
West Berkshire District Council (land at Englefield Road and North Street, Theale) Compulsory Purchase Order 2016

Committee considering report:	Council
Date of Committee:	15 September 2016
Portfolio Member:	Councillor Lynne Doherty
Date Portfolio Member agreed report:	Report e-mailed to Councillor Doherty on 7 September 2016
Report Author:	David Holling and Bill Bagnell
Forward Plan Ref:	C3172

1. Purpose of the Report

- 1.1 In respect of the land adjoining Englefield Road and North Street, Theale known as part of the North Street playing fields to:
- (1) obtain authority from full Council to purchase by agreement or using compulsory purchase powers pursuant to Section 530 of the Education Act 1996 and the Acquisition of Land Act 1981 all or parts of land identified within the land shown edged with a dashed black line on the plan attached to this Report entitled "Site Plan"(see **Appendix C**) to enable the relocation of Theale Church of England Primary School from Church Street, Theale to land adjoining Englefield Road and North Street, Theale;
 - (2) confirm, if the Secretary of State authorises the Council to do so, any Compulsory Purchase Order(s) made;
 - (3) 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; and
 - (4) give authority under Section 6(4) of the Acquisition of Land Act 1981 to dispense with individual service of notices in respect of areas of land where the Council is satisfied that it has not been possible following proper enquiry to establish the ownership of the land in question and for the service of notices in the manner set out in Section 6(4) of the Acquisition of Land Act 1981.
- 1.2 To consider the provisions of the Human Rights Act 1998 and the Equality Act 2010 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.

2. Recommendations

- 2.1 Having given consideration to all the provisions of this report including the impact on Human Rights and Equalities, the 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 1.1 of this report.
- 2.2 Whilst negotiations are continuing to take place, successful negotiated purchase agreements cannot be reached despite numerous attempts to engage over the last 18 months.
- 2.3 Without the Council's involvement to acquire the necessary interests in land, the Council will be unable to unlock the site for the relocation of Theale Church of England Primary School. The school has already exceeded capacity and there is an urgent need to provide more primary school places in Theale to meet current demand and projected pupil modelling numbers. The proposal will assist with meeting the Council's duty to provide sufficient primary school places.

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 freehold land required for the new school site together with implementation of the scheme. However, should the Council have to proceed to full CPO and thereby incur a project delivery delay of over a year, there is a small risk of project construction costs rising. At present that risk is low due to the uncertainty in market conditions and its effect on the construction industry. Of immediate concern is the cost of the CPO process itself. Overall total extra costs associated with delayed construction and CPO are estimated at between £85K to 100K and will have to be found out of the existing approved total budget. At present the overall project budget has a 5% contingency to cover off unforeseen construction problems associated with both the new school and highways improvements. Though undesirable, extra costs associated with delayed construction and the CPO process can at present be underwritten by this contingency. There will be a risk that should major unforeseen problems arise once construction work commences, remaining contingency monies may not be able to fully cover the extra costs as forecasted. At present this risk is viewed as manageable.
- 3.2 **Policy:** This scheme is in accordance of the Council's strategy for better educated communities and protecting and supporting those who need it.
- 3.3 **Personnel:** None
- 3.4 **Legal:** Discussed in the Report.
Legal Services will advise on the CPO process and

acquisition of land.

- 3.5 **Risk Management:** This scheme is being managed in accordance with the Council's Project Management Methodology and Risk Management Process. There is a risk relating to the amount of exchange land currently being negotiated and being equally advantageous as explained in more detail in paragraphs 4.6 and 4.7 of the Supporting Information Report (see **Appendix A**).
- 3.6 **Property:** Expert valuation advice is being sought and will be required throughout the process.
- 3.7 **Other:**

4. Other options considered

- 4.1 As detailed in the Supporting Information Report (see **Appendix A**) and in the Site Selection Scoring Matrix and associated report undertaken by the Council (see **Appendix D**).
- 4.2 The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:
- (1) facilitating the relocation of Theale Church of England Primary School,
 - (2) assist with reducing the shortage of school places at primary phase to comply with the Council's statutory duty to ensure there are sufficient pupil places to meet demand, and
 - (3) ensure there are places available locally.

5. Executive Summary

- 5.1 The National Audit Office has warned that there is a national shortage of school places at primary and secondary school level. West Berkshire District Council (**the Council**) has a duty to ensure that there is a school place available to every West Berkshire resident child who requests one from the age of 5-11 and thereafter to 17.
- 5.2 To meet the expected the demand for primary places on a permanent basis in West Berkshire, the Council is working with Theale Church of England Primary School to replace the existing school situated at Church Street, Theale as part of the Education Capital Programme.
- 5.3 The existing school is already at over capacity. There is an urgent need for suitable accommodation for a 1.5 FE (315 place) primary school and integrated 26 place nursery provision, with integral Autistic Spectrum Disorder (ASD) and Language and Literacy (LAL) units. Based on pupil modelling forecasts the new school is designed to cater for 2 FE expansion when required. The Council fully expects that a 2 FE school (420 pupils) will be required by 2025.
- 5.4 The land identified for the relocation site is currently owned by Englefield Estate Trust Corporation Limited and leased to Theale Parish Council. Negotiations have been progressing over the last 18 months with, the freeholder but the Parish Council has not engaged resulting in the Council having to consider the use of CPO powers in parallel with attempting to continue negotiation. The Council is unable to provide sufficient school places locally by September 2017 if agreements cannot be reached imminently and therefore other options need to be progressed in parallel with negotiations to minimise the impact.
- 5.5 Before promotion of a Compulsory Purchase Order (**CPO**) further preparatory work will be required. The Summary Report – Supporting Information (see **Appendix A**) spells out why it is necessary to progress the use of compulsory purchase powers in parallel whilst continuing negotiations. The report has been prepared on the basis of information currently available.
- 5.6 The Council has compulsory purchase powers which, if authorised to exercise, can be used for the purposes of complying with its functions as a Local Education Authority (**LEA**). The Council has a number of compulsory purchase powers but the most relevant to this particular matter are contained in Section 530 of the Education Act 1996 (**1996 Act**).
- 5.7 Section 530 of the 1996 Act authorises the acquisition of land by the Council that is required for the purposes of any school which is maintained by the Council for which they have the power to assist. Theale Church of England Primary School is maintained by the Council as the LEA. The Council will be the owner of the relocated school site.
- 5.8 The land identified for compulsory acquisition is acquired to deliver the relocated school with associated hard and soft landscaping. Associated highway works will be carried out to Englefield Road on land that already forms part of the adopted highway including the construction of pavements, pedestrian crossing and traffic calming measures.

- 5.9 As noted above, the land required is in third party ownership. Negotiations have been progressing well with the freehold owner. Unfortunately attempts to negotiate acquisition of the leasehold interest have been unsuccessful to date and hence the need to proceed to CPO. Though the Council seeks approval to exercise its powers of compulsory purchase, it will remain open to negotiation with Theale Parish Council throughout the CPO process in the continued hope of reaching an acceptable agreement.
- 5.10 The Council is aware of the Government oil pipeline which crosses through the site and are in communications with the management contractor. The proposed layout of the scheme means there are no impediments to the scheme proceeding due to the pipeline.
- 5.11 The Council will seek to continue to acquire all interests by agreement.
- 5.12 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.
- 5.13 The relocation site is currently used for the purposes of public recreation. As part of the compulsory purchase process, the Secretary of State will therefore need to be satisfied that other land will be exchanged to replace the lost area or the land being acquired is to secure its preservation or improve its management. If the Secretary of State cannot be satisfied, the compulsory purchase order will be subject to special parliamentary procedure.
- 5.14 The Council is in negotiations to acquire some exchange land (see Part 2 at **Appendix E**). Until negotiations have been completed the exchange land will be included in the CPO. Advice is also being sought in relation to whether the re-provision is sufficient. The Council is not attempting to fully replace the 5 acres of recreation land lost to the proposed new school development. Such an acquisition would make the new school scheme financially unviable and full replacement land is either unavailable or inappropriately located.

6. Conclusion

- 6.1 In order to deliver the relocation of Theale Church of England Primary School, land outside the Council's ownership is required. The land required is owned by Englefield Estates Limited and the majority is leased on a long lease to Theale Parish Council. To progress the scheme the Council will need to acquire the freehold and leasehold interests.
- 6.2 To date Englefield Estates Limited have been supportive of the proposals, however, the Council has been unable to secure agreement from Theale Parish Council. Therefore, Officers recommend that the Council approves the use of compulsory purchase powers to ensure that sufficient school places can be provided in Theale.
- 6.3 In respect of the land at Englefield Road and North Street, Theale authority is sought from Council to
- (1) purchase by agreement or using compulsory purchase powers pursuant to Section 530 of the Education Act 1996 and the Acquisition of Land Act 1981 all or parts of land identified within the land shown edged with a dashed black line on the plan attached to this Report

entitled "Site Plan"(see **Appendix C**) to enable the relocation of Theale Church of England Primary School from Church Street, Theale to land adjoining Englefield Road and North Street, Theale;

- (2) confirm, if the Secretary of State authorises the Council to do so, any Compulsory Purchase Order(s) made;
- (3) 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; and
- (4) give authority under Section 6(4) of the Acquisition of Land Act 1981 to dispense with individual service of notices in respect of areas of land where the Council is satisfied that it has not been possible following proper enquiry to establish the ownership of the land in question and for the service of notices in the manner set out in Section 6(4) of the Acquisition of Land Act 1981.

6.4 To consider the provisions of the Human Rights Act 1998 and Equality Act 2010 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 Report

7.2 **Appendix B** – Equality Impact Assessment

7.3 **Appendix C** – Extent of Site 4 Site Plan

7.4 **Appendix D** – Site Selection Scoring Matrix and Associated Area Plan and Report

7.5 **Appendix E** – Part 2 – Exchange Land Plan