

Title of Report:	A339/Fleming Road Junction Compulsory Purchase Order
Report to be considered by:	Council
Date of Meeting:	02 July 2015
Forward Plan Ref:	C2955

Purpose of Report:

- 1. To obtain authority from full Council to purchase private land by agreement or by using compulsory purchase powers under the Town and Country Planning Act 1990, the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 to enable a new junction to be built from the A339 onto Fleming Road in Newbury.**
- 2. To appropriate the land within the Scheme for planning purposes.**

Recommended Action:

Having given consideration to all the provisions of this report including the impact on Human Rights and Equalities Council resolves to delegate to the Head of Legal Services authority to make a Compulsory Purchase Order(s) and other such powers as detailed in section 11 of this report.

Reason for decision to be taken:

Successful negotiated purchase agreement could not be reached despite numerous attempts to engage over the last 8 months.

Without the Council's involvement to acquire the necessary land, the new junction will not be built, which will prevent the unlocking of the redevelopment of the London Road Industrial Estate.

Other options considered:

As detailed in the main report.

Key background documentation:

N/A

Published Works:

West Berkshire Core Strategy and Local Transport Plan.

The proposals contained in this report will help to achieve the following Council Strategy priority:

CSP2 – Promoting a vibrant district

The proposals will also help achieve the following Council Strategy principle:

CSP8 - Doing what's important well

The proposals contained in this report will help to achieve the above Council Strategy priority and principle by:
Enabling the regeneration and redevelopment of the London Road Industrial Estate, delivering economic growth, creating additional jobs and improving the environment of this part of Newbury Town.

Portfolio Member Details	
Name & Telephone No.:	Councillor Garth Simpson
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Date Portfolio Member agreed report:	22/06/15

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Implications

- Policy:** This scheme is in line with the aims of the Council's Local Transport Plan 2011-2026 (A transport vision for Newbury, p.32) and the West Berkshire Core Strategy 2006-2026 (Area Delivery Plan Policy 2).
- Financial:** The financial implications are covered within the body of the report. There is provision within the scheme budget for acquisition of the required land.
- Personnel:** None
- Legal/Procurement:** Legal Services will advise on the CPO process.
- Property:** Expert valuation advice has been sought and will be required throughout the process.
- Risk Management:** This project is being managed in accordance with the Council's Project Management Methodology and risk management process.

Is this item relevant to equality?	Please tick relevant boxes	Yes	No
Does the policy affect service users, employees or the wider community and:			
• Is it likely to affect people with particular protected characteristics differently?		<input checked="" type="checkbox"/>	
• Is it a major policy, significantly affecting how functions are delivered?		<input checked="" type="checkbox"/>	
• Will the policy have a significant impact on how other organisations operate in terms of equality?		<input checked="" type="checkbox"/>	
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?		<input checked="" type="checkbox"/>	
• Does the policy relate to an area with known inequalities?		<input checked="" type="checkbox"/>	
Outcome (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)			
Relevant to equality - Complete an EIA available at http://intranet/EqIA			<input type="checkbox"/>
Not relevant to equality			<input checked="" type="checkbox"/>

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>	
Delays in implementation could have serious financial implications for the Council	<input checked="" type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	
Report is to note only	<input type="checkbox"/>	

Executive Summary

1. Introduction

- 1.1 The re-development of the London Road Industrial Estate is identified as a priority in the Local Plan (West Berkshire Core Strategy, Area Delivery Plan Policy 2). Home to mainly industrial uses, predominantly relating to the motor trade, the London Road Industrial Estate (LRIE) has remained largely untouched in the last 40 years as the generally poor condition of the building stock conveys. Providing access to the LRIE from the A339 will facilitate the regeneration of the LRIE which will deliver economic growth, creating additional jobs and improving the environment of this part of the town.
- 1.2 Essential to unlocking this area for redevelopment is the provision of a new junction directly onto the A339. Whilst planning permission has been sought and granted in the past for the delivery of the new junction onto the A339 by a private developer, such planning permission lapsed without implementation and the market has not been able to bring forward the access road to date. It is the Council's view that the cost of delivering the access road means that the road will not be delivered by a private developer alone and will need the intervention of the Council supported by public funds. The Council has successfully bid for grant funding from the Local Enterprise Partnership Local Growth Fund towards the provision of this junction, which will connect Fleming Road to the A339. The £1.9m funding is, however, time limited and work must commence in the next 12 months in order to comply with the conditions of the grant.

2. Proposals

- 2.1 Subject to the approval of the Secretary of State, the Council has the power under Section 226(1)(a) of the Town and Country Planning Act 1990 to compulsorily acquire land if the Council considers that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. Under section 226(1A) of the Town and Country Planning Act 1990, such powers may only be exercised by the Council if the Council considers that such development, re-development or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area.
- 2.2 The land identified for compulsory acquisition is required to deliver part of a traffic signal controlled junction approximately 230m south of the Robinhood junction which will connect into Fleming Road and, in turn, to Faraday Road. The remaining land is already adopted highway. As part of the new junction, a signal controlled pedestrian crossing will be constructed across the new Fleming Road access and a new staggered pedestrian and cycle crossing will be constructed across the A339 (the Scheme).
- 2.3 The Scheme is required to facilitate re-development within the London Road Industrial Estate which the Council considers will contribute to the economic well-being of the area. The Scheme will also deliver a new footway through Victoria Park which the Council considers will contribute to the environmental well-being of the area and improve social mobility.

- 2.4 Under section 13 of the Local Government (Miscellaneous Provisions) Act 1976, the Council can acquire new rights over land compulsorily. These new rights would be acquired in preference to outright acquisition. This avoids the need to acquire outright the land where rights are sufficient. The Council seeks rights to access land to make good the kerb-line across the front of Units 4 and 5 on Fleming Road. Under section 237 of the Town and Country Planning Act 1990, restrictive covenants over land appropriated for planning purposes may be overridden.
- 2.5 The Council owns the freehold of the land required to deliver the junction and has made numerous attempts to acquire the long leasehold interest of the land to the east of the A339 from Faraday Development Limited (FDL) by agreement. Unfortunately these attempts have been unsuccessful. The small areas of land required from Victoria Park to deliver the new footway as part of the Scheme and allow for the widening of the A339 are leased to Newbury Town Council. Unfortunately it has not yet been possible to finalise agreements with Newbury Town Council for the surrender of this land. However discussions continue and the Council will seek to continue to acquire all interests by agreement.

3. Equalities Impact Assessment Outcomes

- 3.1 The Council has carried out an equality impact assessment scoping exercise, and considers that the proposals do not have a direct impact on any groups with protected characteristics.

4. Conclusion

- 4.1 In order to deliver the new junction, land outside the Highway boundary is required. The land required is owned by West Berkshire Council and the majority is leased on a long lease to FDL, with individual units subsequently let to individual tenants. To progress the project the Council will need to acquire the long leasehold of the land required for the Scheme. The remainder of the land required for the Scheme is at Victoria Park and is leased to Newbury Town Council. In order to deliver the Scheme, the Council will need to acquire this interest.
- 4.2 Given the lack of agreement with FDL and Newbury Town Council, officers recommend that the Council approve the use of compulsory purchase powers to safeguard against losing the funding and ensuring this critical infrastructure scheme proceeds.
- 4.3 In respect of the A339/ Fleming Road Junction in Newbury approval is sought:
- (1) subject to the agreement securing the cost indemnity for the balance of acquisition costs including those required to promote a compulsory purchase order from St Modwen Development Limited in favour of the Council being entered into, make a Compulsory Purchase Order(s) under Section 226(1)(a) of the Town and Country Planning Act 1990, Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 to acquire all or part of the land identified edged red coloured pink and new rights in respect of the areas coloured blue on the map attached to this Report entitled "Map referred to in the West Berkshire Council (A339/ Fleming Road Junction, Newbury) Compulsory Purchase Order 2015" (the CPO Map);

- (2) make a Footpath Creation Order (the Footpath Creation Order) under section 26 of the Highways Act 1980;
- (3) if the Secretary of State authorises the Council to do so, confirm any Compulsory Purchase Order(s) made;
- (4) utilise, where appropriate, either the General Vesting Declaration procedure under the Compulsory Purchase (Vesting Declarations) Act 1981 or the notice to treat procedure under Section 5 of the Compulsory Purchase Act 1965;
- (5) take all steps to seek to acquire the necessary interests in land by agreement or utilising compulsory acquisition powers;
- (6) authorise the appropriation of the land included in plots 1-7 on the CPO Map under the provisions of Section 122(1) of the Local Government Act 1972 for planning purposes to enable the Council to override third party rights and covenants pursuant to sections 237 and 258 of the Town and Country Planning Act 1990, and once the Scheme has been constructed to appropriate the same for highway purposes, following which the land shall be publically maintainable highway;
- (7) subject to the relevant interests in land at Victoria Park included in plots 8 and 9 on the CPO Map being acquired by agreement or by compulsory acquisition, to declare that this land is no longer required for its present purposes, to give public notice of the Council's intention to appropriate the said land to planning purposes to enable the Council to override third party rights and covenants pursuant to sections 237 and 258 of the Town and Country Planning Act 1990, and in the event of no objections being received within the date specified in the public notice (or if received they are withdrawn), upon the day immediately following the date specified in the public notice to appropriate the said land to planning purposes. Once the Scheme has been constructed to appropriate the same for highway purposes, following which the land shall be publically maintainable highway.

4.4 To consider the provisions of the Human Rights Act 1998 so far as they might be applicable in deciding whether or not to make the Compulsory Purchase Order(s) and all other statutory powers that the Council seeks to exercise.

Executive Report

1. Introduction

- 1.1 The proposed Compulsory Purchase Order (CPO) relates to the delivery of a new junction access from the A339 into Fleming Road to unlock access to the London Road Industrial Estate (LRIE), which is identified in the Local Plan as an area for regeneration (West Berkshire Core Strategy, Area delivery Plan Policy 2). The access will facilitate the regeneration of the LRIE which will deliver economic growth, creating additional jobs and improving the environment of this part of the town.
- 1.2 The purpose of the Scheme is to create a new access from the A339 to unlock the redevelopment of the LRIE. Outline proposals to develop the site will include much needed town centre employment sites along with the possible creation of town centre homes in a key brownfield location. The Council is in the process of appointing a development partner for the redevelopment of the LRIE.
- 1.3 Plans for regeneration of the LRIE area are included in the Newbury Vision 2026 with a desire to regenerate the area and make it integral to Newbury town centre.
- 1.4 Essential to unlocking this area for redevelopment is the provision of a new junction directly onto the A339. Whilst planning permission has been sought and granted in the past for the delivery of the new junction onto the A339 by a private developer, such planning permission lapsed without implementation and the market has not been able to bring forward the access road to date. It is the Council's view that the cost of delivering the access road means that the road will not be delivered by a private developer alone and will need the intervention of the Council supported by public funds. The Council has successfully bid for grant funding from the Local Enterprise Partnership Local Growth Fund towards the provision of this junction, which will connect Fleming Road to the A339.
- 1.5 Subject to the approval of the Secretary of State, the Council has the power under Section 226(1)(a) of the Town and Country Planning Act 1990 to compulsorily acquire land if the Council considers that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land. Under Section 226 (1A) of the Town and Country Planning Act 1990, such powers may only be exercised by the Council if the Council considers that such development, re-development or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area. The land to be acquired is shown coloured pink and land over which new rights are sought coloured blue on the CPO Map at Appendix C.
- 1.6 Under Section 13 of the Local Government (Miscellaneous Provisions) Act 1976, the Council can acquire new rights over land compulsorily. These new rights would be acquired in preference to outright acquisition. This avoids the need to acquire the leasehold of land where rights are sufficient. The Council seeks rights to access land to make good the kerb-line across the front of Units 4 and 5 on Fleming Road. The land over which rights are sought is shown coloured blue on the CPO Map at Appendix C. It is not possible to acquire rights on a temporary basis using compulsory purchase powers but the Council would surrender any rights on completion of the works. Under Section 237 of the Town and Country Planning Act

1990, restrictive covenants over land appropriated for planning purposes may be overridden.

- 1.7 The scheme for which the CPO is to be promoted involves the construction of a traffic signal controlled junction approximately 230m south of the Robinhood junction which will connect into Fleming Road and, in turn, to Faraday Road. As part of the new junction, a signal controlled pedestrian crossing will be constructed across the new access and a new staggered pedestrian and cycle crossing will be constructed across the A339 (the Scheme) (Appendix A).
- 1.8 The Scheme provides the opportunity to deliver an attractive illuminated footpath extending parallel to the A339 through Victoria Park to connect into existing pedestrian routes within the park. The Council considers that this is likely to enhance the environmental well-being of the area. The footpath on the eastern side of the A339 will be retained. Construction of the new access connecting to Fleming Road will involve demolition of an industrial building (identified as Units 6 and 7 in Appendix A) in the LRIE. Further detail on this building is provided in Section 4 below.

2. Alternative Options

- 2.1 A number of options were considered in positioning the junction on the A339. Factors taken into consideration included the ability to effectively link the new signals to the existing traffic signals at Robinhood Roundabout, land acquisition and scheme costs.
- 2.2 Positioning the junction further south would mean the height difference from the A339 would be much greater. To construct this access road would require more land for retaining the new road and would prevent buildings from fronting it. This would require significant engineering work to the A339 to create the junction and the design would need to achieve adequate sight lines and accommodate the drop in level onto the site. Therefore the position of a new entrance into the site is limited to approximately level with Fleming Road to minimise the change in level.
- 2.3 Positioning the new junction north of the proposed location would leave less available queuing space on the A339 between the new signals and the Robinhood junction. To prevent northbound vehicles from blocking the Robinhood junction through the new junction, more time would have to be given to northbound traffic passing through the signal controlled junction at the expense of traffic approaching from the A4 and London Road. Equally to prevent southbound traffic from blocking the new junction towards the Robinhood Roundabout, more time would have to be given to southbound traffic passing through the signal controlled junction at the expense of traffic turning to and from the LRIE. This would introduce constraints into the linked timing of the traffic signals that would cause them to run inefficiently and introduce delays into the network.
- 2.4 The proposed location represents the most appropriate solution as it is at the most technically feasible distance for linking the Robinhood junction and new junction effectively whilst making best use of the existing internal road layout of the LRIE and overcoming a minimal height difference (0.75m) from the A339 to the LRIE.

3. The Planning Position

- 3.1 The A339 widening and LRIE junction will provide a direct access from the strategic road network to the LRIE. Redevelopment of this site hinges on the access improvements that the junction delivers and will effectively facilitate brown-field redevelopment and employment intensification over the LRIE. This proposal will unlock a potential site for housing delivery (subject to relevant planning permissions being obtained) and encourage an extension to this vibrant town centre, as identified in the 'Vision for Newbury 2026'.
- 3.2 This Scheme is essential to deliver this site which is identified in the Local Plan as an area for regeneration (West Berkshire Core Strategy, Area Delivery Plan Policy ADPP 2). The redevelopment will deliver economic growth, creating additional jobs and improving the environment in this part of the town. Policy CS5 of the adopted Core Strategy states 'The Council will work with infrastructure providers and stakeholders to identify requirements for infrastructure and services for new development and will seek to coordinate infrastructure delivery, whilst protecting local amenity and environmental quality'. Delivery of this important piece of infrastructure is directly in line with this Policy. Policy CS 14 of the adopted Core Strategy also places an expectation on developments to 'make good provision for access by all transport modes.' This proposed junction will significantly improve access to LRIE across the busiest road in West Berkshire District and will overcome a significant severance issue for pedestrians and cyclists on this part of the network.
- 3.3 The proposed layout of the junction is illustrated on the plan in Appendix A, and has been designed in accordance with the Design Manual for Roads and Bridges.
- 3.4 The A339 through Newbury is the main north/south distributor road through the town. It was formerly the main A34 trunk road until the Newbury bypass was completed in 1998 and the section of road de-trunked in 2001. The route carries approximately 44,000 vehicles per day. The relevant section of the A339 lies between the junctions of the Bear Lane and Robinhood roundabouts and is identified on the plan at Appendix B.
- 3.5 This section of the A339 is dual carriageway and is subject to a 40mph speed limit. The A339 is lit and has footways for its length, on both sides of the carriageway.
- 3.6 The distance between Bear Lane and Robinhood Roundabouts is approximately 700m and the road is in embankment through this section. The height difference of the road from the surrounding land increases from approximately 0.5m at the northern end to approximately 4m on the approach to the Kennet and Avon canal bridge.
- 3.7 Although the A339 provides an excellent North/South link for vehicular traffic it is a significant barrier for pedestrian and cycle movements to and from the town centre.
- 3.8 A planning application for the Scheme was submitted by the Council in November 2014 and planning permission was granted on 4 February 2015.
- 3.9 The junction proposals are in accordance with planning policy and therefore no planning impediments are anticipated to the junction proceeding.
- 3.10 The Scheme involves the demolition of units 6 and 7 on Fleming Road. Neither of these buildings are listed or within a conservation area.

4. The Extent of the Order Lands

- 4.1 As is consistent with the compulsory purchase procedure the Council is only seeking to acquire the minimum of land required for these and car parking/ highway verge on Fleming Road and part of the open space land at Victoria Park in Newbury. Construction of the Scheme will involve the demolition of 2 linked brick constructed 2 storey light industrial units of approximately 720m² combined floor space (units 6 and 7 identified on Appendix A). These units were most recently used by an electrical wholesaler before falling vacant, but the Council is told that they are currently sub-leased. The CPO area can be seen on drawing 81508-LRIE-CPO-002 in Appendix C shaded pink. Whilst the acquisition of part necessitates the demolition of all of the buildings identified the Council will discuss the possible resale of land no longer required on terms which are not inconsistent with the Council's aspirations for LRIE. Rights are required over the areas shaded blue in order to make good behind the new kerb line. The blue shaded area is approximately 40m² and will only be required during construction. Land required for compulsory acquisition at Victoria Park to deliver the widening of the A339 necessary for the Scheme and for the new footpath measures 229m². This is considered in more detail at paragraph 5 below.
- 4.2 Home to mainly industrial uses predominantly relating to the motor trade, the LRIE has remained largely untouched in the last 40 years as the generally poor condition of the building stock conveys. In addition to motor-trade uses, the site contains other uses such as retail, retail warehouse, small industrial, infrastructure, offices and showrooms.
- 4.3 Retail uses including car showrooms extend along the sites northern edge fronting the A4. Car showrooms also extend into the site along Faraday Road (Skoda, Vauxhall, and Seat) and Ampere Road (Mazda). Connection to the site road infrastructure is good from the A4 (London Road), although there is no access from the A339.
- 4.4 Pedestrian connection is poor, particularly from the town centre where the only route is along the canal towpath, crossing the landscape fringe into the southern side of the Estate. Public transport is reasonably good, with buses serving the A4 (London Road) and the railway station only a quarter of a mile from the SW corner of the site.
- 4.5 All of the CPO land is owned freehold by the Council. The majority of the wider LRIE land is leased on a long lease to various lessees, which is in turn let to the numerous businesses that occupy the units.
- 4.6 The proposed junction improvement can be seen in Appendix A, highlighting the land outside of the public highway boundary required for the junction. It can be seen that part of the land required to deliver the Scheme falls within Victoria Park to the west of the A339. The majority of the land included in the CPO is comprised of 4 industrial units. Units 6 & 7 are believed to be currently vacant (although sub-let) and the remaining units are occupied.
- 4.7 The long lease-holder of the CPO land is Faraday Development Ltd. In order to gain control of the land required for the new junction the Council will have to acquire the long lease for the area of land required. Units 6 and 7 are sub-leased to Guardian Realty Limited, Unit 5 is sub-leased to Gordon Newport, trading as Auto

Merc and Unit 4 is leased to Furzeland Limited and occupied by Acedes Gear Tools. A draft CPO schedule showing the interests to be compulsorily acquired is provided at Appendix D.

- 4.8 The Scheme will require the demolition of units 6 & 7. However, from discussion with the long leaseholder it is considered that the Scheme will not adversely impact on the businesses occupying units 4 to 5 as they would only lose a small area of frontage which will not affect their operations. The buildings themselves will not be affected.
- 4.9 Rights will be sought to make good the kerb line across the frontage of units 4 and 5 Fleming Road. Whilst interests cannot be acquired temporarily by compulsory acquisition, once the works are complete, the interests will be offered back.
- 4.10 The purpose of this paragraph is to deal with land subject to third party rights. All parties who have the benefit of rights, easements and covenants in land which is the subject of a compulsory purchase order must be served with notices. Diligent enquiry has been carried out but if there are any parties who have not been notified of the order who are within this category they may still be notified of the CPO by the posting of notices on site.

5. Victoria Park

- 5.1 The land shown for compulsory acquisition in Victoria Park to the west of the A339 measures approximately 229m². This land is required to carry out the necessary widening works to the A339 to deliver the Scheme and also to allow delivery of the new footway through Victoria Park.
- 5.2 The land required at Victoria Park is owned by the Council and leased to Newbury Town Council. Whilst Newbury Town Council is generally supportive of the Scheme, it has not yet been possible to reach agreement for the surrender of the land required at Victoria Park to deliver the Scheme. As a result, this land is included in the CPO as plots 8 and 9.
- 5.3 The size of the open space land at Victoria Park to be compulsorily acquired in order to deliver the Scheme is 229m². As the land is open space land for compulsory acquisition, but measures less than 250m², under Section 19(1)(b) of the Acquisition of Land Act 1981, no replacement land is required to be provided and the CPO will not be subject to special parliamentary procedure. The Secretary of State will however need to certify that he is satisfied that the open space land to be compulsorily acquired is less than 250m².
- 5.4 Once the land at Victoria Park required to deliver the Scheme has been acquired either by agreement or compulsorily, the Council needs to appropriate the land from open space to planning purposes to enable the Council to override third party rights and covenants pursuant to sections 237 and 258 of the Town and Country Planning Act 1990. Appropriation to allow the overriding of third party rights is considered in more detail at paragraph 8 below.
- 5.5 The Council is authorised under section 122 of the Local Government Act 1972 to appropriate land for any purpose for which it is authorised to acquire land by agreement, providing that if the land is open space land, it not exceed 250 square yards. The size of the open space land at Victoria Park for appropriation is 229m².

- 5.6 Under section 122(2A) of the Local Government Act 1972, before appropriating open space land, the Council must advertise notice of the Council's intention in respect of such appropriation for two consecutive weeks in a local newspaper, and consider any objections to the proposed appropriation which may be made.
- 5.7 If no objections are received to the appropriation, or if received such objections are withdrawn, then the Council may proceed to appropriate the said land for planning purposes. Once the Scheme has been constructed, the Council may then appropriate the land for highway purposes.

6. Acquisitions by Private Treaty

- 6.1 The Council has made numerous attempts to acquire the long leasehold interest from Faraday Development Limited by agreement. Unfortunately these attempts have not been successful and agreement has not been reached with Faraday Development Limited.
- 6.2 Offers have been made to the sub-lessees to acquire their interests, but these have not been accepted to date.
- 6.3 Whilst Newbury Town Council is generally supportive of the Scheme, it has not been possible to reach agreement on the surrender of the relevant land at Victoria Park required to deliver the Scheme.

7. ODPM Circular 06/04

- 7.1 In promoting a compulsory purchase order, acquiring authorities should have regard to government guidance, and the relevant government guidance is ODPM Circular 06/04. Matters which must be addressed are:
- (1) Authorities should seek to acquire by negotiation where practicable. A compulsory purchase order is intended as a last resort in the event that attempts to acquire by agreement fail. A summary of the negotiations with third parties is contained in paragraph 6 above;
 - (2) There must be a compelling case in the public interest – as to which see paragraph 7.3 below;
 - (3) There must be a clear idea of how the Council intends to use the land and that the necessary resources are likely to be available to achieve that end within a reasonable timescale;
 - (4) Full details for the funding of the scheme are required including timing – this is covered in Section 9 below;
 - (5) There must be a reasonable prospect of the scheme proceeding and be unlikely to be blocked by impediments to implementation.
- 7.2 A compulsory purchase order can only be made if there is a compelling case in the public interest and that the purposes for the making of the order should sufficiently justify interfering with the human rights of those with an interest in the order land. This is dealt with at Section 10 below.

- 7.3 On the basis of the assessment carried out by the Council it must consider that a compelling case exists before a decision is made. Officers have carried out this assessment and are of the view that as a result of the unlocking of the redevelopment of a key brown-field site in the centre of Newbury which will be delivered by the access road, which will bring employment opportunities, potential housing development and regeneration, subject to relevant planning permissions being obtained, in addition to strategic links to the town centre, there is a compelling case in the public interest for the making of the CPO and interfering with the human rights of those affected by the Scheme. The purpose for which the land is to be compulsorily acquired is likely to improve the economic well-being of the area by unlocking the access to the LRIE. The Scheme will also deliver a new footway through Victoria Park which is likely to contribute to the environmental well-being of the area and improve social mobility. Delaying the implementation of this Scheme could jeopardise the securing of £1.9m grant funding for the implementation of the junction from the Local Enterprise Partnership which would have repercussions for the delivery of the regeneration of the LRIE as a whole.
- 7.4 As planning permission has been granted for the Scheme, there are no planning impediments to the Scheme proceeding.
- 7.5 The Council considers that there is no alternative to its use of compulsory acquisition powers to deliver the Scheme (unless negotiations do not succeed) as the cost of delivering the access road means that a private developer would not be willing to provide this alone. The Council needs to use the grant funding from the Local Enterprise Partnership Local Growth Fund to deliver the access road.

8. Appropriation

- 8.1 All of the interests which are not in third party ownership are owned by the Council. These plots are currently held for investment purposes.
- 8.2 The Council can appropriate land for any purpose for which it is authorised to acquire land by agreement. The appropriation process is set out in the Local Government Act 1972. Section 122(1) provides:
- 'Subject to the following provisions of this section, a principal Council may appropriate for any purpose for which the Council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the Council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a Council by virtue of this sub-section shall be subject to the rights of other persons in, over or in respect of the land concerned'.
- 8.3 The Council is a principal Council and so must follow the process set out in Section 122. The Council should only resolve and authorise the Council to appropriate land for another purpose if it is satisfied that the land is no longer required for the purpose for which it is held. Whilst the Council currently holds the land for investment purposes, it is clearly required for regeneration as set out in this report. It should therefore be appropriated for planning purposes prior to its appropriation for highway purposes.
- 8.4 There are a number of private rights of way and other easements which the land within plots 1-7 is subject to.

- 8.5 Where land is appropriated for planning purposes, the Council may rely upon the provisions of Section 237 and 258 of The Town & Country Planning Act 1990. The Council has this statutory power to override easements, rights of way and restrictive covenants affecting land. Section 237 authorises the overriding of any private rights (such as restrictive covenants and easements) affecting the use of land which is held for planning purposes where development is carried out in accordance with planning permission. The power extends not only to development by the local planning authority itself but also to any person deriving title from it. That being so, statutory undertakers are exempt from the provisions of Section 237 such that their rights cannot be overridden. Section 258 authorises local planning authorities to extinguish public rights of way where it is satisfied that alternative rights of way have been or will be provided or that alternative rights of way are not required.
- 8.6 The ability to interfere with these rights is important in the context of enabling the Scheme to proceed. Whilst the power exists to override such rights, it does not prevent such rights being compensated. Section 237(4) of the Town & Country Planning Act 1990 provides that compensation will be payable to those parties whose interests have been affected by the appropriation. The justification for proceeding with any appropriation is set out elsewhere in this report, given the need for unlocking redevelopment of the LRIE.

9. Funding

- 9.1 The total Scheme cost for the new junction is £3m which includes the cost of the land required to deliver the Scheme. In October 2014 the Berkshire Local Enterprise Partnership (LEP) agreed to contribute £1.9m from the Local Growth Fund towards the cost of delivering the new junction. £0.5m will be funded from a combination of existing S106 contributions and DfT Grant funding, which has already been secured and the remaining monies to cover the cost of acquiring the relevant interests to deliver the Scheme will be provided by St Modwen Development Limited, in accordance with an agreement to be entered into between the Council and St Modwen shortly, the terms of which have been approved by the Council. In such an agreement, St Modwen will indemnify the Council against the costs of acquiring the land that it funds which are secured through the grant funding and are necessary to deliver the Scheme. The recommendation for the making of the CPO is subject to the agreement with St Modwen being entered into.
- 9.2 The funding contributed from the LEP is conditional on the Scheme being constructed in the 2015/16 and 2016/17 financial years, with £1.4m of the LEP funding being spent in 2015/16 and £0.5m spent in 2016/17. The Scheme must therefore be commenced as early as possible to achieve these timescales.
- 9.3 Once the CPO is made and implemented the Council will be liable to meet statutory compensation claims and has the necessary funding in place to cover these costs.

10. Human Rights Act 1998

- 10.1 The Human Rights Act 1998 (HRA) came into force on 2 October 2000.
- 10.2 Provisions of the HRA which are relevant in relation to the CPO are:
- (1) The European Convention on Human Rights (the Convention) is an international treaty signed under the auspices of the Council of Europe.

Whilst the United Kingdom was instrumental in drafting the Convention it was never incorporated into United Kingdom law;

- (2) The HRA still does not incorporate the Convention into United Kingdom law but what it does is to enable individuals to invoke Convention rights for certain purposes and for certain effects;
- (3) The main articles of the Convention which are of importance in circumstances where the Council is considering making a compulsory purchase order is Article 1 of Protocol 1 – the protection of property;
- (4) In making a CPO an acquiring authority must show that the acquisition is justified in the public interest.

10.3 Article 1 of Protocol 1 provides that:

- (1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions;
- (2) No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law;
- (3) However, the above rules shall not prevent a State enforcing such laws as it deems necessary to control the use of property in accordance with the general interest;
- (4) The Council must decide in relation to Article 1 whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The right to compensation is an important factor in considering the balance between the two.

10.4 Recommendations Relating to the Human Rights Act:

- (1) It is considered that the interference with the individual's property is justified by the advantages accruing to the public by proceeding with the works particularly taking into account the fact that there is a legal right to compensation for the property taken and rights extinguished under the CPO.

11. Recommendations

11.1 That having given consideration to all the provisions of this report Council resolves to delegate to the Head of Legal Services to:

- (1) subject to the agreement securing the cost indemnity for the land acquisition costs from St Modwen Development Limited in favour of the Council being entered into, make a Compulsory Purchase Order(s) under Section 226(1)(a) of the Town and Country Planning Act 1990, Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981 to acquire all or part of the land identified edged red coloured pink and new rights in respect of the areas coloured blue on the map attached to this Report entitled "Map

- referred to in the West Berkshire Council (A339/ Fleming Road Junction, Newbury) Compulsory Purchase Order 2015" (the CPO Map);
- (2) make a Footpath Creation Order (the Footpath Creation Order) under Section 26 of the Highways Act 1980;
 - (3) if the Secretary of State authorises the Council to do so, confirm any Compulsory Purchase Order(s) made;
 - (4) utilise, where appropriate, either the General Vesting Declaration procedure under the Compulsory Purchase (Vesting Declarations) Act 1981 or the notice to treat procedure under Section 5 of the Compulsory Purchase Act 1965;
 - (5) take all steps to seek to acquire the necessary interests in land by agreement or utilising compulsory acquisition powers;
 - (6) To authorise the appropriation of the land included in plots 1-7 on the CPO Map under the provisions of Section 122(1) of the Local Government Act 1972 for planning purposes to enable the Council to override third party rights and covenants pursuant to Section 237 and 258 of the Town and Country Planning Act 1990, and once the Scheme has been constructed to appropriate the same for highway purposes;
 - (7) subject to the relevant interests in land at Victoria Park included in plots 8 and 9 on the CPO Map being acquired by agreement or by compulsory acquisition, to declare that this land is no longer required for its present purposes, to give public notice of the Council's intention to appropriate the said land to planning purposes to enable the Council to override third party rights and covenants pursuant to sections 237 and 258 of the Town and Country Planning Act 1990, and in the event of no objections being received within the date specified in the public notice (or if received they are withdrawn), upon the day immediately following the date specified in the public notice to appropriate the said land to planning purposes. Once the Scheme has been constructed to appropriate the same for highway purposes, following which the land shall be publically maintainable highway.

Appendices

- Appendix A - Proposed Scheme Drawing
- Appendix B - General Location Drawing
- Appendix C - CPO Map
- Appendix D - Draft CPO Schedule

Consultees

Local Stakeholders: A press release regarding the scheme was issued in October 2014 and details of the proposal highlighted in the Newbury Weekly News. A public meeting was held with businesses on Thursday 11th December attended by a WBC Officer. The scheme was discussed at the Newbury Vision Conference held at the Corn Exchange on 14th November. A further public meeting with businesses was held on 28th January 2015, attended by WBC Chief Executive and St Modwen Director to discuss the junction and the wider redevelopment of the industrial estate.

Officers Consulted: David Holling, Mark Edwards, Bill Bagnell, Jenny Graham, Neil Stacey, Corporate Board

Trade Union: N/A