

CABINET

15 JUNE 2011

THE OVERVIEW AND SCRUTINY COMMITTEE

20 JUNE 2011

SILVER HILL WINCHESTER – COMPULSORY PURCHASE ORDER

REPORT OF CORPORATE DIRECTOR (OPERATIONS)

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RECENT REFERENCES:

[CL34](#) - Silver Hill Development Landowners Approval - 1 February 2006

[PDC673](#) - Silver Hill Development - 27 March 2007

[CAB1534](#) - Silver Hill Proposed Use of Compulsory Purchase Powers - 17 Oct 2007

CAB1535 - Silver Hill Winchester - Land Matters (EXEMPT) – 17 Oct 2007

CAB1554 - Silver Hill Winchester - Land Matters Update (EXEMPT) – 14 Nov 2007

CAB1688 - Upper Brook Street Car Park Winchester (Exempt) – 14 Nov 2007

CAB1733 - Upper Brook Street Car Park Winchester – Revised Terms (EXEMPT) –
15 Oct 2008

[PDC768](#) – Silver Hill, Winchester – 21 October 2008

[CAB 1739](#) – Silver Hill Winchester – Compulsory Purchase Order – 18 November
2008

[CAB 2085](#) – Silver Hill Regeneration Project – Latest Developments – 24 November
2010

EXECUTIVE SUMMARY:

At its meeting on 17 October 2007 Cabinet considered the detailed case for the making of a Compulsory Purchase Order (CPO) to secure the redevelopment of the Silver Hill area of Winchester. Cabinet agreed to the making of the order once two preconditions were met, these being the provision of indemnities by the developer (Thornfield Properties (Winchester) Limited) and the completion of the Section 106 agreement required to issue the planning consent that the Council resolved to grant through Planning Development Control Committee at its meeting on 27 March 2007.

The planning application (which the Planning Development Control Committee resolved to grant at its meeting of 27 March 2007, subject to legal agreements and conditions) was subject to amendments which were considered and agreed by the Planning Development Control Committee on 21 October 2008.

At its meeting on the 18 November 2008 Cabinet approved the making of a Compulsory Purchase Order for the assembly of land to enable the Silver Hill scheme to proceed.

In January 2010 it became clear that Thornfield Properties (Winchester) Limited and its parent company Thornfield Properties PLC were no longer in a position to progress the scheme due to an inability to obtain the necessary financial support. This was a consequence of dramatic changes in the financial markets and the attitude of potential lenders, not as a result of any actions by the Council or any other process which called into question the underlying merit of the consented scheme or justification for compulsory purchase.

The share capital of Thornfield Properties (Winchester) Limited has now been acquired by Henderson Global Investors UK Property Fund. This fund is in a position to progress the scheme and has entered into all the necessary contractual obligations with the Council. The terms of a Full Indemnity Agreement have been also been agreed, as set out in the Report.

It is not necessary as a matter of law for the Council to reconsider its decision to use Compulsory Purchase Order powers just because there is a new source of funding for the scheme. However, it is prudent that the Council reconsiders its decision in view of the revised circumstances, to provide a robust basis for proceeding. The recommendations in this regard are therefore almost identical to those contained in the November 2008 report.

The report is also being considered by The Overview and Scrutiny Committee.

Consequential legal advice is provided in Exempt Appendix C of the report.

RECOMMENDED to Cabinet:

- 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 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 attached as

Appendix A to this report;

- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) 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;
- (vi) To take all necessary steps in relation to compensation issues which are referred to the Tribunals Service, 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 Henderson to assist and advise in this regard.

RECOMMENDED to The Overview and Scrutiny Committee:

That the Committee considers whether there are any issues which it wishes to raise with Cabinet.

CABINET15 JUNE 2011THE OVERVIEW AND SCRUTINY COMMITTEE20 JUNE 2011SILVER HILL WINCHESTER – COMPULSORY PURCHASE ORDERREPORT OF CORPORATE DIRECTOR (OPERATIONS)DETAIL:

- 1 Introduction
- 1.1 At its meeting on 18 November 2008 Cabinet resolved to authorise the Corporate Director (Governance) to make a Compulsory Purchase Order (CPO) to enable the assembly of land for the Silver Hill development.
- 1.2 Following that decision, work continued to enable the Council (with appropriate support from the developer, Thornfield Properties (Winchester) Limited) to make the order and deal with consequential legal processes and issues. These were time-consuming and complex but raised no points of principle or doubt over the desirability of progressing the scheme.
- 1.3 In January 2010 it became clear that the developer was no longer in a position to access funds to proceed with the development or to provide the Council with the indemnities which are essential to ensure that the costs of the CPO and the acquisition of land which follows are met by the developer. The rest of 2010 was spent in a series of discussions with other developers/investors and the administrators of the Thornfield, all of which were directed at finding a new development partner.
- 1.4 These discussions reached a successful conclusion at the end of 2010 when it was agreed that Henderson Global Investors UK Property Fund would acquire the share capital of the two subsidiary companies of Thornfield Properties PLC which were relevant to the Silver Hill scheme, subject to certain issues being resolved by the Council. These were resolved and the acquisition completed. Details of the acquisition and matters concerning the Council were set out in the Cabinet report [CAB 2085](#).
- 1.5 The decision of the Council to authorise the making of a CPO is still valid. The identity of the Council's development partner has not changed (it is the same company but with new owners) and it would not necessarily be relevant even if it had. However, advice from the Council's external solicitors is that it would be prudent, in view of the passage of time since the original decision, to invite

Cabinet to review the circumstances justifying the use of CPO powers and to make a new resolution so to do.

2 Development Proposals

2.1 The planning context for the scheme remains as it was in 2008. The Council has set out its approach to the development of the Silver Hill area and has been proceeding within the planning policy guidance afforded by policy W2 of the Winchester District Local Plan Review and the Broadway Friarsgate Planning Brief (2003) which envisage a comprehensive approach. This is still the relevant statutory planning policy document. Policy W2 of the Local Plan Review was 'saved' by a direction of the Secretary of State in June 2009 and the requirement for a comprehensive approach to redevelopment therefore now forms part of the Council's Local Development Framework (LDF).

2.2 Policy W.2 of the Winchester Local Plan Review states that development proposals for a mix of uses including housing, shopping, leisure, possible civic, cultural and community facilities will be permitted on approximately 2 hectares of land between the Broadway and Friarsgate provided that they:

- incorporate an appropriate mix of uses that reinforce and complement the town centre, including housing, retail and other town centre uses;
- provide a new bus station, retain the existing street market and provide sites for the relocation of existing health care facilities, the post office, taxi rank and other important facilities in the area;
- provide the main vehicular access to the multi storey car park and service areas from Tanner Street, with the closure of Silver Hill to through traffic, except where access is required for servicing;
- retain and enhance key views and provide a series of link public spaces;
- include a satisfactory archaeological assessment;
- provide public art within the scheme and "percent for art" contribution;
- make an appropriate contribution to the improvement of the public realm on the site and in the surrounding area, in particular, Friarsgate, Middle Brook Street and The Broadway;
- provide appropriate on and off site highway works and traffic management arrangements to accommodate a new bus station and associated revised bus routes and stops in the town centre;
- incorporate adequate flood protection measures;
- include an Environmental Impact Assessment and Transport Assessment.

- 2.3 Paragraph 2.0.1 of the Broadway Friarsgate Planning Brief (2003) states that the Council will require a commitment from the developer to the comprehensive redevelopment of the area indicated in the site plan, comprising approximately 2 hectares.
- 2.4 Any acceptable proposal for development must therefore be entire in itself or be supported by a Masterplan and implementation mechanism demonstrating, to the Local Planning Authority's satisfaction, that the successful development of the whole is secured, including an appropriate contribution to the non-commercial elements set out in Policy W.2 and the Planning Brief.
- 2.5 The Planning Brief and the Local Plan policy must be read together, with primacy being given to the Local Plan policies. Policy W2 and the Planning Brief both require a comprehensive package of measures to regenerate the site, although the Planning Brief acknowledges that more than one possible approach to achieving comprehensive development might exist.
- 2.6 The planning consent granted on 21 October 2008 fulfils this requirement and was not challenged by a third party. It is this consent which Henderson intends to implement.

3 Summary of Commercial Position

- 3.1 In the period since the 2008 Cabinet decision there has been considerable upheaval in the UK property market as a result of the general recession and a dramatic reduction in the availability of bank funding for property investment. This has caused the failure of numerous development proposals around the country including large scale town centre schemes.
- 3.2 Against this background, the potential benefits of the Silver Hill scheme have increased rather than diminished and it is more important than ever to seek to obtain the comprehensive redevelopment of the site. The need to deliver additional housing in Winchester has grown and is reinforced by Government policy. There is strong demand for new retail outlets in Winchester which would assist in promoting growth in the economy, which again is a national policy objective set out by the Government. The bus station continues to deteriorate and requires redevelopment. Investment in other public areas such as the High Street repaving has highlighted the shortcomings in the public areas around Silver Hill.
- 3.3 The acquisition of the Thornfield Winchester companies by Henderson took place after an extensive and commercially-driven due diligence process. The value of the acquisition to Henderson is in the right to develop the Silver Hill scheme. Although there can be no guarantee that development will happen until the scheme goes unconditional, the commercial deliverability has been tested by the Henderson acquisition.
- 3.4 The only alternative proposition for redevelopment of the Silver Hill site which has ever been put to the Council was the proposal by London and Henley Ltd which was considered by the Planning Development Control Committee on 18 May 2007 when reasons for refusal were agreed. An appeal against non-determination was

started but dropped by the appellant shortly after. In the period that has elapsed between 2008 and today, no company or developer has approached the Council with any alternative proposal for comprehensive redevelopment.

- 3.5 Achieving the regeneration of the area is a highly desirable objective for which there is only one approved scheme. The passage of time since 2008 has only emphasised the need for the benefits which would be achieved by the scheme. No alternative has been brought forward by any third party. In the light of the multiple ownerships on the site, it is considered that the only sure way of securing development of the Silver Hill area within a reasonable time and in accordance with the relevant policies is for a CPO to be made.
- 3.6 There have been no legislative or regulatory changes since 2008 which have an impact on the scheme such that they are relevant to the Council's decision as to whether to make a CPO. The Government's 'Planning for Growth' document published in March 2011 would tend to emphasise and support the use of planning powers, including the use of CPOs, to promote economic development and regeneration in town centres.
- 3.7 In these circumstances, it has been confirmed by the Council's advisors that it is appropriate to proceed with the CPO in order to provide certainty of site assembly within a reasonable period of time.

4 The Order Lands

- 4.1 A plan to be used for the CPO is attached as Appendix A. The dark grey areas show land over which rights only are to be acquired, whilst the light grey colouring indicates the land in respect of which the Council will seek to acquire the freehold (together with any leasehold interests and other rights). There have been no changes to the plan since it was reported in 2008.

5 Indemnity

- 5.1 The Development Agreement requires that the Developer and the Council enter into an Indemnity Agreement which sets out how the Developer will provide the funding needed to meet his obligations under the Agreement and which ensures that the Council is not avoidably exposed to financial risk. An Indemnity Agreement has been drawn up by the Council's external solicitors but not yet signed. It requires Henderson to reimburse the costs which the Council incurs in relation to the making of the CPO including the public inquiry as they fall due and to place funds for that purpose in advance in a third party account. If the CPO is upheld then the Indemnity sets out the mechanism for the acquisition of land which is the point at which large sums of money will become due as compensation. In simple terms Henderson is required to pay to the Council in advance the estimated amount of compensation payable to interested parties when they serve notice on the Council to acquire land. They must also pay for any compensation over and above this estimate which the Council becomes liable to pay when settled by the Tribunals Service. Henderson is also bound by the terms of the Section 106 agreement for the Silver Hill scheme which runs with

ownership of the Friarsgate Medical Centre site (the site is in the ownership of one of the Thornfield companies acquired by Henderson).

6 Milestones

- 6.1 If objections are made and sustained once the CPO has been made and published, the next milestone would be a public inquiry to consider these, and (if the Order is confirmed by the Secretary of State) the earliest date which vacant possession of the part of development site could be obtained would be approximately one year after the inquiry concludes.
- 6.2 Once the CPO has been confirmed, the development can go ahead provided the other pre-conditions within the Development Agreement have been satisfied or waived. These relate to, amongst other things, planning, affordable housing agreement with a registered social landlord, pre-letting, funding, financial viability, etc.
- 6.3 The indicative timetable for the project suggests that a start on site would take place in early 2013, with the development being completed by mid 2014.

7 Risk Management

- 7.1 Except as stated above, the risks to the Council arising from the CPO, Development Agreement and transactions with Henderson have been set out in previous reports to Cabinet. The indemnity agreement provides the Council with cover for the cost of fees and professional expenses incurred by the Council in connection with the CPO, which is comprehensive provided the Council continues to act in good faith. Were the scheme not to proceed, the Council would not have incurred a significant financial loss but would have to deal with the consequences of losing a substantial regeneration opportunity.
- 7.2 The international problems of finance and economic uncertainty have undoubtedly increased the risks to the scheme itself by making it more difficult to secure the necessary financial return and/or the debt finance which will be needed. If the scheme were to become non-viable, both the Council and Henderson would be able to terminate in accordance with the terms of the Development Agreement. The acquisition by Henderson provides some reassurance as regards the viability of the scheme at that point and a formal appraisal as required by the Development Agreement is being undertaken and an update will be provided at the meeting.

OTHER CONSIDERATIONS:

8 SUSTAINABLE COMMUNITY STRATEGY AND CHANGE PLANS (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 will be met by the indemnity arrangements the Council has with the developer. These costs can include officer time as well as the appointment of external professional advisors.

10 RISK MANAGEMENT IMPLICATIONS:

- 10.1 The potential risks to the City Council are primarily related to financial issues and the objective of seeking regeneration of the Silver Hill area.
- 10.2 In terms of financial risk, the arrangements are structured in a similar way to other development agreements of this nature, whereby the developer is required to meet the costs incurred by the Council in pursuing the development and complying with its obligations under the agreement.
- 10.3 In order to secure the regeneration objectives of the Council, the developer needs to be able to access the necessary funds to carry out the acquisition of the site and construction of the development. Henderson have sufficient funds at their disposal and are able to meet these requirements. This is not a guarantee that they will decide to so since all projects of this scale are subject to continual reappraisal in the light of commercial circumstances.

BACKGROUND DOCUMENTS:

None

APPENDIX:

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

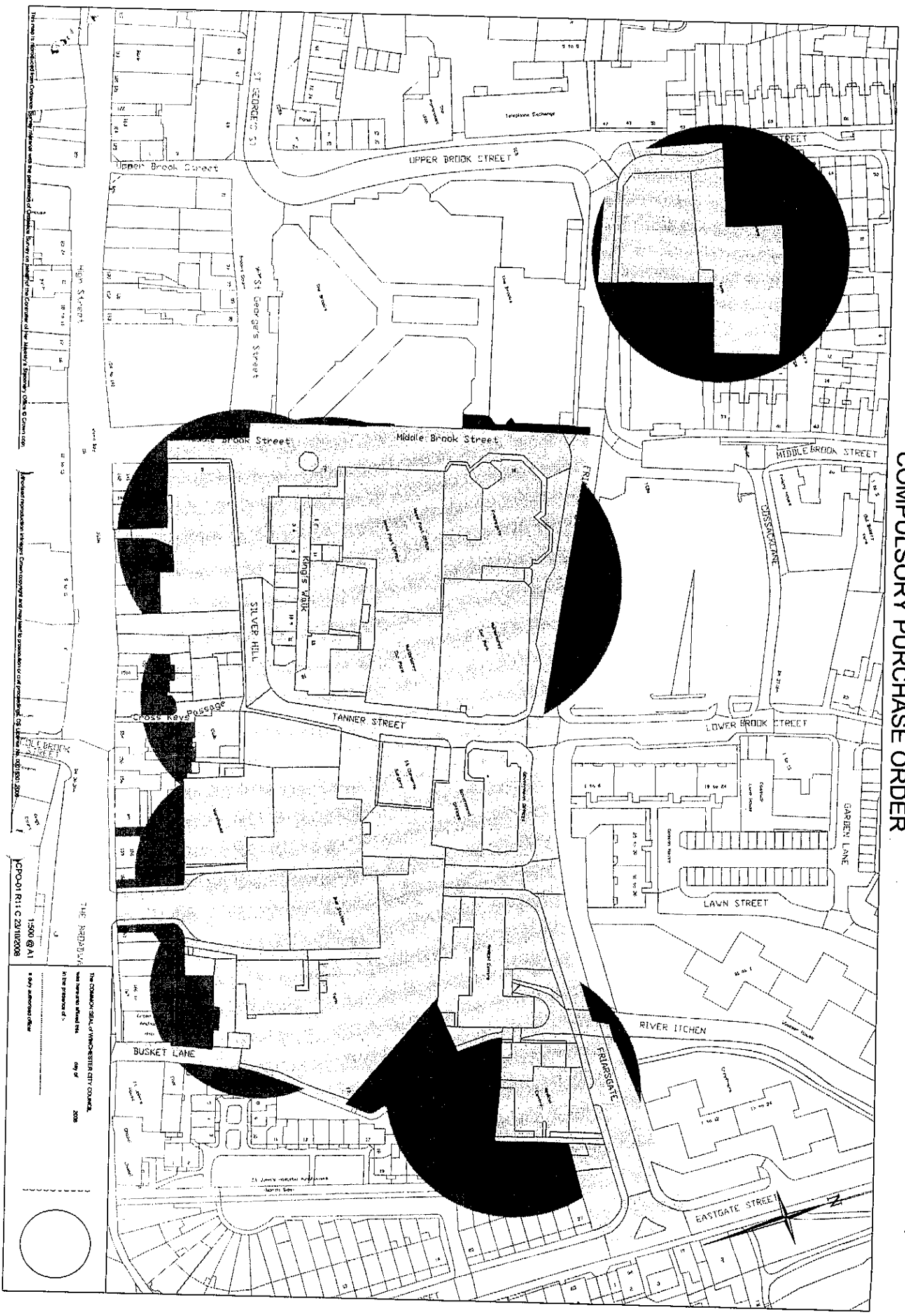
B – Silver Hill Development Estimated Timetable

Silver Hill Development – Estimated Timetable

November 2008	Planning Permission Issued
August 2011	Council makes the Compulsory Purchase Order [CPO]
September 2011	End of CPO objection period
Spring 2012	Compulsory Purchase Inquiry Date
October 2012	Secretary of State's Decision
November 2012	Unconditional date for Development Agreement
November 2012	Making of first General Vesting Declaration
Spring 2013	Taking possession of land and scheme commencement

PROPOSED COMPULSORY PURCHASE PLAN - WINCHESTER CITY COUNCIL (SILVER HILL WINCHESTER)
 COMPULSORY PURCHASE ORDER

APPENDIX 1 - CA62183



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 JCPD-01 R1 C 23/10/2008

THE COMMON SEAL OF WINCHESTER CITY COUNCIL
 was hereunto affixed this 23rd day of 2008
 At the presence of:
 a duly authorized officer

