

APPENDIX F

WAVERLEY BOROUGH COUNCIL

EXECUTIVE – 29 NOVEMBER 2011

COUNCIL – 13 DECEMBER 2011

Title:

EAST STREET DEVELOPMENT FARNHAM

[Portfolio Holder: Cllr Adam Taylor-Smith]

[Wards Affected: All Farnham Wards]

Summary and purpose:

- In preparation for the Council making a decision on whether to proceed to make a Compulsory Purchase Order (CPO), this report sets out a series of procedural steps necessary to put the Council in a position to proceed with a CPO if it wishes.
- To appropriate the necessary land for planning purposes and to identify the land to be leased if Council agrees to Crest Nicholson/Sainsburys (CNS) to enable the East Street Development to take place.

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 also 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 72 new, affordable housing units. The provision of shops, restaurants and leisure facilities, including a cinema, will provide attractions 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 (CNS), either party can secure ownership of the parts of the development site which are not already in Council ownership. The Development Agreement includes a formula on how the acquisition costs will be shared. CNS has agreed to indemnify the Council against half of the costs relating to the contractual

obligation to acquire the site through a successful CPO and have entered into a formal indemnity agreement. CNS also indemnified the Council in respect of the purchase price/compensation payments in connection with acquiring the sites, although these are taken into account in the formula set out in the development agreement. If Waverley Borough Council did not achieve the CPO or did not proceed then the costs incurred in undertaking the process would have to be written-off.

The Council's share of the costs of undertaking the CPO process will be met from the eventual capital receipt. (Until the receipt is received the costs will be met from the Revenue Reserve in the first instance). Similarly, the acquisition costs of both sites will be met from the eventual capital receipt and financed in the short term from the revenue reserve.

The cost of appropriating the land will be met from existing budgets. The transfer of land at Riverside from the Housing Revenue account to the General Fund for planning purposes will be at nil value given the condition of the land.

Background

1. On 6 August 2009 the Council, as local planning authority, granted planning permission for a scheme of mixed use development as described in paragraph 2 below ('the planning permission'). The resolution to grant the planning permission had been taken at a meeting of the Joint Planning Committee on 1 October 2008. The planning permission authorises the redevelopment of the area referred to as the East Street Development. The planning permission is subject to the terms of a S.106 agreement dated 6 August 2009. At a meeting of the Executive on 10 December 2007, and again on 3 November 2008, with the prospect of acquiring the sites by voluntary agreement appearing less likely, it was agreed to pursue a CPO in respect of the sites if necessary.

Development Proposals

2. The planning permission authorises a mixed-use redevelopment of the East Street 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%]
 - 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.
3. The Council has a long standing and established policy objective of regenerating the East Street area of Farnham and of facilitating a scheme of development, redevelopment and improvement of land for that purpose. Implementation of the East Street Development will achieve that objective and both promote and improve the economic, social and environmental well-being of Farnham and the wider locality. The Council already owns the majority of the land and buildings comprised within the area of the planning permission. The Council acquired by voluntary agreement the Health Centre premises in March 2006. However, acquisition of the Sites shown on the Plan at Annexe 1 would be required for the purpose of the East Street Development. The principal lands to be acquired compulsorily are two parcels of land in private ownership: the site of the former Regal Cinema which is owned by F&C Reit; and the Marlborough Head Public House, which is owned by Greene King Brewery. The remaining lands to be acquired are required for the purposes of the East Street Development but ownership of those lands is uncertain.
 4. Despite attempts to agree terms for acquisition by negotiation, the owners of the two principal lands to be acquired have so far been unwilling to sell by private treaty. It is, therefore, necessary to prepare for the possibility of compulsory purchase pursuant to section 226(1)(a) of the TCPA, in order to enable the East Street Development to proceed and the planning permission to be implemented for that purpose.
 5. This report seeks approval to undertake two important procedural steps prior to the CPO process: namely the appropriation of parcels of the Council-owned landholdings for planning purposes, and the serving of notices on adjacent landowners for the purpose of acquiring various rights – such as the right to erect hoardings, over-fly cranes, etc. It also seeks authority to begin informal discussions with the government office about the technical requirements of a CPO order.
 6. The draft programme for the potential acquisition of the land by compulsory purchase is set out below. It makes allowance for the likely requirement for a public inquiry to hear any objections to the order.

Timeline

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| Preparation of information for potential CPO submission | October/November 2011 |
| Notices to and agreement of freeholders re acquisition of rights | 14/12/11 – 20/01/12 |
| Draft CPO order for preliminary discussion with Government office | December 2011 |

Appropriation of land issues

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| Agreement by Council for appropriation | 13/12/11 |
| Advertisement process | 23/12/11 – 20/01/12 |
| Result of responses to Executive | 07/02/12 |

Potential CPO timeline

The formal process commences with a decision of full Council to make a Compulsory Purchase Order

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| Secretary of State decision confirming or dismissing | 3 months |
| If opposed public inquiry preparation | 6 months |
| Public inquiry | 1 week |
| Secretary of State decision | 4 months |
| Allow for potential High Court Appeal | 6 weeks |

Viability

- Members will be aware that one of the main pre-conditions in the Development Agreement with CNS is a satisfactory viability test. Before any decision to proceed with compulsory purchase, the Council will need to assure itself as to the likelihood of success of the proposed development.
- The latest viability statement prepared by CNS is attached at (Exempt) Annexe 3 and demonstrates that after a period of economic recession there has been an improvement in trading conditions in both residential and commercial markets whereby a positive return on the scheme is forecasts. This has been prepared using relevant expertise as follows:

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|------------------------|------------------------|
| Residential Values | Hamptons and Savills |
| Commercial rent levels | DTZ and CBRE |
| Building costs | EC Harris |
| Land Valuations | GL Hearn and Christies |

- Very good progress has been made by CNS in securing anchor tenants and commercial lettings. Odeon is now in contract with the developer and negotiations with Marks & Spencer are at an advanced stage. Heads of Terms have also been agreed with a number of additional retail and restaurant businesses.

Funding Advice

10. DTZ are an international firm of real estate advisors who have been working alongside Crest Nicholson on the East Street project to advise on financial viability, funding advice and provide information and advice on the retail and commercial markets. A letter at Annexe 4 from DTZ sets out their view on funding criteria and their assessment of how Farnham compares to this. It also gives an update on their progress in marketing the project to potential funders, and explains the importance of considering making a CPO in the process in due course.

Appropriation of Land

11. All the land that Waverley owns is held for a specific statutory purpose (e.g. housing). The process of changing from one statutory purpose to another is known as “appropriation”. This requires a resolution of the Council, but does not involve any change in the ownership of the land.
12. The land owned by Waverley within the East Street and Riverside development sites is currently held for various statutory purposes, as shown on the plans at Annexe 5 (East Street) and Annexe 6 (Riverside). Planning permission has been granted for the redevelopment of both sites. Now the Council must appropriate its land for planning purposes. The effect of the appropriation for planning purposes is that any existing private rights, (for example, easements and restrictive covenants), which could prevent the development from proceeding in accordance with the planning permission, can be overridden in accordance with section 237 of the TCPA.
13. The Council also intends to lease the East Street site to CNS and part of the Riverside site to the tennis club. If none of the land were currently used as open space, the Council would be able to appropriate the land for planning purposes and to lease the land without issuing any public notice. However, parts of both the East Street and Riverside sites come within the definition of “open space” and the leases will be for more than seven years. Under sections 122 and 123 of the Local Government Act 1972 (LGA) the Council is required to notify the public of its intentions in respect of these lands and to consider any objections made within the notice period before making decisions on the proposed appropriations and disposals.
14. This procedure is required *only for the land currently used as open space* (“the open space land”), and the Council could therefore consider the appropriation and leasing of all other land except the open space land at this stage. However, it is considered preferable for the appropriation of *all* the land and the leasing of *all* the land to be considered together once the public notices have been issued. At this stage, authority is therefore being sought to issue the necessary public notices. A detailed report, including the outcome of the public notice procedure, will be submitted to the Executive in February 2012.

Conclusion

15. It is considered that carrying out the East Street Development scheme will realise the Council's long-standing and established policy objective of regenerating the East Street area of Farnham. Preparation for a CPO is required to facilitate the development, redevelopment and improvement of the East Street area. Implementation of the East Street Development by means of the planning permission will achieve that objective and both promote and improve the economic, social and environmental well-being of Farnham and the wider locality as required by Section 226 (1A) of the TCPA.

Recommendation

The Executive recommends to the Council that:

- 1 the progress made by CNS in securing anchor commercial tenants and progressing lettings to retailer and restaurant businesses be welcomed;
2. it resolves to exercise its powers under Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the creation of new rights required for the purpose of carrying out the East Street Development;
3. the statutory notice procedure in sections 122 and 123 of the Local Government Act 1972 be implemented in respect of the land currently used as open space within the East Street Development site as shown on the plans at Annexe 7 and Annexe 8 to the report and within the Riverside development site
4. officers be authorised to commence informal discussions with the Department for Communities and Local Government on the requirements for the Compulsory Purchase Order.

Background Papers

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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Annexes:

- Annexe 1 Plan showing the land which may need to be compulsorily purchased
- 2 Plan showing the hoarding line during the construction period
- 3 CNS's viability statement (Exempt)
- 4 DTZ Letter

- 5 East Street – plan showing the current appropriation of Waverley land
- 6 Riverside – plan showing the current appropriation of Waverley land
- 7 East Street – plan showing the open space land to be appropriated for planning purposes
- 8 Riverside – plan showing the open space land to be appropriated for planning purposes
- 9 East Street – plan showing the open space land to be leased
- 10 Riverside – plan showing the open space land to be leased
- 11 East Street – plan showing existing and future open space