

# Special Council



*St Edmundsbury*  
BOROUGH COUNCIL

<b>Title of Report:</b>	<b>Suffolk Business Park Land Assembly</b>	
<b>Report No:</b>	<b>COU/SE/15/015</b>	
<b>Report to and date/s:</b>	<b>Special Cabinet</b>	24 February 2015
	<b>Special Council</b>	25 March 2015
<b>Portfolio holder:</b>	Cllr John Griffiths Leader of the Council <b>Tel:</b> 01284 757001 <b>Email:</b> john.griffiths@stedsbc.gov.uk	
<b>Lead officer:</b>	Steven Wood Head of Planning and Growth <b>Tel:</b> 01284 757306 <b>Email:</b> steven.wood@westsuffolk.gov.uk	
<b>Purpose of report:</b>	<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>	
<b>Recommendations</b>	<p>It is <b>RECOMMENDED</b> that full Council:</p> <p><b>(1) 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</b></p>	

	<p><b>produced as Appendix 1 to Report No: COU/SE/15/015 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;</b></p> <p><b>(2) 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;</b></p> <p><b>(3) following confirmation of the Order by the Secretary of State, 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;</b></p> <p><b>(4) 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;</b></p> <p><b>(5) gives delegated authority to the Head of Planning and Growth and Section 151 Officer in consultation with the Leader of the Council to:</b></p>
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<p><b>Recommendations:</b> (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) approves 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><b>Key Decision:</b></p> <p>(Check the appropriate box and delete all those that <b>do not</b> apply.)</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>

<b>Consultation:</b>		<ul style="list-style-type: none"> <li>• Consultation on the Masterplan for Suffolk Business Park ran for four weeks before the Masterplan was formally adopted in June 2010.</li> <li>• Additional consultation will be necessary for any planning application in line with the Council's Joint Statement of Community Involvement and protocols on development briefs.</li> <li>• 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. The Council has met with Churchmanor Estates Co Ltd as agents for Rougham Estate and a further meeting is scheduled for 26 March 2015. Attempts to consult with Rougham Estates direct have not been successful. Rougham Estates have requested that all dealings are through Churchmanor.</li> </ul>	
<b>Alternative option(s):</b>		<ul style="list-style-type: none"> <li>• Not to use CPO powers would threaten the delivery of the Eastern Relief Road and risk funding falling away. Suffolk Business Park cannot be delivered without the Eastern Relief Road.</li> </ul>	
<b>Implications:</b>			
Are there any <b>financial</b> implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> <li>• As detailed in the report</li> </ul>	
Are there any <b>staffing</b> implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> <li>• Time and resources of existing staff and need to appoint/manage consultants</li> </ul>	
Are there any <b>ICT</b> implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Are there any <b>legal and/or policy</b> implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> <li>• As detailed in the report</li> </ul>	
Are there any <b>equality</b> implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> <li>• As detailed in the report</li> </ul>	
<b>Risk/opportunity assessment:</b>		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
<b>Risk area</b>	<b>Inherent level of risk</b> (before controls)	<b>Controls</b>	<b>Residual risk</b> (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 LEP 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
<b>Ward(s) affected:</b>	All Wards		
<b>Background papers:</b> <i>(all background papers are to be published on the website and a link included)</i>	Suffolk Business Park Masterplan dated June 2010.  <a href="#">Cabinet Report No: CAB/SE/15/016 – 24 February 2015</a> (Whilst the recommendations remain unchanged and are endorsed by Cabinet, this Council report has been updated since it was first considered on 24 February 2015)		
<b>Documents attached:</b>	<b>Appendix 1:</b> Location Plan		

## **Key issues and reasons for recommendations**

### **1. Background**

- 1.1 The extension to Suffolk Business Park for commercial use was first allocated in the Replacement St Edmundsbury Borough Local Plan in 1998. This allocation has been confirmed through the adoption of the Core Strategy and most recently in the Bury St Edmunds Vision 2031 documents.
- 1.2 Negotiations between the parties have been continuing since 2006 and have yet to reach agreement. It is considered that the need to provide employment land in Bury St Edmunds is now becoming urgent and the need to deliver the wider opportunities set out in the Vision 2031 documents is increasingly pressing. It is for these reasons that it is 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 and all the benefits that it will bring, may be secured.
- 1.3 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 resolve the matter without the need for the Council to invoke its compulsory purchase powers.
- 1.4 On 24 February 2015, Cabinet approved similar recommendations as set out in bold above and in doing so recommended to full Council that it approves these actions.
- 1.5 Following the approval of Report No: CAB/SE/15/017 at Council on 24 February 2015 a number of appointments have been made. The Council has appointed Pinsent Masons LLP to work with the Council's legal team to take forward the Compulsory Purchase Order (CPO). Terraquest have been appointed to carry out land searches and provide a hatched plan which will form the basis of the Order and Lambert Smith Hampton who are charged with providing valuation advice.

### **2. Negotiations**

- 2.1 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 and is currently not being progressed.
- 2.2 The Council had 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 CPO powers.
- 2.3 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,

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 on 24 February 2015 to, in principle, use its CPO 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 CPO powers.

- 2.4 In addition, following the Cabinet resolution on 10 February endorsed by Council on 24 February, Officers have met with Mr Stephen Clark of Churchmanor Estates Company PLC and representatives from Taylor Wimpey UK Ltd. Officers have explained the seriousness of the authority's concerns from the outset and have also encouraged Churchmanor to enter more readily into meaningful negotiations.
- 2.5 Since Council published its intention to consider the use of CPO powers there has been a change in attitude from Churchmanor. It is considered that showing a clear intention to use the CPO process has acted as a catalyst for a more positive dialogue with partners.
- 2.6 It is the intention that these negotiations will continue with the hope that the parties will reach agreement without resorting to the use of CPO powers. It is important however, that the CPO process should continue in parallel so that the powers will be in place, should the need arise.

### **3. Planning matters**

- 3.1 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.
- 3.2 The broad location of the Eastern Relief Road has been long established through the Suffolk Business Park Masterplan. 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 including the same ownerships as the current alignment.

### **4. Legal Powers**

- 4.1 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.
- 4.2 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.

- 4.3 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.
- 4.4 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.
- 4.5 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.
- 4.6 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 4.3.and 4.4 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.
- 4.7 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.

## **5. Finance/Budget/Resource Implications**

- 5.1 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 promotion of the CPO, including acquisition of the land should the order be invoked.



### **Costs incurred during the process of making the CPO**

- 5.2 Council Report No: CAB/SE/15/017 – 24 February 2015 approved a £150,000 budget for the project which included the costs associated with making this Order. The Council is in the process of agreeing a mechanism for the costs associated with making the order to be recovered.

### **Costs relating to the promotion of the CPO**

- 5.3 The Council must have access to the necessary resources to meet the costs of the promotion of the CPO, including land acquisition and planning blight costs. However it will fall to developers to meet all costs associated with the redevelopment of the site.
- 5.4 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 with a developer to ensure that the Council isn't liable for the acquisition costs.
- 5.5 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 will not be invoked unless it is clear how the acquisition/compensation payments will be met.
- 5.6 It is important to note that an Order (once made) does not have to be invoked. A CPO can be confirmed but not implemented; therefore not attracting the promotion costs, for example costs of acquisition. Likewise, following the confirmation of a CPO, it is possible to draw down land as and when it is required. Therefore in the example of Suffolk Business Park, the acquiring authority could purchase parcels of land over a period of time and when the demand arose during the life of the CPO powers (CPO powers must be exercised within a period of three years following the confirmation of the Order).

## **6. Conclusion**

- 6.1 The development of Suffolk Business Park is a long held strategic aspiration of St Edmundsbury Borough Council (SEBC). The need for employment land to serve this part of the region is now urgent. Negotiations have been continuing for several years in several different ways and to date there is no guarantee of the delivery of this land. It is considered that this matter is now too important to leave to chance. Unless the Council takes urgent steps to promote a CPO and secure the necessary land for the Eastern Relief Road (ERR), there is the potential that the funding for the ERR will be re-allocated. There is a compelling case for the making of the CPO to:

- deliver the new road and the regeneration of the land along its route;
- enable the project to be delivered with certainty and to a programme;
- ensure the Council can use the Local Enterprise Partnership funding available to it; and
- ensure that the critical elements of the scheme can be delivered without delay.

- 6.2 It is clear that the CPO process is already acting as a catalyst for more meaningful discussions and therefore it is proposed that the process should be allowed to continue in conjunction with efforts to reach agreement via negotiation.
- 6.3 The legal powers set out in section 4 above exist for exactly this type of situation and officers have carefully considered the relevant aspects of the law and the SEBC Constitution to ensure that the process is sound.
- 6.4 There are costs associated with making the Order (paragraph 5.2 above) which were previously approved by full Council on 24 February 2015. These costs will be recovered out of the development costs. Any further costs associated with the acquisition of land, should the Order be confirmed, will not be required until and unless parts of the land come forward for development. It is unlikely that SEBC will have to cover the costs of land acquisition unless it chooses to do so for good reason. A further report will be brought to full Council in the future to detail any proposed acquisition.
- 6.5 Once the Order is confirmed, it does not have to be invoked. The process of making the Order often results in the desired outcome by negotiation. A further report will be brought back to full Council prior to any Order being invoked.
- 6.6 Wider consultation with stakeholders has been and will continue to be part of the process to deliver Suffolk Business Park and the wider benefits that will be achieved from the opening of the Eastern Relief Road.
- 6.7 It is for all these reasons that it is considered there is a compelling case in the public interest for the making of the order so that delivery of the Eastern Relief Road and all the benefits that it will bring, may be secured.