

APPENDIX B.1

WAVERLEY BOROUGH COUNCIL

EXECUTIVE – 3 NOVEMBER 2008

COUNCIL - 4 NOVEMBER 2008

Title:

EAST STREET REDEVELOPMENT FARNHAM

[Portfolio Holder: Cllr Richard Gates]

[Wards Affected: All Farnham Wards]

Summary and purpose:

To seek approval for the making of a Compulsory Purchase Order [CPO] of the land and premises on which the former Regal Cinema was erected and the Marlborough Head Public House, Farnham ("the Sites") [shown hatched and cross hatched on the plan at Annexe 1 to this report] in order to fulfil the land assembly conditions of the East Street Development contract.

How this report relates to the Council's Corporate Priorities:

The Council has a clear priority to regenerate the East Street Area of Farnham and has an important role to play in working to ensure an increased supply of affordable housing for rent or shared ownership. The East Street development will provide at least 60 new affordable housing units. The provision of leisure facilities, such as a cinema, will provide an attraction for all age groups within the town, and the development also makes provision for open spaces and community facilities in a convenient central location.

Equality and Diversity Implications:

There is a specific target under the Environment priority in the Corporate Plan to provide a major boost to the wellbeing of the Farnham Area with the delivery of the improved East Street development. The development will also provide additional facilities for young people and an increased supply of affordable housing for rent or shared ownership.

Resource/Value for Money implications:

Under the development agreement between the Council and Crest Nicholson/Sainsburys, both parties have contractual obligations to secure ownership of the parts of the development site which are not already in Council ownership. The Council is responsible to meet the cost of the acquisition sites which are the subject of this report. Crest Nicholson and Sainsburys have agreed to indemnify the Council against costs relating to the contractual obligation to acquire the site and are about to enter into a formal indemnity agreement.

There is a legal procedure to be followed in pursuing Compulsory Purchase which is set out in further detail at paragraph 6 of this report.

The final development will provide Waverley with both a capital sum and a future income. There will be financial implications in acquiring the site more fully set out in paragraph 20 to this report.

Background

1. At a meeting of the Joint Planning Committee on 1 October 2008, it was resolved to grant Planning Permission for the redevelopment of the area referred to as the East Street Regeneration Project subject to a further decision in respect of the relevant planning conditions and Section 106 agreement. At a meeting of the Executive on 10 December 2007, with the prospect of acquiring the sites by voluntary agreement appearing less likely, it was agreed in principle to pursue a CPO in respect of the Sites if necessary.

Development Proposals

2. The proposal provides for a mixed-use redevelopment of the area of Farnham including the sites shown on the plan at Annexe 1 to this report and includes:
 - 9,814 sq m of new retail, cafes, restaurants and bar floorspace;
 - 239 new residential properties comprising:
 - 167 for private sale [70%]
 - 36 affordable shared ownership [15%]
 - 36 affordable rental [15%]

(4 existing residential properties will be demolished leaving 235 net);

 - A cinema;
 - New public open space areas including a new town square;
 - Landscaped garden areas;
 - Provision for a new Gostrey/Community Centre;
 - New surface, basement parking facilities and a multi-storey car park with the provision of 426 car parking spaces including 3 spaces for use by a Car Club.

Why a CPO is needed

3. The Council already owned most of the development land required for this project and acquired by voluntary agreement the Health Centre premises in March 2006. However, there are still two parcels of land in private ownership that are needed for the project. The site of the former Regal Cinema is owned by F&C, and the Marlborough Head Public House is owned by Greene King Brewery.

4. Despite attempts to agree terms for acquisition by normal negotiation, the owners in both instances have so far refused to sell. It is therefore necessary to consider the use of Waverley's statutory powers to make a Compulsory Purchase Order to enable the proposed development to proceed in its current design.
5. The Council has on two occasions in the past agreed in principle to use CPO powers, subject to officers securing necessary safeguards for the authority such as the Indemnity agreement referred to earlier.

Programme

6. The draft programme for acquiring the sites using compulsory purchase powers is set out below. It makes allowance for the possible requirement for a public inquiry to determine the need for compulsory purchase powers, progress, at many stages will be outside the Council's control.

October 2008	Planning application considered by Joint Planning Committee.
November 2008	Special Executive followed by Special Council to consider resolution to make CPO.
November 2008 – January 2009	Referencing and recording information/serving notices etc.
February 2009	Making the CPO
March 2009	Press and Site Notices
April 2009	Submitting CPO to the Secretary of State
June 2009	If unopposed CPO(this would be the exception) – Secretary of State will issue a decision confirming or dismissing it
July 2009	Public Inquiry announced if CPO is opposed
September 2009 – December 2009	Preparation for Inquiry and Inquiry held
January 2010	Outcome of Public Inquiry known (Secretary of State's decision)
March 2010	Allow six weeks for appeal to High Court
April 2010	Procedure for acquiring the site
July/August 2010	Taking ownership and settlement of compensation

Statutory Authority for Making the CPO

7. Compulsory purchase powers exist under planning legislation to facilitate development, redevelopment and improvement projects. The Planning and Compulsory Purchase Act 2004 amended the law to make the process clearer and easier to use.
8. The Council is required to state the specific powers that it proposes to use, as set out below.
 - i. Powers under Section 226[1] [a] of the Town and Country Planning Act 1990 enable the Council to acquire land that is needed to "secure the carrying out of development, redevelopment or improvement". Furthermore, under Section [1A] of Sect. 226 the Council must be satisfied that this scheme contributes to achieving the promotion or improvement of the "economic, social or environmental wellbeing" of its area [i.e. the area covered by Waverley Borough Council].
 - ii. The major components of the scheme which contribute to satisfying these criteria are detailed within the Statement of Reasons below.
 - iii. The scheme will necessitate applications for stopping up orders under Section 249 of The Town and Country Planning Act 1990. The cost of these will be funded by the developer (Crest Nicholson).
 - iv. Subject to the outcome of the referencing process, the Council may also need to exercise other powers under Sections 236,237,271 and 272 of the 1990 Act.

These sections relate to powers for the extinguishment of private rights over land acquired compulsorily; the power to override easements affecting development land; the power to extinguish rights of Statutory Undertakers; and the power to extinguish rights relating to telecom apparatus.

Until the referencing procedure has been completed the precise nature and extent of any existing rights will not be know.
 - v. Powers under Section 13 of the Local Government[Miscellaneous Provisions] Act 1976 to create new rights over land in the vicinity of the Order land
9. It is necessary for the Council to resolve formally to use these compulsory purchase powers before it may make a CPO. However [assuming there are objections], 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 merits of the scheme and any objections, by way of public inquiry.

Statement of Reasons

10. In resolving to use CPO powers, the Council must be satisfied that it is necessary to acquire the site in order to secure the entire delivery of the scheme. This justification will form a key part of the statement of reasons which will accompany the order. This is now in preparation but will include the following matters:-
11. Farnham is an historic market town, which has always maintained a vibrant economy throughout the centuries. Its centre retains aspects of its medieval origins, together with later Georgian and Victorian influences. The quality of the architecture in the town is high and it boasts more listed buildings than Lincoln or Chester.
12. The heritage cannot be ignored when planning further development. Many studies have been undertaken to understand better the needs of the town. Farnham Town Council has carried out a recent Healthcheck and has also commissioned a Sustainable Town Study and there has been an independent retail study, which was undertaken as part of the evidence gathering for the Core Strategy. It is evident that the town needs investment, but any development must be sympathetic to the rest of the town.
13. It should also be recognised that there is much development taking place in areas adjoining Farnham, which in themselves, will have an impact on the town and its function. Current proposals include the Aldershot urban expansion project and the Bordon/Whitehill eco town proposal.
14. The only practical location for any major redevelopment is within the East Street area of the town. The potential of this site had been recognised by many reflecting its location immediately adjoining the town centre area and also being immediately accessible to the major bus routes, car parks and railway station.
15. In addition, general economic benefits will arise as a result of the increases, in particular, in retail development and direct employment during and after construction and from the substantial overall financial investment by Crest Nicholson which the scheme represents and which will act as a catalyst for the regeneration of this part of Farnham.
16. The social benefits will include improved leisure and housing facilities, including a new cinema and much-needed residential units, including new affordable housing in the town centre. Environmentally, the scheme will serve to redevelop an area of Farnham that has become badly run-down and the materials and design have been selected having regard to sustainability issues.
17. The provision of public open space and public realm will be welcome in the context of a town centre location and the quality of proposed landscaping provisions will provide long-term enhancement of the area.
18. Significant benefits from the East Street regeneration include:

- The provision of modern sized retail units with adequate servicing to meet customer demand and to retail trade within the town – as confirmed by the Chase and Partners retail study.
- The provision of leisure facilities, such as a cinema, which will provide attraction for all age groups within the town. The Healthcheck confirmed the local importance of this being a desired facility.
- The provision of housing within the town centre location close to bus and rail routes – will provide a sustainable location.
- Within the overall housing mix 30% will be affordable and thereby assist in meeting local housing needs.
- The development makes provision for open space and an attractive public domain at the heart of the proposed retail area.
- The land use mix of the scheme creates peak traffic demands at different times of the day [e.g. residential units may contribute to a journey to work or commuting flow whilst the shops will have most of its traffic generated during the middle of the day or from mid-morning to mid-afternoon and at weekends and the cinema and bars characterising evening traffic generation]. As such, the overall traffic generation will be spread out through the whole day and makes the most efficient use of the highway network and public transport facilities.
- The scheme acts as as catalyst for the park and walk strategy envisaged in the Farnham Sustainable Town report. In practice this will be a move to more peripheral parking on the edge of the town centre and thereby reducing the need to travel through the town centre.
- The scheme makes provision for the accommodation of community facilities in a convenient central location.

Financial Analysis

Background

19. All estimates remain the same as those reported to Council in December 2007 and given current financial conditions it is not considered an appropriate time to review them.
20. When the Council granted landowner sanction for the East Street development in December 2007 it made financial provision for the acquisition of land not in its ownership or control. Part of the provision was spent on the purchase of the freehold of the Health centre and the release of the Surrey County Council covenant across the site. A balance remains which is available to fund the purchase of the former Regal Cinema site, together with Stamp Duty Land Tax (SDLT) and Waverley's share of the costs of using Compulsory Purchase.

21. If a CPO is granted on this site the price to be paid will be determined by a Lands Tribunal. The price will be the open market value of the site in a "no scheme" situation, i.e. the current East Street scheme with planning permission will be disregarded for valuation purposes.
22. It is difficult to assess what valuation would be placed on the site but market conditions at the valuation date will determine the figure.
23. The purchase of the Marlborough Head and the associated costs of that part of the CPO will be met by CNS. Only a local authority can action a CPO so CNS will be required to contractually indemnify the Council for their share of the costs. CNS have specific provision for the cost of purchasing the Marlborough Head.

CPO costs

24. Each case can vary quite significantly and will also depend on how much internal resource can be utilised. It is considered that a significant amount of the work leading up to any Inquiry will involve internal staff resources which are already budgeted for. However, as a rough estimate the cost of undertaking a CPO is £165,000 including Lands Tribunal fees. The £130,000 element could reduce approximately to £100,000 depending on how many witnesses are necessary. So of the estimated amounts it is believed that 70% will be incurred when an inquiry happens.

	£'000
Lawyers, Surveyors, Counsel, expert witnesses – assuming a 4 day inquiry, if there is significant objection	130
Land tribunal fees	35
Estimated total costs	165

25. Given that CNS will be indemnifying Waverley for the costs of acquiring The Marlborough Head, it is assumed that these costs will be shared 50:50. The Council's share of these costs would be met from the financial provision for land acquisitions.

Key Financial Risks

26. **1. The valuation price plus SDLT and CPO exceeds the financial provision for land acquisition and makes the scheme non-viable.**

Whilst the precise effect of this would not be known until the final scheme viability is carried out, alternative funding other than the scheme premium might be required to deliver the CPO purchase.

2. The landowner(s) agree to sell the land well into the CPO process.

In this situation the Council would face abortive CPO costs and would have to assess whether the price the landowner wants to receive is favourable compared to the likelihood of the CPO being granted and the valuation price to be agreed by the Lands Tribunal.

3. Waverley secures a CPO, but the East Street scheme is non-viable.

If the CPO is completed and the scheme is non-viable the potential costs of purchase and other costs would need to be financed from other sources, such as partly the Revenue Reserve or through borrowing. Alternatively, the Council could offer the land back to the previous landowner, although there is no guarantee that they would want it. Before actually completing the CPO purchase the Council will undertake a financial risk assessment/appraisal.

4. There are significant delays between site acquisition and the CNS contract becoming unconditional.

In these circumstances the Council could arrange bridging finance which would be charged against the overall scheme. This will however affect viability as the Council would incur additional financing costs. The Council will also need to balance carefully the timing of its spending because of its need to fund the car park and tennis facilities at Riverside.

5. The overall East Street scheme is non-viable for the Council.

In this situation CNS could waive the viability clause and pay the Council its premium. If this didn't happen there is a risk that the Council could be left holding the land without an immediate scheme. Whilst this would require alternative capital funding and financing costs the Council would be in a stronger position in developing a future scheme.

However, in these circumstances the Council would not own the Marlborough Head. To protect the Council's position it would be worth including an option on the Marlborough Head, which requires CNS to sell it should the Council require it, again to put the Council in a stronger position in the future. There would however be extra purchase costs for the Council to consider and finance.

6. The scheme does not immediately satisfy the viability requirement when the CPO is being considered.

It is expected that the CPO process will take up to two years and that a CPO would only be issued when a scheme is considered viable either at that point or within the three subsequent years. However, as this scheme was shown to be viable as recently as December 2007, this will give a firm basis for going forward beyond the downturn. The economic downturn is currently affecting the viability of all developments and it is economic recovery which will determine when schemes become viable again. Whilst it is hoped that recovery starts within two years, there is an additional safeguard to the

Council built into CPO processes in that the CPO does not need to be implemented until three years after it has been confirmed, thereby potentially allowing further time to action the CPO and viability to be satisfied.

7. The CPO is not confirmed.

If it is not possible to secure the necessary land acquisitions, it will not be possible to deliver the current scheme in its present form. In addition to the potential costs incurred by Waverley it is possible that the Council/CNS would be required to pay for the other parties costs which could be of a similar order to Waverley's/CNS's. If this happens the costs will need to be met from existing capital programme resources.

Viability

27. Members will be aware that one of the main pre-conditions in the Development agreement with Crest Nicholson and Sainsburys is a satisfactory viability test. There is also a provision which allows the developer to waive this condition in which instance Waverley would receive its required land value while Crest Nicholson and Sainsburys absorbed the risk that the required profit levels did not materialise.
28. At the time of granting landowner sanction for the present scheme it was clear that viability could be adequately met. However since that time the unforeseen "Credit Crunch" has occurred. Clearly this has had a widespread and nationwide impact on the building industry. Crest Nicholson have informed us that they remain adequately funded and fully committed to the scheme. Latest proposed amendments to the Development Agreement allow for a rolling programme of viability testing for this scheme and both officers and Crest Nicholson remain confident that adequate viability will be proven as the market recovers.
29. As stated in Circular 06/2004, the Minister in confirming the CPO would expect to be reassured that it was anticipated that adequate funding would be available to enable the authority to complete the compulsory acquisition within the statutory period i.e. 3 years following the confirmation of the order

The CPO Boundary

30. The area of land required to be shown on the Order Plan is shown hatched and cross-hatched on the plan appended to this report at Annexe 1.

Cost Indemnity Agreement

31. Crest Nicholson are proposing to enter into an indemnity agreement whereby they agree to meet Waverley's costs in compulsorily acquiring the sites which Crest Nicholson have a contractual obligation to secure under the terms of the Development Agreement. Waverley's liability is therefore limited to the cost of acquiring the land agreed in the Development Agreement as being the Council's obligation.

32. Members will be aware that the Council has already secured the release of the restrictive covenant over the Dogflud Car Park and has purchased the Freehold of the former Health Centre. The Council's outstanding liability under the Development Agreement remains the former Regal Cinema site owned by F&C. The estimated cost of this has been shown in all the previous financial reports submitted by the Chief Finance Officer and there is therefore no new cost over and above this. Crest Nicholson remains responsible for costs associated with the acquisition of the Marlborough Head Public House from the Greene King Brewery.
33. The procedure for calculating compensation for compulsory purchase is set out in statute, principally the Compensation Code. A more detailed report on this is included in the exempt appendix to this report.

Other Options

34. The Council would have prepared to seek to secure site assembly purely by private agreement with property owners. However, negotiations over past years have shown such an approach would be unlikely now to succeed. This uncertainty would be fatal to the scheme as designed. It is therefore considered vital that the scheme is supported by a CPO in order to achieve certainty of delivery of the current scheme, notwithstanding that efforts to acquire the necessary interests by agreements will continue.

Risk Assessment

35. Possible Issues

- 1. Development does not proceed after CPO has been made and confirmed.**

The Council will be indemnified by Crest Nicholson against any costs incurred other than those already budgeted for.

- 2. Development does not proceed after properties have been compulsorily purchased.**

The property owners will have the right to [or will have been paid] compensation and Crest Nicholson will have an on going liability to cover the Council's costs as referred to. If, for unforeseen reasons, Crest Nicholson are unable to proceed, Waverley would have to decide whether to seek an alternative developer.

If the CPO sites are acquired and the development does not proceed, the Council will have to offer the undeveloped CPO sites back to former owners first, if it wishes to dispose of the land. This is a requirement under legal rules known as the "Chrichel Dawn" Rules.

3. Objections lead to a public inquiry

The programme set out at paragraph 6 in this report allows time for such an inquiry as this proposal is not likely to go unchallenged. That aspect of the procedure will inevitably cause a delay but is outside the Council's control.

4. The CPO is not confirmed by the Secretary of State

The justification for the CPO satisfies the provisions of the Town and Country Planning Act 1990 and complies with Government guidance in circular 06/04. The Government is encouraging local authorities to use CPOs to assist in major redevelopment projects such as East Street. However, the ultimate decision remains with the Secretary of State.

Consultation and Human Rights Act 1998

36. There is a well documented history of consultation with the public in general and Farnham residents in particular on this scheme since its inception. The current scheme which received Planning approval on 1 October 2008 was, as usual, subject to a consultation period. Members of the public and representatives of interested organisations have been given the opportunity to make suggestions, ask questions and present their views to members in a range of settings.

37. The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights. Public authorities are prevented from acting in a way which is incompatible with the Convention. Various convention rights could be relevant to the order, including:

1. Entitlement to a fair and public hearing in the determination of a person's civil and political rights [Convention Article 6]. This includes property rights and can include opportunities to be heard in the consultation process. Interested parties also have the opportunity to oppose the making of a CPO through the relevant legal procedures. As mentioned above, the matter may ultimately be decided following a public inquiry.

2. Rights to respect for private and family life and home [Convention Article 8]. Such rights may be restricted if the infringement is legitimate and fair and proportionate in the public interest. It should be noted that the current main freehold owners of the CPO site are commercial organisations.

3. Peaceful enjoyment of possessions [First Protocol Article 1]. This right includes the right to peaceful enjoyment of property and is subject to the State's right to enforce such laws as it deems necessary to control the use of property in accordance with the general public interest.

38. Of course those who have interests in the CPO sites will be entitled to financial compensation.

39. The European Court has recognised that "*regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole*". Both public and private interests are to be taken into account in the exercise of the Council's powers and duties. Any interference with a Convention right must be necessary and proportionate.
40. The Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. The Council must carefully consider the balance to be struck between individual rights and the wider public interest. It is considered that any interference with the Convention rights caused by the CPO will be justified in order to secure the economic, social and environmental benefits that the scheme will bring in redeveloping a run-down part of Farnham. The benefits have been set out above in this report but the Council is under an obligation to consider them carefully and decide whether they do justify the making of a CPO and the interference with private rights such that the benefits of the scheme outweigh the other interests.

Conclusion

41. It is considered that the proposed East Street redevelopment scheme will contribute to achieving the promotion or improvement of the economic, social or environmental well being of the Borough of Waverley, including Farnham as required by Section 226 (1)(a) of the Town and Country Planning Act 1990.

Recommendation

It is recommended that the Executive RECOMMENDS to the COUNCIL that

1. Subject to completion of an appropriate CPO and Cost Indemnity Agreement, the Council shall make 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 for the acquisition of land and the creation of any new rights within the areas shown on the plan (attached as Annexe1) for the purposes of securing the proposed redevelopment scheme to include mixed-use redevelopment comprising: 9,814 sq m of retail, restaurant and café-bar accommodation (239 gross) (235 net) residential units; a cinema; multi-storey, surface and basement car parks providing a total of 426 spaces; associated highway and access works; provision of infrastructure and landscaping; replacement facility for the existing 'Gostrey Centre';
2. In order to carry out the development as currently proposed and achieve the social economic and environmental benefits outlined in this report, the Council is satisfied that it is necessary to acquire the CPO Sites as part of the required redevelopment site;

3. If appropriate, subject to the outcome of the referencing process, it is agreed that the Council shall exercise its powers under Sections 236, 237 and 271 of the 1990 in order to extinguish any relevant rights in connection with the CPO;
4. the Chief Executive be authorised to take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order including finalising the terms of the Statement of Reasons, CPO Order and Schedule of Interests; service of notices and dealing with all other relevant documentation; negotiating and entering into agreements or undertakings with landowners; acquisition of third party interests by private treaty and payment of compensation; and
5. the Chief Executive, in consultation with the Deputy Chief Executive, be authorised to incur the necessary expenditure in obtaining the CPO site and undertaking the CPO procedure.

Background Papers (CSP)

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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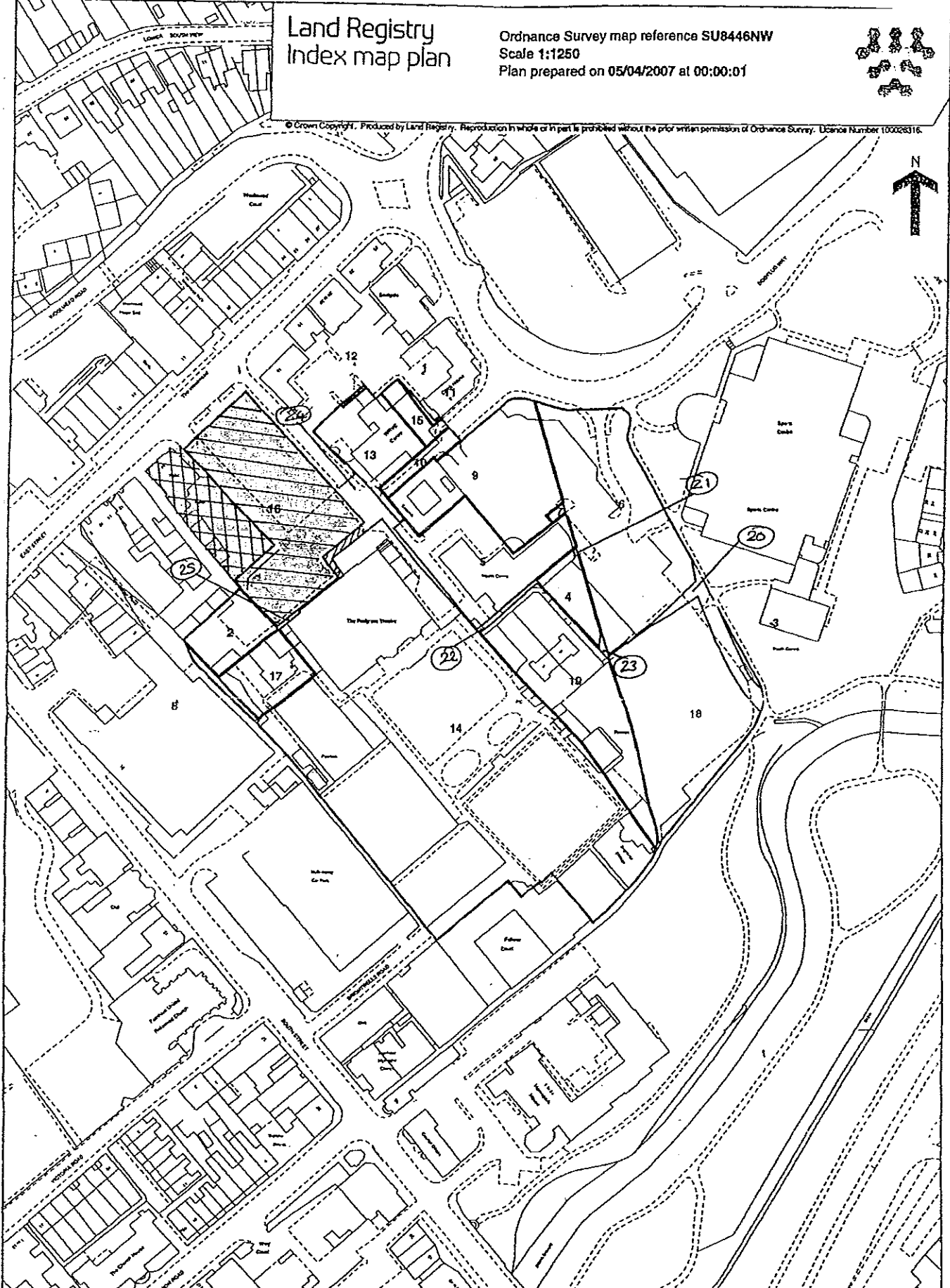
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Land Registry
Index map plan

Ordnance Survey map reference SU8446NW
Scale 1:1250
Plan prepared on 05/04/2007 at 00:00:01



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This plan should be read in conjunction with result C94CSGB.

This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 7 - Title Plans.

