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

1. Introduction/Background

- 1.1 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.
- 1.2 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.
- 1.3 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 'care' expansion when required. It is currently anticipated that a 2 FE school will be required by the 2025.
- 1.4 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, however, the Council is also reviewing whether it could use its compulsory purchase powers. 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.
- 1.5 Before promotion of a Compulsory Purchase Order (**CPO**) further preparatory work will be required. This Report sets 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.
- 1.6 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**).
- 1.7 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.

- 1.8 This report sets out:
- (1) The site options considered (see Paragraph 3)
 - (2) The planning position (see Paragraphs 4.1-4.2)
 - (3) The extent of the proposed order lands and status of negotiations (see Paragraphs 4.3-4.8)
 - (4) The need for the CPO (see Paragraphs 4.9 – 4.13)
 - (5) The funding position (see Paragraphs 4.14 - 4.16)
 - (6) Consideration of the Human Rights Act 1998 (see Paragraphs 4.17-4.20)
 - (7) Consideration of the Equalities Act 2010 (see Paragraphs 4.21 – 4.22)
 - (8) Recommendations for resolution (see Paragraph 5)
 - (9) Consultation and Engagement (see Paragraph 6)
- 1.9 The Council has procured Kier Construction under a design and build framework and awarded a pre-construction services contract. Following the acquisition of the land required for the scheme it will enter into a construction contract with Kier.

2. Supporting Information

Appendices

- 2.1 **Appendix B** – Equality Impact Assessment
- 2.2 **Appendix C** – Extent of Site 4 Site Plan
- 2.3 **Appendix D** – Site Selection Scoring Matrix and Associated Area Plan & Report
- 2.4 **Appendix E** – Part 2 - Exchange Land Plan

3. Options for Consideration - Site Selection

- 3.1 The Council has an Education Capital Programme. It supports the Council's commitment to raising educational attainment in the district, as identified in the Council Strategy 2015-2019. Theale Church of England Primary School is a popular local primary school in the east of the district. It is rated as 'Outstanding' by Ofsted. An Autistic Spectrum Disorder (**ASD**) Unit and a Language and Literacy (**LAL**) Unit are also part of the school. West Berkshire is experiencing strong demographic growth, both within Theale and across the district. The scheme will see the existing school relocate to a new site within Theale, and will ensure that children born in Theale catchment continue to be able to get a place at their local school. The school has been designed to accommodate up to 2 FE (420 pupils) should demand for places continue which the Council fully expects by 2025.
- 3.2 The scheme is required for the following reasons:

- Theale has experienced strong demographic growth, putting pressure on the existing amount of pupil places available;
- Approved and future new housing will put existing provision under even more pressure;
- The Council has a statutory duty as LEA to ensure there sufficient pupil places to meet demand;
- To ensure that there is good quality local education provision for the local community.

3.3 The existing school is on a constrained site of approximately 0.61Ha and currently functions as a 1.5FE school with several temporary classrooms and reduced play space. Although a feasibility study has been carried out by the Council on expanding the existing school to a 1.5FE school, it has not been realised due to abortive costs, time, lack of play space, disruption to the school life and a requirement to build on existing Parish Council recreational land to the north of the existing school which was not acceptable to the Parish Council.

3.4 A comprehensive site selection appraisal has been undertaken by the Council, see **Appendix D**. In total eleven (11) sites were considered as shown on page 14 of the appraisal. The sites have been tested against key criteria:

- (1) Cost (land price)
- (2) “Abnormals” (other costs - ground conditions, noise, business loss)
- (3) Situation (access, relationship to village, planning)

3.5 Site 4 (as shown edged with a dashed black line on the plan at **Appendix C**) which will be known throughout this report as “the Order Lands” (**the Order Lands**) was the Council's preferred option. Site 1 was identified by some residents and members of Theale Parish Council as a suitable site. On the Council's criteria, Site 1 was ranked 10th out of 11 sites whereas Site 4 was ranked 1st out of 11 sites.

3.6 The establishment of a new primary school at Englefield Road (Site 4) (the Order Lands) is preferred by the Council due to the site's suitability including:

- (1) Initial land valuations indicate the site to be affordable;
- (2) The site has minimal abnormalities which reduces cost impact and offers good suitability for development;
- (3) The site is well located within the village, with good connection to open space and the church;
- (4) Highways and access assessment by a highways engineer shows the site is capable of development for education purposes with the following mitigation works:
 - (a) New site access at the southern corner of the site;

- (b) Extend the 30mph speed limit section of Englefield Road and move the existing gateway feature;
- (c) Extending and widening of the footpath; and
- (d) The ability to deliver a footpath connecting Church Street with Englefield Road and a footpath connecting Play Platt with the Order Lands.

4. Proposals

The planning position

- 4.1 The works to construct the new primary school will require planning permission pursuant to the Town and Country Planning Act 1990. An application for the proposal was made by the Council as LEA to the Council as Local Planning Authority on 24 March 2016 for the construction of a new 1.5 FE single storey primary school with associated hard and soft landscaping on the existing playing field area north of the Theale Village Hall. This proposal also includes construction of pavements, pedestrian crossing and traffic calming measures on Englefield Road (application reference no. 16/00724/COMIND). On 13 July 2016 the Eastern Area Planning Committee resolved to grant planning permission subject to conditions. Therefore, it is expected that there are no planning impediments to the scheme proceeding.

As the site relates to an existing playing field the Council is considering referring the application resolution to the Secretary of State before the decision is issued in accordance with the Town and Country Planning (Consultation) (England) Direction 2009. An update on the current status of the application will be provided at the meeting.

- 4.2 As the scheme is a departure from the development plan, specifically Policy CS18 – Green Infrastructure, a Press Notice of the departure was published in the Reading Chronicle on 7 July 2016. The period for comments expired on 21 July 2016.

The extent of the Order Lands/Acquisitions by private treaty

- 4.3 As is consistent with compulsory purchase procedure, the Council is only seeking to acquire the minimum land required for the school. Construction of the school will involve the construction of a single storey building with associated hard and soft landscaping on the existing playing field. The proposal includes the construction of pavements, pedestrian crossing and traffic calming measures. The total proposed gross internal floor area will be 2,093m². The total size of the area is 19,700m² for a 2 FE school.
- 4.4 The land is currently used as a playing field/general recreation including dog walking and is laid to grass. It contains an undersized football pitch. The area to be included in the CPO, the Order Lands, is shown edged with a dashed black line on the site plan at **Appendix C**. All of the freehold interest required for the Order Lands is in the ownership of Englefield Estates Limited registered at the Land Registry under Title No. BK450180. Negotiations with the freeholder are progressing well.

- 4.5 The majority of the Order Lands are leased to Theale Parish Council. The Lease expires in 2029. The freeholder can only terminate the lease early if any of the forfeiture provisions apply. Unfortunately attempts to negotiate acquisition of the leasehold interest have been unsuccessful over the last 18 months and as a result the Council is being asked to consider the use of compulsory purchase powers which will cause delay and incur additional cost.

Further due diligence enquiries will need to be carried out before any CPO is made to identify any other interests in the Order Lands including those with the benefit of rights, easements and covenants over the land.

- 4.6 As the Order Lands are used for the purposes of public recreation, the CPO would be subject to special parliamentary procedures unless the Secretary of State certifies that either:
- (a) Exchange land is being given which is no less in area and equally advantageous as the land taken; or
 - (b) The land is being purchased to ensure its preservation or improve its management; or
 - (c) The land being taken is 209 m² or less in area and that exchange land is unnecessary.

- 4.7 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.

- 4.8 The Council has made and is continuing attempts to acquire the third party interests by agreement. Unfortunately these attempts have not been successful 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 hope of reaching an acceptable agreement.

The Council is only seeking to acquire the land required for the scheme (consistent with government guidance) and is not seeking to acquire all of the North Street playing fields nor Theale Parish Council's entire leasehold interest.

Guidance and Compulsory Purchase Orders

- 4.9 In promoting a compulsory purchase order, acquiring authorities should have regard to government guidance, and the relevant government guidance is now the guidance which was issued in October 2015 from Department for Communities and Local Government. Matters which must be addressed are:
- (1) There must be a compelling case in the public interest – as to which see paragraph (4.11) below;

- (2) Authorities should have taken reasonable steps to acquire the interests 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 paragraphs 4.4, 4.5, 4.8 above;
- (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 source of, and timing for, the funding of the scheme are required – this is covered in paragraph 4.14 below;
- (5) The scheme must be unlikely to be blocked by impediments to implementation.

4.10 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 paragraph 4.17 – 4.20 below.

4.11 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 site for the relocation of Theale Church of England Primary School, the Council will be able to increase the number of primary school places available in Theale which in turn will assist with meeting its obligation to provide sufficient school places under its statutory duty. There is a compelling case in a public interest for the making of the CPO and interfering with human rights of those affected by the scheme. The scheme will also deliver highway improvements to provide a benefit of the community. Delaying the implementation of the scheme will have an impact on the school places in Theale. From September 2017 it will be necessary to transport children to the nearby schools/villages until sufficient provision can be provided in Theale. The acquisition of land for the new site and construction of the scheme is therefore genuinely and urgently required to minimise disruption.

4.12 A resolution to grant planning permission has been passed. It is anticipated that planning permission will be granted for the scheme and there are no planning impediments to the scheme proceeding. Further subject to confirmation of compulsory purchase powers or acquisition of land by agreement there are no remaining impediments to the scheme proceeding.

4.13 The Council considers that there is no alternative to its use of compulsory acquisition powers to deliver the scheme in a timely manner (albeit if continuing negotiations are successful there will be no need to use the powers).

Funding

4.14 The scheme for a new school is part of the approved Education Capital Programme which was agreed by the Council in March 2015 and reaffirmed in March 2016. The Council currently has the necessary funds in place to deliver the scheme. A total amount of £7.46m was earmarked by the Council in 2015 for the scheme. This amount is intended to cover all costs associated with the scheme including the

acquisition of the land required to deliver the scheme and implement the scheme. Also the budget includes monies required to reasonably convert up to 2 acres of agricultural land into playing field land should such conversion be approved at Planning and the relevant land owner be able to formally offer to Theale Parish Council 2 acres of replacement leasehold land to mitigate against the land required for the new school.

- 4.15 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 market uncertainty 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.

Whilst the funds allocated do not have to be spent by a fixed date, if the scheme does not proceed in a timely manner the funds will be allocated to other 'Basic Need' schemes to meet the Council's duty to provide sufficient places within its LEA area.

- 4.16 Once the CPO is confirmed and implemented the Council will be liable to meet statutory compensation claims and has the necessary funding in place to cover these costs. As with extra costs associated with project delay and CPO, any approved compensation will have to be found from the original approved budget.

Human Rights Act 1998

- 4.17 The Human Rights Act 1998 (**HRA**) came into force on 2 October 2000.
- 4.18 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.

4.19 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.

4.20 Recommendations Relating to the Human Rights Act:

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 under the CPO.

Equalities Act 2010

4.21 In addition to the Human Rights Act 1998 the Council is required to comply with the Equalities Act 2010. Section 149 of the Equalities Act 2010 requires the Council to have due regard to the need to:

- (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

4.22 The Council has carried out an equality impact assessment and considers that the proposals do not have a direct impact on any groups with protected characteristics. **Appendix B** contains an Equality Impact Assessment.

5. Conclusion

Recommendations

5.1 That 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:

- (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.

5.2 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.

6. Consultation and Engagement

Community Engagement

- 6.1 On 5 June 2015 the Council's Education Service gave a public presentation to the Theale Community regarding the proposal for the relocation to a new site. The presentation explained the need for more school places and the sites considered. The Council explained why the land included within the proposal CPO was the preferred site.
- 6.2 Further meetings were held in November and December 2015 by the design team, the Council, Theale Parish Council and the Chief Executive of the Council, before submission of the planning application.
- 6.3 Local stakeholders: Residents of Theale, Holy Trinity Church Theale, Theale Church of England Primary School, Theale Village Hall Trustees/Theale Social Club.
- 6.4 Officers consulted: Shiraz Sheikh, Richard Turner, Andy Walker, Mark Lewis, Ian Pearson and Nick Carter
- 6.5 Trade Union: N/A

Subject to Call-In:

Yes: No:

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 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"/>

Wards affected: Theale

Strategic Aims and Priorities Supported:

The proposals will help achieve the following Council Strategy aims:

- BEC – Better educated communities**
- P&S – Protect and support those who need it**

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

- BEC1 – Improve educational attainment**
- BEC2 – Close the educational attainment gap**

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