

## EAST HERTS COUNCIL

EXECUTIVE – 6 MAY 2014

### REPORT BY THE LEADER OF THE COUNCIL

#### RECOMMENDATION TO USE COMPULSORY PURCHASE POWERS AT THE OLD RIVER LANE SITE, BISHOP'S STORTFORD TOWN CENTRE

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WARD(S) AFFECTED: BISHOP'S STORTFORD – CENTRAL,  
BISHOPS STORTFORD - MEADS

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#### **Purpose/Summary of Report**

- The report recommends that the Council agrees in principle to use its compulsory purchase powers to assemble land to assist in the implementation of the Old River Lane development in Bishop's Stortford Town Centre proposed by Henderson Global Investors (referred to as "Henderson"). The proposed development, is in line with Council planning policy and has outline planning permission (ref: 3/10/1964/OP) which was granted on 14 January 2013. The planning permission issues are covered in section 5.4 below.
- The report outlines the development proposals (referred to as the "Scheme") for a comprehensive retail-led mixed-use redevelopment in Bishop's Stortford town centre in line with the planning permission.
- The extent of the land and interests to be compulsorily acquired (referred to as the "Order Land") are described. The report details the statutory powers under which the Council will proceed and the guidance contained in Office of the Deputy Prime Minister Circular 06/2004: "*Compulsory Purchase and the Crichton Down Rules*" (the "Circular"), which provides best practice guidance to be followed in the exercising of compulsory purchase powers.
- The report sets out the public interest case for the use of the compulsory powers, how the well-being test is met, an assessment of the development in relation to the national and local planning framework, the resource implications of acquiring the Order Land and implementing the Scheme, the

issue of whether there are any impediments to the Scheme proceeding and whether the development could be achieved by any other means.

- It is proposed that the decision in relation to the proposed Compulsory Purchase Order ('CPO') is made in two stages; a preliminary stage and a second stage. The report recommends that the Council confirm its support in principle to using compulsory purchase powers to facilitate the land assembly needed to deliver the Scheme subject to a further report back to Members on those issues identified in the recommendations. This report covers the matters required at the preliminary stage.
- **Essential Reference Paper 'D'** sets out the process from the second decision stage.

<b><u>RECOMMENDATIONS FOR DECISION:</u> that:</b>	
<b>(A)</b>	<p><b>the principle of using compulsory purchase powers to facilitate the comprehensive redevelopment of the Old River Lane Site, Bishop's Stortford is approved subject to a further report back to Executive prior to making the Order to advise Members on:</b></p> <ul style="list-style-type: none"> <li><b>(i) the outcome of attempts to acquire the outstanding land interests by negotiation in line with paragraph 24 of Circular 06/2004 since the date of this report,</b></li> <li><b>(ii) an update as to the current status of the case for making the CPO in light of circumstances as they stand at the date of the future report,</b></li> <li><b>(iii) consideration of the draft Statement of Reasons,</b></li> <li><b>(iv) whether a full CPO indemnity has been put in place between Henderson and the Council, and</b></li> <li><b>(v) settling the form of, making and publishing an Order.</b></li> </ul>
<b>(B)</b>	<p><b>the Director of Neighbourhood Services be authorised to make any necessary requisitions for information from parties interested in the Order Land by way of the service of notices under section 16 of the Local</b></p>

	<b>Government Miscellaneous Provisions Act 1976 or section 5A of the Acquisition of Land Act 1981; and</b>
<b>(C)</b>	<b>the Director of Neighbourhood Services be authorised to continue to negotiate with any interested parties with a view to acquiring interests by negotiation and to appoint any necessary consultants jointly with Henderson to advise in this regard.</b>

## REPORT

### 1 Background

- 1.1 The land to be included in the CPO comprises approximately 3.89 hectares located in the north east quarter of Bishop's Stortford town centre. The Order Land comprises a mix of development and uses of land and further detail is provided in paragraph 3 of this report.
- 1.2 The Council owns the freehold interest of a significant part of the Order Land incorporating:
- i) two 1970s office blocks occupied by the Council (the Causeway and Charrington's House) and ancillary parking;
  - ii) a Council operated pay and display public car park with approximately 233 surface spaces; and
  - iii) Waitrose customer car park comprising approximately 174 surface spaces.
- 1.3 Henderson has longstanding aspirations to undertake a re-development of the Order Land and in 2009 it entered into a land transaction with the Council whereby the Council granted 999 year leases, to Henderson, of the land interests summarised at (i) to (iii) above.
- 1.4 Since then Henderson has obtained outline planning permission for the Scheme. In addition to the Order Land, the planning permission incorporates an area of approximately 2.51 hectares north of the Order Land on the opposite side of the Link Road which is required for flood mitigation measures. This is referred to as the "Flood Compensation Area" or "FCA". The FCA is in the

ownership and control of Henderson and the Council and there are no third party interests which need to be acquired.

- 1.5 The Order Land includes land interests owned by third parties other than Henderson and the Council. It is therefore necessary to acquire these interests to enable the Scheme to proceed. Henderson has been in active negotiations to acquire the remaining freehold property interests since 2010 and these negotiations remain ongoing. Further information regarding the land interests owned by third parties is provided at paragraph 3.5.
- 1.6 Henderson remains committed to securing the remaining interests in the Order Land by private treaty negotiations where practicable, however, in order to provide certainty, the Council's compulsory purchase powers are likely to be needed to be exercised to enable the Scheme to be implemented within a reasonable timeframe. This report outlines what the Council needs to have regard to when making a CPO, with a recommendation that the Council resolves in principle to use their CPO powers subject to a further report back to the Executive prior to the Order being made.

## 2 The Development Proposals

- 2.1 Henderson has obtained outline planning permission for the Scheme. The outline planning application for a retail-led mixed use development was dated 4 November 2010 and members of the Development Control Committee resolved to grant planning permission on 25 August 2011 subject to a section 106 planning agreement being entered into. The section 106 agreement was subsequently completed, and outline planning permission granted on 14 January 2013.

- 2.2 The description of the consented development is:

*“Development including demolition and removal works to provide mixed use development comprising retail, leisure, hotel, food and drink, residential, community uses, car parking, servicing and access arrangements together with alterations to public highway and/or public realm works at Old River Lane, Link Road, Water Lane, Bridge Street and Barrett Lane, Bishop’s Stortford and flood mitigation measures on land north of the Link Road, Bishop’s Stortford.”*

2.3 Conservation Area consent has also been granted for the demolition of some of the existing non-listed buildings within the Order Land and the removal of material in the FCA in order to facilitate the development. Its description is as follows:

*“Demolition of the Causeway office building, Bridge Street; 1, 2 and 3 Old River Lane residential dwellings; church hall, Water Lane; boundary wall north of church hall; and substation, Old River Lane, to provide a retail-led mixed use development; and removal of material in association with flood compensation works at land north of Link Road.”*

2.4 The Scheme comprises a comprehensive re-development of the Order Land to provide a retail-led mixed use development. It includes associated highway works to enable the formation of a new access off the existing public highway and modifications to the existing highway arrangements, flood mitigation measures on the FCA, plus all associated infrastructure works, landscaping and improvements to the public realm.

2.5 The planning permission is outline in respect of all matters except access which has been approved in detail. The parameters of scale and massing have been fixed by a set of parameter plans which have set: a maximum level for the extent of excavation; upper and lower limits of horizontal and vertical deviation; and upper and lower limits of floorspace for different land uses.

2.6 The gross external areas of the maximum floor spaces of the individual uses proposed are set out below.

<b>Use Class</b>	<b>Maximum floorspace (square metres)</b>
A1, A2, A3, A4, A5 (retail, professional services, restaurants, cafes, drinking establishments and hot food takeaways)	16,000
D2 Assembly and leisure (including cinema uses)	2,100
C1 Hotel	6,600
C3 Dwellings	8,900 (This equates to up to 100 dwellings of which 40% will be

	affordable)
D1 Non-Residential institutions (the provision of a community facility space within block D)	500
Public toilets	250
Car parking	Up to 670 spaces

2.7 The proposals additionally provide for extensive associated improvements to the public realm including:

- i) two new public spaces at the northern and southern ends of the proposed Old River Lane pedestrianised route, with seating and sufficient area for the northern space to act as an informal event space that could host external exhibitions and markets;
- ii) improvements to the surface treatment of adjacent highways;
- iii) public art within the Scheme and in particular at the north – south route;
- iv) a tree boulevard along the Link Road;
- v) roof gardens for residential units and hotel.

2.8 In most cases, the Scheme design enables the third party interests which are to be acquired to be reinstated and/or modified to enable the existing occupiers to continue in their current location alongside the new Scheme on completion of the development. There is one exception to this where it has not been practicable to reinstate uses within the main site. The church hall owned by the United Reformed Church (URC) is proposed to be reinstated offsite.

It is an obligation of the section 106 agreement concluded in association with the Scheme's planning permission to relocate the URC church hall off site. The s106 agreement requires the new location to meet the three criteria that it must be close to the main church building, of equivalent or greater size and have satisfactory parking arrangements. Henderson's commercial advisor, Lambert Smith Hampton, considered suitable land for the relocation of the URC church hall in or on the edge of town in the period leading up to the decision on their planning application. They have identified the Charis Centre on Water Lane as the preferred site and the URC have confirmed it meets their requirements and have agreed

to the principle of a relocation. Henderson's representatives have met with the current owners of the Charis Centre who have confirmed that the property is still for sale and they are willing to vacate and move to alternative premises. Henderson is in negotiation to acquire the Charis Centre and will carry out necessary works to enable the relocation by the URC. Whilst there is no liability for compensation to the owners of the replacement site, and there is no statutory obligation to offer assistance, on a practical basis Henderson have been trying to assist them with alternative solutions. Henderson are confident that the alternative can be provided or that another site can be identified such that the scheme as a whole can be delivered in accordance with the identified time frame.

### 3 The Order Land

- 3.1 The proposed CPO is to include all of the land edged in black on the indicative CPO Boundary Plan at **Essential Reference Paper 'B'**. The hatched areas are excluded for the purposes of land acquisition powers, but included for the purposes of acquiring rights required for the purpose of executing works or facilitating the development, such as oversailing rights for cranes.
- 3.2 The Order Land forms the north eastern quarter of Bishop's Stortford Town Centre and is bounded by the Link Road to the north and east, Bridge Street to the south and Old River Lane/Water Lane to the west.
- 3.3 The existing land uses comprise:
- i) The Causeway office building and adjoining car park;
  - ii) Charrington's House office building;
  - iii) Council public pay and display car park;
  - iv) three residential houses (1, 2 and 3 Old River Lane);
  - v) Waitrose surface car park (approximately 174 spaces);
  - vi) URC church hall;
  - vii) land to the rear of the Lemon Tree restaurant;

- viii) yard comprising outside sales area, servicing and parking for Coopers of Stortford on Bridge Street;
- ix) the Town Council Memorial Garden; and
- x) an electricity substation.

3.4 The Order Land falls within the Bishop's Stortford Conservation Area. None of the buildings which fall within land to be acquired are either locally or statutorily listed. Of the other buildings within the area only two of these, the existing URC Church Hall and brick boundary to its north, are considered to have historic merit. The land over which new rights are to be acquired (for oversailing) includes three Listed Buildings. These comprise a greater extent of the Coopers of Stortford malting building, the Guild House and the UR Church. The extent of the area over which new rights are to be acquired sits adjacent to a further Listed Building, the west wing of Water House. The site is not of historic significance in its own right having undergone major change over the last 50 years and makes little contribution to the character of the Conservation Area. The development of the area will provide the opportunity to revitalise this part of the town centre and preserves the character of the Conservation Area. An appropriate urban grain is introduced that compliments the surrounding town centre and introduces individual buildings that will enhance the area. It will facilitate the development of a currently under utilised brownfield site and will deliver a number of regeneration benefits. When considering the application the Council concluded that, whilst the development may impact harmfully in relation to adjacent listed buildings, this was outweighed by the beneficial impact of the proposals.

3.5 The plan at **Essential Reference Paper 'C'** shows the current land ownership of the Order Land. The Council and Henderson have freehold ownership and/or control of the majority of the property interests in the site including The Causeway and Charrington's House office buildings and ancillary parking, the freehold and long leasehold interests in the Waitrose car park (subject to a lease to Waitrose), the Council public pay and display car park and the three residential houses. The remaining land and property interests are held by third parties. There are only four principal land ownerships remaining to be acquired, which are summarised as follows:

- i. Waitrose customer car park, Old River Lane (leasehold);



- ii. United Reformed Church Hall and parking area, Water Lane (freehold);
- iii. two parcels of land at the rear of the Lemon Tree Restaurant, Water Lane (freehold);
- iv. land adjoining Coopers of Stortford, Old River Lane (freehold).

3.6 Henderson has undertaken extensive negotiations with the remaining landowners. These negotiations commenced in 2010 and remain ongoing. The negotiations have taken place through a combination of formal written offers, emails, telephone conversations and face to face meetings. All of the remaining landowners have received proposals for the acquisition of their interests. In most cases the proposal provides for the re-provision of facilities currently undertaken on their land, in order to enable their continued operation in an enhanced environment within and alongside the new Scheme. The only exception to this is the URC church hall which it is intended will be relocated slightly away from the main site. Throughout the negotiations extensive efforts have been made to address the concerns raised by landowners. Despite these negotiations it has not so far been possible to reach agreements with all landowners and it may not be possible to do so within a reasonable timeframe. In accordance with the guidance set out in paragraphs 24 and 25 of the Circular negotiations will continue alongside the compulsory purchase process.

3.7 There are no residential properties in third party ownership to be included in the CPO.

3.8 The Order Land incorporates the entire area required for the Scheme (with the exception of the FCA) including areas already owned by the Council and Henderson in order to ensure that any unknown ownerships are captured by the CPO and to ensure that any third party rights or covenants can be expunged, thereby giving the Council a title without the continued existence of third party interests. Where the Order Land abuts the public highway, the boundary has been drawn along the half width of the highway. This is because it is common for the title of frontage land adjoining the public highway to extend to the half width. Henderson have requested this is included within the CPO boundary to ensure clean title. The intention is that any land within the highway boundary that is acquired from third parties be transferred to Hertfordshire County Council as highway authority. Any land within the highway

boundary that is already owned by the County Council will be excluded from the CPO and remain in the ownership of the County Council. Henderson's advisors have had initial discussions with the County Council regarding this approach. At this stage no agreement has been reached. In the event that the County Council do not wish to take on the title of the subsoil beneath the public highway it will be retained by Henderson. The extent of third party ownership within the highway boundary will become clear following the formal referencing exercise.

- 3.9 Work to date has been undertaken to identify all of the known land interests within the Order Land. Once a resolution to use CPO powers has been made, the land referencing will be checked and formally completed and final details of owners and occupiers will be determined by use of a statutory requisition procedure before the CPO is made in line with the statutory requirements.

#### 4 The Council's Powers and use of Compulsory Purchase

- 4.1 The Council has the power in Section 226(1) of the Town and Country Planning Act 1990 to acquire land compulsorily for planning purposes. The relevant tests are set out in Section 226(1)(a). Firstly the local authority must think that the acquisition will facilitate the development, redevelopment or improvement of the land. Officers consider that this first test will be met by the implementation of the Scheme which will facilitate the redevelopment of the Old River Lane area.
- 4.2 Further Section 226(1A) requires local authorities utilising the powers under Section 226(1)(a) to show that they think that the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of the area. This is mirrored in the Circular which contains the guidance that acquiring authorities should follow when exercising compulsory purchase powers. The Circular confirms that any land assembly needs to be set within a clear planning framework and that the use of the powers needs to be in furtherance of the "well-being" of the area. The justification for using these powers is considered in the next section.
- 4.3 The Council's preference is that if at all possible, all interests will be acquired through private treaty negotiation, either by the Council or Henderson. All attempts to do this are being made and will continue to be made throughout the CPO process. Henderson

have already acquired several interests in the area and have had, and are continuing to have, negotiations with the identified owners and occupiers. The Council owns a significant part of the site. The Circular recognises that whilst the use of compulsory powers should be considered a last resort, as a contingency a compulsory purchase timetable should be planned at the same time as conducting negotiations. The clear signalling of its intentions to use compulsory powers will demonstrate that the Council is committed to the proposal. With a CPO timetable, that has a clear end point, meaningful negotiations will be easier to undertake.

- 4.4 It is recognised that compulsory purchase procedures may lead to uncertainty and anxiety for those with affected land. In line with its commitment to open and honest treatment of customers, the Council will strive to keep people informed at all stages of the process and to keep delays to the minimum.
- 4.5 It is proposed that consideration is given to compiling the Schedule to the Order in two parts. Part 1 will comprise all those parties who are freehold or leasehold owners, reputed owners, tenants or occupiers of the land included within the Order. Part 2 of the Schedule will contain a list of those parties who have a qualifying interest in the land, for instance, parties with the benefit of a right such as a restrictive covenant over land comprised within the CPO. All parties included in Parts 1 and 2 of the Schedule will receive notice of the making of the Order once this stage is reached. The CPO will also be advertised locally. Officers will prepare a detailed Statement of Reasons setting out the justification for the compulsory acquisition. This statement will cover all the issues set out in this report. Following notification and advertisement of the CPO, if any duly made objections are not withdrawn, the Secretary of State must hold an inquiry and consider the conclusions and recommendations of the Inspector before deciding whether to confirm the Order.

## 5 Reasons for the Decision and the Justification for Making the Proposed CPO

- 5.1 The Circular provides guidance as to the factors the Secretary of State can be expected to consider when considering the confirmation of a CPO. One key test is that a CPO should only be made where there is a compelling case in the public interest and that the purposes for which the CPO is made sufficiently justify interfering with the human rights of those affected. Additionally it is necessary to show that there are no impediments to the Scheme

proceeding within the relevant time frame. Furthermore paragraph 16 of Appendix A of the Circular sets out a number of 'tests'. All of these Circular tests are considered and addressed below.

5.2 Whether there is a compelling case in the public interest which justifies the use of CPO powers

- a) The Order Land largely comprises an underutilised brownfield town centre site with only two existing structures having identified architectural or heritage merit. The site is identified in the August 2008 Retail and Town Centre Study (RTCS), undertaken by Chase and Partners on behalf of the Council, as the best location in Bishop's Stortford for a retail-led mixed use development incorporating housing and leisure uses.
- b) The Scheme accords with the adopted and emerging local planning policy framework for the area, as summarised at paragraph 5.4 below, and has the benefit of an outline planning permission.
- c) The proposed re-development will deliver a significant number of improvements for the benefit of the area, which are identified in paragraph 5.5 below.
- d) It is the Officers' view that the significant public benefit which will be derived from these proposals outweighs the interference caused by the CPO with the human rights of those parties affected by the CPO. In addition the fact that there are clear proposals for the re-development of the land which have the benefit of a planning permission, taken together with the experience and the financial standing of Henderson to ensure the delivery of the Scheme within a reasonable timescale further assists the Officers' view that the use of the CPO powers are justified in this case.

5.3 Whether there are any impediments to implementation, including potential financial impediments, physical and legal factors

- a) Officers are content that there are no financial impediments to the scheme proceeding for the reasons set out at paragraph 5.6. Officers are also satisfied that there are no material planning impediments to the scheme proceeding given that there is an outline planning permission. There are no physical impediments to the scheme proceeding.
- b) In terms of the planning position, the Council's decision to grant the outline planning permission was subject to a claim for judicial review by the Bishop's Stortford Civic Federation.

On 4 July 2013 the High Court granted permission for the claim to proceed and the hearing into the matter took place on 11 and 12 February 2014. The judicial review application was unsuccessful.

- c) Reserved matters approvals will be required before the Scheme can be implemented, however, it is not necessary for this to be in place before the making of the CPO and no reason to suggest these would not be forthcoming under the outline planning permission in due course. The Circular states that where planning permission will be required for the Scheme but has not been granted, there should be no obvious reason why it might be withheld. This is considered further in paragraph 5.4 below.
- d) The relocation of the URC church hall will be required before substantial works can be commenced on site and Henderson are in the progress of ensuring the provision of suitable alternative premises

#### 5.4 Whether the purpose for the acquisition fits with the adopted planning framework

- a) The proposed development has the benefit of an outline planning permission. The conformity of the Scheme to the national and local (and at the time regional) planning policy document was fully examined and reported in the Officer's report to the Development Control Committee of 25 August 2011. The Officer's report concluded that the investment, job creation, provision of enhanced facilities, provision of additional housing and contribution toward identified retail need all weigh heavily in favour of the proposals which were granted planning permission.
- b) The relevant adopted planning policy is the "saved" policies of the East Herts Local Plan Second Review, adopted in April 2007. The Local Plan does not have a formally defined Town Centre area, however the current uses on the Order Land act as part of it (retail and office) or are used in association with it (car parking). The majority of North Street and Bridge Street are defined as primary shopping frontages and Florence Walk is defined as a secondary shopping frontage. The Link Road provides a firm and clear boundary to the area, emphasised by the changed nature of the land uses beyond it – the gardens and Castle Mound.
- c) Policy STC1 states that the preferred location for retail development is town centres, followed by edge-of-centre sites

in line with the sequential approach. The RTCS undertaken on behalf of the Council (see subparagraph 5.4 i) below) identifies a number of sites which could potentially accommodate additional retail development in the town and the Order Land was identified as the most suitable and sequentially preferable.

- d) Proposed development should be consistent with the character and role of the town centre, accessible by a choice of transport, provide effective use of upper floors and be satisfactory in terms of parking provision, access and traffic generation.
- e) The development proposals adhere to the Town Centre strategy criteria set out in Local Plan Policy B1S10 (Town Centre Sites for Redevelopment):
  - i. improve townscape;
  - ii. introduces a variety of uses to stimulate and encourage all aspects of Town Centre life;
  - iii. improves and completes open areas in the townscape and strengthens and enhances pedestrian and cycling movements in the town;
  - iv. creates new public spaces;
  - v. establishes civic quality in the town;
  - vi. appropriately addresses car parking demand and the provision of car parking facilities.
- f) The proposed cinema and hotel are deemed Town Centre uses and the principle of their inclusion in the Scheme is acceptable. Policy LRC4 encourages the provision of new cultural and entertainment facilities. Policy LRC10 encourages suitable tourism proposals. This includes cinema and hotel uses. The Local Plan states that there is a deficiency in visitor accommodation in the District and Policy LRC10 states that the District Council will give favourable consideration to proposals for visitor accommodation. The inclusion of cinema and hotel uses is in accordance with Town Centre policy STC1 which encourages effective use of upper floors.
- g) The Officer's report also refers to the requirement for the Council's need to demonstrate a five year supply of land available for housing. It states that, when considering housing provision figures set out in the Local Plan, supply has been limited resulting in the five year supply being difficult to sustain on current site availability. The Scheme will make a significant

contribution to this.

- h) The Development Control Committee Members resolved to grant planning permission and conservation area consent subject to a section 106 agreement on 25 August 2011. Since then there has been no change in planning policy at a local level. The Development Plan is still the East Herts Local Plan Second Review. There has been a change at regional level with the revocation of both the East of England Plan and Hertfordshire County Structure Plan on 3 January 2013. This has not resulted in any material change in local and regional planning policy since the decision to grant planning permission was made.
- i) The Local Plan will, in due course, be replaced by the East Herts District Plan (DP). The Council commissioned Chase and Partners to undertake a Retail and Town Centre Study (RTCS) in 2008 to form part of the evidence base for the Council's emerging DP. The RTCS was updated in 2013 by Nathaniel Litchfield and Partners (NLP). The RTCS 2008 identifies a significant outflow of shopping trips from the Bishop's Stortford catchment for major purchases and cited the lack of a national department store as one of the reasons for this. The study went on to say that Bishop's Stortford must improve its retail offer just to maintain its existing market share, and identified the site as the best location for comprehensive retail-led mixed use development. There is no more sequentially preferable site than the Order Land. A failure to proceed with the re-development will result in a fall in the town's position in the retail hierarchy. The Scheme includes up to 16,000 sq m of retail and leisure uses in units to meet the requirements of modern retailers and will be anchored by a department store. The Scheme as permitted will satisfy approximately half of the identified retail capacity up to 2021. The RTCS Update 2013 states that the implementation of the Scheme would absorb much of the retail capacity but identifies a need for further convenience good retail floorspace over the study period to 2031.
- j) Both the 2008 RTCS and the 2013 update recommend the designation of Town Centre boundaries in the District, and both state that Order Land should be included within it. The 2013 update recommends that the Primary Shopping Area should be extended to include the Order Land, and that the development of the Scheme should be made a priority.
- k) The development strategy and site-specific policies of the Draft DP were presented to the District Planning Executive

Panel on 16 January 2014. The draft DP sets out the strategy for delivering 15,000 homes in the East Herts district over a 20 year period up until 2031 to meet projected need. 5,380 of these are in Bishop's Stortford. One of the guiding principles of the draft DP is to prioritise the use of brownfield land. Policy BISH4 of the Draft DP proposes a mixed use development for the Order Land including retail, leisure and residential uses. Whilst little weight can be assigned to the policy position set out in the Draft DP at this stage, the Scheme proposal accord with this policy.

- l) There have been changes in policy at a national level since the resolution to grant planning permission. Since then there has been the introduction of the Localism Act 2011 and the Government's National Planning Policy Framework (NPPF).
- m) The Localism Act came into force in November 2011 and introduced greater emphasis on community involvement and consultation. The planning application for the Scheme was the subject of comprehensive formal pre and post application consultation and in accordance with the Council's adopted Statement of Community Involvement. A Statement of Community Involvement formed part of the planning application. The Localism Act has not resulted in any material change since the planning application was considered.
- n) The NPPF came into effect on 27 March 2012 and replaced nearly all of the previous national planning policy statements and guidance. The purpose and intent of the NPPF is to help achieve sustainable development in pursuit of growth in a positive, proactive and timely way. At the heart of the NPPF is the presumption in favour of sustainable development. It supports the positive promotion of town centres and policies for the management and growth of town centres and encourages a mix of uses including retail, leisure, commercial, office, tourism, cultural, community and residential. It states that planning authorities should identify a housing land supply to provide five years' worth of housing against their housing requirements with an additional buffer of a minimum of 5%.
- o) The officer's report to the Development Control Committee in August 2011 weighed as a consideration in decision making the consultation draft NPPF. It was determined by officers that, whilst undue weight could not be assigned to the draft NPPF at that time, it did not alter the advice that the development could be supported. Officers also took into account the ministerial statement of 23 March 2011 entitled Planning for Growth which set out that the Government's top



priority in reforming the planning system is to promote sustainable economic growth and jobs. Following the publication of the NPPF in final form, the application was considered by the Council against its policies in an Update Report published in December 2012 which concluded at paragraph 9.5 that:

*"Where there are changes to the weight to be applied to the relevant issues, there are positive changes. It is concluded then that the decision making balance cannot have changed other than in the direction that indicates the development proposals should be supported."*

- p) Therefore since the decision to grant planning permission there have not been any changes in planning policy which have had a material impact on the decision to support the development proposals, other than the publication of the NPPF which has resulted in a minor change in support of the development proposals. It is the Officers' judgement that the planning framework "test" is clearly satisfied.

5.5 The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area

- a) The existing site comprises underutilised brownfield land and only two buildings of heritage and architectural merit. The site has been identified in the RTCS, which forms part of the evidence base for the Council's emerging DP, as the best location for a retail-led mixed use scheme in order to meet an element of the identified retail capacity.
- b) The regeneration benefits are summarised as:
- i. the provision of retail, tourism and leisure facilities within the Town Centre will reduce "leakage" out of the town and encourage more existing shoppers to stay for longer periods. Additional expenditure in the town will further enhance the trading vitality and viability of the centre;
  - ii. the quantum of floorspace is required to maintain Bishop's Stortford's position in the settlement hierarchy of the District. Without this development the town will decline;
  - iii. the provision of up to 100 residential dwellings (of which 40% will be affordable – either on site or via a commuted sum) will add to the housing stock available

within the Town Centre and provide high quality housing in a highly sustainable location. The increased population will increase spending in the Town Centre and increase activity throughout the site throughout the day and evening thereby providing natural surveillance;

- iv. provision of modern hotel and leisure accommodation. This will help to add to address a recognised deficiency in visitor accommodation in the District. The cinema will not replicate the existing cinema provision in the town centre as the format being proposed is for a digital cinema which will provide a unique leisure experience not currently present in the town;
- v. the proposed development has the potential to provide up to 834 job opportunities, based on maximum floorspace density;
- vi. in addition 75 full time equivalent job opportunities are expected during the construction phase, based on estimated total construction cost of the Scheme;
- vii. the creation of new public spaces that will seek to address an existing deficit in the Town Centre. The space to the north will also be able to host events such as temporary markets;
- viii. the proposed development maximises its highly accessible location and promotes legibility, accessibility and social inclusion;
- ix. the development introduces an appropriate new urban grain in this north eastern quarter of the Town Centre;
- x. the proposed development is designed to achieve BREEAM “Very Good” and Code for Sustainable Homes Level 3 standards;
- xi. the development seeks to link the new quarter to the existing town centre;
- xii. significant benefits derived from section 106 contributions including: improvements to bus services and related infrastructure; highways improvements; the introduction of Variable Messaging Systems (VMS) to provide enhanced information about the availability of parking and other traffic information; financial contributions toward nursery and secondary education, childcare, youth and libraries; improvement to pedestrian links; and provision of fire hydrants.

- c) Officers confirm that the Scheme represents an excellent opportunity to maximise the use of a currently underused area of previously developed land in a very well located position in the town centre. It will provide employment, investment in services and facilities, housing and increased choice. The Scheme will promote and improve the well-being of Bishop's Stortford, not least by the significant private investment in the order of £105 million. Officers are of the view that the proposals will enhance the economic, social and environmental well-being of the area.

5.6 The resource implications of the Scheme for which the land is being acquired including general indication of funding intentions

- a) As members are aware, the proposed development will be delivered by Henderson. Henderson is listed on the London Stock Exchange and the Australian Stock Exchange and is a constituent of the FTSE 250. Henderson manages investments of just under £66.65bn of which property investments represent £12.45bn and approximately half of the managed property assets are in the UK. These investments are held in a variety of pooled and partnership funds investing directly and indirectly in specialised and mixed asset classes in the UK and globally. Henderson also has a number of formal and informal segregated mandates for large international institutions and sovereign wealth funds. Taken together this shows Henderson's impressive financial standing to take forward the development of the Scheme.
- b) Henderson also have significant experience in delivering major retail-led projects in recent years such as Buchanan Galleries in Glasgow, and is currently involved with over £3bn of retail-led mixed use developments both in the UK and globally. More recently Henderson has been actively involved on behalf of investors in the development of Westfield Stratford City, Buchanan Street in Glasgow, retail and leisure expansion at Weavers Wharf in Kidderminster, the expansion of the Buchanan Quarter in Glasgow, St James's Quarter in Edinburgh and Silver Hill in Winchester city centre.
- c) Henderson has the capability and resources to fund and carry out the proposed Scheme and has a track record of delivery. Henderson has already invested over £7million in land acquisition costs and incurred in excess of £1million in securing the planning permission. Before the CPO is made Henderson will enter into a CPO Indemnity Agreement with the

Council to fully underwrite the Council's costs of pursuing and implementing the CPO process and the payment of compensation to affected parties. Henderson is committed to delivering a successful scheme, one it has already expended very considerable financial costs on to date.

- d) Henderson anticipate that the pre-construction phase could take 18 months during which land would be assembled, reserved matters approved, pre-commencement planning conditions addressed, retail and leisure space pre-let and the construction contract procured. This is anticipated by the end of September 2015, and approximately 6 months earlier if negotiations on the CPO land can be concluded without resort to the formal process. Once construction commenced a 24 month construction window is likely with the development opening in Autumn 2017, and again 6 months earlier in Spring 2017 if negotiations on the CPO land can be concluded without resort to formal process. The car parking would on both projected timelines be opened 12 months before completion, in Spring or Autumn 2016.
- e) Officers are satisfied that in the light of the above circumstances there is a reasonable prospect of the Scheme proceeding within a reasonable timeframe. Given the proposed indemnity agreement between Henderson and the Council both the resource implications of the land acquisition and the delivery of the Scheme will be adequately secured as a result of Henderson's financial standing and ability to fund the redevelopment proposals.

5.7 Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means.

- a) The RTCS undertaken on behalf of the Council in August 2008 identified the need for a retail-led mixed use development to reduce "leakage" of retail spend and maintain Bishop's Stortford's position in the retail hierarchy. The study sets out that there are a number of sites which could potentially accommodate additional retail in the town, and of these the Order Land is the most central. The location of the Order Land means that it is able to integrate with the existing shopping areas and create retail linkages and circuits. The RTCS concludes that the Order Land is the best location for the new retail-led mixed use development

- b) The Scheme for which Henderson has obtained planning permission has been subject to extensive public and stakeholder consultation. The Scheme complies with national and local planning policy as well as the emerging DP. The Order Land is under used and underutilised and there is no alternative suitable and available preferable location for the Scheme. No other party has come forward with alternative proposals that will achieve the Council's objectives.

## 6 Financial Considerations

- 6.1 Prior to making the Order a Deed of Indemnity with Henderson will be put in place to ensure that the Council's CPO order making, compensation and inquiry related costs are underwritten by Henderson.

## 7 Human Rights and Equality Act 2010 considerations

- 7.1 Circular 06/04 advises acquiring authorities in paragraph 17 that compulsory purchase orders should only be made where there is a compelling case in the public interest. The purposes for which the order is made should justify the interference with human rights of those with an interest in the affected land. In this case officers have considered the relevant factors and are satisfied that the many benefits that the Scheme delivers provide a compelling case in the public interest for the use of CPO powers and outweigh the impact on existing owners and occupiers.
- 7.2 Officers acknowledge that these proposals will have an effect on the human rights of those with interests in the Order Land, however, on balance officers recommend that the Council finds that the public benefit of these proposals outweigh the impact on those affected. Regard has been taken in particular to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and Articles 6 and 8.

### **Article 1 of the First Protocol**

- 7.3 Article 1 of the First Protocol provides 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*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”*

- 7.4 The Order will affect the Article 1 rights of the present owner/occupiers if confirmed by the Secretary of State. However, there will be no violation of those rights as officers are content that the steps taken are in the public interest and lawful as required by Article 1 of the First Protocol. Those directly affected by the Order will be entitled to compensation as provided by law, such compensation to be settled in the absence of agreement by the impartial Upper Tribunal.

### **Article 8**

- 7.5 Article 8 of the Convention provides as follows:

*“(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*

*(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the Country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others”.*

- 7.6 Article 8 is a qualified right and interference can be justified in appropriate cases by reference to Article 8(2).
- 7.7 The Order will be made pursuant to s226 (1) a of the Town and County Planning Act which authorises the Council to acquire land compulsorily subject to following the procedures laid down in the Acquisition of Land Act 1981. There is a compelling case in the public interest to acquire the Order Land and the public benefit will outweigh the private loss. In the circumstances, the compulsory acquisition of the Order Land will not conflict with Article 8 of the Convention.

### **Article 6**

7.8 Article 6 provides that:

*“In the determination of his civil rights and obligations..... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”*

7.9 The Order when made will be publicised and all those affected by the Order will be notified and have the opportunity to make objections and to be heard at a public inquiry before a decision is made on whether or not the Order should be confirmed. A right of legal challenge exists to this process in accordance with section 23 of the Acquisition of Land Act 1981. Any dispute as to compensation payable falls to be determined by the Upper Tribunal, a court established by law.

### **Application of Human Rights to the Order**

7.10 In pursuing this Order officers of the Council have carefully considered the balance to be struck between individual rights and the wider public interest.

7.11 To the extent that the Order would affect those individual rights, officers recommend that the Council finds that the proposed interference with them would be in accordance with the law, proportionate and necessary in the public interest in order to secure the redevelopment of the Order Land and improvements and benefits that the Scheme will bring.

7.12 All of those whose Article 1, Article 6 and Article 8 rights would be affected by the Order will have an opportunity to object to it and to have their objection considered at an independent and public hearing. Statutory judicial challenge provisions also exist.

7.13 Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the compensation code and any disputes over compensation are determined by an impartial tribunal established by law.

### **Equality Act Considerations**

7.14 The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics namely: age, disability,

gender re-assignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers. In particular the Council must pay due regard to the need to:

- I. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- II. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- III. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

7.15 The Council considers that the Scheme is fully compliant with the Equality Act. The Order required to facilitate the Scheme is not anticipated to have any additional effects. The Council will undertake an Equality Impact Assessment before reporting back at the full resolution stage.

## 8 Corporate Issues

8.1 Information on many corporate issues and consultation with this report can be found within **Essential Reference Paper 'A'**.

### Background Papers

Planning permission and Conservation Area Consent 3/10/1964-OP

<http://online.eastherts.gov.uk/swiftlg/apas/run/WPHAPPDETAIL.DisplayUrl?theApnID=3/10/1964/OP&backURL=<a>

Viability Letter 28<sup>th</sup> March 2013

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