

# Cabinet

18 July 2018



<b>Title</b>	<b>Use of compulsory powers to enable development – 116, 118 and 120 High Street. Staines upon Thames</b>		
<b>Purpose of the report</b>	To make a decision		
<b>Report Author</b>	Heather Morgan, Group Head Regeneration and Growth Michael Graham, Head of Corporate Governance		
<b>Cabinet Member</b>	Councillor Colin Barnard	<b>Confidential</b>	No
<b>Corporate Priority</b>	Housing		
<b>Recommendations</b>	<ol style="list-style-type: none"><li>1. The Cabinet approves the principle of the Council’s willingness to use compulsory powers to acquire or appropriate third party land and buildings for planning purposes, shown edged green on the plan in Appendix 2 of this report and such other incidental and adjoining interests in land which would facilitate and enable viable and deliverable development in connection with the creation of a housing development at Charter Square (formerly known as Majestic House), High Street, Staines, in order to improve the Borough’s economic, environmental and social wellbeing.</li><li>2. The Head of Regeneration Growth in consultation with the Cabinet Members for Finance and Planning and Economic Development be authorised to undertake preparatory work for the use of a compulsory purchase order upto an initial budget of £150,000</li><li>3. Members should note the use of compulsory powers are subject to:<ul style="list-style-type: none"><li>• The Council using reasonable endeavours to assemble the development site by agreement or private treaty.</li><li>• Approval by the Planning Committee of a suitable scheme for the comprehensive development of this site and 116, 118 and 120 High Street</li><li>• The Council being satisfied that there is a viable business plan and funding strategy, together with a preliminary property cost estimate detailing the costs of making and confirming any CPO and/or appropriation; and</li></ul></li></ol>		

	<ul style="list-style-type: none"> <li>• In the event the Council and its development partners are unable to assemble the development land by agreement or private treaty, that a further report is presented to the Cabinet seeking authority to make a full and unconditional Compulsory Purchase Order for the site and to acquire or appropriate the site for planning purposes</li> </ul>
<p><b>Reason for Recommendation</b></p>	<p>This report seeks confirmation of the Council’s willingness, in principle, to use compulsory purchase and / or appropriation powers in order to enable development of the 116, 118 and 120 High Street, Staines-upon-Thames.</p> <p>Government guidance in Circular 10/2015 ‘Compulsory purchase and the Crichton Down Rules’ make it clear that compulsory powers should only be exercised where there is a compelling case in the public interest.</p> <p>Knowing the Council is prepared to use compulsory powers may be sufficient to bring parties to the negotiating table. However, the report also seeks specific authority to commence preparatory compulsory purchase procedures in respect of the site so that the Council will be in a position to proceed quickly to make a decision so that it can acquire all necessary interests in the land to enable development.</p> <p>Officers would be required to obtain further Cabinet authority prior to the making of a Compulsory Purchase Order or appropriating land or rights over land.</p>

## 1. Key issues

- 1.1 The High Street site has been the subject of a plethora of redevelopment proposals. The first comprehensive scheme was granted planning permission on appeal in 2011 although a number of applications relating to smaller elements of the site were permitted before this time. During this time, the site has changed ownership on several occasions. A range of different schemes have been approved, all of them have been mixed use. Initially the proposals were office based with elements of retail use. The most recent proposals have been residentially led. The extent of the site that has been identified by the Council for development of a new residential use is shown edged red on the attached plan.
- 1.2 The planning application for the site at Charter Square, High Street, Staines-upon-Thames, TW18 4BY, Phase 1B has recently been approved. This planning application seeks planning consent for the redevelopment of Phase 1B of the Charter Square development for a multi-residential development of 104 units above commercial space on the ground floor and a separate 2 storey commercial building fronting London Road. The development would

also provide 27 car parking space below grade in a basement level, 108 secure cycle spaces at grade and a pocket park with children's play space.

- 1.3 The buildings on the site were demolished approximately eight years ago. The site currently is being redeveloped and comprehensive redevelopment will significantly improve this area of the town centre and uplift the town centre more generally. Whilst it is possible to redevelop the site without nos. 116, 118 and 120 High Street, the inclusion of these properties up to the railway bridge, which are key corner buildings, would result in visual improvement in townscape terms at a strategic location within Staines. Moreover, it would result in a comprehensive town scheme when combined with the recently developed Premier Inn site on the opposite side of the railway to the west.
- 1.4 It is also important to note that the current scheme under construction includes a new link road on the northern side of the site to link Fairview Avenue to Millmead. Acquiring this site will enable the closing off of Millmead at its junction with the High Street which is a very substandard and dangerous access. It will also enable Millmead to be pedestrianised with environmental improvements. However, without nos 116- 120 High Street, the completion of the pedestrianisation will not be possible due to the existing use of the first part of Millmead by 116 & 118 High Street. The inclusion of 116, 118 and 120 High Street would result in a comprehensive redevelopment of the site with significant environmental benefits for the town.

### **Options analysis and proposal**

- 1.5 There are two options:
  - (a) Do nothing and allow market forces alone to determine whether the land is finally developed in accordance with the Council's aspirations. This option is not recommended due to already prolonged delays and further possibility that terms will not be agreed between the parties. If terms are not agreed then it is unlikely that this key site will be developed in the foreseeable future.
  - (b) To confirm, in principle, the Council's willingness to use compulsory powers to facilitate development of this site and to further the economic, environmental and social well-being objectives of the Borough principally through the provision of increased housing and a comprehensive development on a key road into Staines Town Centre. This is the **recommended option** as it gives a clear message to all parties of the importance to the Council of redeveloping this site to further the economic, environmental and social well-being of the Borough.

## **2. Legal implications**

- 2.1 The use of the powers in Section 226(1) (a) of the Town and Country Planning Act 1990 looks to be the most relevant power here because the acquisition of all the various interests in the land shown on the plans would facilitate the redevelopment of the site in accordance with the Council's policy framework. The development of this site and the regeneration opportunity it would create would contribute to the economic, environmental, and social well-being of the Borough.

- 2.2 The use of compulsory powers overrides all ownership rights in land, and therefore a local authority has to demonstrate that there is a compelling case in the public interest for compulsory acquisition of land in order to convince the Secretary of State to confirm a CPO. However, in cases where it is thought that it may be necessary to use the power in order to assemble a redevelopment site if negotiations break down, it is usual to commence the preparatory work for making an order in tandem with the conduct of negotiations for acquisition of the land by agreement. Indeed, negotiation will continue throughout the process. The report seeks confirmation in principle of the Council's willingness to use compulsory purchase powers, and authority to commence preparatory work, in order to be in a good position to progress further if so required.
- 2.3 The making and confirmation of a Compulsory Purchase Order means that the acquiring authority can force owners and occupiers of the land to transfer their property interest to the Council and vacate the land. It has the potential therefore to interfere with a person's human rights in respect of the enjoyment of their property, or their home. The extent of the harm must be assessed and weighed against the public interest in achieving the regeneration at the time when a local authority is considering making a CPO. The carrying out of preliminary work as is recommended here is not likely to interfere with the human rights of any person interested in the land.

### **3. Statutory Powers**

- 3.1 The Council has wide ranging powers for the acquisition of sites including Part IX of the Town and Country Planning Act 1990. The 'Guidance on Compulsory purchase process and The Crichel Down Rules' states that the purpose for which an acquiring authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought
- 3.2 Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) gives a local authority the power to compulsorily acquire land in its area if it thinks that the acquisition will facilitate a development, re-development or improvement on or in relation to the land. However, the power must only be exercised if the authority thinks that the development, redevelopment or improvement is likely to contribute towards the economic, social or environmental well-being of the Council's area.
- 3.3 Section 226(1)(b) of the 1990 Act provides for the compulsory acquisition of land where it is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area.
- 3.4 Section 17 of the Housing Act 1985 authorises local housing authorities to compulsorily purchase land, houses or other properties to provide housing accommodation. The Section includes the power to dispose of the land, houses or other buildings to a person who intends to so provide.
- 3.5 Section 121 of the Local Government Act 1972 provides the general power of compulsory purchase (subject to certain constraints) in conjunction with other enabling powers to acquire land compulsorily for the stated purpose. This section can also be used where land is required for more than one function and the differences between uses are not clearly defined.

The statutory guidance states that the acquiring authority should choose the most appropriate power available and only use a general power when a specific power is not available.

#### **4. Risk Management**

- 4.1 Legal challenge is unlikely at this stage because there is no legal liability attached to an in principle decision that does not bind the Council to use its CPO powers. At this stage this report is a broad description of policy ambitions. This report does not fetter the discretion of the Council to make a different decision when it comes to consider all the factors associated with making a full CPO. The Planning Committee will have full discretion in its assessment of any comprehensive scheme which comes forward for these two sites.

#### **5. Financial implications**

- 5.1 Financial advice on the likely costs associated with the CPO are included in the Confidential Appendix 3 attached to this report. This document discusses the financial viability of taking 116, 118 and 120 High Street project to completion.
- 5.2 External consultant appointments would be required if compulsory purchase proceedings were instigated in accordance with the recommendation (2) and the work would be (broadly) as follows:
- (a) Consultants to prepare a Land Referencing report;
  - (b) External valuers to advise on the value of the interests identified in the Land Referencing report and to negotiate an acquisition of these interests, together with appropriate costs for disturbance, ahead of any enquiry;
  - (c) External planning consultants and legal advisors
- 5.3 There would be a requirement for internal officer time from Asset Management and Legal Services departments in managing these external consultants and in preparing a Statement of Reasons.

#### **6. Other considerations**

- 6.1 A full Equalities Impact Assessment will be undertaken, as part of the preparatory work, to identify any equalities issues that may be associated with the use and occupation of the site. The Council is aware that the use of CPO can impinge on the rights of individuals under the Human Rights Act. Full regard will be paid to this in the development of any proposals and in negotiations with land owners.

#### **7. Timetable for implementation**

- 7.1 If negotiations are not successful and the Council were to proceed with compulsory purchase proceedings, the overall time from the Resolution to use CPO powers and obtaining possession of the relevant interest(s) could be between 6 and 18 months from the making of the CPO. The length of time

depends upon whether or not an inquiry is required, the length of that enquiry, and the extent of valid objections to the CPO.

- 7.2 In the event that Council did initiate compulsory purchase proceedings, a specific process has to be followed. Prior to the making of a Compulsory Purchase Order (CPO), there are a number of steps to be followed:

**(a) Formulation**

This is an initial information-gathering exercise to decide that land is required for some particular purpose or scheme, in accordance with the Council's policy framework as set out above, and that the Council is prepared to use compulsory purchase powers to assist in achieving this. This report is effectively the completion of Stage 1, since the site has already been identified and the purpose that the proposed development would fulfil is known.

**(b) Referencing**

This is an exercise to collect and record information on land ownership and occupation so that all legal interests in, or rights to occupy, the land are identified. This is specialist work and external consultants will be appointed to undertake this work and prepare a report.

**(c) Preparation of the CPO and Statement of Reasons**

The CPO is the document that contains details of the Act authorising the acquisition, the purpose for which the CPO is being made, the land involved and the names of the owners and all other persons who have an interest in or enjoy rights over the land. External consultants will be appointed to undertake this work. The Statement of Reasons is a document that sets out the authority's reasons for seeking to acquire the land.

**(d) Resolution**

This is the formal Resolution of the Council to use compulsory purchase powers.

This Resolution can be obtained prior to steps (a) and (b) above. However, since it is not yet known if it will be necessary to use compulsory purchase powers, this report is seeking an in principle decision only until it is known, or expected, that there is no other option available. A further report will be brought to the Cabinet should a resolution be required to make a CPO.

**Background papers: There are none.**

**Appendices:**

**1 – plan for 116, 118 and 120 High Street**

**2 - financial costs of CPO (confidential)**