

Taunton Deane Borough Council

Full Council – 10 April 2018

Comprehensive Compulsory Purchase of Third Party Land and Interests at Firepool, Taunton

This matter is the responsibility of Executive Councillor Mark Edwards

Report author: Tom Gillham Assistant Director, Asset Development Projects (Interim)

1. Executive Summary

- 1.1 Member's support is sought to enable Officers and our legal representatives (Ashfords working together with the Shape Partnership) to proceed with the compulsory acquisition of remaining 3rd party land and interests that are required to enable delivery of the next phases of the Firepool Development and the comprehensive mixed use scheme approved by committee.
- 1.2 In December 2014 Council approved in principle the acquisition of land and interests, by agreement, alongside preparations for the making of a future Compulsory Purchase Order (CPO), subject to a future planning approval.
- 1.3 Officers and agents (Bruton Knowles) acting on behalf of the Council have successfully negotiated and acquired through agreements the majority of land and interests required to deliver a comprehensive scheme, however some land remains in third party ownership, primarily situated between Old Cattle Market and Northern Inner Distributor Road (NIDR).
- 1.4 The CPO proposals in this report and confidential appendices are consistent with the recent resolution to grant outline planning consent for Firepool (14 March 2018). Acquisition of remaining interests are a priority and precursor to development aligned with Taunton Garden Town programme and contributes to a thriving and sustainable Town Centre.
- 1.5 A location plan is attached to this report showing areas of the Firepool master-plan that are to be developed (confidential Appendix A - edged in red), that reflects the proposals for a comprehensive compulsory purchase order. The third party land is hatched in green on the plan and currently under negotiations.
- 1.6 Discussions are currently underway with agents and owners of affected interests, and we are in communication with occupiers. However, if we are unable to agree acquisition by agreement then the Council will need to utilise its CPO powers. Members are, therefore, being requested to consider and authorise the compulsory purchase of the land and interests to enable the comprehensive development proceed.

2. Recommendations

Council are recommended to:

- i. Authorise officers to proceed with the final stages required to make a Compulsory Purchase Order for the acquisition of all relevant property interests required to facilitate the implementation of the proposed comprehensive Firepool development, which we are unable to acquire by agreement, comprising the land edged in red (confidential Appendix A).
- ii. Delegate to Director of Growth and Development in consultation with Portfolio Holder and Council Leader, under legal advice (from Ashfords and Shape Partnership) to:
 - a. Make a CPO and to progress through the appropriate procedures to secure the confirmation of the CPO once made;
 - b. Negotiate with parties affected by the CPO with a view to acquiring their interests by agreement;
 - c. Make any necessary steps and applications in relation to the stopping up or diversion of highways under powers contained in the Town and Country Planning Act 1990, as relevant to the comprehensive Firepool Compulsory Purchase Order;
 - d. Ensure the Equalities Impact Assessment and any relevant action plan are completed, identify any potentially adverse effects of CPO and clarify mitigation through an appropriate plan of action to protect any persons involved.

3. Risk Assessment

- 3.1 The Council and its development partner have taken expert independent legal and asset valuation advice (MRICS) in deciding the best way to proceed to ensure Council members support a viable and deliverable Masterplan.
- 3.2 There are some risks involved because of the nature of the market and the ongoing negotiations with remaining occupiers of the site.
- 3.3 A working copy of risk matrix is contained within confidential Appendix D. The assessment shows that identified risks can be mitigated to acceptable levels. It is considered that proceeding with a CPO will realise wider economic and regeneration benefits for Taunton from the development proposals, significantly outweighs the assessed level of residual risk, following mitigation.

4. Background

- 4.1 Following Council resolution 9 December 2014 (confidential Appendix J), positive negotiations over the last few years have led to the successful acquisition on north-side of the majority of land required, however a couple of remaining landowners have declined the best value offers made to date.

- 4.2 Communications channels remain open between remaining third parties their agents and our representatives so hopefully matters will be resolved amicably in the near future, although CPO will proceed regardless, to ensure all relevant interests can be appropriately acquired or extinguished.
- 4.3 Members will be aware that the Firepool site is a prime riverside regeneration opportunity in Taunton, adjacent to the Railway Station and conveniently located in relation to other parts of the Town Centre. The Council is the principal land owner of the Firepool site and in its capacity as promotor of local economic growth it supports the delivery of revised Masterplan produced by St Modwen.
- 4.4 Previous land acquired by the Council on the South side of the River Tone, forms part of the comprehensive Firepool site. Planning was previously attained and land developed in part for Viridor offices and 49 riverside residential units by Acorn, with recent proposals for new hotel. The comprehensive CPO ensures that the Council remains in control of all Firepool land yet to be developed for the uses approved by committee.

5. Links to Corporate Aims, Priorities and Key issues

- 5.1 The CPO enables development aligned with the following key themes in the Council's Corporate Strategy:
- **Key Theme 1: People:** facilitating employment opportunities in the construction and ongoing operation of the comprehensive mix of business, leisure, retail, residential and commercial development;
 - **Key Theme 2: Business and Enterprise:** enhancing the quantity and variety within the Town Centre. Firepool Development will act as an important catalyst, attracting visitors, business and investment in the wider Taunton area.
 - **Key Theme 4: An Efficient and Modern Council:** Council development partnership with St Modwen and other key parties will be commercially viable and sustainable, enabling comprehensive investment across Firepool area and making important improvements both to the general appearance of site and prosperity of the immediate area and surrounding town centre.
- 5.2 The Proposals will help to achieve many of the Council's corporate aims, providing a quality sustainable growth and development, vibrant economic development and social, cultural and leisure environment
- 5.3 The comprehensive development of the Firepool Site will bring this currently vacant and relatively redundant brownfield site back in to full economic and social use, improving its environmental appearance and significantly enhancing one of the key gateway locations to the town centre from areas to the north (including the Railway station) and along Priory Bridge Road.
- 5.4 The scheme now proposed will enable the creation of approximately 1700 new jobs in numerous businesses of different types and sectors. The location

of the site offers a unique opportunity to create jobs in a sustainable, town centre location, drawing advantages from the enhanced transport and infrastructure in that location. The mixed use approach proposed will create a solid, sustainable foundation on the site to support the economic growth agenda for the Taunton and wider area that is shared by the Council and key delivery partners.

- 5.5 The acquisition of remaining 3rd party land and associated stopping up will facilitate the carrying out of development, redevelopment or improvement in relation to the land to be acquired.
- 5.6 The development is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well being of the area in the following ways:
- Economic: The scheme will enable the creation of approximately 1,700 new jobs in numerous businesses of different types and sectors.
 - Social: The majority of the site is currently derelict and the Masterplan design seeks to encourage safe access and areas for public use on the site.
 - Environmental: The new scheme will significantly improve the current physical environment. New buildings and public realm will be constructed to relevant standards. Planned infrastructure work will mitigate the risk of flooding and support the wider flood prevention strategy.

6. Planning Permission

- 6.1 At its meeting on 14th March 2018 the Planning Committee resolved to grant outline planning permission for the Firepool site in accordance with St. Modwen's Masterplan . In summary, that scheme contains the following components (see below), as stated in the introduction to the Planning Committee report.
- 6.2 Outline planning application with some matters reserved, except for access for the NIDR only, for the redevelopment of the former cattle market site to provide up to 3500sqm of convenience retail development (Class A1), up to 6000sqm of non-food development (A1), up to 4000sqm of office (B1) or hotel (C1), up to 3900sqm of assembly/leisure (D2) and non-residential institutions (D1) (of which no more than 1500sqm shall be D1) , up to 2600sqm of food and drink establishments (A3/A4/A5), and up to 200 residential units (C3) with redevelopment of the former Priory Bridge Road car park and former 84-94 Priory Bridge Road to provide up to 2964sqm of office (B1) and 5525sqm of office (B1) or hotel (C1) uses and a further 1300sqm of A3/A4/B1 (office) D2 uses with car parking, landscaping, public realm, access, (in detail for the NIDR connection) highways, infrastructure works and relevant demolition at Firepool, Priory Bridge Road, Taunton (resubmission of 38/15/0475).

7. Land and Interests to be Assembled

- 7.1 The land to be included within the compulsory purchase as illustrated by plan edged in red (Confidential Appendix A) and comprises the plots described in the schedule of land referencing that will accompany the comprehensive CPO (draft CPO documents are shown in confidential Appendices F, G & H).

- 7.2 All the development land required for the Firepool scheme will be included in the comprehensive Firepool CPO, in order to minimise the risk of gaining control of occupiers' interests and any third (3rd) party rights.

8. Finance / Resource Implication

- 8.1 Finance confirm that funding for the Firepool Land Assembly and CPO project should proceed on the basis that the acquisition value estimated independently by Valuation Surveyors and CPO experts are supported by the underlying value of the future asset, receipts generated from expected land sales and development.
- 8.2 Sufficient budget has already been allocated and accounted for within the Council's existing capital programme as approved as part of the Budget setting process which took place at full Council on 22nd February 2018. Finance for essential Firepool Land Assembly and associated CPO activities has been identified as a key priority within the Town Centre Growth Budget funded by New Homes Bonus.
- 8.3 Due to the sensitive commercial nature of negotiations land valuations for the remaining 3rd party land have not been specifically stated within this report.

9. Legal Implications

- 9.1 Unless the land is included in the CPO the Council will not be able to show its ability to assemble the whole site to achieve the regeneration objectives. Any compulsory purchase of land in pursuit of the delivery of the Firepool Scheme would proceed in accordance with the provisions of the Acquisition of Land Act 1981. This requires the Council to set out details of its reasons for making a CPO and a Schedule of the interests required, which is compiled following land referencing.
- 9.2 The Council will take all necessary steps to make a Compulsory Purchase Order as per the above by affixing the seal of the Council. Thereafter it will take all necessary steps to secure the confirmation of the CPO and the vesting of the relevant interests in the Council. These steps include the following:
- a) Legal advisors will support Officers in finalising the draft Statement of Reasons, the draft form of the CPO, the draft Order Schedule and the draft Order Plan before the Council makes the CPO.
 - b) Prepare the necessary statutory certificates to be submitted to the Secretary of State with the CPO.
 - c) Prepare and serve and/or publish such statutory notices as are required following the making of the Order.
 - d) Dealing appropriately with any potential objections, either by:
 - i. securing a withdrawal through a compromise agreement; or

- ii. preparing for a public inquiry to secure a confirmed Order with any potential modifications consider necessary or as directed by the Secretary of State.
 - e) Should a confirmed CPO be obtained, serving the relevant notices and/or execute general vesting declarations to provide for the vesting of acquired interests in the Council.
- 9.3 The process allows full opportunity for objectors to set out their grounds for opposition, including making representations to an independent Inspector at a public inquiry who will report to the Secretary of State for Housing, Communities and Local Government with whom a final decision as to whether the CPO should be confirmed rests.
- 9.4 The Council will need to satisfy the Secretary of State that the scheme warrants the use of statutory powers, having taken into account the views of objectors.
- 9.5 In the event of the Order being confirmed the Council would be able to acquire the land compulsorily, and any disputes in relation to compensation could be referred to the Lands Tribunal
- 9.6 If compensation matters are referred to the Upper Tribunal, then Officers and CPO advisors will be directed to take all necessary steps.
- 9.7 **Compulsory Purchase Powers and Procedure**
- 9.7.1 Section 226(1), Town and Country Planning Act 1990 (as amended) enables the Council (on being authorised by the Secretary of State) to acquire by compulsory purchase any land needed to facilitate the carrying out of the development, redevelopment or improvement on or in relation to land. The Council must also consider that the specified development, redevelopment or improvement is likely to contribute to the achievement of the promotion or improvement of the economic, social or environmental well being of the area. In deciding whether to make a CPO using planning powers, the Council would be required to demonstrate that there is sufficient justification for acquiring the land compulsorily and that there is a compelling case for CPO. The procedural requirements of the Acquisition of Land Act 1981 will then apply to the compulsory acquisition.
- 9.7.2 The Compulsory Purchase Order is a composite document containing a number of elements as follows.
- **The Order.** This sets out the name and date of the CPO and the statutory basis for its preparation, which in this case will be the Town and Country Planning Act 1990 (Confidential Appendix B shows a copy of a Draft Order for Firepool Comprehensive Site – to be finalised)
 - **Schedule.** This will comprise the map and list of known interests. This will be a more detailed plan similar to the illustrative summary version shown in Confidential Appendix A that will clearly indicate each specific interest as listed in draft schedules and land references (Appendices F, G & H – to be finalised)

- **Statement of Reasons.** This is a formal statement of the Council's reasons for seeking powers to make the acquisitions listed in the Schedule. The draft Statement for Firepool Comprehensive CPO is attached as Appendix C.

9.8 Human Rights Act 1998 implications

- 9.8.1 The Act effectively incorporates the European Convention of Human Rights into UK law and requires all public authorities to have regard to the rights contained within the Convention. When making the decision, Members must therefore have regard to the Convention. The rights that are of particular significance are those contained in Article 8 (right to home life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions)
- 9.8.2 Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society, in the interest of the economic well-being of the country, protection of health and protection of the rights and freedoms of others. Article 1 of the 1st Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.
- 9.8.3 In determining the level of permissible interference with enjoyment, the courts have held that any interference must achieve a fair balance between the general interest of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation to affected persons is relevant in assessing whether a fair balance has been struck.
- 9.8.4 In deciding whether to proceed with the recommendations, the Council and its Officers delegated to take forward recommendations (stated above in section 2 i & ii) needs to consider the extent to which the decision may impact upon the Human Rights of the landowners and residents and to balance these against the overall benefits to the community which the redevelopment would bring. Officers will consult with Members and need satisfied them that any interference with the rights under Article 8 and Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.

9. Environmental Implications

- 9.1 Environmental implications have been addressed through the planning process approved by statutory bodies such as the Environment Agency.

11. Safeguarding and/or Community Safety Implications

- 11.1 None identified or related directly to this report. Any potential issues arising will be dealt with through the completion of an Equalities Impact Assessment

and or statutory planning processes.

12. Equality Impact Assessment and Diversity Implications

- 12.1 Equality Impact Assessment (EIA) is a tool that helps us thoroughly assess the impact of major policy decisions in terms of the people it may affect: using consultation and survey data (see confidential Appendix D - draft EIA survey form attached); also any other relevant information that is available.
- 12.2 Findings of the EIA survey to be undertaken will be translated into an CPO Equality Action Plan monitored and resources identified, if appropriate.
- 12.3 A detailed Equalities Impact Assessment must be finalised and complete prior to the making of the CPO, to ensure that any potential impacts are clearly understood and mitigated.
- 12.4 If information from local Firepool CPO survey of residents, businesses employees, customers and service users demonstrates that there may be particular impacts on those with “protected characteristics”, then officers will prepare a further report to inform members and reassure them that appropriate action is being taken to mitigate any individual’s specific situation.

13. Social Value Implications

- 13.1 Social value is being taken account for as part of wider planning matters.
- 13.2 We can expect that further opportunities to add social value will be identified within future procurement of the mixed development, buildings and operations that will create both new jobs and training opportunities for local people.

14. Partnership Implications

- 14.1 The Council works closely in partnership with the Homes and Communities Agency (HCA) as key Funding partner. The Council procured St. Modwen as Development Partner to secure private sector investment and development expertise. Regular meetings with St Modwen and specialist advisors explore and evaluate opportunities for timely acquisition of Firepool land and interests.
- 14.2 Officers and advisors work closely with St Modwen to ensure a coordinated approach to negotiations and acquisition of third party land as set out in the approved masterplan. St Modwen have been entirely supportive of the acquisition and CPO process led by officers, lawyers and appointed agents.

15. Health and Wellbeing Implications

- 15.1 No specific implications identified in this report, however this proposal will create high quality environment and employment opportunities will likely have a positive impact the general health and wellbeing of the local community at Firepool.

16. Asset Management Implications

16.1 A comprehensive CPO will enable the Council to gain control of the whole Firepool site that will be beneficial in terms of strategic development and estate management. Bruton Knowles are appointed through the Council's Asset Management Framework to provide specialist advice on Firepool CPO, independent valuations (MRICS) on acquisitions also estate management matters ensuring compliance and best value is attained for the Council.

16.2 A successful CPO will enable our development partner St Modwen accelerate proposed Firepool delivery programme that will creating value and future income for the Council, therefore it is essential that remaining land acquired to facilitate the delivery of a comprehensive scheme. St Modwen marketing strategy promotes a mixed use scheme and creates exciting opportunities for a variety of new occupiers, expanding businesses and maximises potential for inward investment into Firepool and Taunton.

17. Summary of next steps

17.1 The decision to support the proposals, both Council as landowner and as a promoter of economic development, was initially approved in principle by Council in December 2014 (confidential Appendix J), subject to planning approval. CPO is a key to the next steps in achieving the master-plan recently approved by planning committee March 2018, subject to s106 and reserved matters.

17.2 The next steps and indicative timeline for comprehensive Firepool CPO are outlined in confidential Appendix I.

Democratic Path:

- **Full Council** – 10th April 2018

Reporting Frequency : Once only

List of **Confidential Appendices** (attached):

Ref:	Strictly Confidential Information - due to commercial sensitivity
Appendix A	Illustrative Plan indicating proposed comprehensive Firepool CPO (red-line)
Appendix B	Compulsory Purchase Order (Draft) for the comprehensive Firepool CPO
Appendix C	Statement of Reasons (Draft) for the comprehensive Firepool CPO
Appendix D	Firepool CPO Equalities Impact Assessment: Draft Survey Form
Appendix E	Risk Matrix (Working copy) - Comprehensive Firepool CPO
Appendix F	Comprehensive Firepool CPO Land Reference - Table 1 (Draft)
Appendix G	Comprehensive Firepool CPO Land Reference - Table 2 (Draft)
Appendix H	Comprehensive Firepool CPO Special Category Land - Table 3 (Draft)
Appendix I	Comprehensive Firepool CPO Indicative Time-line (Working Copy)
Appendix J	Council Resolution 9 Dec 2014 (supported Firepool CPO in principle)

Contact Officers

Name	Tom Gillham – Assistant Director of Asset Development Projects (Interim)
Direct Dial	07585 306981 (Mobile)
Email	t.gillham@tauntondeane.gov.uk
Name	Paul McClean (Growth Accountant) & Paul Fitzgerald (s151 Officer)
Direct Dial	01823 356537
Email	p.mcclean@tauntondeane.gov.uk & p.fitzgerald@tauntondeane.gov.uk