily purchase order and planning permission for a scheme are intrinsically linked. DJB's addendum provides detail in respect of the same.

5.0 Implications

Financial

5.1 The total cost of the project is estimated to be £115m. This is estimated to be financed by £95m awarded from the HIF bid, £10m from WBC, and £10m saving/contribution from Network Rail. The £10m from the Council shall be funded by a PWLB loan and will be repaid through future developer contributions as set out in the HIF recovery strategy.

5.2 The cost of making the CPO is included in the £115m project budget.

Human Resource/Training and Development

5.3 There are no significant human resource implications arising from this report, although clearly Council officer resource will be required to progress the recommendations.

Community Safety

5.4 The replacement of Victoria Arch will provide significant improvements to the public realm and highway network, and will remove the congestion pinch-point that currently exists through this location in the town centre.

5.5 A replacement bridge will also provide enhanced pedestrian and cycle access which will significantly improve permeability across the railway line, and deliver safe connectivity in the town for residents and businesses.

Risk Management

5.6 The Council has instructed specialist solicitors and Counsel to act for it in connection with the Order. The management of risk forms an integral part of the HIF project. The project team have developed and maintain a detailed risk register that will cover all aspects of the scheme; including the CPO process.

Sustainability

5.7 None, directly arising from this report.

Equalities

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- 5.8 The Council is required to comply with its Public Sector Equality Duty (as set out in Section 149 of the Equality Act 2010). In addition, the Council has had regard to relevant guidance in this regard. The decision to make the Order is one that this duty applies to and accordingly, the Council has commissioned the preparation of the EqIA to assess the potential impacts of the Scheme on groups with protected characteristics.
- 5.9 The Council has instructed Dr Sophia Skyers to undertake a Public Sector Equalities Duty Assessment. The EqIA contains a number of recommendations for the Council to adopt as the plans for, and delivery of, the Scheme progresses. These are set out in full within the EqIA a copy of which is attached at Appendix 3. The recommendations are as follows:-
- a. The Working Access Group gets a Copy of this EqIA in sufficient time to make comments.
 - b. The Working Access Group continue to be engaged as the detailed implementation progresses.
 - c. The EqIA be publicised and published on the Council's website.
- 5.10 The Working Access Group was sent a copy of the EqIA on 14 July 2020. At the time of writing this report no comments have been received. The Council shall continue to engage with them. A copy of the EqIA has been published on the Council's website.
- 5.11 The conclusions of the EqIA are set out in full within the EqIA, however, can be summarised as:- *“The proposals for Victoria Arch will have a positive impact overall and where the potential for negative impacts have been identified, mitigating measures have been put in place by the Council where possible to do so.”*
- 5.12 Consideration as to the Council's equality duty has formed an integral part of the Scheme and Officers are satisfied that proportionate steps have been taken to comply with its duty in this regard.

Human Rights Act

- 5.13 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights. The parts of the Convention rights which should be considered in the course of the making of the Order and leading up to the confirmation of the Order Article 1 of the First Protocol and Articles 6 and 8 of the Convention.
- 5.14 Article 1 of the First Protocol of the Convention provides that:
- 5.15 *Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
- 5.16 *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.*
- 5.17 If confirmed by the Secretary of State, the Order will affect the Article 1 rights of the present leaseholders/occupiers resident within the Order Land. However, there will be no violation of those rights where the steps taken are in the public interest and are lawful, as is required by Article 1 of the First Protocol (above) and Article 8 of the Convention (below).
- 5.18 Article 6 of the Convention provides that:-

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5.19 *In the determination of 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.*

5.20 The Order proposals have been extensively publicised and consultation has taken place with the communities, businesses and residents that will be affected by the Order. All those affected by the Order will be notified of its making and have the opportunity to make objections to the Order and to be heard at a public inquiry before a decision is made on whether or not the Order should be confirmed by the Secretary of State. Those persons directly affected by the Order will also be entitled to compensation proportionate to any losses that they may incur as a result of any compulsory acquisition made pursuant to the Order.

5.21 Article 8 of the Convention provides that:

5.22 *Everyone has the right to respect for his private and family life, his home and his correspondence.*

5.23 *There shall be no interference by a public authority with the exercise of this right except such as 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 the prevention of disorder or crime, for the protection such as 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 the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.*

5.24 Article 8(1) is a qualified right and interference with it may be justified in appropriate cases by reference to Article 8(2).

5.25 If made, the Order will authorise the Council to acquire land compulsorily subject to the Council following the usual procedures for compulsory acquisition eg. the giving of notices, allowing a period for objections and affording objectors an opportunity to make their objections at a public local inquiry. To justify interference with the above rights, the Council must consider that there is a compelling case in the public interest such that if the Order Land is acquired the public benefit will outweigh the private loss arising from that acquisition. Further, interference with Convention rights must be proportionate and justified in the public interest.

5.26 In preparing this Report, Officers have carefully considered the balance to be struck between individual rights and the wider public interest and consider that, to the extent that the Order would affect those individual rights, the proposed interference with them would be in accordance with the law, necessary in the public interest and proportionate. Appropriate compensation will be made available to those entitled to claim it under the relevant provisions of the statutory Compensation Code.

5.27 It is therefore considered that the Scheme and the Order will not infringe the lawful rights of individuals which are provided by the European Convention on Human Rights.

Safeguarding

5.28 None, directly arising from this report.

6.0 Conclusions

6.1 Officers remain of the view that there is a compelling case in the public interest for the making and confirmation of the Order, and that the Order comprises a proportionate response to secure the Council's objectives.

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6.2 The Council is confident that there is more than a reasonable prospect of the Scheme proceeding, given the commitment to the delivery of the Scheme demonstrated to date, the acquisition of interests by agreement in the Order Land and the steps it is taking to deliver the Scheme. The Council also believes that there are no credible alternatives to compulsory purchase to achieve the purposes of the Order. It is highly unlikely that all the outstanding interests required could be assembled by agreement within a reasonable timescale, if at all.

6.3 Council is therefore recommended to formally resolve to make the Order, and authorise the Director of Legal and Democratic Services, in consultation with the Leader of the Council and Portfolio Holder, to take all necessary steps to secure its confirmation.

REPORT ENDS

Appendix Title