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# A339/Fleming Road Junction Compulsory Purchase Order - Summary Report

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<b>Committee considering report:</b>	Extraordinary Council
<b>Date of Committee:</b>	21 January 2016
<b>Portfolio Member:</b>	Councillor Garth Simpson
<b>Date Portfolio Member agreed report:</b>	21 December 2015
<b>Report Author:</b>	Jon Winstanley
<b>Forward Plan Ref:</b>	C3061

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## 1. Purpose of the Report

### 1.1 To:

- (1) 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 the new junction to be built from the A339 onto Fleming Road (the Scheme)(Appendix C).
- (2) appropriate the land within the Scheme for planning purposes.

## 2. Recommendation

- 2.1 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 paragraph 6.3 of this summary report (section 12 of Appendix A).

## 3. Implications

- 3.1 **Financial:** The financial implications are covered within the body of the report. There is provision within the scheme budget for the acquisition of land required.
- 3.2 **Policy:** The 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).
- 3.3 **Personnel:** None
- 3.4 **Legal:** Legal Services will advise on the CPO process.
- 3.5 **Risk Management:** This project is being managed in accordance with the Council's Project Management and risk management process.

3.6 **Property:** Expert valuation advice has been sought and will be required throughout the process.

3.7 **Other:** N/A

#### 4. **Other options considered**

4.1 A number of options were considered by the Council for the Scheme to position 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

4.2 These options are discussed in detail in section 3 of Appendix A, the conclusion being that the proposed layout and location of the junction gives the optimal solution.

## 5. Executive Summary

- 5.1 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 a new junction access to the LRIE from the A339 will facilitate the regeneration of the LRIE which will deliver economic growth, create additional jobs and improve the environment of this part of the town. An earlier report to the Council in July 2015 approved the making of a compulsory purchase order for the same area of land which is the subject of this report. Since then however, matters have progressed on a planning appeal submitted by a landowner on LRIE which includes a new road in a similar position to the Scheme. That landowner, Faraday Development Limited (FDL) would be affected by the Council's authority to make a CPO contained in the July 2015 resolution. Since then the Council has also concluded its development agreement with St Modwen Developments Limited. In light of the updated planning position it has been necessary to revisit the July 2015 decision and undertake an assessment of the Council's proposed scheme and that being promoted by FDL. The Council has recently received a claim from FDL and proceedings have been issued seeking a judicial review of the Council's decision to enter into the development agreement with St Modwen as well as a procurement challenge. In addition an offer has been received from FDL via its solicitors relating to the acquisition of the land and wider consolidation of their leasehold interests beyond the land required for the Scheme. The Council will be making an offer based upon its understanding of what FDL would accept from direct discussions based upon the land required for the scheme without consolidating its wider leasehold interests. An update on these issues is in section 11 of Appendix A.
- 5.2 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 a new junction onto the A339 by a private developer, and landowner FDL, such planning permission lapsed. The developer is awaiting the outcome of an appeal to a renewal of the lapsed 2009 planning permission. The appeal is due to be resolved this month by way of written representations, however 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. Equally the FDL proposal for a junction, if planning permission is granted, is inferior to the Council's scheme (see section 3 of Appendix A), which has been designed in detail. 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.
- 5.3 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.

- 5.4 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 controlled pedestrian and cycle crossing will be constructed across the A339 (the Scheme).
- 5.5 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.
- 5.6 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 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.
- 5.7 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 FDL by agreement. Unfortunately these attempts have been unsuccessful. However discussions continue and the Council will seek to continue to acquire this interest by agreement.
- 5.8 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. The Town Council have expressed their support for the regeneration of the industrial estate and are amenable to transferring the land by agreement. Unfortunately it has not yet been possible to finalise the surrender of this land, which has been included in the CPO as a matter of procedure.

## 6. Conclusion

- 6.1 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.
- 6.2 Given the lack of agreement with FDL and that the agreement has not yet been finalised with 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.

6.3 In respect of the A339/ Fleming Road Junction in Newbury approval is sought to:

- (1) 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 District Council (Land at A339/ Fleming Road Junction, Newbury) Compulsory Purchase Order 2016" (the CPO Map)(Appendix E);
- (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.

6.4 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.

## 7. Appendices

- 7.1 Appendix A - Supporting Information
- 7.2 Appendix B – Equalities Impact Assessment
- 7.3 Appendix C – Proposed Scheme Drawing
- 7.4 Appendix D – General Location Drawing
- 7.5 Appendix E – CPO Map
- 7.6 Appendix F – Draft CPO Schedule
- 7.7 Appendix G – Possible land area to be offered back to the long lease holder