

CABINET

17 OCTOBER 2007

SILVER HILL WINCHESTER – PROPOSED USE OF COMPULSORY PURCHASE POWERS

REPORT OF HEAD OF ESTATES

Contact Officer: Tony Langridge Tel No: 01962 848 528 tlangridge@winchester.gov.uk

RECENT REFERENCES:

PDC673 - Silver Hill Development - 27th March 2007

CL34 - Silver Hill Development Landowners Approval - 1 February 2006

EXECUTIVE SUMMARY:

The report recommends that the Council uses compulsory purchase powers to assemble land to assist in the implementation of the Silver Hill development proposed by Thornfield Properties (Winchester) Limited, which is in line with Council planning policy and the development agreement the Council has with Thornfield.

The report outlines the development proposals for a comprehensive mixed-use redevelopment in central Winchester contained in planning application 06/01901/FUL, which the Planning Development Control Committee resolved to grant on 27th March 2007 and sets out the justification for the use of compulsory purchase powers.

The extent of the land and interests to be compulsorily acquired are described, and referred to as the 'Order Lands'. This extends to land in Upper Brook Street which may be required for the relocation of one of the site occupiers. The report details the statutory powers under which the Council will proceed and the advice contained in Office of the Deputy Prime Minister circular 06/2004 which needs to be followed in the exercising of those powers.

The report sets out the public interest case for the use of the compulsory powers, the development's conformity to local planning framework, the potential financial viability of the scheme and whether the development could be achieved by any other means.

The report recommends that the order itself is only made once Cabinet is satisfied that the Full Indemnity Agreement is in place.

A separate exempt report on this agenda CAB1535 deals with the Council's interest as land-owner in the area, legal advice and issues relating to the development agreement which the Council has entered into with Thornfield.

RECOMMENDED:

1 That compulsory purchase powers be used to facilitate the comprehensive redevelopment of the Silver Hill area of central Winchester and the Corporate Director (Governance) be authorised ;

- (i) To make any necessary requisitions for information from parties interests in the Order Lands by way of the service of notices under section 16 of the Local Government Miscellaneous Provisions Act 1976 or section 5A of the Acquisition of Land Act 1981
- (ii) To continue to negotiate with any interested parties with a view to acquiring interests by negotiation

and that, subject to Cabinet being satisfied that the full indemnity agreement with Thornfield is in place, and the completion of the Section 106 agreement the Corporate Director of (Governance) be then authorised ;

- (iii) To make a Compulsory Purchase Order (the Order) for the Silver Hill development area pursuant to Sections 226(1)(a) and 226(3)(a) of the Town and Country Planning Act 1990 (as amended) and the Acquisition of Land Act 1981 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 (as necessary) for the purpose of acquiring the Order Lands which are shown on the plan to this report;
- (iv) To make all amendments or additions to the Order Lands plan to encompass all additional lands or rights which may be required for the scheme including but not limited to any interests which have the benefit of restrictive covenants or easements and rights over the development site, subject to prior consultation with the Leader ;
- (v) To advertise the making of the Order and to take all relevant action to facilitate the promotion and confirmation of the Order by the Secretary of State including publication of the Statement of Reasons, the Statement of Case and all necessary evidence in support of the Council's case at any resulting public inquiry. Additionally to appoint any necessary consultants to assist in facilitating the promotion and confirmation of the Order;
- (vi) Upon the Order having been confirmed and becoming operative to execute General Vesting Declarations or at his discretion, to serve Notices to Treat and where necessary Notices of Entry under Sections 5 and 11 of the Compulsory Purchase Act 1965 in respect of land included in the Orders;
- (vii) To be authorised to negotiate and agree terms with interested parties for the purchase by agreement or payment of compensation for any of the interests or rights included in the Order and where appropriate to agree relocations.
- (viii) To be authorised to take all necessary steps in relation to compensation issues which are referred to the Lands Tribunal, including advising on the appropriate uses and compensation payable and in issuing any appropriate certificate and be further authorised to appoint chartered surveyors jointly with Thornfield to assist and advise in this regard

CABINET

17 OCTOBER 2007

SILVER HILL WINCHESTER – PROPOSED USE OF COMPULSORY PURCHASE POWERS

REPORT OF HEAD OF ESTATES

DETAIL:

1 Introduction

- 1.1 The Council has long had an ambition to facilitate the redevelopment of the Silver Hill area where a clear regeneration need exists. Following extensive consultations through the planning process policies have been put in place to enable such development. The Council in its land-owning capacity has entered into a development agreement with a developer Thornfield Properties (Winchester) Limited (Thornfield) who have obtained a positive resolution to grant planning permission for a comprehensive scheme.
- 1.2 The next stage in the process is for the land to be assembled. It is important for land assembly to be progressed by negotiation wherever possible, however in order to provide certainty, the Council's compulsory purchase powers are likely to be needed to be exercised to enable the scheme to be implemented within a reasonable timeframe. This report outlines what the Council needs to have regard to when making a Compulsory Purchase Order (CPO), with a recommendation that Cabinet resolves to make an order for the Silver Hill development.

2 Development Proposals

- 2.1 Thornfield have made three applications for planning approval which were considered by the Planning Development Control Committee on 27th March 2007. That Committee resolved to grant permission for all three applications which were for; the comprehensive redevelopment of the Silver Hill area, Listed Building Consent for the necessary demolitions and for relocation of the weekly and farmers markets. Those permissions were granted subject to conditions and the completion of legal agreements under of Section 106 of the Town and Country Planning Act and Section 278 of the Highways Act.
- 2.2 On 9th May 2007 the Council was informed that the Secretary of State would not be calling in the application for his own determination. A Section 106 agreement is currently being negotiated with Thornfield, which once entered into, together with the Section 278 agreement will enable planning permission to be granted.
- 2.3 The development will have a substantive and positive impact upon the area and it will deliver a number of benefits for the town in terms of an improved environment and specific public benefits such as; the new Shopmobility facility, new public open space and public open space contribution, affordable homes, public art and improved primary care facilities.

2.4 The scheme comprises of a comprehensive redevelopment of 2.17 hectares (5.35 acres) comprising 10 buildings and a new bus station relocated to Friarsgate with the associated widening of Friarsgate to provide a contra flow bus lane, plus all associated infrastructure works, landscaping and improvements to the public realm, including upgrading of parts of The Broadway, High Street and Middle Brook Street.

2.5 The individual uses are summarised as follows;

Retail 10,168 sq. metres gross external retail floorspace, including a new supermarket of 2,305 sq metres net internal.

Housing 264 flats, comprising 158 private & 106 affordable units (40%) and 5 live/work units.

Offices/Employment 2433 sq metres for the Primary Care Trust and 468 sq metres of live/work space.

Parking A total car parking provision of 533 spaces broken down into 136 residential use, 59 business use, 330 public use and 8 for Shopmobility and others. In addition the scheme has 456 cycle bays and 15 motor cycle parking bays.

Other Uses Bus station including waiting room and 12 bay open bus stands, medical centre, public toilets, pharmacy, Shopmobility, telecommunications mast at roof level, youth venue and a private club.

2.6 The proposals additionally provide for extensive associated improvements to the public realm including creation of a new town square, street paving, landscaping and public art, 5 kiosks on the eastern side of the entrance from the Broadway, a footpath adjacent the brook to the east of the site and other public open space improvements. These include repaving of parts of The Broadway, High Street, Middle Brook Street Tanner Street and Friarsgate. The plans include the re-location of the weekly and farmers markets to the High Street and The Broadway.

2.7 The scheme provides relocation space, if required, for a number of the occupiers within the CPO area including the Bus Station, RAOB Club, Sainsbury's, pharmacy, Post Office, Orange telecoms aerials, Friarsgate Surgery, Primary Care Trust Medical Centre as well as small unit shops and kiosks.

3 The Order Lands

3.1 The proposed CPO is to include all of the land hatched black on the Indicative Compulsory Purchase Plan, Appendix A (the primary land), and the land shown shaded grey (the adjoining land), which rights are required over land for the purpose of executing works or facilitating the development, such as over sailing rights for cranes.

3.2 The site in the centre of Winchester comprises the Bus Station, medical buildings, Sainsbury's supermarket, Marks and Spencer's warehouse and car park, Kings Walk, Friarsgate multi-storey car park and the former Post Office sorting office. The area currently contributes little to the architectural and historic character of the city. The development of the area will provide the opportunity to revitalise this part of the city and provide a mix of uses appropriate to it with high quality urban design and architecture that enhances the city centre.

- 3.3 The City Council and Thornfield have freehold ownership and or control over a number of the property interests in the site including the Bus Station, the Friarsgate Medical Centre, Coitbury House, Friarsgate car park and Kings Walk. The remaining land and property interests are held by a number of third parties. There are no residential properties within the primary land area, although residential properties fall within the additional land area over which rights are sought.
- 3.4 Work to date has already identified the majority of land interests within the CPO area. Once a resolution to use CPO powers is made, the land referencing will be completed and final details of owners and occupiers will be determined by use of a statutory requisition procedure before the proposed CPO is made.
- 3.5 The Order Lands include the site of the Upper Brook Street car park which is a site in the Council's ownership. This site is included at this stage as there is a requirement to ensure that if the site is required for a relocation of the St Clements surgery there are no third party rights which may prevent or delay the delivery of this relocation property and thus the main scheme. Including the site will enable any third party rights or covenants to be expunged. The plans also indicate that rights over adjoining land may be required to enable its development.
- 3.6 Following adjustment to the road alignment a small strip of land on the northern side of Friarsgate at its junction with Eastgate Street is required which was not previously within the development area. This land is in Council ownership and is included within the primary land.

4 The Council's Powers and use of Compulsory Purchase

- 4.1 The Council has the power in Section 226 1A(a) of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004, to acquire land compulsorily for planning purposes. These powers are intended to provide a positive tool to help authorities to assemble land to implement proposals in their community strategies and local development documents. The tests set out in Section 226 1(a) are firstly that the local authority must think that the acquisition will facilitate the development, redevelopment or improvement of the land. Officers consider that this first test will clearly be met by the implementation of the scheme which will facilitate the regeneration of the Silver Hill area of Winchester
- 4.2 Further Section s226 1A requires local authorities utilising the powers under Section s226 1A to show that they think that the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of the area. This is mirrored in the Government's Circular 06/04 'Compulsory Purchase and the Critchel Down Rules' (the Circular) which contains the guidance that acquiring authorities should follow when exercising compulsory purchase powers. The Circular confirms that any land assembly needs to be set within a clear planning framework and that the use of the powers needs to be in furtherance of the 'well-being' of the area. The justification for using these powers is considered in the next section.
- 4.3 The Council's preference is that if at all possible, it and its development partner Thornfield will acquire all interests by negotiation. All attempts to do this are being made and will continue to be made up throughout the CPO process. The Council and Thornfield have already acquired some interests in the area and have had, and are continuing to have, negotiations with the identified owners and occupiers. Owners and those with interests that are currently unidentified will be contacted once their

identity is established from the land referencing exercise. The Circular recognises that whilst the use of compulsory powers should be considered a last resort, as a contingency a compulsory purchase timetable should be planned at the same time as conducting negotiations. The clear signalling of its intentions to use compulsory powers will demonstrate that the Council is serious. With a CPO timetable, that has a clear end point, meaningful negotiations will be easier to undertake.

- 4.4 It is recognised that compulsory purchase procedures lead to uncertainty and anxiety for those with affected land. In line with its commitment to open and honest treatment of customers, the Council will strive to keep people informed at all stages of the process and to keep delays to the minimum. As a first stage those owners and occupiers who have been identified within the proposed CPO as having an interest have been written to informing them of this report. If the recommendations are agreed a copy of the Government leaflet explaining the compulsory purchase procedure and a copy of the indicative plan will also be sent. Copies of the Government leaflets have been placed in the Members room. The Head of Estates' details, as case officer, have been included in the letter as a first contact point for any concerns.
- 4.5 The Schedule to the Order will be compiled in two parts. Part 1 will comprise all those parties who are freehold or leasehold owners, tenants or occupiers of the land included within the CPO. Part 2 of the Schedule will contain a list of those parties who have a qualifying interest in the land, for instance, parties with the benefit of a right such as a restrictive covenant over land comprised within the CPO. All parties included in Parts 1 and 2 of the Schedule will receive notice of the making of the Order once this stage is reached. The CPO will also be advertised locally. Officers are currently preparing a detailed Statement of Reasons setting out the justification for the compulsory acquisition. This statement will cover all the issues set out in this report. Following notification and advertisement of the CPO, if any duly made objections are not withdrawn, the Secretary of State must hold an inquiry and consider the conclusions and recommendations of the Inspector before deciding whether to confirm the Order.

5 Reasons for the Decision and the Justification for Making the Proposed CPO

- 5.1 The Circular provides guidance as to the factors the Secretary of State can be expected to consider when considering the confirmation of a CPO. One key test is that a CPO should only be made where there is a compelling case in the public interest and that the purposes for which the CPO is made sufficiently justify interfering with the human rights of those affected. Additionally it is necessary to show that there are no impediments to the scheme proceeding. Furthermore paragraph 16 of Appendix A of the Circular sets out a number of 'tests'. All of these Circular tests are considered and addressed below;
- 5.2 **Whether there is a compelling case in the public interest which justifies the use of CPO powers**
- a) The need for the Redevelopment of the Silver Hill Area is acknowledged and supported by the adopted planning policy framework for the area as summarised in paragraph 5.4 below. The proposed scheme will deliver this redevelopment which secures a significant number of improvements for the benefit of the area. These are identified in paragraphs 2.3 and 5.5. It is the Officers' views that the significant public benefit which will be derived from these proposals outweighs the interference of the CPO with the human rights

of those parties affected by the CPO. In addition the fact that there are clear proposals for the redevelopment of the land which have the benefit of a resolution to grant planning permission taken together with the experience and financial standing of Thornfield to ensure the delivery of the scheme within a reasonable timetable further assist the Officers' view that the use of the CPO powers are justified in this case.

5.3 Whether there are any impediments to implementation, including potential financial impediments, physical and legal factors

- a) Officers are content that there are no financial impediments to the scheme proceeding for the reasons set out at paragraph 5.6. Officers are also satisfied that there are no planning impediments to the scheme proceeding given that there is a resolution to grant planning permission subject to the completion of section 106 and 278 agreements which will be completed in due course. There are no physical impediments or legal impediments to the scheme proceedings. Road Closure Orders may be required to be obtained before the Scheme is implemented but such orders will be applied for once planning permission is issued and this process will run concurrently with the CPO process. To the extent that there is any objection to the Road Closure Orders any inquiry into the objections will be conjoined with the Compulsory Purchase Order Inquiry.

5.4 Whether the purpose for the acquisition fits with the adopted planning framework.

- a) The proposed development has the benefit of a resolution to grant planning consent. The conformity of the proposal to the national and local planning policy framework was fully examined and reported in report PDC 673 to the Planning Development Control Committee. The following is an extract from paragraph 7.5 of that report relating to the planning framework;

“The benchmark policy is however W2 of the Winchester District Local Plan Review which specifically provides for the redevelopment of the Silver Hill site. This is up to date statutory policy having been examined through the local plan process in 2004/05 and objections considered by the Local Plan Inspector. Supplementing this policy are the provisions of the Broadway Friarsgate Planning Brief, which was adopted at a full meeting of the Council on 25 June 2003.”

- b) The planning vision contained in paragraph 2.1.2 of the Planning Brief and noted below is delivered full by the proposals;

The Council will require the development to resolve a number of longstanding problems in the area and provide new and upgraded facilities to improve the appearance and vibrancy of the town's central area. . These include:

- *Providing a modern, well- planned and more passenger- friendly bus station with and closer integration with community transport and Shopmobility services;*
- *Removing eyesores and unsightly buildings;*

- *Providing a wider range of shops and services to meet current and future demand ;*
- *Strengthening Winchester's niche within the wider retail hierarchy;*
- *Creating a more attractive public realm, which encourages encouraging shoppers and visitors to stay longer;.*
- *Providing spaces for public use and activity*
- *Providing housing that helps meet the needs of the district in this sustainable location;*
- *Providing dwellings of mixed tenure with a substantial component of affordable housing;*
- *Providing a boost to the local economy and creating jobs;*
- *Incorporating leisure provision, particularly for young people.*

c) It is Officers' judgment that the planning framework 'test' is clearly satisfied.

5.5 The extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area.

a) The site is generally of poor townscape and environmental quality with no strong character, and the buildings are a mix of poor quality 1960's and 70's blocks fronting Middle Brook Street and a concrete framed multi storey car park fronting Friarsgate, which rises to a maximum height of 5 storeys. The offices on Friarsgate are of more traditional design and rise to 3 storeys whilst the Health Centre is a two-storey contemporary design, reflective of its 1960's era, and the bus station is especially unattractive and set within an expanse of tarmac. A number of properties particularly in the Kings Walk development have been vacant for a period of years.

b) It is considered that the contemporary architectural approach adopted by the scheme is appropriate and does produce a distinctive high quality identity and sense of place to this part of the town. It also delivers accommodation that is fit for purpose and adaptable to changing needs and the range of uses sought by the Planning Brief. The scheme will deliver the following specific benefits:

- (i) The provision of additional retail space which fulfils part of the need identified by the 2003 retail study. The scheme is expected to make a very significant impact on the vitality of Winchester as a visitor destination for both shopping and leisure purposes. The investment in the scheme is anticipated to have a positive knock on effect elsewhere in the city improving the overall quality and economic prosperity of the city and surrounding area.
- (ii) The proposals to replace all of the buildings on the site except Woolstaplers Hall will result in a significant improvement in the visual appearance of the area. Public access to the area will be improved and the environmental measures to enhance biodiversity and sustainable design have been welcomed by Natural England amongst others.
- (iii) New public areas such as Silver Hill Square and alterations to the bus routing will improve the attractiveness of the area for pedestrians with greater areas where pedestrians have priority. These measures

together will therefore promote an improvement to the environmental well being of the area.

- (iv) The introduction of significant numbers of new homes in the scheme will assist in maintaining a vibrant city centre economy and assist in maintaining a safe environment. The number of housing units will contribute to meeting the area's housing need for both market and affordable housing in what is a highly sustainable location.
- (v) Improved facilities for primary medical care will be provided as well as a new ground floor unit for Shopmobility and provision for a young person's facility. Together the mix of housing provided and the community facilities will improve the social well being of the area.
- c) The Council can affirm that the scheme will promote and improve the well being of Winchester, not least by the significant investment in the order of £100million. The new commercial space will provide new employment opportunities although to date these have not been quantified. Officers are therefore clearly of the view that the proposals are in the economic, social and environmental benefit of the area.

5.6 **The potential financial viability of the scheme for which the land is being acquired including general indication of funding intentions.**

- a) As Members are aware the Council has a development agreement with Thornfield Properties (Winchester) Limited for the delivery of the scheme. Thornfield is controlled by a private property development company specialising in major urban regeneration projects throughout the UK. This private company is jointly owned in equal 50:50 shares between a number of individuals and Halifax Bank of Scotland plc. The company's present portfolio, is being delivered in close working partnerships with a number of local authorities and is set to deliver over £2 billion of investment.
- b) By way of example, Thornfield are the appointed development partners of: Bury Metropolitan Borough Council, for the delivery of a £330 million regeneration in Bury, Dacorum Borough Council for the delivery of a £350 million regeneration in Hemel Hempstead and in Sunderland for the £250 million Holmeside Triangle regeneration scheme.
- c) Thornfield completed a 1 million sq ft redevelopment of Feltham town centre in 2006 and has also been appointed strategic 20 year development partner by Mid Sussex Council under a groundbreaking agreement to regenerate the three principal town centres of Burgess Hill, Haywards Heath and East Grinstead, as well as local authority assets district wide.
- d) Thornfield has the capability to fund and deliver commercial solutions in complex and challenging town centre environments. As part of its many comprehensive schemes, Thornfield has delivered numerous, significant community based facilities throughout the UK including an award winning 2,000 pupil high school, affordable housing, libraries, community centres, bus stations and health centres for local NHS primary care trusts.

- e) A development agreement has been in place for a considerable period of time and Thornfield are committed to delivering a successful scheme, one they have already expended very considerable financial costs on to date.
- f) Officers are satisfied that in the light of the above circumstances there is a reasonable prospect of the scheme proceeding.

5.7 Whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by any other means.

- a) The Council identified the need for the comprehensive redevelopment of the area following consultation issued the Broadway Friarsgate Planning Brief in July 2003. The following is an extract from paragraph 2.0.1 of the Brief.

“The Council will require a commitment from the developer to the comprehensive redevelopment of the area indicated in the site plan, comprising approximately two hectares. This is the best way of securing a well-designed scheme, which incorporates the non-commercial elements identified in this, brief. The site includes the ‘Post Office Site’, the Sainsbury’s supermarket site and the ‘Bus Station Site’. Any proposal for piecemeal development must be supported by a master plan demonstrating how it will contribute to the successful development of the whole area, and an appropriate contribution to the non-commercial elements of the brief as a whole.”

- b) The development agreement with Thornfield requires it to deliver a comprehensive redevelopment incorporating the non-commercial elements and other public benefits. Officers consider that such arrangements are the best approach to satisfying the objectives of the brief and ensuring that the development of Silver Hill is carried out on a holistic basis. Thornfield have prepared a masterplan which demonstrates how the scheme will be delivered and have secured a planning approval based upon that masterplan and in respect of which they must comply . The planning approval is also subject to Section 106 Planning and Section 278 Highways agreements. The Section 106 planning agreement will require the delivery of a comprehensive scheme.
- c) As Members are aware, London & Henley (Winchester) Limited (L&H) are owners of 2 freeholds in the area: the Post Office (incl the old sorting office) and the Antiques Market. They also have a leasehold interest in Kings Walk. L&H made a planning application for the redevelopment of the site bounded by Silver Hill, Middle Brook St, Friarsgate and Tanner St. This is only part of the Silver Hill site. That application was considered by the Planning Development Control Committee on 18th May 2007 and refused for a number of reasons including; that it was contrary to the provision of Policy W2 - not providing a comprehensive development solution for the area, treatment of archaeological remains, highways, design, sustainability, affordable housing and public open space. L&H appealed on the grounds of non determination but has subsequently withdrawn that appeal. In subsequent discussions L&H have indicated their intention to submit a new planning application.
- d) The Council's Local Plan policy W2 and the Broadway Friarsgate Planning Brief clearly states a requirement for development which provides a comprehensive package of development including, inter alia, the provision of a bus station, new public spaces, public car parking and the regeneration of

an area which is currently unsightly and inefficient in land use terms. The application received from L&H did not provide for comprehensive development since it did not encompass the whole site nor did it include any practicable mechanism by which the Council could ensure that the full requirements of the planning policies could be met across the site. The Thornfield scheme as approved does provide for comprehensive redevelopment in a manner which is commercially viable and provides all of those elements sought by the Council. The use of compulsory purchase powers is considered necessary to ensure that this approved scheme of comprehensive development can be implemented and thus to ensure that the provision of public benefits arising from regeneration of the area can be provided in a timely and managed fashion. The alternative strategy would be to allow piece meal development and ad hoc negotiation which would be a highly risky and unmanaged mechanism for the pursuit of the regeneration objectives.

- e) The need for a comprehensive approach was considered by the Local Plan Inspector when considering representation 2337/2 submitted by L&H, paragraph 11.5.3 of his report states;

“The comprehensive nature of the development (Issue 2) is in my view essential. Certainly this increases the complexity of the scheme but I agree with the Council that without it there would be a real risk that the objectives set out in the Planning Brief would not be achieved. Development on a block by block basis may well be appropriate in some developments in some locations. But from my inspection of the area and reading the Plan and the documents that inform it, I am satisfied that in this instance such an approach would run the risk of the proposal failing to meet its social, economic and transport objectives as well as making it harder to achieve a distinctive contribution to the townscape of the City Centre.”

- f) The Council is strongly of the opinion that there is not another method or way in which the whole of the redevelopment can be delivered.

6 Financial Considerations

- 6.1 All of the costs of the compulsory purchase of land and interests in the Silver Hill area will be met by Thornfield under the terms of the development agreement once the Full Indemnity Agreement is in place. A separate exempt report to this meeting provides further details in relationship to the development agreement and the Council's Capital Strategy

7 Human Rights

- 7.1 In relation to human rights, regard should be had, in particular, to the European Convention of Human Rights. As outlined above there is a strong belief that the development is in the public interest sufficient to justify interfering with the human rights of those with an interest in land. The proposed CPO does not include the acquisition of any residential property leading to the loss of anybody's home.
- 7.2 The provisions of Articles 6 and 8 and Article 1 of the first protocol of the Convention are applicable when making a CPO.

7.3 Article 6 states:

“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 “

7.4 The Development proposals have been extensively published and all parties will be notified of the making of the CPO. This gives parties affected a right to make representations to the Secretary of State and to be heard at a public inquiry. Those directly affected by the Order will also be entitled to compensation and they have an ability to refer this to a tribunal for determination should this be necessary. The Statutory Procedures taken together with the right to object and judicial review satisfy the requirements of Article 6.

7.5 Article 8 states;

“Everyone has the right to respect of his private and family life, his home and his correspondence....interference is justified however, if it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the Country, for the prevention of disorder or crime, for the protection of health and morals, or the protections of rights and freedom of others”

7.6 Article 1 of the First Protocol states;

“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 the law and the general principles of international law”

7.7 Article 8 addresses the right to respect of private and family life but acknowledges that interference is justified when it is in accordance with law and necessary within a democratic society i.e. where it is proportionate in the public interest. Article 1 of the First Protocol entitles all persons to peaceful enjoyment of their possessions and requires that no party should be deprived of their possessions except in the public interest and subject to the conditions provided by the law and general principles of international law. i.e. compulsory purchase must be proportionate in that the public interest in pursuing the objection to be achieved in making the CPO must outweigh the interference with any private rights.

7.8 The Council have given careful consideration to the balance to strike between individual rights and the wider public interest and is of the view that interference with individual rights is justified in order to secure the regeneration of the Order Lands. Whilst occupiers and owners will be deprived of their property if the Order is confirmed, this will be done in accordance with the law and will be in the greater public interest as set out in this report. In these circumstances interference with convention rights, to the extent that there is any, is considered justified in order to secure the Development of the Silver Hill area and to secure the economic, social and environmental improvements that the scheme will bring.

OTHER CONSIDERATIONS:8 CORPORATE STRATEGY (RELEVANCE TO):

- 8.1 The delivery of the Silver Hill redevelopment is an important element of the Council's economic prosperity strategy in that it will deliver a range of new jobs, new infrastructure and an improved environment for business. The redevelopment will also improve and enhance the City's existing high quality environment and improve access to affordable housing.

9 RESOURCE IMPLICATIONS:

- 9.1 The Council's costs of preparing and making of the CPO are met by the indemnity arrangements the Council has with the developer Thornfield. These costs can include Officer time as well as external professional advisors.
- 9.2 Wider land-owning related resource implications have been included in previous exempt reports relating to the development agreement. The Capital Strategy agreed by Cabinet in July 2007 (CAB1484) made reference to the Silver Hill development at paragraph 48 it states;

"The Council has signed a development agreement with Thornfield Properties plc to bring forward the development of a major mixed use scheme in the Silver Hill area of central Winchester. The Council has a number of capital assets within this area which are included in the terms of the agreement. In early 2007 the scheme was approved by planning and the next phases will include the Council exercising its compulsory purchase powers to ensure the assembly of the whole site. The Council has minimised its exposure to financial risk in this process through indemnity agreements with Thornfield. As part of the agreement the Council will be given a capital sum to reprovide a CCTV control room and parking offices off site. If the scheme is financially successful the Council would share in profits above an agreed level by way of an overage agreement. For the purposes of capital planning no overage has been anticipated and overall in relation to the Council's budget the scheme is assumed to be capital neutral."

BACKGROUND DOCUMENTS:

Office of Deputy Prime Minister (ODPM) Circular 06/2004

APPENDICES:

A – Winchester City Council (Silver Hill Winchester) Indicative Compulsory Purchase Plan

Cabinet 17th October 2007

Report CAB1534 - Addendum

Silver Hill Winchester - Proposed use of Compulsory Purchase Powers

Report corrections

Since the publication of the report a small number of minor correction and clarifications to the report have been identified these are as follows;

1. In relation to paragraph 2.1 and 2.2, the section 278 Agreement does not need to be entered into before the planning permission is issued but it is required by the section 106 agreement that it will be entered into before the development is commenced.
2. That the housing numbers referred to in paragraph 2.5 were the original figures in the planning report, the numbers changed slightly as a result of officers recommendations to committee. The total number of housing units is now 262 of which 105 are affordable.
3. In relation to paragraph 4.1 and 4.2 the section numbers have been wrongly quoted in places the following is the corrected paragraph with the changes in bold
 - 4.1 *The Council has the power in Section **226 1(a)** of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004, to acquire land compulsorily for planning purposes. These powers are intended to provide a positive tool to help authorities to assemble land to implement proposals in their community strategies and local development documents. The tests set out in Section 226 1(a) are firstly that the local authority must think that the acquisition will facilitate the development, redevelopment or improvement of the land. Officers consider that this first test will clearly be met by the implementation of the scheme which will facilitate the regeneration of the Silver Hill area of Winchester*
 - 4.2 *Further Section 226 1A requires local authorities utilising the powers under Section **s226 1(a)** to show that they think that the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social or environmental well-being of the area. This is mirrored in the Government's Circular 06/04 'Compulsory Purchase and the Critchel Down Rules' (the Circular) which contains the guidance that acquiring authorities should follow when exercising compulsory purchase powers. The Circular confirms that any land assembly needs to be set within a clear planning framework and that the use of the powers needs to be in furtherance of the 'well-being' of the area. The justification for using these powers is considered in the next section.*

16 October 2007