

**SURREY COUNTY COUNCIL****CABINET MEMBER FOR TRANSPORT****2 FEBRUARY 2021****LEAD OFFICER:** KATIE STEWART, EXECUTIVE DIRECTOR –  
ENVIRONMENT, TRANSPORT & INFRASTRUCTURE**SUBJECT:** HOUSING INFRASTRUCTURE FUND, VICTORIA ARCH, WOKING -  
COMPULSORY PURCHASE**ORGANISATION STRATEGY PRIORITY AREA:** GROWING A SUSTAINABLE ECONOMY SO  
EVERYONE CAN BENEFIT**SUMMARY OF ISSUE:**

This report relates to the joint successful Housing Infrastructure Fund (HIF) bid by Surrey County Council (SCC) and Woking Borough Council (WBC) to deliver an integrated highways revitalisation project estimated to cost £115 million. There are three key elements to the project: acquisition and demolition of the Island site; A320 highway widening and improvements; and the replacement of Victoria Arch bridge (the "Scheme"). In order to deliver the scheme, SCC and WBC must consider the use of Compulsory Purchase Order (CPO) powers. This report outlines the detailed reasons for using such powers.

Woking Borough Council are acting as lead project delivery authority and recipient of the HIF funds from Homes England on behalf of Surrey County Council. All costs associated with the project are dealt with by WBC as detailed in this report and there are no financial implications to SCC.

On the basis of the analysis set out in this report, authority is sought to enable Surrey County Council to make a compulsory purchase order ("Order") under the Highways Act 1980 in respect of the Order Land identified within Annex 1 ("Order Land") to facilitate the carrying out of the Scheme.

**RECOMMENDATIONS:**

It is recommended that:

The Cabinet Member for Highways agree that officers may acquire land compulsorily as required by the Housing Infrastructure Fund project for Woking town centre using the Council's powers under the Highways Act 1980 if negotiation proves unsuccessful.

**REASON FOR RECOMMENDATIONS:**

Woking Borough Council (WBC) is acting as the recipient to the Housing Infrastructure Fund and lead authority for project delivery. In this role WBC has considered the use of its compulsory purchase order (CPO) powers and had a

resolution by Full Council on 30 July 2020 approving the use of compulsory purchase powers order under the relevant statutory powers (being the powers under the Highways Act 1980 or the powers under the Town and Country Planning Act 1990, as appropriate) in respect of the "Order Land" identified in Annex 1 to facilitate the carrying out of the scheme.

Since that time, Counsel's advice has been to progress the CPO under the Highways Act, the reason being that most of the land still to be acquired is for the highways scheme, which falls to SCC as Highway Authority.

Cabinet Member approval is now sought to progress the CPO process under the powers of the Highways Act 1980.

## **DETAILS:**

### **Background**

1. There has been a long-held aspiration to improve conditions at Victoria Arch in Woking town centre. The existing Victoria Arch Bridge has stifled local growth and town centre development for decades. The current single carriageway that runs through Victoria Arch is not sufficient to cope with the busy A320, which is the main arterial road through Woking, resulting in significant town centre congestion at peak times. Pedestrian and cycle access through Victoria Arch is also limited, with connectivity between the north and south of the railway-line restricted by the existing infrastructure which can no longer service the needs of a vibrant and progressive town centre.
2. In an effort to remedy this situation, SCC and WBC jointly made a successful Housing Infrastructure Fund bid for £95 million. The Government commitment (through Homes England) to invest in Woking Town Centre will fund the replacement of Victoria Arch and critical highway improvements, which will support Woking to meet its housing needs and become a regional focus of economic prosperity. On 18 March 2020, WBC entered into a funding agreement with Homes England to deliver the overall project.
3. On 30 July 2020, WBC presented a report to full Council in respect of the use of compulsory purchase powers. The purpose of this report was to enable WBC to consider whether or not WBC wished to support the Scheme through the use of compulsory purchase powers and whether there was sufficient public interest justification for doing so. The recommendations presented in the report were carried and it was resolved that WBC would use the relevant statutory powers to make a CPO.

### **Compulsory Purchase**

4. WBC Legal Services Manager instructed Davitt Jones Bould (DJB) solicitors with expertise in compulsory purchase orders, to act for them in preparing and progressing the proposed compulsory purchase order (Order). DJB have prepared a report containing their comments and advice on the proposed compulsory purchase order. A copy of this advice is contained in Annex 2.

5. This report sets out the background to and need for the Scheme. It also sets out the relevant considerations in determining whether or not to exercise compulsory purchase powers, prospects for delivery and, its financial viability and deliverability. This report also includes matters for consideration in relation to the Public Sector Equality Duty and the implications for the human rights of those who might be affected by the Order.
6. WBC has made considerable efforts to voluntarily purchase and relocate owners and tenants on the Triangle to try to secure vacant possession of the land and has made good progress with most of the land now having been acquired. The site did comprise of a wide mix of purpose built office buildings, retail units with converted upper parts into several residential flats, retail with upper parts in office use, two small office buildings, a driveway with parking on it and a single long leasehold parking space. There was a wide variety of ownerships consisting of properties owned freehold and let out, long leasehold residential units and residents homes.
7. Good progress has been made in purchasing both commercial properties and residential properties forming part of the Order Land. Lynton House, Jubilee House and Southern House have been purchased in their entirety and following planning approval are currently being demolished. These three properties make up a significant proportion of the site. To date, over 87% of the Island site has either been acquired or terms have been agreed, and formal negotiations with the remainder of the site are in hand. The freehold footprint of the Island site is approximately 4,214 sqm of which WBC owns over 2,887 sqm. WBC has also made considerable efforts to voluntarily purchase the areas of land needed to facilitate the Scheme. The total area of the Order Land is 8,840sqm (0.884 hectares).
8. As with any acquisition process, it is possible that despite best efforts, land cannot be voluntarily acquired. In this instance compulsory purchase order (CPO) proceedings will have to be commenced on all land that WBC has been unable to voluntarily purchase which is required to enable the project to progress. The compulsory purchase of land is a last resort where attempts to acquire the land by agreement fail. Acquiring authorities should nevertheless consider at what point the land they are seeking to acquire will be needed and, as a contingency measure, should plan a compulsory purchase timetable at the same time as conducting negotiations. Given the amount of time which needs to be allowed to complete the compulsory purchase process, it may often be sensible for authorities to initiate the formal procedure in parallel with such negotiations.
9. To date, WBC has made a number of relocation proposals to current occupiers with the Order Land and are currently working on a number of further offers for compensation or relocation. Discussions and negotiations with landowners and occupiers will continue parallel to the compulsory purchase order process if an affirmative decision to use compulsory purchase powers is made. The COVID 19 pandemic has impacted upon WBC's negotiations. It was not possible or appropriate for a reasonable period of time to be in discussion with owners and occupiers to sell and/or vacate their properties.

10. WBC Legal Services Manager has instructed Ardent, a land referencing agent to provide land referencing services and produce the final CPO schedule and Order Plan(s). A draft map of the Order Land is contained in Annex 1. The extent of the interests and rights in land proposed to be acquired are listed in the schedule at Annex 3. The final schedules and plans will be prepared in accordance with the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.

#### **CONSULTATION:**

11. The land acquisition proposals have been extensively publicised by WBC and consultation has taken place with the communities, businesses and residents that will be affected. All those whose land may be compulsorily acquired will be notified and have the opportunity to make objections and if objections are not withdrawn to be heard at a public inquiry before a decision is made on whether or not any CPO should be confirmed by the Secretary of State. Notice must be served on all owners, lessees and occupiers of land affected and also the public at large. Those affected will also be entitled to expenses incurred in attending any Public Inquiry in addition to compensation for the market value of the land compulsorily acquired.

#### **RISK MANAGEMENT AND IMPLICATIONS:**

12. Specialist solicitors and Counsel have been instructed to act for WBC in connection with the Order. The management of risk forms an integral part of the HIF project. The joint SCC and WBC project team have developed and maintain a detailed risk register that cover all aspects of the scheme; including the CPO process.

#### **Financial and value for money implications:**

13. Financial responsibility for the scheme rests with WBC who are recipient of the HIF funds from Homes England and are lead project delivery authority and therefore there are no costs associated with the project to SCC.
14. The total cost of the project is estimated to be £115 million. This is estimated to be financed by £95 million Housing Infrastructure Fund grant awarded by Homes England, £10 million from WBC, and £10 million saving/contribution from Network Rail.
15. The cost of making the CPO will be recovered in full from the £115 million project budget, with no costs being met by SCC. Land purchase will be undertaken by WBC.
16. The £95 million grant fund for the project is secured through a Grant Determination Agreement (completed March 2020) between WBC and Homes England. Within the GDA, WBC is contracted to provide Homes England with detailed, clear and transparent financial reporting on all negotiations and project spend, which is all subject to monthly scrutiny by the Homes England Infrastructure Grants Management team.

#### **Section 151 Officer commentary:**

17. Although significant progress has been made over the last twelve months to improve the Council's financial position, the medium term financial outlook is uncertain. The public health crisis has resulted in increased costs which may not be fully funded in the current year. With uncertainty about the ongoing impact of this and no clarity on the extent to which both central and local funding sources might be affected from next year onward, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority in order to ensure stable provision of services in the medium term. The costs incurred by the Council in relation to making a Compulsory Purchase Order will be recovered from the Victoria Arch scheme budget held by Woking Borough Council. As such, the Section 151 Officer supports the recommendation.

#### **Legal implications – Monitoring Officer:**

18. Powers are conferred by Section 239 of the Highways Act 1980 on SCC as highway authority to acquire land compulsorily or by agreement for the construction of roads to be maintainable at public expense and for the improvement of highways. Section 240 of this act also enables the highway authority to acquire land required for use by them in connection with the construction or improvement of a highway.

19. Such powers are exercisable upon authorisation by the Secretary of State. SCC as acquiring authority must establish through evidence that the compulsory purchase order is required in order to achieve the statutory purpose. This means that the land to be acquired must be necessary for the scheme and that land has to be acquired compulsorily. If there are objections it must be established that it is in the public interest that the order be confirmed, and that SCC has acted proportionately in the exercise of its powers.

20. The procedure for the making and confirmation of compulsory orders is largely set out in the Acquisition of Land Act 1981 and in regulations. Objections to compulsory purchase orders if not withdrawn will lead to the holding of a public inquiry.

#### **Equalities and diversity:**

21. It is necessary to comply with the Public Sector Equality Duty (as set out in Section 149 of the Equality Act 2010). The decision to make the Order is one that this duty applies to and accordingly WBC has commissioned the preparation of the Equalities Impact Assessment (EqIA) to assess the potential impacts of the Scheme on groups with protected characteristics.

22. WBC has instructed Dr Sophia Skyers to undertake a Public Sector Equalities Duty Assessment. Although this instruction came from WBC, SCC has

assessed the report and endorse this report as a fellow joint promoter of the project.

23. The EqlA contains a number of recommendations to adopt as the plans for, and delivery of, the Scheme progresses. These are set out in full within the EqlA a copy of which is at Annex 4. The recommendations are as follows:-
  - a) The Woking Access Group gets a copy of this EqlA in sufficient time to make comments.
  - b) The Woking Access Group continue to be engaged as the detailed implementation progresses.
  - c) The EqlA be publicised and published on WBC's website.
24. The Woking Access Group was sent a copy of the EqlA on 14 July 2020 and subsequent on-site meetings and a virtual meeting was attended by WBC officers to answer queries. A copy of the EqlA has been published on WBC's website.
25. The conclusions of the EqlA are set out in full within the EqlA, however, can be summarised as:- "The proposals for Victoria Arch will have a positive impact overall and where the potential for negative impacts have been identified, mitigating measures have been put in place by the Council where possible to do so."
26. Consideration as to WBC's equality duty has formed an integral part of the Scheme and both SCC and WBC officers are satisfied that proportionate steps have been taken to comply with its duty in this regard.
27. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights. The parts of the Convention rights which should be considered in the course of the making of the Order and leading up to the confirmation of the Order Article 1 of the First Protocol and Articles 6 and 8 of the Convention.
28. Article 1 of the First Protocol of the Convention provides that:
  29. *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.*
  30. *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.*
31. If confirmed by the Secretary of State, the Order will affect the Article 1 rights of the present leaseholders/occupiers resident within the Order Land. However, there will be no violation of those rights where the steps taken are

in the public interest and are lawful, as is required by Article 1 of the First Protocol (above) and Article 8 of the Convention (below).

32. Article 6 of the Convention provides that:-

33. *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.*

34. The Order proposals have been extensively publicised and consultation has taken place with the communities, businesses and residents that will be affected by the Order. All those affected by the Order will be notified of its making and have the opportunity to make objections to the Order and to be heard at a public inquiry before a decision is made on whether or not the Order should be confirmed by the Secretary of State. Those persons directly affected by the Order will also be entitled to compensation proportionate to any losses that they may incur as a result of any compulsory acquisition made pursuant to the Order.

35. Article 8 of the Convention provides that:

36. *Everyone has the right to respect for his private and family life, his home and his correspondence.*

37. *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 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 wellbeing 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.*

38. Article 8(1) is a qualified right and interference with it may be justified in appropriate cases by reference to Article 8(2).

39. If made, the Order will authorise WBC to acquire land compulsorily subject to usual procedures for compulsory acquisition being followed eg. the giving of notices, allowing a period for objections and affording objectors an opportunity to make their objections at a public local inquiry. To justify interference with the above rights, the Council must consider that there is a compelling case in the public interest such that if the Order Land is acquired the public benefit will outweigh the private loss arising from that acquisition. Further, interference with Convention rights must be proportionate and justified in the public interest.

40. In preparing this report, officers have carefully considered the balance to be struck between individual rights and the wider public interest and consider that, to the extent that the Order would affect those individual rights, the

proposed interference with them would be in accordance with the law, necessary in the public interest and proportionate. Appropriate compensation will be made available to those entitled to claim it under the relevant provisions of the statutory Compensation Code.

41. It is therefore considered that the Scheme and the Order will not infringe the lawful rights of individuals which are provided by the European Convention on Human Rights.

#### **Environmental sustainability implications:**

42. The environmental implications of the overall project will be considered by WBC as part of the planning process. A screening opinion was submitted for the demolition of the Island site in February 2020 and the planning authority adopted a negative screening opinion meaning that the proposal is not considered to be an Environmental Impact Assessment development. Any further requests for EIA screening opinions for the project will be submitted as required.
43. However, it is worth noting that WBC have instructed Dr Sophia Skyers to undertake a Public Sector Equalities Duty Assessment (EqIA). The conclusions of the EqIA are set out in full within the EqIA, at Annex 4 however, in terms of environmental sustainability, can be summarised as:- “The measures underpinning the proposals bring forward a more useable, pedestrian-friendly, and connected public realm, reduce congestion, and enhance liveability and walkability,” and “The proposals for Victoria Arch will have a positive impact overall and where the potential for negative impacts have been identified, mitigating measures have been put in place by the Council where possible to do so.”
44. WBC instructed Dr Sophia Skyers to undertake this EqIA, and SCC has assessed the report and endorse it as a fellow joint promoter of the project.

#### **WHAT HAPPENS NEXT:**

45. Officers remain of the view that there is a compelling case in the public interest for the making and confirmation of any Order, and that this comprises a proportionate response to secure both SCC and WBC’s objectives.
46. WBC is confident that there is more than a reasonable prospect of the Scheme proceeding, given the commitment to the delivery of the Scheme demonstrated to date, the acquisition of interests by agreement in the Order Land and the steps it is taking to deliver the Scheme. Both SCC and WBC believe that there are no credible alternatives to compulsory purchase to achieve the purposes of the Order. It is highly unlikely that all the outstanding interests required could be assembled by agreement within a reasonable timescale, if at all.

47. It is therefore recommended that the Cabinet Member for Highways gives the necessary authority and permission to officers to proceed to facilitate land acquisition (associated with the Housing Infrastructure Fund project for Woking town centre) by means of Compulsory Purchase through the Highways Act 1980 power, in the event that attempts through direct negotiation prove unsuccessful.

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**Contact Officer:**

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**Consulted:**

The full list of consultees is included in Annex 5

**Annexes:**

- Annex 1 Plan of Order Land to facilitate the carrying out of the Scheme
- Annex 2 Davitt Jones Bould – A report containing DJB's comments and advice on the proposed compulsory purchase order.
- Annex 3 Schedule of interests and rights in land proposed to be acquired as of July 2020
- Annex 4 Public Sector Equalities Duty Assessment by Dr Sophia Skyers
- Annex 5 List of Consultees (as attached)

**Sources/background papers:**

- WBC Executive Report – Housing Infrastructure Fund – Funding Allocation of £95million to Woking Town Centre - 6 February 2020  
[Agenda for Executive on Thursday, 6th February, 2020, 7.00 pm \(woking.gov.uk\)](#)
  - WBC Full Council Report - Housing Infrastructure Fund – Island Site – Compulsory Purchase Order (CPO) - 30 July 2020  
[Agenda item - Housing Infrastructure Fund \(HIF\) Island Site - Compulsory Purchase Order \(CPO\). WBC20-014 \(woking.gov.uk\)](#)
  - Guidance on Compulsory purchase process and The Crichtel Down Rules  
[Compulsory purchase process and the Crichtel Down Rules - GOV.UK \(www.gov.uk\)](#)
  - HIF Recovery Strategy for Woking Town Centre  
<https://www.woking.gov.uk/sites/default/files/documents/planning-and-building-control/planning/policies-and-guidance/hif-recovery-strategy-guidance-note.pdf>
  - Woking Core Strategy  
[Adopted Core Strategy - Woking 2027](#)
  - Draft site Allocations DPD  
[Draft Site Allocations DPD - Woking 2027](#)
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