

**Report of:** Strategic Director, Physical Environment

**To:** Executive Board

**Date:** 20 November 2006 **Item No:**

**Title of Report :** Westgate Redevelopment  
Proposed Compulsory Purchase Order



### Summary and Recommendations



**Purpose of report:** To provide Board Members with additional background information on the Westgate redevelopment scheme, and to request the Board to approve the making of a Compulsory Purchase Order (CPO).

**Key decision:** Yes

**Portfolio Holder:** Councillor John Goddard

**Scrutiny Responsibility:** Finance

**Ward(s) affected:** Carfax; Hinksey Park

**Report Approved by:** Jeremy Thomas (Head of Legal and Democratic Services)  
Sarah Fogden (Financial and Asset Management Business Manager)  
Councillor Goddard.



**Policy Framework:** The Oxford Local Plan 2011–2016, (see policies DS.1, [Abbey Place Car Park], DS.16 [OCVC College site] DS.88 [Westgate Shopping Centre])



Asset Management Plan 2006 – ( see Appendix 5, Action Plan, Theme 2

**Recommendation(s):** 1) The Board confirms that it is satisfied that the Westgate redevelopment is likely to



contribute to achieving the promotion or improvement of economic, social and environmental well being of the City, and

2) Subject to completion of an appropriate CPO Cost Indemnity Agreement, the Council shall make a CPO under Section 226 (1)(a) of the Town and Country Planning Act 1990, and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of land and the creation of new rights within the areas shown by a red line on the plan (attached as Appendix 1) for the purposes of securing a mixed use development including retail and residential accommodation, a new multi-storey car park, improvements to the Westgate Library, provision of a new bus facilities and a bus priority route, and

3). That the Head of Legal and Democratic Services in consultation with the Strategic Director of Finance and Corporate Services be authorised to take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order including: negotiating and entering into agreements or undertakings with land owners, acquisition of third party interests by private treaty, payment of compensation (subject to full indemnity), setting out the terms for the withdrawal of objections to the Order, (including, where appropriate, seeking exclusion of land from the Order) and/or making arrangements for relocation of occupiers, and

4) To note that there are no financial implications as all costs will be reimbursed by the developer

## **Introduction**

1. The background to this report is contained in two earlier reports to Executive Board;
  - (i) In November 2004 the Executive Board gave its approval in principle to negotiate with The Westgate Partnership (TWP) for the partial redevelopment and extension of the Westgate Centre. One of the elements of that approval was an 'in principle' decision to support the use of compulsory powers to support land assembly (min 157 [13]).
  - (ii) On 9 October 2006, the Board agreed the principal terms for the proposed Conditional Development Agreement (CDA), building agreement, and the lease of the site to TWP.
2. The Strategic Development Control Committee considered the planning application made by TWP on 30 October. It agreed to support the application and refer it to the Secretary of State for Communities and Local Government.

### **Why a Compulsory Purchase Order is needed**

3. Most of the site is owned freehold by the City Council and is either let under the existing Westgate lease or forms part of the car parks. Some other parcels of land are owned freehold by TWP. However, a few freehold ownerships (e.g. part of the College site) and also a number of other property interests (mainly occupational leases) that are held by third parties still need to be acquired. Although TWP has already acquired a number of property interests by agreement, and will continue to seek to obtain the remainder by this method, it is crucial for site assembly and the development programme that this process is supported by a CPO. TWP will indemnify the Council against the costs of securing and using CPO powers (see para 15 below).
4. Approximately 30 property interests remained to be acquired at the date of preparation of this report.

### **Development proposals**

5. The planning application proposal is for a total redeveloped area of 5.7 hectares consisting of the following main elements:
  - A total retail element of 106,000 sq m gross (including the refurbishment of an existing 32,000sq m of gross retail floorspace) providing a flagship department store fronting Thames Street, and between 40–50 retail units of varying sizes, all located within the existing centre and in two new buildings to the south.
  - 1335 space multi-storey car park.
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- 127 city centre residential apartments. 50% of these will be affordable units.
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- A remodelled Library entrance, with a financial contribution towards refurbishment of the Library.
- A phased transport solution that aims to reduce bus traffic in Queen Street by redirection of some services around the perimeter road network

It is estimated that an extended Westgate will directly employ 3280 people, an increase of over 2000 on the existing figure. In addition during the construction period it is estimated that 300 people will be employed on site in the early stages of construction, rising to 1300 in the later stages

The splitting of the development into four blocks, separated by new pedestrian cross streets running east to west, will improve accessibility across this part of the central area.

The development should act as a catalyst for the redevelopment of the wider West End area.

## **Programme**

6. The current indicative timetable is set out below. Although it makes allowance for the possible requirement for a public inquiry to determine the planning application and need for compulsory purchase powers, progress at many stages will be outside the Council's control, and it is not possible to be precise at this point

October (30) 2006	Planning application considered by Strategic Development Control Committee.
November (6) 2006	Executive Board to consider resolution to make CPO.
November 2006	Making of CPO.
Spring 2007	CPO and highway order inquiry.
Autumn 2007	Secretary of States decision.
Early 2008	Commencement of construction
Autumn 2011	Scheme completed

## **Compulsory Purchase Order**

7. Compulsory purchase powers exist under planning legislation to facilitate development, redevelopment and improvement projects. The Planning and Compensation Act 2004 amended the law to make the process clearer and easier to use.

### **Statutory authority**

- 8 The Council is required to state the specific powers that it proposes to use, as set out below

a) Powers under Section 226(1)(a) of the Town and Country Planning Act, 1990, to acquire the land that is needed to 'secure the carrying out of development, redevelopment or improvement'. Furthermore, under subsection (1A) of Section 226, the Council must be satisfied that the scheme contributes to achieving the promotion or improvement of 'economic, social or environmental well being' of its area (ie the whole City of Oxford))

The five major components of the scheme contribute to satisfying these criteria, as detailed below

- (i) **Refurbishment of the existing Westgate Centre;** The library improvements, new Castle Street retail frontage, new roof, and creation of a new cross street will provide social and environmental benefits
- (ii) **New shopping streets and department store;** The creation of new shops, department store and new pedestrianised cross streets will provide economic and environmental benefits
- (iii) **New Residential units on Old Greyfriars Street ;** The construction of 44 maisonettes and apartments will have social and environmental benefits
- (iv) **Abbey Place Redevelopment;** The construction of a new multi storey car park, a further 83 flats, and provision of new bus drop off and pick up facilities will contribute to social and environmental benefits
- (v) **Other transportation and public realm improvements;** The creation of a new bus priority route, bus waiting bays, taxi pick up and cycle parking, and general improvements to streetscape and public spaces will have environmental benefits

In addition, general economic benefits will arise as a result of the increases in direct employment during and after construction (outlined in Section 5), and from the substantial overall financial investment by the developer which the scheme represents and which will act as a catalyst for the regeneration of the wider West End

b) The scheme will necessitate applications for stopping up and pedestrianisation orders under Sections 247 and 249 of the Town and Country Planning Act 1990. The cost of these will be funded by the developer. Subject to the outcome of the referencing process (see para 13, below), the Council may also need to exercise other powers under Sections 236, 237, 271, and 272 of the Act

c) The Order land includes areas of open space, and procedures set out in the 1990 Town and Country Planning Act and 1981 Acquisition of Land Act will be followed in respect of these areas.

d) Powers under Section 13 of the Local Government (Miscellaneous Provisions) Act 1976, to create new rights over land in the vicinity of Castle Mill Stream. These rights are required to enable the removal of the existing bridge over the Stream and the construction of two new bridges. The rights required are;

- vehicular and pedestrian rights of access, including a reasonable working area, to undertake the removal of the existing bridge.
- vehicular and pedestrian rights of access to the location of the two new bridges to be constructed.
- rights to undertake the engineering works to construct the two new bridges, including the right to occupy a reasonable working area during the construction period.
- rights of vehicular and pedestrian access for the purposes of future inspection, maintenance and repair of the two new bridges.
- rights for crane oversailing during the construction period.

9 It is necessary for the City Council to resolve formally to use these compulsory purchase powers, before it may make a CPO. However (assuming there are objections), the final decision on the CPO rests with the Secretary of State for Communities and Local Government who will decide whether to confirm the CPO, having considered the merits of the scheme and any objections, by way of public inquiry.

### **Statement of Reasons**

10 In resolving to use CPO powers the City Council must be satisfied that it is necessary to acquire the land in order to secure the delivery of the scheme. This justification will form a key part of the Statement of Reasons, which accompanies the Order. This is now in preparation, and will include the following information;

- (i) A brief description of the Order land, its location, features and existing use
- (ii) Explanation of the use of the particular enabling power
- (iii) An outline of the Councils purpose in seeking to acquire the land

- (iv) The Councils justification for compulsory purchase, including reference to the applicability of European Convention on Human Rights
  - (v) A description of the proposals for the use or development of the land
  - (vi) A statement about the planning position of the Order site
  - (vii) Any special considerations affecting the Order site, eg listed buildings, conservation area
  - (viii) Information of interest to persons affected by the order, eg displaced residents
  - (ix) Details of any related order, application or appeal made under other powers, which may require a co-ordinated ministerial decision, eg road closure, pedestrianisation.
- 11 This scheme will involve the demolition of a council owned block of 14 flats at Abbey Place. Five flats are privately owned and let on short term tenancies. Six flats are let by the Council to weekly tenants and three flats are held on shared ownership leases. In respect of item (viii) above, the Statement of Reasons will set out the Councils proposals for rehousing the weekly tenants, and procedures by which the shared owners, (subject to eligibility), will be entitled to apply for rehousing in other shared ownership schemes operated by registered Social Landlords

### **Viability**

- 12 The Secretary of State needs to be satisfied that the scheme is viable and likely to proceed in the event that the order is confirmed. On 9 October, after lengthy negotiations, including an appraisal of the financial aspects of the scheme the Council agreed to enter into a number of agreements for the development and proposed leasing arrangements. These will include stipulations and safeguards as to the timescale for commencing and finishing the development

### **The CPO Boundary**

- 13 The potential extent of the CPO boundary (i.e. the land to be subject to the CPO) is set out on the plan attached as Appendix 1. This may be amended as further information is collected. To assist this process, what is known as 'referencing' is in progress. A private specialist firm (Terraquest) has been appointed to identify all the interests in the development site. This has involved desktop research and contacting known owners and occupiers by letter to establish their ownerships and try and identify any currently not known. It should be stressed that the intention is only to acquire interests actually required to implement the scheme

- 14 To date the referencing firm has identified around 200 separate potential interests in the redevelopment area. It is anticipated that there are approximately 30 compensatable interests. The majority of these are commercial interests and ownerships. Prior to the availability of compulsory purchase powers, TWP will continue to seek to purchase interests by agreement where the opportunity arises. This process will continue after the City Council's resolution up to the point at which it becomes necessary to compulsorily purchase the remaining interests, in order to maintain the programme for the delivery of the project.

However, with a scheme of this size and complexity it is extremely unlikely that the site will be successfully assembled without the exercise of compulsory purchase powers.

### **Cost Indemnity Agreement**

15. The use of CPO powers will make the City Council (rather than TWP) liable for claims for compensation. It is crucial therefore that TWP indemnifies the City Council for all costs arising from the use of CPO powers. Thus, although TWP will have the ability to call on the City Council to use its CPO powers, this will be conditional on completion of a CPO Cost Indemnity Agreement. By entering into this, TWP will indemnify the City Council against all costs arising from the use of CPO powers, including any blight notice cases. Those costs will include compensation payments, inquiry costs, costs of pedestrianisation orders and highway stopping up orders and all the City Council's fees for professional advice and internal costs (an interim indemnity has already been obtained by the City Council to cover preparatory work carried out to date on CPO matters).
16. TWP have appointed Drivers Jonas to act on their behalf to monitor the land assembly process, and oversee the build up to the making of the CPO. Under the proposed indemnity agreement the Council will appoint Drivers Jonas to negotiate any claims for CPO compensation which the Council receives. Their fees and compensation costs paid by the Council will be reimbursed under the CPO Cost Indemnity Agreement.

### **Other Options**

17. The Council and TWP could seek to secure site assembly purely by private agreement with property owners. However, this is a complex site and such an approach would be unlikely to succeed. There will be owners who refuse to sell, try to ransom the project, or cannot be found. This uncertainty would be fatal to the scheme. It is therefore considered vital that the scheme is supported by a CPO in order to achieve certainty of delivery, notwithstanding that efforts to acquire the necessary interests by agreements will continue



## **Risk Assessment**

18. Possible issues

**a) Development does not proceed after CPO has been made and confirmed**

The CPO will not be made until TWP has entered the indemnity agreement. The City Council will then be indemnified for any costs it incurs. The Development Agreement will contain a 'long stop' date by when the development must have begun otherwise either party can withdraw.

**b) Development does not proceed after properties have been compulsory purchased**

The property owners will have the right to (or will have been paid) compensation and TWP will have an ongoing liability under the indemnity agreement to cover the City Council's costs in this respect. If for unforeseen reasons TWP is unable to proceed, the City Council would have to decide whether to seek an alternative developer, transfer the acquired properties to TWP or 'buy' these properties from TWP. These matters will be dealt with within the Development Agreement, in accordance with the approved heads of terms.

**c) Objections to the CPO lead to a public inquiry**

The development programme allows time for an inquiry, which is likely to be necessary with a CPO of this scale.

**d) The CPO is not confirmed by the Secretary of State**

The justification for the CPO satisfies the provisions of the Town and Country Planning Act 1990 and complies with government guidance in Circular 06/04. The government is encouraging local authorities to use CPOs to assist in major regeneration projects such as Westgate. The use of compulsory purchase also reflects government policy, particularly in PPS 6 and PPG 13, in supporting existing city centre retailing areas. The planning application is in accordance with the Local Plan and the emerging Local Development Framework and hence there is considerable planning support for a CPO.

## **Consultation and Human Rights Act 1998**

19. Consultation with the public and affected parties has been carried out by TWP, since inception of the revised scheme in 2003, up to endorsement of the Master Plan by the Council in 2004. Section 4 of the Westgate report to Strategic Development Control Committee on 30 October provides a comprehensive summary of all the consultation

carried out both by TWP, and by the City Council in connection with the planning application.

The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights. Public authorities are prevented from acting in a way which is incompatible with the Convention. Various convention rights are likely to be relevant to the Order, including:

**Entitlement to a fair and public hearing** in the determination of a person's civil and political rights (Convention Article 6). This includes property rights and can include opportunities to be heard in the consultation process.

**Rights to respect for private and family life and home** (Convention Article 8). Such rights may be restricted if the infringement is legitimate and fair and proportionate in the public interest.

**Peaceful enjoyment of possessions** (First Protocol Article 1). This right includes the right to peaceful enjoyment of property and is subject to the State's right to enforce such laws as it deems necessary to control the use of property in accordance with the general interest.

**Right to life** in respect of which the likely impacts of the proposals will need to be taken into account in evaluating the scheme (Convention Article 2).

The European Court has recognised that *"regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole"*. Both public and private interests are to be taken into account in the exercise of the Council's powers and duties as a local planning authority. Any interference with a Convention right must be necessary and proportionate.

The Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. The Council must carefully consider the balance to be struck between individual rights and the wider public interest. It is considered that any interference with the Convention rights caused by the CPO will be justified in order to secure the economic, social, and environmental benefits that the scheme will bring.

**Legal Implications:** These are contained in the body of the report

**Financial Implications** None, because all costs are indemnified

**Appendices:**

1. CPO boundary plan

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**Background papers:** None

