

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

30 March 2011

Report of the Legal Services Partnership Manager and Director of Planning, Transport and Leisure

Part 1- Public

Executive Non Key Decisions

1 COMPULSORY PURCHASE ORDER FOR MEDWAY CROSSING AT PETERS PIT WOULDHAM

1.1 Introduction

1.1.1 Members will recall that this matter was reported to Cabinet in October last year. Since that time the issue has also been considered by the Cabinet of Medway Council and your own officers have taken the opportunity to seek further advice from Queen's Counsel. In view of the time which has elapsed since the last report and having regard to the actions of Medway Council and the further advice received it was felt that an update on this project would be appropriate.

1.2 Medway Council's Position

1.2.1 At its meeting in February this year the Cabinet of Medway Council considered whether or not to support the use of compulsory purchase powers to facilitate the construction of the proposed road from the Peters Village development, across the River Medway and the Medway Valley Railway line to join the A 228. Medway's Cabinet resolved to make a compulsory purchase order but, unlike this Council which has considered action under its planning powers, the resolution was made under the Highways Act 1980. This is not a surprising decision as Medway Council, being a unitary authority, is a highway authority in its own right. Accordingly, the use of Highway Act powers is entirely logical and readily sustainable bearing in mind that the report considered by Medway's Cabinet relied to a significant degree on highway factors. Their report contains evidential statements such as "Without this new highway vehicles from the new development will end up rat-running into Borstal and Rochester to the detriment of residents living there" and "The new road and bridge also provides improved connectivity for the residents of Cuxton and Halling (and the wider area) into Tonbridge and Malling".

1.2.2 Whilst the resolution to make a CPO by Medway Council uses different powers to those proposed by the Borough Council there are no significant practical differences so far as procedure is concerned. The primary intention of both

Councils is that all parties will be able to negotiate a settlement which will allow the developer to construct the new road and bridge. It is only if negotiations remain unsuccessful that the two authorities will have to pursue the compulsory acquisition route and whether planning or highway powers are used, a public inquiry will be necessary and the case for both cpo's will, with almost absolute certainty, be heard at the same time. Whilst the Medway report referred to the highway considerations, it also drew heavily on the planning need for the development and hence the requirement for the new road and bridge. Likewise, the Borough Council's case shows the need for the development to go ahead in terms of the Council's Planning and Development Strategy, as detailed in the October report, but this can only happen with the highway improvements which are provided to a very great extent by the proposed road and bridge. The evidence, therefore, that each Council would provide to a public inquiry is inextricably inter-linked and any Inspector appointed by the Secretary of State to deal with the two cpo's would clearly need to hear both cases at the same Inquiry.

- 1.2.3 We have consulted Counsel on this particular point and the advice received confirms our own judgement.

1.3 Other Considerations

- 1.3.1 Since the October report the Council has taken further advice on the use of compulsory purchase powers in this case. Compulsory acquisition of land and planning are areas of law which are regularly scrutinised by the Courts. As a consequence of one decision in the Court of Appeal, *R (Harris) v London Borough of Haringey*, for instance, local planning authorities have been reminded of their duties to eliminate unlawful racial discrimination and promote equality of opportunity between different groups when exercising planning powers. The effect of this in the current matter is that members in considering the recommendation before them tonight must bear in mind those duties. It is my professional opinion that the development of this site and, in particular, the improvement of transportation links through the provision of a new road and Medway crossing will assist in achieving the objectives at which these duties are aimed.
- 1.3.2 Further, Counsel has suggested that Members clearly consider the requirements of the Human Rights Act 1998 and in particular Article 1 First Protocol Rights. The First Protocol, Article 1 protects a person's peaceful enjoyment of his possessions (including property). The Article states that 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. However, the provisions do not impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The making of a Compulsory Purchase Order will interfere with the peaceful enjoyment of property. However, such interference is permitted by law, under the Planning Acts and the Acquisition of Land Act 1981 (which sets out the procedure for making and confirming a cpo). It is considered that the making of this cpo, for the reasons set out in the report, is in the public interest and that the interference with the

peaceful enjoyment of property is proportionate having regard to the legitimate aims pursued by the Council in making the cpo.

- 1.3.3 The basic recommendation to make a cpo remains unchanged from the October meeting as the same compelling case in the public interest exists. The development of the Peters Pit site continues to be a significant part of the Borough's development strategy not just in this part of Tonbridge and Malling, but for other areas both in and out of the Borough. Counsel has indicated that one small change is needed in the process and has advised that under the Local Government Act 2000 and the Functions and Responsibilities Regulations the decision to make the cpo rests with Cabinet rather than Council and the recommendation has been phrased accordingly.

1.4 Legal Implications

- 1.4.1 These are as set out in this report.

1.5 Financial and Value for Money Considerations

- 1.5.1 These remain unchanged from the October report.

1.6 Risk Assessment

- 1.6.1 This is as the October report.

1.7 Equality Impact Assessment

- 1.7.1 See 'Screening for equality impacts' table at end of report

1.8 Policy Considerations

- 1.8.1 These remain unchanged from the October report

1.9 Recommendations

- 1.9.1 The Cabinet is recommended to make a compulsory purchase order under s. 226 of the Town and Country Planning Act 1990

Background papers:

contact: Ian Henderson

Nil

Adrian Stanfield
Legal Services Partnership Manager

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	The decision will not adversely impact any groups
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	Redevelopment of the area and improved transportation links will promote equality of opportunity in an area currently less well developed. In addition, at least 25% of the housing development will be affordable housing.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?	N/A	

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.