

Cheltenham Borough Council

Cabinet – 9th December, 2014

Compulsory Purchase Resolution

Land acquisition to facilitate Brewery development phase II, 233-243 (inclusive) High Street, Cheltenham

Accountable Member	Cabinet Member Development and Safety, Cllr Andrew McKinlay
Accountable Officer	Mike Redman, Director of Environmental and Regulatory Services
Ward(s) Affected	St Paul's
Key Decision	Yes
Executive Summary	<p>This report explains the reasons and justification for making the Cheltenham Borough Council (233-243 Cheltenham High Street) Compulsory Purchase Order 2014 (the Order) under section 226(1)(a) of the Town and Country Planning Act 1990 (the 1990 Act) which will need to be submitted to the Secretary of State for Communities and Local Government (the Secretary of State) to request its confirmation.</p> <p>The Order is required to facilitate the comprehensive redevelopment and regeneration of a significant part of Cheltenham High Street, from numbers 233 to 269 inclusive, and the adjoining area to contribute towards significant social, economic and environmental improvements in the area.</p> <p>This will be achieved through the demolition and redevelopment of the commercial units fronting the High Street and the immediately adjoining commercial interests to the north, together with the stopping-up of Baynham Way which will support the improvement of the commercial offer and deliver connectivity of the High Street to the leisure based Brewery scheme.</p> <p>The proposed redevelopment has the potential to bring substantial economic, environmental, retail and social benefits to the Western end of Cheltenham High Street, and critically, will assist with uplifting the Lower High Street too. The area has had a range of uses over the last century, but in common with many High Streets its defining feature has been its retail offer. The current arrangement was built in the 1960's and replaced a more traditional High Street of individual units from varying time periods. The current single unit is very much "of its time" with a brutalistic architecture presenting a slab-like façade with limited articulation and critically no opportunity to penetrate to the spaces behind as was previously the case with a former access to the historic Brewery. The regeneration of this area is a high order priority for the Council as a means of improving the appearance of this area, and creating better connectivity between the main</p>

<p>Recommendations</p>	<p>High Street thoroughfare and the currently physically separated leisure quarter, based in the Brewery complex.</p> <p>In conclusion, it is considered that 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.</p> <p>Cabinet is recommended:-</p> <ol style="list-style-type: none"> 1. To authorise the making of a Compulsory Purchase Order ('the Order') under section 226 (1)(a) of the Town and Country Planning Act 1990 to acquire 233 to 243 High Street (inclusive), Cheltenham, as shown edged red on the attached plan (Appendix 2) (the Order Land), provided that the Costs Indemnity Agreement has been entered into between NFUM and the Council. 2. To authorise the Borough Solicitor to seal the Order and take all necessary steps, including the publication of all statutory notices and to represent the Council at Public Inquiry if necessary, to secure confirmation of the Order and the vesting of the Order Land in the Council. 3. To authorise the Head of Property and Asset Management if the owner(s) can be traced to negotiate with them and take all necessary steps to seek to acquire the necessary interests in the Order Land by agreement or by utilising compulsory acquisition powers. 4. To authorise the Head of Property and Asset Management to arrange for a valuation in respect of the Compulsory Purchase of the Order Land and to make any minor or technical amendments to the boundary of the Order Land. Such amendments would only be to reduce rather than increase the size of the Order Land. 5. To authorise the Borough Solicitor 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. In the event that the Secretary of State notifies the Council that it has been given power to confirm the Order, to authorise the Borough Solicitor to confirm the Order to allow the Order Land to be transferred to a third party for redevelopment. 7. In the event that the Secretary of State confirms the Order, authorise the vesting of the Order Land in the Council and the carrying out of any necessary work to allow the Order Land to be transferred to a third party for redevelopment. 8. To authorise the Borough Solicitor to utilise, where appropriate either the General Vesting Declaration procedure under the Compulsory Purchase (Vesting Declarations) Act 1981 or the
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	<p align="center">notice to treat procedure under Section 5 of the Compulsory Purchase Act 1965.</p>
<p>Financial Implications</p>	<p>The Council must have sufficient funds to meet all the expenses including legal costs and fees associated with Order Lands purchase and onward transfer; any compensation claims associated with the acquisition and to meet any other heads of claim as appropriate.</p> <p>Circular 06/04 highlights that the Secretary of State will want to be reassured that there is a realistic prospect that the Order Lands will be brought into beneficial use within a reasonable timeframe. Paragraph 20 states that in preparing its justification, the acquiring authority should provide as much information as possible about the resource implications of acquiring the land and implementing the scheme, though it is acknowledged that projects may not be intended to be commercially viable or that it may not be possible to finalise details until there is certainty regarding assembly of the land. In such instances the authority should provide an indication of how any potential shortfalls are to be met.</p> <p>Paragraph 21 states that, even more importantly, the confirming Minister would expect to be reassured that it was anticipated that adequate funding would be available to enable the authority to complete the compulsory acquisition within the statutory period following confirmation of the order.</p> <p>Officers are satisfied that the necessary resources are available to achieve the regeneration of the Order Lands, whereby the Order powers would be implemented and land will be developed within the 3 year statutory period. Under the terms of a Costs Indemnity Agreement which will be entered into by NFUM and the Council if the recommendation to make the Order is approved, NFUM fully underwrites all costs of process, acquisition and compensation resulting from the preparation, confirmation and implementation of the Order.</p> <p>NFUM have total Funds under management of over £14 billion and a property portfolio of £1.5 billion. £31 million has been allocated to this specific project and therefore the Council is assured that any compensation claims arising from a Order can be met.</p> <p>It is not considered that there are any financial impediments to the scheme, and particularly Phase 2b, proceeding.</p> <p>Phase 2a of the scheme is already on-site with initial enabling works and demolition being carried out. The construction contract is for both phases so subject to securing the Order Lands, there is certainty that the Order Lands will be brought into beneficial use within a reasonable timescale.</p> <p>Given the assurances regarding the re-imbursement of costs, the council will not be required to make a budgetary provision, hence there are no financial implications for the council.</p> <p>Contact officer: Nina Philippidis (nina.philippidis@cheltenham.gov.uk) 01242 264121</p>
<p>Legal Implications</p>	<p>Section 226(1)(a) of the Town and Country Planning Act 1990 enables Local Authorities to acquire land compulsorily to facilitate development,</p>

	<p>redevelopment or improvement of land. Such authorities can exercise their compulsory purchase powers if they think that acquiring the land in question will contribute to the achievement of promoting or improving the economic, social or environmental well-being of an area.</p> <p>A Public Inquiry may be held if there are objections to the CPO but if none are submitted or are withdrawn, the Secretary of State may authorise the Council to confirm the CPO itself or decide to confirm it himself.</p> <p>If, after sufficient and diligent investigations have been carried out, any owner of the Order Land cannot be found the Council can make a Compulsory Purchase Order with an “unknown/absent owner” notice. This involves a similar procedure to that with identified owners, but with more emphasis on notices being attached to the relevant Order Land. If the owner cannot be traced, any compensation payable would generally be paid into court and if not claimed will be repaid to the Council after a period of time, generally after 12 years, although there are other practical ways of dealing with the compensation.</p> <p>If the Owner is merely not replying to enquiries, then the notices can be served on the last known address and the normal procedure followed.</p> <p>There are human rights implications that must be considered before making a compulsory purchase order. More information is contained in section 7 of this report.</p> <p>Contact officer: Donna Ruck (donna.ruck@tewkesbury.gov.uk) 01242 775074 or 01684 272696</p>
<p>HR Implications (including learning and organisational development)</p>	<p>None arising directly from this report.</p> <p>Contact officer: Richard Hall, HR Business Partner West, GOSS (richard.hall@cheltenham.gov.uk)</p>
<p>Key Risks</p>	<p>See Appendix 1</p>
<p>Corporate and Community Plan Implications</p>	<p>Under the objective ‘Cheltenham has a strong and sustainable economy’ the Council has a stated aspiration to work with developers to enable the extended development of the Brewery site, to link the existing Phase 1 scheme with the High Street. This was originally set out in the action plan for 2013-14 relating to the Council’s Corporate Strategy 2010-15, under ‘Strategic Projects’ ECD3 on Page 10. This document was approved by the Council on 25 March 2013. This document stated that a key milestone is to ‘work with developers to enable them to start construction work on the Brewery/ High Street site’.</p> <p>This position was restated in the Council’s published Action Plan for 2014-15:-</p> <p>ECON 1 - We will continue to support Cheltenham Development Task Force</p> <p>Provide support for the private sector Brewery development Phase 2 which will link Phase 1 directly to the High Street, improving the economic performance of the centre and securing a significant street scene</p>

	improvement.
Environmental and Climate Change Implications	The redevelopment of the Order Land to modern standards is likely to improve the site in terms of its relative energy efficiency and will help to improve the vibrancy of this part of the town centre, contributing to housing targets and supporting the general environmental well-being of the area.
Property/Asset Implications	There are no direct property/asset implications as any acquired interests will be transferred to NFUM, who it has been agreed will cover the Council's costs of promotion of the Order and payment of compensation claims. Contact officer: David Roberts@cheltenham.gov.uk

1 Background

- 1.1** It is widely accepted that the relevant area of the High Street to which this report relates has been in decline for more than a decade.
- 1.2** Phase 1 of the redevelopment of the Old Brewery site comprising leisure, retail and residential accommodation is complete and opened in 2006. Phase 2a of the redevelopment includes the demolition of units 255 to 269 of the High Street, together with a pedestrian link to the Phase 1 Brewery development and public realm works. Phase 2a of the development has already commenced. Phase 2b of the redevelopment (for which the Order is recommended) involves the demolition of units 233 to 253 of the High Street and the construction of retail and residential uses.
- 1.3** The National Farmers Union Mutual (**NFUM**) is the developer and freehold owner of all of the land within the Scheme, and by definition within the sub-area affected by this Order (the **Order Lands**).
- 1.4** In accordance with the ODPM Guidance Circular 06/04 'Compulsory Purchase and the Crichel Down Rules' (Circular 06/04), NFUM and the Council have sought to acquire the land and interests in land necessary to deliver Phase 2b by agreement and the majority of occupational interests within Phase 2b have been acquired by private treaty. However, the Council needs to secure acquisition of all remaining leasehold property interests currently held by third parties, as well as other rights and easements to ensure that the remainder of the Scheme may be implemented in a comprehensive manner within an appropriate timeframe.
- 1.5** The Council will continue to negotiate (through NFUM and its agents) in order that the outstanding interests can be acquired by mutual agreement if possible, in accordance with the guidance set out within Circular 06/04. However, the Order needs to be promoted to ensure that the full programme of development can be achieved within a reasonable timeframe in order to achieve the intended regeneration benefits if such agreement cannot be reached.
- 1.6** The extent of the Order Lands is shown on the attached plan at Annex 2 outlined in red and shaded pink.
- 1.7** NFUM and its agent (Martin Commercial Properties) have already secured detailed planning consent for the Scheme including Phase 2b. The redevelopment is consistent with the current Cheltenham Local Plan and has full planning consent (Ref: 14/00182/FUL). Planning Permission was granted on 2 July 2014.
- 1.8** The proposed Scheme of regeneration, taken as a whole, has the potential to bring substantial economic, environmental, retail and social benefits to the western end of Cheltenham High

Street, and will also assist with uplifting the Lower High Street. The area has had a range of uses over the last century, but in common with many High Streets its defining feature has been its retail offer. The current arrangement was built in the 1960's and replaced a more traditional High Street of individual units from varying time periods. The current single unit is very much "of its time" with a brutalist architecture presenting a slab like façade with limited articulation and critically, no opportunity to penetrate to the spaces behind as was previously the case with the former access to the historic Brewery site. The regeneration of this area is a high order priority for the Council as a means of improving its appearance and of creating better connectivity between the main High Street thoroughfare and the currently physically separated leisure quarter, based in the Brewery complex. The site was clearly identified as a target for the Cheltenham Development Task Force (CDTF) which was set up in early 2010 by CBC, as an arm's length delivery vehicle with a specific remit to help unlock challenging sites, such as this one.

- 1.9** There is a clear and compelling case in the public interest for compulsory purchase powers as sought in the Order.

2 Purpose of acquisition and Justification for use of Compulsory Purchase Powers

- 2.1** In January 1999, the Council published a Development Brief (adopted as Supplementary Planning Guidance) for land including the Order Lands. The Development Brief (amongst other things) aimed to revitalise the High Street, increase the attraction of the town centre to residents and visitors, facilitate local safe and stress-free circulation for pedestrians, cyclists, buses and cars and to achieve high standards of development. The Development Brief specifically identified a need to link the High Street to the Brewery Phase 1, stating:

"The main problem with the [Brewery] site in this context is the lack of a direct link with the High Street and opportunities to create this should be explored."

- 2.2** The aspirations of the Development Brief are echoed by the conclusions of the Retail and Leisure Study carried out by DPDS in 2006. The study recognised that the area continued to attract less investment than other parts of the town centre notwithstanding the recent Brewery redevelopment. It considered that development to improve linkages should be encouraged.
- 2.3** In early 2010, the CDTF was established, following a full Council resolution in December 2009 which was supported unanimously (bar one abstention). One of its first priorities was to publish its challenges and opportunities leaflet identifying key town centre sites that had eluded delivery. Phase 2 of the Brewery Scheme was listed amongst those sites.
- 2.4** The Council has a stated aspiration to work with developers to enable the extended development of the Brewery site, to link the existing Phase 1 scheme with the High Street. This is set out in the action plan for 2013-14 relating to the Council's Corporate Strategy 2010-15, under 'Strategic Projects' ECD3 on Page 10. This document was approved by the Council on 25 March 2013. This document states that a key milestone is to 'work with developers to enable them to start construction work on the Brewery/ High Street site'.
- 2.5** The High Street, not unsurprisingly, is considered by the Council to be a vitally important component of the town centre and the relative fragility of this section through lack of investment and severance at Boots Corner is viewed as having a detrimental impact on the wider economic and social performance of the town centre as a whole. The Council promoted the regeneration of this High Street frontage as a way of ensuring the long term survival and success of both the High Street and the leisure quarter created by Phase 1 of the Brewery Scheme.
- 2.6** The economic case for regeneration and potential contribution to Gross Value Added was set out in an independent assessment for a bid application to the Department for Transport, titled 'An Economic Impact Assessment of Boots Corner and King's Quarter Schemes' in support of a Local Sustainable Transport Fund (LSTF) Bid Application. (The Boots Corner assessment includes the Brewery scheme as well as another scheme in Gloucester.) The assessment was

carried out by DC Research who specialise in economics & regeneration and was completed in line with Treasury Green book guidance. It contributed to a successful LSTF bid which aims to tackle the existing severance of the Cheltenham High Street at Boots Corner. This Scheme was also recognised as a catalyst and part of a wider effort to better integrate Phase 1 of the Brewery development with the High Street. Phase 2b of the redevelopment plays its part in promoting the LSTF ambition by supporting modal shift and creating a better public realm and bus access zone along this part of the High Street.

- 2.7** The LSTF scheme is much wider than Boots Corner and has been the subject of several tiers of public consultation. It is anticipated that GCC as the highways authority will be holding a Traffic Regulation Order Committee in January 2015 as part of the process to determine the implementation strategy of the LSTF backed Cheltenham Transport Plan. If fully implemented it aims to reduce severance at Boots Corner and better connect the High Street into a seamless and cohesive commercial zone.
- 2.8** As a result of active collaboration between CDTF and Martin Commercial Property, a planning application (with reference 12/00319 FUL) was submitted to the Council as local planning authority and planning permission granted at planning committee in July 2012. A revised application for planning permission (allocated reference 14/00182/FUL) was subsequently granted on 2 July 2014. The rationale for the revised application was to provide improved vehicular access between Oxford Passage and Bennington Street as a result of NFUM purchasing some additional land from 27-33 Bennington Street. The additional land purchased also allowed for the provision of an additional 5 parking spaces within the application site which was welcomed by GCC's Highways Department.
- 2.9** The redevelopment of the existing Cheltenham High Street retail frontage proposed as part of the Scheme (at units 233-269 inclusive), which was built in the 1960's, will deliver significant improvements to the area, promoting renewed retail use of the Order Lands, whilst also providing direct pedestrian access to Phase 1 behind.
- 2.10** The regeneration Scheme will support the local community through increased employment through construction and enterprise opportunities, diversity of the housing stock and the protection and enhancement of the diversity of the retail offer in the area, thereby increasing consumer spending in the local economy. The provision of better public spaces and movement within the town centre and the integration of the Order Lands with neighbouring properties will improve the environmental wellbeing of the area. The additional housing units will also contribute to high quality town centre living in an area dominated by commercial use, adding to the mixed use nature of the Scheme, and the hotel use will aid tourism in the town. The Scheme will secure environmental benefits as the new pedestrian link from the High Street to the Brewery Phase 1 encourages pedestrian movement, and new modern BREEAM rated buildings are to replace tired existing run-down units.
- 2.11** The presence of the hotel with an agreed pre-let by the promoter, will increase the use of the West end of High Street and bring in investment from outside of the town, which will recognise one of Cheltenham's key sectors which shows the most potential for growth in accordance with the Cheltenham Economic Development Strategy 2007.
- 2.12** The Scheme as a whole will add to the vibrancy of this part of the town centre, and Phase 2 in particular will provide a much stronger visual link with Boots' Corner, where the Council has further plans for pedestrianisation, linking to major changes to traffic circulation and bus priority measures. These changes are currently the subject of statutory consultation by the Highway Authority in relation to Traffic Regulation Orders associated with the Cheltenham Transport Plan.
- 2.13** The Scheme will deliver improvements to the public realm via the Section 106 obligation secured as part of the planning permission. New hard surfacing is proposed to create an improved pedestrianised zone along High Street, to match with that existing immediately to the east of the

site. New paved areas will be created along the High Street and into the new link with the existing Brewery development constructed as Phase 1.

- 2.14** The new development will act as a destination for local shopping and leisure use, and will improve the economic and social well-being of the area for the benefit of residents, local businesses and visitors to the area.
- 2.15** There has been widespread support for the Scheme in the town since it was unveiled and the response from attendees to the public exhibitions for the planning application for the Scheme was that local people and stakeholders wanted to see the site redeveloped and that it was in need of regeneration.
- 2.16** The Scheme represents a comprehensive approach to the regeneration of this part of the High Street, with the additional bonus of greatly improving connectivity between the High Street and Brewery. Phase 2b will provide a good mix of commercial, hotel and housing in a sustainable location with identified new housing needs, close to local amenities and with excellent public transport connectivity.
- 2.17** Save for the temporary tenancies which have recently been granted on favourable terms as a result of the redevelopment (being Woody's Fruit and Veg Limited and Tam Emerali and Mohamed Barouk) all of the existing businesses can be accommodated within the Scheme and NFUM has committed to keeping as many traders open and operational throughout the development period as possible, by facilitating a phased delivery of the Scheme.
- 2.18** Furthermore, the expansion of the commercial space will create opportunities for additional new businesses to become established in the locality and thereby assist the growth of the local economy and widen the scope of services and facilities available to local people. In total, these measures are considered to be sufficient to achieve the intended regeneration objectives.
- 2.19** Without Phase 2b of the Scheme, there is a significant risk that the benefits to be accrued will be lost. The first phase will be delivered but will then sit amongst a sea of dereliction. An inability to deliver the second phase will create the juxtaposition of a brand new development set against the remnants of the 1960's brutalist architecture which in essence will be a building site until such time as the Order Lands can be released and the second phase delivered. Apart from the aesthetic and safety complications of such a situation it will not be possible to deliver the effective High Street – Brewery connection. Such a situation would equally have a drag impact on surrounding investment. Already new retailers have moved into this zone of the High Street as part of uplift and anticipation generated by the Brewery phase 2, but a half built scenario will seriously dent both their confidence and critically the performance of this zone. The Council should not tolerate such an option given that all other trading operations, bar one within 233-269 High Street have mutually relinquished their leases in order to facilitate the comprehensive scheme. In fact there have already been significant gains through this negotiated approach such as the relocation of the IPD dental surgery to the rear of the Brewery with a brand new 7 surgery NHS dental facility right in the heart of the town close to both public transport access and a car park.
- 2.20** The Council has given careful consideration to the need for each parcel of land included in the Order Lands. The Council is satisfied that all of the Order Lands are required to deliver this improvement to the economic, social and environmental well-being of this area, by ensuring that the Scheme delivered is comprehensive and not piecemeal.
- 2.21** Despite the number of third party interests within the wider Scheme and specifically the Order Lands, NFUM has made significant efforts to secure the necessary interests by private agreement over a lengthy timescale. Negotiations have been on-going prior to securing the first planning consent in July 2012. Having arrived at a position that the Scheme could stall as a result of the inability to secure units 233 – 235, which would effectively prevent the delivery of Phase 2b

of the Scheme, the Council considers that any further uncertainty would prevent the comprehensive regeneration proposals from coming forward.

3 Negotiations to acquire the Order Lands by private treaty

- 3.1** The Order Lands measure approximately 0.23 hectares in size. The whole of the land the subject of the Scheme (therefore including the Order Lands) is owned freehold by NFUM (with the exception of Plot 6 which is in unknown ownership).
- 3.2** The Order Lands are subject to leasehold interests of 7 retail units, which will be replaced with new retail facilities with housing above as part of the Phase 2b redevelopment.
- 3.3** Agreements have been reached with all of the lessees of the retail units in the Order Lands apart from Units 233-235 which are leased to Tesco Stores Limited (**Tesco**).
- 3.4** The agreements reached between NFUM and the other lessees allow for continued occupation of the units until redevelopment takes place, often on short term leases with break clauses to secure timely vacant possession.
- 3.5** These interests have still been included in the Order to ensure that if any minor interests in the Order Lands such as easements, rights of way, restrictive covenants or similar interests are discovered that have not previously been negotiated away, or in addition if the agreements secured fall away or cannot be exercised due to incapacity or insolvency of the relevant holder of the interest, powers are available to override those interests to ensure that the redevelopment is not impeded. The reasoning for including land in the Order even where agreement has been reached has been explained to the lessees.
- 3.6** New locations for substations will be provided by the Scheme and the affected electricity undertakers will be provided with those sites, and the opportunity to relocate their apparatus before being required to give up existing sites.
- 3.7 Tesco Stores Limited**
 - 3.7.1** Tesco occupies units 233-235 Cheltenham High Street under the terms of a 29 year lease from 24.6.1989 (expiring 23.6.18) which is within the Landlord and Tenant Act 1954. Despite extensive attempts to negotiate a redevelopment break option with Tesco, agreement has unfortunately not been reached.

4 Unknown owners

- 4.1** NFUM's solicitors have completed their title investigations, obtained information from the Land Registry and NFUM has confirmed that it will not be affecting any statutory undertakers. All reasonable enquiries were made to establish ownership, including notices being served on Tesco Stores Limited to request owner/ lessee/ tenant information in respect of plot 4.
- 4.2** Despite the investigations undertaken, plot 6 of the Order Land is subject to unknown interests.
- 4.3** Section 6(4) of the Acquisition of Land Act 1981 provides that if the Council is satisfied that diligent enquiry has been made and it is not practicable to ascertain the name or address of an owner, lessee or occupier on whom any document has to be served, the document may be served by addressing it to the "owner/lessee/tenant/occupier" and adding a description of the premises and delivering it to some person on the premises.

- 4.4** If there is no person on the premises to whom it may be delivered, then the notice can be served by affixing a copy of it to some conspicuous part of the premises. In adopting this approach the Council must be satisfied that reasonable enquiries have been made to establish ownership.
- 4.5** To proceed with the making of the Compulsory Purchase Order it is necessary for the Council to give authority to dispense with individual service of notice in respect of these areas of land mentioned in paragraph 4.2 above and to authorise the service of notices in accordance with the provisions of Section 6(4).

5 Enabling Powers

- 5.1** Section 226(1)(a) of the 1990 Act enables a local authority to exercise compulsory purchase powers if it thinks that acquiring the land in question will facilitate the carrying out of development, redevelopment, or improvement on, or in relation to, the land being acquired.
- 5.2** Section 226(1A) of the 1990 Act requires a local authority not to exercise its powers under section 226(1)(a) unless the local authority thinks that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of its area.
- 5.3** For the reasons set out in section 5 below, the Council considers that these statutory tests have been met.
- 5.4** The Council first resolved to consider using its compulsory purchase powers on 15 April 2014 with the following minute recorded:
- “The Cabinet Member Built Environment reported that he had taken a decision to support the request from the owner of the Brewery Site, NFU Mutual, for the authority to consider using its compulsory purchase powers, if necessary to acquire any third party interest to enable the development of the Brewery Site. The decision requested the Director of Environmental and Regulatory Services to undertake the preparatory work required for the compulsory purchase process, should this be necessary, subject to NFUM underwriting all of the Council’s reasonable and proper costs. He also noted that if it was considered by the Director of Environmental and Regulatory Services that it was necessary and appropriate for a compulsory purchase order to be made, that a report would be taken to Cabinet”.
- 5.5** The condition precedent that the Council’s reasonable and proper costs will be underwritten will be discharged if the Council resolves to proceed to make the Order. A costs indemnity agreement has been agreed between NFUM and the Council which confirms that NFUM will cover the Council’s costs of promotion of the Order and payment of compensation claims. At the time of writing this report, the agreement is circulating for signature by both parties, and will be completed if the Council resolves to make the Order.
- 5.6** Negotiations have been undertaken and will continue with owners of relevant interests to acquire them by private agreement wherever possible (see paragraph 3 for further information).
- 5.7** Compulsory purchase will enable the regeneration to take place in accordance with a managed programme, providing certainty for site assembly and the implementation and delivery of the Scheme. This will enable the Council’s regeneration objectives for the Order Lands and the Borough to be achieved. The use of compulsory purchase powers is therefore considered by the Council to be necessary and justifiable in the public interest.
- 5.8** The Council is aware that NFUM has been actively pursuing a line of dialogue with all leaseholders, as evidenced by the fact that, bar one, all leaseholders have agreed through negotiation to relinquish their interests. Acquisition by negotiation has been the strategy adopted by NFUM and the Council and the use of compulsory purchase powers is viewed by NFUM and the Council as a last resort.

6 Government Guidance

- 6.1 In promoting a compulsory purchase order, acquiring authorities need to have regard to government guidance, and the relevant government guidance is ODPM Circular 06/04. Matters which must be addressed are:
- 6.1.1 whether the scheme would contribute to the promotion or improvement of the economic, social or environmental well-being of the area;
 - 6.1.2 whether the scheme would contribute to the promotion or improvement of the economic, social or environmental well-being of the area;
 - 6.1.3 that the Council has a clear idea of how the land will be used;
 - 6.1.4 whether there are any unresolved impediments to implementation of the scheme;
 - 6.1.5 that the Council sought to acquire the land through negotiation as far as practicable;
 - 6.1.6 that the scheme is financially viable;
 - 6.1.7 that the public benefits will outweigh the private loss.
- 6.2 These considerations contribute to the overall issue of whether there is a compelling case in the public interest.
- 6.3 The Council must carry out an assessment to address these matters and in doing so it must consider that a compelling case exists before a decision is made.
- 6.4 Officers have carried out this assessment and are of the view that the regeneration of the area is a high order priority for the Council to improve the appearance of the area and to create better connectivity between the main High Street and the leisure quarter.
- 6.5 Therefore, 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.

7 Human Rights

- 7.1 Circular 06/2004 "Compulsory Purchase and the Crichel Down Rules" states that a compulsory purchase order should only be made where there is a compelling case in the public interest. The Council must be sure that the purposes for which it is making the order sufficiently justify interfering with the human rights of those with an interest in the land affected.
- 7.2 The Human Rights Act 1998 requires that every public authority must act in a manner that is compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms (the **Convention**). This Convention contains Articles aimed to protect the rights of the individual.
- 7.3 The provisions of particular relevance to the determination as to whether an Order for compulsory purchase is made are as follows:
- 7.3.1 Relevant parts of Article 1 of First Protocol of the Convention provide:

“Every natural or legal person is entitled to peaceful enjoyment of his possessions” and “[no] one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law ...”

7.4 Relevant parts of Article 6 provide that:

7.5 “In determining his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

7.6 The Order has the potential to infringe the public rights of persons who hold interests in the Order Land. Such infringement can be authorised by law provided that the appropriate statutory procedures for making the Order are followed and a compelling case in the public interest for compulsory purchase is made out and the interference with the Convention rights is proportionate.

7.7 The proposed regeneration of this section of the High Street through the Scheme has been publicised extensively and consulted upon by the Council and NFUM. Third parties likely to be affected by the proposals have been offered several opportunities to make representations to the Council, but have not done so through the usual planning process. So far as the Order is concerned, any owner, lessee or occupier of land included in the Order will have the opportunity to make an objection and to appear before a person appointed by the Secretary of State before a decision is made whether or not the Order should be confirmed.

7.8 The Order is made pursuant to section 226(1)(a) of the 1990 Act which authorises the Council to acquire land compulsorily subject to following the procedures laid down by the Acquisition of Land Act 1981.

7.9 The Council considers that there is a compelling case in the public interest that the Order Lands be compulsorily acquired in order to achieve the purposes described in this Statement of Reasons. The Council considers that there will be significant public benefit arising from the confirmation of the Order.

7.10 If the Secretary of State agrees with the Council that there is a compelling case in the public interest, he may confirm the Order. If there are no objections to the Order and/or all objections submitted are withdrawn, the Secretary of State may exercise his discretion and allow the Council to confirm the Order.

7.11 If the Order is confirmed, compensation may be claimed by persons whose interests in land have been acquired or whose possession of land has been disturbed in accordance with Statute and case law commonly referred to as the Statutory Compensation Code.

7.12 If the Order is confirmed, notwithstanding the provisions of Article 1 of the First Protocol, adequate provisions are in place to compensate those adversely affected. Moreover, there is a compelling case in the public interest for compulsory acquisition of each and every parcel of land comprised within the Order Lands. It is considered that the public interest that is to be served by the development and the improvements that will be achieved to the condition and performance of this part of the High Street outweighs the private interests held in the Order Lands. The use of the authority’s compulsory purchase powers to achieve its regenerative objectives for the Brewery Phase 2 and the town centre within which it sits are proportionate to the interference with human rights.

8 Legal Implications

8.1 Please see the main body of report.

8.2 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:

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

8.3 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. The impact assessment is attached as Appendix 2.

9 Financial Implications

Whilst liability will arise to pay compensation for interests acquired by way of the Order, the Costs Indemnity Agreement will ensure that all costs and liabilities of the Council will be met by NFUM.

10 Reasons for Recommendations

10.1 The proposals for the redevelopment of land for Phase 2b of the Brewery scheme accord with the Council's corporate strategy and support the delivery of a key component of the opportunities identified by the Cheltenham Development Task Force.

10.2 Planning permission for Phase 2b has been granted and the Council is not aware of any planning impediments to the delivery of the redevelopment.

10.3 There are clear and specific proposals for the use of the Order Lands.

10.4 The requisite funds are available to meet any costs of land acquisition or compensation payable as a result of the use of powers of compulsory acquisition.

10.5 Given the clear regeneration benefits of the Scheme, of which Phase 2b forms part, there is a compelling case in the public interest for the confirmation of the Order to allow delivery of the Scheme in a reasonable timeframe.

11 Alternative Options Considered

11.1 As outlined in this report, compulsory purchase is very much a last resort which will only be pursued to its ultimate conclusion if agreement cannot be reached with relevant parties.

11.2 Officers have carefully considered the case for supporting the implementation of the development via the use of CPO powers and the impacts of a delay.

12 Consultation and Feedback

12.1 The development has been the subject of extensive consultation as an inherent part of the planning process and the scheme has the benefit of detailed planning consent, confirming its compliance with the local development plan and the National Planning Policy Framework (NPPF).

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Appendices	<ol style="list-style-type: none"> 1. Risk Assessment 2. Communities/ equalities impact assessment 3. Plan of land to be acquired 4. CPO statement of reasons 5. CPO compensation schedule – Not for publication by virtue of paragraphs (1) and (2), part (1) schedule (12A) Local Government Act 1972
Background Information	<ul style="list-style-type: none"> - s29 notice served under Local Government (Miscellaneous Provisions) Act 1982 - Housing and Homelessness Strategy 2012-2017

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk					
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible Officer	Transferred to risk register	
1	If the Council does not resolve to make a Compulsory Purchase Order (CPO), or the CPO is not confirmed by the Secretary of State following objection, the Council will not be able to acquire the Order Land. This will lead to development delay and blighting of the High Street, with consequential impacts on the Cheltenham economy.	Director of Environmental and Regulatory Services	9/12/2014	4	2	8	Reduce	CBC resolves to make a CPO and ensures legal procedure and government guidance are followed in respect of the CPO.		Director of Environmental and Regulatory Services		
2	If NFUM fails to honour its commitment to acquire the land interests which CBC compulsorily purchases, the authority would	Director of Environmental and Regulatory Services	9/12/2014	4	2	8	Reduce	Whilst the likelihood of this is considered low due to the financial strength of NFUM, an indemnity		Director of Environmental and Regulatory Services		

	be financially exposed.							arrangement has been negotiated to offset the financial risk involved.			
3	If the Council's case for compulsory purchase is subject to legal challenge, this will lead to development delay and blighting of the High Street, with consequential impacts on the Cheltenham economy.	Director of Environmental and Regulatory Services	9/12/2014	4	2	8	Accept	<p>The case has been carefully considered with expert legal advice which considers there is a strong case for CPO in the public interest.</p> <p>Without CPO action it is considered that the risk of blighting of the High Street would be greater and timescales even less certain.</p>		Director of Environmental and Regulatory Services	