

Cabinet



St Edmundsbury
BOROUGH COUNCIL

Title of Report:	Suffolk Business Park Land Assembly	
Report No:	CAB/SE/15/016	
Report to and dates:	Cabinet (Special)	24 February 2015
	Council (Special)	25 March 2015
Portfolio holder:	Cllr John Griffiths Leader of the Council Tel: 01284 757001 Email: john.griffiths@stedsbc.gov.uk	
Lead officer:	Steven Wood Head of Planning and Growth Tel: 01284 757306 Email: steven.wood@westsuffolk.gov.uk	
Purpose of report:	<p>To meet the objective of the Council to achieve development of Suffolk Business Park. To facilitate site assembly by the acquisition of property through a compulsory purchase order.</p> <p>This action meets the Council's priority to increase opportunities for economic growth; and homes for our communities by the development of Suffolk Business Park and the construction of the Eastern Relief Road.</p>	
Recommendations	<p>Cabinet is asked to <u>RECOMMEND</u> to Council that:</p> <p>(1) it makes the St Edmundsbury Borough Council (Suffolk Business Park Infrastructure) Compulsory Purchase Order 2015 ("the Order") under section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) and the Acquisition of Land Act 1981 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and all other enabling powers, for the acquisition of all legal estates and interests in the land and the acquisition of rights within the areas shown hatched on the draft Order map</p>	

<p>Recommendations (continued)</p>	<p>produced as Appendix 1 to Report No: CAB/SE/15/016 with such amendment to the final land take and plot boundaries and to substitute the taking of new rights as an alternative to the acquisition of title as may be considered necessary and approved by the Head of Planning and Growth, the Section 151 Officer and the Monitoring Officer, in consultation with the Leader of the Council, for the purposes of securing mixed use development including the provision of the Eastern Relief Road linking Moreton Hall/Suffolk Business Park at Lady Miriam Way to Junction 45 of the A14 Trunk Road;</p> <p>(2) it notes that the draft Order map shows areas hatched where the intention is for the acquisition of all interests in the land other than those of the acquiring authority;</p> <p>(3) following confirmation of the Order by the Secretary of State, it authorises the use of the General Vesting Declaration procedure and notice to treat, notice of entry and conveyance where necessary in accordance with the Compulsory Purchase (Vesting Declarations) Act 1981 and the Compulsory Purchase Act 1965 to implement the St Edmundsbury Borough Council (Suffolk Business Park Infrastructure) Compulsory Purchase Order 2015;</p> <p>(4) it approves the acquisition and appropriation of the land required for the scheme for planning purposes under the provisions of section 122 of the Local Government Act 1972 and section 237 of the Town and Country Planning Act 1990 in conjunction with (3) above to enable the Council to over-ride private rights, easements and interests (including restrictive covenants etc) affecting the land required for the scheme;</p> <p>(5) it gives delegated authority to the Head of Planning and Growth and Section 151 Officer, in consultation with the Leader of the Council to:</p>
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<p>Recommendations (continued)</p>	<p>(i) take all necessary steps as soon as is reasonably practical to secure the making, submission, confirmation and implementation of the Order (and, where appropriate, amendments to the Order by way of exclusion of interests in land or the addition of interests in land including the investigation of ownership interests) including the publication and service of all notices and the presentation of the Council's case at any Public Inquiry; and subsequent services of Notices to Treat and Notices of Entry or, at their discretion, the execution of General Vesting Declarations as the case may be if the Order is confirmed;</p> <p>(ii) negotiate to acquire all interests in the land and new rights within the Order and rights and interests affected by the Order either by agreement or compulsorily, including prior to the making of the Order; and, where appropriate, to agree terms for relocation;</p> <p>(iii) approve agreements and undertakings with the owners of any interest in the Order and any objectors to the confirmation of the Order setting out the terms for the withdrawal of objections to the Order including, where appropriate, seeking inclusion in and/or exclusion from the Order of land or new rights; and</p> <p>(iv) in the event that the question of compensation be referred to the Upper Tribunal (Lands Chamber), to take all necessary steps in relation thereto including advising on the appropriate compensation payable and to appoint appropriate consultants if necessary to assist and advise in this regard.</p>
<p>Key Decision:</p> <p><i>(Check the appropriate box and delete all those that do not apply.)</i></p>	<p><i>Is this a Key Decision and, if so, under which definition?</i></p> <p>Yes, it is a Key Decision - <input type="checkbox"/></p> <p>No, it is not a Key Decision - <input checked="" type="checkbox"/></p> <p>(as they are decisions of full Council)</p>

Consultation:		<ul style="list-style-type: none"> • Consultation on the Masterplan for Suffolk Business Park ran for four weeks before the Masterplan was formally adopted in June 2010. • Additional consultation will be necessary for any development brief in line with the Council's Joint Statement of Community Involvement and protocols on development briefs. • Consultation with the landowners and the landowners agents has been continuing for a number of months. Currently the Council is meeting weekly with Taylor Wimpey. A meeting has been arranged with Churchmanor Estates Co Ltd as agents for Rougham Estate on 25 February 2015. Attempts to consult with Rougham Estates direct have not been successful. Rougham Estates have requested that all dealings are through Churchmanor. 	
Alternative option(s):		<ul style="list-style-type: none"> • Not to use CPO powers would result in the Eastern Relief Road not progressing and funding falling away. Suffolk Business Park cannot be delivered without the Eastern Relief Road. 	
Implications:			
Are there any financial implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> • As detailed in the report 	
Are there any staffing implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> • Time and resources of existing staff and need to appoint/manage consultants 	
Are there any ICT implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any legal and/or policy implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> • As detailed in the report 	
Are there any equality implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> • As detailed in the report 	
Risk/opportunity assessment:		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
The CPO fails to be confirmed by the Secretary of State	Medium	Instruct expert consultants and follow due process	Low
Recovery of costs	Medium	Legal agreement	Low

Time taken to confirm the CPO affects the delivery of the road	High	Consultants advice and MP support	Medium
If the land is not acquired and the ERR cannot be secured, the area will be vulnerable to requests for ad hoc developments which will reduce the chances of a road being funded and additional development requests for other parts of the district.	High	Agree the CPO process to purchase the said land	Medium
Ward(s) affected:	All Wards		
Background papers: <i>(all background papers are to be published on the website and a link included)</i>	Suffolk Business Park Masterplan dated June 2010.		
Documents attached:	Appendix 1: Location Plan/Draft Order Map		

Key issues and reasons for recommendations

1. Background

- 1.1 Negotiations between Churchmanor and Taylor Wimpey had stalled. On 10 February 2015, Cabinet approved in principle, the use of the Council's compulsory purchase powers in relation to the land shown on the drawing (Appendix 1) presented with the report, subject to appropriate attempts to explore options with the landowner which would remove the matter without the need for the Council to invoke its compulsory purchase powers.
- 1.2 The Head of Planning and Growth informed both Churchmanor Estates Company Ltd (as agent for the landowner) and Sir George Agnew, Rougham Estates (the present owners of part of the land in question) and Taylor Wimpey (the present owners of part of the land in question) in writing that the Council had passed a resolution to, in principle, use its compulsory purchase powers to facilitate the sustainable urban extension known as Suffolk Business Park/Eastern Relief Road. The letter invited both parties to resolve the issue of land assembly without the need for the Council to invoke its compulsory purchase powers.
- 1.3 Government guidance asks councils to make best endeavours to resolve these matters by negotiation so as to avoid the use of statutory powers. To this end, Officers have arranged to meet with Mr Stephen Clark of Churchmanor Estates Company PLC and with Mr Bryn Maidman of Taylor Wimpey UK Ltd. The Council is concerned to make the parties aware of the seriousness of the authority's concerns from the outset and therefore tried to encourage Churchmanor to enter more readily into meaningful negotiations.
- 1.4 Prior to the involvement of the Council, Taylor Wimpey and Churchmanor had been meeting regularly to agree a Joint Venture which would be based upon all the landowners contributing the necessary land for development. This agreement has not been signed.
- 1.5 The Council has been holding meetings with Taylor Wimpey and Churchmanor for some time both individually and together. These meetings and in particular the meeting held on 24 October 2014, have set out the issues that need to be resolved to enable the development to proceed. Subsequent discussions and the submission of a heads of terms document from Churchmanor have regrettably not resulted in a satisfactory resolution to provide the Council with any confidence that the site assembly will happen without the Council using its compulsory purchase powers.
- 1.6 The costs associated with making the Order fall into two general categories, costs incurred during the process of making the Order and then costs relating to the acquisition of the land should the order be invoked. The Council is in the process of agreeing a mechanism for the costs associated with making the order to be covered. There are options for covering the costs of the acquisition which include agreeing a back to back arrangement with a commercial developer or agreeing an Indemnity Agreement. The Compulsory Purchase Order (CPO) process will not commence unless it is clear how the compensation payments will be met.

- 1.7 The Council has appointed Pinsent Masons LLP who will work with the Council's legal team to take forward the CPO. Terraquest has been appointed to carry out land searches and provide a hatched plan which will form the basis of the Order.
- 1.8 Suffolk Business Park is an allocated site in the St Edmundsbury Core Strategy (adopted 2010) and the Bury St Edmunds Vision 2031 (adopted 2014) The site also benefits from a Masterplan (adopted 2010) which sets out the broad parameters of how the site should come forward. Planning permission for the precise alignment of the Eastern Relief Road was granted on 17 February 2014.
- 1.9 The location of the Eastern Relief Road has been long established through technical planning events and consultation for the Suffolk Business Park Master Plan and through the Inquiry into the Bury St Edmunds Vision 2031 document. The options for the alignment of the Eastern Relief Road are limited by the fixed nature of junction 45 of the A14 Trunk Road and existing development at Moreton Hall/Suffolk Business Park. Alternative routes for the Eastern Relief Road would also have to cross land in the same ownerships as the current alignment. It is therefore considered that there is a compelling case in the public interest for the making of the Order so that delivery of the Eastern Relief Road may be secured.

2. Legal Powers

- 2.1 The main legal powers to be used by the Council are contained within Section 226(1) (a) of the Town and Country Planning Act 1990 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 for the making of the compulsory purchase order.
- 2.2 Section 226(1)(a) Town and Country Planning Act 1990 (as amended) enables the compulsory acquisition of land where an acquiring authority thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the Order land and where the acquiring authority thinks that the development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic and/or, social and/or environmental wellbeing of the authority's area and in accordance with the guidance in ODPM Circular 06/2004. The Secretary of State will not confirm a compulsory purchase order unless there is a compelling case in the public interest that outweighs the private interests in the CPO area. This question of balance is also required to satisfy the Human Rights Act incorporating the European Convention of Human Rights.
- 2.3 Article 1 of the First Protocol (of The Human Rights Act 1998) states that 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.
- 2.4 Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interest of national

security, public safety or the economic well-being of the country.

- 2.5 The Council is utilising its powers under section 226(1)(a) because it has not been possible to secure by agreement all interest that are required for the development and it is not certain it will be able to acquire the remaining land by agreement.
- 2.6 Any objections to the Order will be considered by an independent inspector at the Public Inquiry. It is necessary, having regard to the Human Rights Act, and in particular to the specific rights mentioned at paragraphs 2.3.and 2.4 above, to take into account the interference with private property rights protected by the European Convention on Human Rights and ensure that the interference is proportionate and in the public interest. In this context, the Council must carefully consider the balance to be struck between individual rights and the wider public interest.
- 2.7 The Council can reasonably take the view, for the reasons set out in this report, that it considers that any interference with the Convention rights is justified in order to secure the economic, environmental and social benefits the scheme will bring. Compensation payments will be made for the acquisition of interests in land and for the acquisition of new rights in land within the compulsory purchase compensation code pursuant to the Land Compensation Acts 1961-1973 and other relevant legislation. Consequently if the Order is confirmed it would strike an appropriate balance between public and private interests such that there is no breach of Human Rights.

3. Finance/Budget/Resource Implications

- 3.1 The costs associated with making the Order fall into two general categories, costs incurred during the process of making the Order and then costs relating to the acquisition of the land should the order be invoked. The Council is in the process of agreeing a mechanism for the costs associated with making the order to be covered. There are options for covering the costs of the acquisition which include agreeing a back to back arrangement with a commercial developer. Alternatively, it is possible for the Council to enter into an indemnity agreement to ensure that the Council isn't liable for the acquisition costs. Costs associated with specialist advice are the subject of a separate report also on the agenda for today's Cabinet and full Council meetings.
- 3.2 To assist with understanding the magnitude of the acquisition costs, officers have commissioned Lambert Smith Hampton to provide a valuation in line with the Compensation Code. The s151 Officer and Monitoring Officer will need to be satisfied that the Council has a mechanism in place to recover costs associated with acquisition prior to the process being started. The CPO process will not commence unless it is clear how the compensation payments will be met. An update will be given at the meeting.