



WNDC Board Report

Report by the Chief Executive

Paper Reference: 2012-02-01-01

Agenda Item: 1

15 February 2012

Subject: St Peters Waterside, Northampton - Compulsory Purchase Order 2012

Advice: That the Board:

1. **Authorise** the making of a Compulsory Purchase Order (CPO), to be known as the West Northamptonshire Development Corporation (St Peters Waterside, Northampton) Compulsory Purchase Order 2012 ("the Order") under Section 142 of the Local Government Planning and Land Act 1980 and the Acquisition of Land Act 1981 for the acquisition of the land shown edged red on the plan at Appendix One of this report ("the Order Land"), being land which is needed to facilitate the comprehensive regeneration of the Order Land, which falls within the Corporation's area, as described in this report.
2. **Authorise** the Chairman, in consultation with the Chief Executive, subject to him being satisfied that the appropriate legal agreement and protections are in place, to:

- 2.1 Finalise the precise extent of the Order Land and agree the Order map;
- 2.2 Take all necessary steps (prior to and after the application of the Corporation's Seal to the Order) to secure the making, confirmation and implementation of the Order including (but not limited to):
 - a. finalising the Statement of Reasons;
 - b. as necessary, submitting the draft Order, including the draft Order map, to the National Unit for Land Acquisition and Disposal for technical review prior to making the Order;
 - c. the publication and service of all notices that may be required;
 - d. the placing of site notices and press notices, including (but not limited to) those arising from the making of the Order, the holding of any Public Inquiry, the confirmation of the Order (should confirmation be authorised) and the acquisition of land;
 - e. the submission of the Order to the Secretary of State for confirmation and the taking of such steps as may be necessary to secure the confirmation of the Order;
 - f. the presentation of WNDC's case at any Public Inquiry, including the preparation and submission of evidence as is necessary to any Public Inquiry or other procedure which is convened to consider objections to the Order, including enlisting the assistance of external consultants, lawyers and Counsel to assist in the preparation and presentation of evidence at any inquiry.
- 2.3 Confirm the Order in the event that no objections are received against it and the Secretary of State confirms that the Corporation may so authorise.
- 2.4 Request confirmation of the Order with modifications if it appears expedient for the confirmation of the Order.
- 2.5 Negotiate terms for the acquisition of the interests subject to the Order and the acquisition of those interests by agreement.

- 2.6 Once the Order becomes operative, to serve notices to treat and notices of entry under the Compulsory Purchase Act 1965 and/or execute general vesting declarations under the Compulsory Purchase (Vesting Declarations) Act 1981.
- 2.7 Approve agreements with landowners and others having an interest in the area to be subject to the Order setting out the terms for the withdrawal of objections to the Order.
- 2.8 If the question of compensation is referred to the Upper Tribunal to take all necessary steps in relation thereto.
- 2.9 Authorise the making or submission of application(s) for “stopping up orders” under Section 247 of the Town and Country Planning Act 1990, and/or any necessary highway diversion and closure orders and traffic regulation orders, including enlisting the assistance of external consultants, lawyers and Counsel to assist in the same.
- 2.10 Authorise, where necessary, interference with rights as set out in this report.
- 2.11 Authorise and agree to commit to compensation payments as appropriate in accordance with the CPO Compensation Code.
3. **Note** the draft St Peters Waterside CPO Schedule.

1 Summary

- 1.1 St Peters Waterside is at the forefront of WNDC's plans to regenerate Northampton's Waterside Area ("the Waterside Area"), which is a key site within the Northampton Enterprise Zone ("EZ"). The site runs alongside St Peters Way and is bounded by the Brampton branch of the River Nene in the west as well as Towcester Road and existing commercial development in the south and east.
- 1.2 The Waterside area has the potential to become an important business location, attracting new companies and investment to the town centre. Its redevelopment will breathe new life into the area and transform underutilised brownfield land. As part of the Northampton Enterprise Zone, it will provide high quality office space in the centre of Northampton, supporting the creation of new jobs for local people. Combined with the planned redevelopment of Castle Railway Station it will form an impressive gateway into the town centre.
- 1.3 National Grid owns a significant portion of the land in the east and south of the Waterside Area, part of which is operational land comprising of two gas holders with the remainder being non-operational land comprising of office buildings ("the National Grid Land"). The regeneration of the National Grid Land is dependent upon the gas holders being decommissioned and accordingly cannot come forward at this time. WNDC has and continues to work closely with National Grid towards achieving the decommissioning of the gas holders in order to enable the whole of the Waterside Area to be redeveloped.
- 1.4 Given the above constraints on regeneration of the Waterside Area, WNDC is focusing on securing that part of the Waterside Area to the west of Tanner St, known as St Peters West, as shown edged red on the draft Order map at Appendix One ("the Order Land") as an initial phase of the overall regeneration of the Waterside Area. The proposal is to use CPO powers to complete the acquisition of land interests within this area to ensure full site assembly and to provide clean title. This continues the process of site assembly already undertaken by WNDC to secure the ownership of the Order Land. Single ownership of the Order Land will significantly improve the prospects of this key regeneration site being delivered in a comprehensive and timely manner.

- 1.5 The principal land interest within the Order Land that is not already owned by WNDC is the site in the registered ownership of Messlorne LLP, managed by Capital & Provident (referred to in the report as “C&P” land) comprising plots 6 and 10 on the draft Order map. WNDC has and continues to try to secure the acquisition of C&P’s land by agreement. WNDC’s latest offer to acquire their land was submitted to them some six months ago but a response has not yet been received.
- 1.6 There are a number of smaller leasehold interests in the Order Land which are to be acquired, comprising mainly of tenants of WNDC. WNDC has and continues to liaise with its tenants with a view to them being relocated to alternative premises.
- 1.7 There are also a number of smaller and minor areas of subsoil, adopted highway verge and river bank within the Order Land which are owned by Northamptonshire County Council, other third parties or where underlying ownership is unknown for which clean title is necessary.
- 1.8 In order to secure the comprehensive regeneration of this key site at the heart of the EZ, a CPO Strategy, making full use of WNDC’s CPO powers, was prepared and considered by the Board in January 2012. This set out WNDC’s CPO powers, identified four potential options and recommended a preferred CPO option. This report takes forward Option Two of that initial report; proposes the addition of two further parcels of grassed and highway land which are in unknown ownership and recommends that the Order be made to achieve regeneration of the Order Land.
- 1.9 Professional advice has been provided by Wragge & Co and CB Richard Ellis on a CPO strategy to secure the comprehensive regeneration of this first phase of the Waterside Area.

2 **Background**

- 2.1 The Waterside Area is one of Northampton’s five “key” town centre regeneration projects. The objective is to deliver a comprehensive office led development on this brownfield site, a key priority within Northampton Borough Council’s Central Area Action Plan (CAAP).

- 2.2 The Waterside Area masterplan was finalised in January 2011 and its key aspirations are reflected in the CAAP. The masterplan envisages a predominantly commercial development comprising 43,000sq.m of office space and ancillary retail, together with 270 new homes. It also aims to improve the riverside environment through the Waterside Area, creating stronger links to it from the town centre.
- 2.3 Plans have already been brought forward for the first stage of development of the Waterside Area in the form of the Northampton Innovation Centre. There is evidence from developers that the proposed Innovation Centre will act as a catalyst for adjacent development within the Waterside Area, and in particular, the Order Land which lies adjacent to the centre.
- 2.4 For some time WNDC has been working with its partners, including National Grid, to secure a high quality scheme that will transform this largely under-utilised, brownfield site. However, to date, whilst dialogue continues with National Grid regarding the status of the gas holders, and their potential plans for the redevelopment of the National Grid Land, a formal decision to decommission the gas holders has yet to be taken.
- 2.5 WNDC is consequently minded to bring forward the redevelopment of the Order Land as a first phase of development of the Waterside Area. This will leave the National Grid Land to be brought forward as a later phase following decommissioning of the gas holders. WNDC has, over the last 2 years, already acquired substantial interests in the Order Land through direct negotiation as part of its Strategic Site Acquisitions Strategy.
- 2.6 The process of acquiring the remaining land interests within the Order Land by negotiation has proved to be unsuccessful as a result of two main issues. The first being the impact of the downturn in the market on existing commercial owners of part of the site and the second being the inability to identify the owners of various smaller areas of the site.
- 2.7 The only significant area of land proposed to be acquired pursuant to the Order (plots 6 and 10 on the draft Order map) currently belongs to C&P who acquired the site at the height of the property market with the intention of delivering private sector

development. Before any progress was made on the scheme, the market underpinning the site purchase price deteriorated significantly and the site has since remained undeveloped. The current value of the site means that C&P is not incentivised to sell. The ownership of the site is further complicated as the owners borrowed money from an Irish financial institution to acquire the site, and it is believed that the future of the site will be determined in partnership with the National Asset Management Agency for Ireland (NAMA).

- 2.8 To date no firm proposals have been made by C&P for the redevelopment of their site which acts as a block to the potential redevelopment of the Waterside Area. Piecemeal development, in a fragmented and uncoordinated way over a prolonged period of time, will fail to deliver the full regeneration and economic benefits envisaged in the Waterside masterplan. Such piecemeal development would further provide less incentive for National Grid to bring forward their plans to decommission the gas holders and redevelop their own site.
- 2.9 As indicated above, WNDC has attempted to negotiate with C&P, including by making a financial offer for the full amount of the open market valuation, together with a commitment to pay C&P's fees. Despite chasing, no substantive response has been received in the six months since the offer was made although WNDC is aware that the matter has been referred to NAMA for consideration. There, therefore, appears to be no reasonable prospect of securing the site by negotiation unless the prospect of an acquisition through CPO unlocks a negotiated acquisition.
- 2.10 The central part of the Order Land from Green Street to Towcester Road is already largely in the ownership of WNDC, having been acquired over time through direct negotiation. Parts of the land have been let by WNDC on short term tenancies. WNDC continues to liaise closely with its tenants to secure their relocation to alternative premises. National Tyres, WNDC's only tenant with a long term lease expiring in 2015, have been offered several relocation alternatives, however, to date no agreement has been reached and WNDC continue to negotiate with them.

- 2.11 The balance of the outstanding interests in the Order Land comprise largely of minor areas of land in unknown ownership or where the last known owner has died and no descendents can be found. It is believed that a considerable part of the minor areas in unknown ownership may be the result of local Government reorganisation in 1974, when highways responsibility transferred from the Borough Council to County Council. These are areas of land beneath former and existing roadway/footpath/verges, including an area of highway verge required for the Innovation Centre development. The use of CPO powers is therefore necessary to ensure that these small areas do not inhibit future development. They cannot be acquired by the private sector, as there would be no available powers under which this could be achieved.
- 2.12 Securing ownership of the entirety of the Order Land will increase confidence that regeneration will take place and maximise its appeal to potential investors and development partners. WNDC has received recent developer interest in the Order Land which cannot currently be satisfied because of the fragmented ownership which confirms this view. WNDC are at the early stages of a process to secure a development partner which will be progressed in parallel with the progression of the Order.
- 2.13 In addition, securing ownership of the entirety of the Order Land will remove associated land ownership risk and enable the site to come forward in a comprehensive manner under WNDC's control. In particular the acquisition of the outstanding C&P interests will enable early development to meet potential demand in the EZ, as this represents the next phase of the Waterside Area likely to come forward for development after the Innovation Centre.

3 Compulsory Purchase – Initial Phase

- 3.1 As set out above, Wragge & Co and CB Richard Ellis have been appointed to advise the Corporation on options for use of CPO powers. Various options were considered, tested and reported to the Corporation's Board on the 17 January 2012. It was ultimately considered that option 2 of the initial report be taken forward to enable regeneration of the Order Land, with the addition of two further parcels of grassed and highway land at which are in unknown ownership.

3.2 In the absence of the Order, the Order Land is likely to remain underused for many years to come. The Corporation was created in order to ensure that this does not happen; the Order Land is of a size and nature to enable it to make a significant contribution to the EZ and the regeneration of Northampton.

4 CPO - Process and Programme

4.1 A number of supporting documents have been prepared in order to help inform the Board in consideration of the resolutions it has before it. These include a draft Statement of Reasons, draft Order map and draft programme.

Statement of Reasons

4.2 A draft Statement of Reasons to support the Order has been prepared and is attached at Appendix Two. It specifically sets out the Corporation's reasons for making the Order to facilitate the comprehensive redevelopment of that part of the Waterside Area comprising the Order Land.

4.3 The draft Statement of Reasons in support of the making of the Order will be finalised and agreed by the Chairman and Chief Executive of the Corporation and a copy served on each person with an interest in the Order Land.

Draft CPO map

4.4 The draft Order map is shown in Appendix One and the associated CPO Schedules have been circulated to all Board Members.

Programme

4.5 A draft programme has been developed for bringing forward the Order as follows:

- a. Land Referencing, draft Statement of Reasons, Order map and schedule – January 2012
- b. Board Resolution to make the Order – 15 February 2012
- c. Serve Requisition Notices – February 2012

- d. Review responses to Requisition Notices and finalise Order map and Schedule – March 2012
- e. Approve the Order, the Order map, Order schedule and Statement of reasons and if necessary, submit to National Unit for Land Acquisitions and Disposals for technical review – April 2012
- f. Make the Order – April 2012
- g. Objection period closes – May 2012
- h. Negotiations close – August 2012
- i. Public Inquiry held – August 2012
- j. Secretary of State’s decision – November 2012
- k. General Vesting Declaration made and/or Notice to Treat/Notices of Entry served – December 2012
- l. Possession of the Order Land – March 2013

5 **Financial Implications**

5.1 There are two key areas of financial exposure in progressing the Order:

- a. The cost of progressing the CPO process; and
- b. The quantum of compensation payable to affected parties following compulsory purchase, about which the Corporation has taken advice from CBRE.

5.2 The most significant potential cost is the compensation payable to C&P for their land interests. CBRE will further review the likely compensation payable for all land interests within the Order Land, including the two areas added. Discussions with adjacent land owners will take place with respect to them providing WNDC an indemnity on any potential compensation that might arise from these specific areas.

- 5.3 It is recommended that, should negotiations fail to secure the acquisition of the C&P land and the other outstanding land interests (including those in unknown ownership), the land be acquired by General Vesting Declaration. A person wishing to claim compensation must make a reference to the Lands Tribunal within 6 years from the date on which the claimant “first knew, or could reasonably be expected to have known” of the vesting of title in the authority.
- 5.4 The Board should be aware that, in light of the advice received from the Corporation’s professional advisors on the possible maximum compensation payable, the Corporation has the financial capacity to acquire all of the interests which would be subject to compulsory acquisition. As with any commitment of WNDC capital funding this will be subject to authorisation by DCLG, which will be secured prior to the Order being made.

6 Legal Implications

Compulsory Purchase Order - Corporation’s Powers

- 6.1 The Corporation's powers of compulsory acquisition are set out in the Local Government, Planning and Land Act 1980. Section 136(3) of the 1980 Act empowers the Corporation to acquire, hold, manage, reclaim and dispose of land and to carry out a variety of incidental activities, for the purpose of achieving its objectives which are:
- a. bringing land and buildings into effective use;
 - b. encouraging the development of existing and new industry and commerce;
 - c. creating an attractive environment;
 - d. ensuring that housing and social facilities are available to encourage people to live and work in the area.
- 6.2 Section 142 of the 1980 Act provides for the acquisition of the following land:
- a. land in the Urban Development Area;

- b. land adjacent to the area, which the Corporation requires for the provision of services in connection with the discharge of its functions; and
 - c. land, whether or not adjacent to the area, which the Corporation requires for the provision of services in connection with the discharge of its functions in its area.
- 6.3 The Corporation needs to formally resolve to exercise its compulsory purchase powers before it can make a CPO. The final decision on the CPO rests with the Secretary of State who will decide whether to confirm the CPO having considered the justification for the CPO.
- 6.4 If there are objections to the CPO, this consideration will take place following a public inquiry, hearing or written representation procedure unless those objections are withdrawn. The Corporation must successfully show that there is a compelling case in the public interest for the compulsory acquisition of the land subject to the CPO.
- 6.5 The Corporation has a broader remit with regards to the use of compulsory acquisition powers than that of local authorities. This is described in Circular 06/2004 which explains that compulsory purchase powers available to urban development corporations are expressed in wide and general terms. In relation to pursuing a CPO for the Order Land, the Corporation does not need to be facilitating a scheme that has already received planning permission. However, there is a need to demonstrate that the land assembly then achieved will facilitate the regeneration of the land.
- 6.6 In addition to being satisfied that there is a compelling case in the public interest, the Secretary of State, when looking at a CPO made by the Corporation, considers:
- a. whether the Corporation has demonstrated the land is in need of regeneration;
 - b. what alternative proposals (if any) have been put forward by the owners of the land or other persons for regeneration;
 - c. whether the regeneration is on balance more likely to be achieved if the land is acquired by the Corporation;

- d. the recent history and state of the land;
- e. whether the land is an area for which the Corporation has a comprehensive regeneration scheme; and
- f. the quality and timescale of both the Corporation's regeneration proposals and any alternative proposals.

Interference with Rights

- 6.7 Paragraph 5 of Part III of Schedule 28 to the 1980 Act provides that where land is compulsorily acquired by the Corporation all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land (excluding those of a statutory undertaker vested in them for the purpose of carrying on their undertaking) shall be extinguished, and any such apparatus shall vest in the Corporation.
- 6.8 Paragraph 6 of Part III of Schedule 28 to the 1980 Act provides that where land is vested in the Corporation by the Secretary of State or acquired compulsorily by the Corporation, any building work carried out on such land is authorised if it is done in accordance with planning permission, whether by the Corporation or any other person even though it involves interference with an easement, servitude, liberty, principle, right or advantage annexed to land and adversely affecting any other land, including any natural right to support (excluding those rights of a statutory undertaker vested in them for the purpose of carrying out of their statutory undertaking).
- 6.9 The effect of Part III of Schedule 28 to the 1980 Act is that any existing rights, which could prevent the regeneration proposals from proceeding, can be overridden. This does not remove any legitimate entitlement of those who have the right to claim compensation. If a person feels that they are not being offered a fair amount of compensation in respect of the right that they hold, then the matter may be referred to the Upper Tribunal for a decision. However, this would not prevent the regeneration of the land included in the Order proceeding.

Human Rights Considerations

- 6.10 The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights (“ECHR”). The ECHR includes provisions in the form of Articles, which aim to protect the rights of the individual. Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with rights protected by the ECHR.
- 6.11 The Statement of Reasons covers the Human Rights implications of taking forward the Order. The ECHR places direct obligations on public bodies such as the Corporation to demonstrate that the use of compulsory purchase powers is in accordance with the law, is in the public interest, and that the use of such powers is proportionate to the ends being pursued. Attention is drawn to the section on the Human Rights Act in the draft Statement of Reasons attached at Appendix Two.

7 Conclusions

- 7.1 The regeneration of the Waterside Area, and in particular, the Order Land will deliver key objectives for the local community, local partners, WNDC and Government. The benefits to the area resulting in enabling development of the Order Land to come forward are set out in the draft Statement of Reasons. Specifically, concluding land assembly creates the potential for an initial phase of a high quality office led redevelopment to be secured, which will compliment the development of the Innovation Centre and facilitate the regeneration of the remainder of the Waterside Area by providing the catalyst for National Grid to decommission their operational assets and redevelop their site. Without the use of the Corporation's powers of compulsory purchase to facilitate the land assembly, the regeneration and redevelopment of the Order Land and the benefits to the Waterside Area and Northampton generally will not be realised or at best be significantly reduced and delayed as development comes forward in a piecemeal fashion over time. There is, therefore, a compelling case in the public interest for the compulsory acquisition of interests in the Order Land.
- 7.2 The Corporation will continue to seek to purchase the outstanding interests in the Order Land by agreement following the Board's resolution, throughout the compulsory purchase

process and until the point at which it becomes necessary to vest land in the Corporation following confirmation of the Order to maintain the programme for the delivery of the comprehensive regeneration of the Order Land.

- 7.3 Assuming that the Board approves the recommendations set out in this report the Chairman, in consultation with the Chief Executive, will make any further amendments necessary to finalise the draft Statement of Reasons and draft CPO map. The Corporation will then prepare the final Order, the Order schedule and Order map.

8. Appendices

Appendix One – Draft Order Map

Appendix Two – Draft Statement of Reasons