
Key Decision

Cabinet – 13 December 2006

Joint Report of the Directors of Urban Environment and Law and Property

Dudley Area Development Framework: Cavendish Quarter Compulsory Purchase Powers

Purpose of Report

1. To consider extending the current resolution to use compulsory purchase powers to include premises in Hall Street and Trindle Road so as to facilitate the implementation of the Dudley Town Centre Area Development Framework (ADF) for the Cavendish Quarter and to authorise the acquisition of property and rights within the proposed Compulsory Purchase Order (CPO) by agreement.

Background

2. The Borough of Dudley revised Unitary Development Plan was adopted in October 2005 and the ADF has been adopted as Supplementary Planning Guidance. Cabinet resolved in September 2005 to use CPO powers to protect and assemble five of the nine Opportunity Areas identified in the ADF. At the meeting on 8 February 2006 Cabinet resolved to also use compulsory purchase powers to acquire Cavendish House, subject to obtaining funding from English Partnerships.
3. At its Executive meeting on 4 December 2006, English Partnerships will seek approval to proceed with the funding of the Cavendish Quarter project which will, if approved, deliver 130 new residential units, 840 square metres of commercial space and regenerate approximately 2 hectares of the Cavendish Quarter Opportunity Area. The result of this meeting will be reported to Cabinet on 13th December 2006.
4. In order to facilitate the proposed scheme the resolution to use compulsory purchase powers will need to be enlarged to include additional premises in Hall Street and Trindle Road, as shown on the plan at Appendix 1

Consultation

5. As part of the preparation of the ADF the idea of priority development sites or "Opportunity Areas" was proposed and widely supported by the public and key stakeholders. The Framework shows the proposed locations for the opportunity areas together with the range of recommended uses and type of development most suited to each of them. English Partnerships also undertook their own public consultation on brownfield sites in the ADF area and Cavendish House received the most nominations for action.

Need for Compulsory Purchase

6. In order to realise the overall vision for the town centre expounded in the ADF each Opportunity Area needs to be developed in a consistent and comprehensive manner. This will require the assembly of the sites into one ownership by means of agreement or, if necessary, compulsory purchase whether the sites are developed by the Council or a private developer. In the absence of any CPO there are likely to be planning applications made on parts of these sites which will frustrate the overall aims of the Council and there may be some “cherry picking” of key parcels of land by speculators. The implementation of the ADF is expected to be phased over 10 or 15 years and to avoid unnecessary blight within the town it is essential that a resolution to use CPO powers is only made where there is a prospect of early development. Negotiations will take place with all affected owners and occupiers as soon as approval is granted under this report with a view to acquiring all required interests by agreement. However, CPO powers are needed as a last resort if the negotiations fail to secure the whole of the site within the timescale required to ensure delivery of the project.

Finance

7. The passing of a resolution to use CPO powers does not in itself commit the Council to acquire premises or proceed to make the actual order. It is, however, a statutory event which permits the service on the Council of Blight Notices by owners of qualifying premises. If a Blight Notice is upheld then the Council will be forced to acquire the premises in advance of the scheme and the lack of funds is not a valid reason to refuse to accept a Blight Notice. Before making a resolution the Council will need to have a source of funding to cover any Blight Notices which may be expected. English Partnerships have offered to fund the acquisition and to cover any other costs incurred by the Council. Until English Partnerships have entered into an indemnity agreement with the Council there is a risk that Blight Notices may be served which will need to be financed by the Council. However, such risk is considered small and in order to progress quickly it is advisable to make a resolution now. If English Partnerships withdraw from the project then any existing resolution to use compulsory purchase powers can be withdrawn to stop any further Blight Notices being served.

Law

8. Section 226 (1) of the Town and Country Planning Act 1990 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 gives a local planning authority power to acquire compulsorily any land or acquire new rights in their area if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land, and if they think that the development, re-development or improvement is likely to contribute to the promotion or improvement of the economic, social and environmental well-being of their area.
9. Section 227 of the 1990 Act also confers specific but widely drawn powers on a local planning authority to purchase by agreement any land which is required for development or other planning purposes, as defined by section 226.

10. Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 provides for the creation of new rights to facilitate development or the acquisition of existing rights.
11. The Human Rights Act 1998 implements the European Convention on Human Rights where Article 1 of the First Protocol states:

“Article 1 Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. 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. The preceding provisions shall not, however, in any way 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 or to secure the payment of taxes or other contributions or penalties.”

It has been shown in various decided cases that UK compulsory purchase law is compatible with human rights legislation provided that the correct procedures are followed. The right of an individual to peaceful enjoyment of his possessions under that Article is a qualified, rather than an absolute, right and it involves a balancing exercise between the public interest and the individual's right whereby any interference with the individual's right must be necessary and proportionate.

Equality Impact

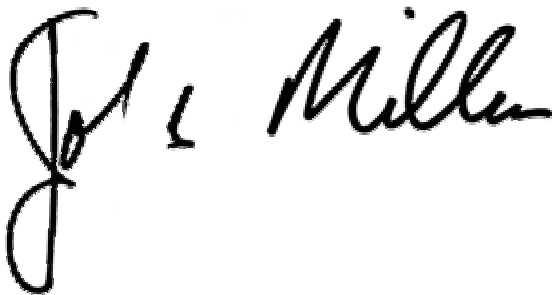
12. There will be no impact on equal opportunities or diversity as a result of the passing of the resolution to use CPO powers.

Recommendation

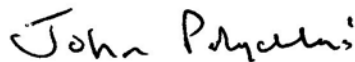
13. It is recommended that:-

1. Subject to English Partnerships or their development partner entering into a suitable indemnity agreement to cover any costs incurred, the Council makes a Compulsory Purchase Order(s) under Section 226 (1) (a) of the Town and Country Planning Act 1990 and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of the land shown on the Plan attached, or the acquisition of new rights, for the purpose of securing mixed use development including, office, residential, leisure, ancillary retail and car parking in accordance with the proposals more fully described in the Dudley Town Centre Area Development Framework.
2. The Director of Law and Property, in consultation with the Cabinet Member for Economic Regeneration, be authorised to: -
 - (i) take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order(s) including the publication and service of all notices and the presentation of the Council's case at any Public Inquiry;

- (ii) acquire interests in land and new rights within the compulsory purchase order(s) either by agreements or compulsorily; and
 - (iii) approve agreements with land owners setting out the terms for the withdrawal of objections to the Order, including where appropriate seeking exclusion of land or new rights from the Order and/or making arrangements for relocation of occupiers.
3. That the Director of Law and Property be authorised to negotiate and complete any undertakings with English Partnerships regarding costs and any required development agreement(s) prior to the making of any Order(s).



John Millar
Director of the Urban Environment

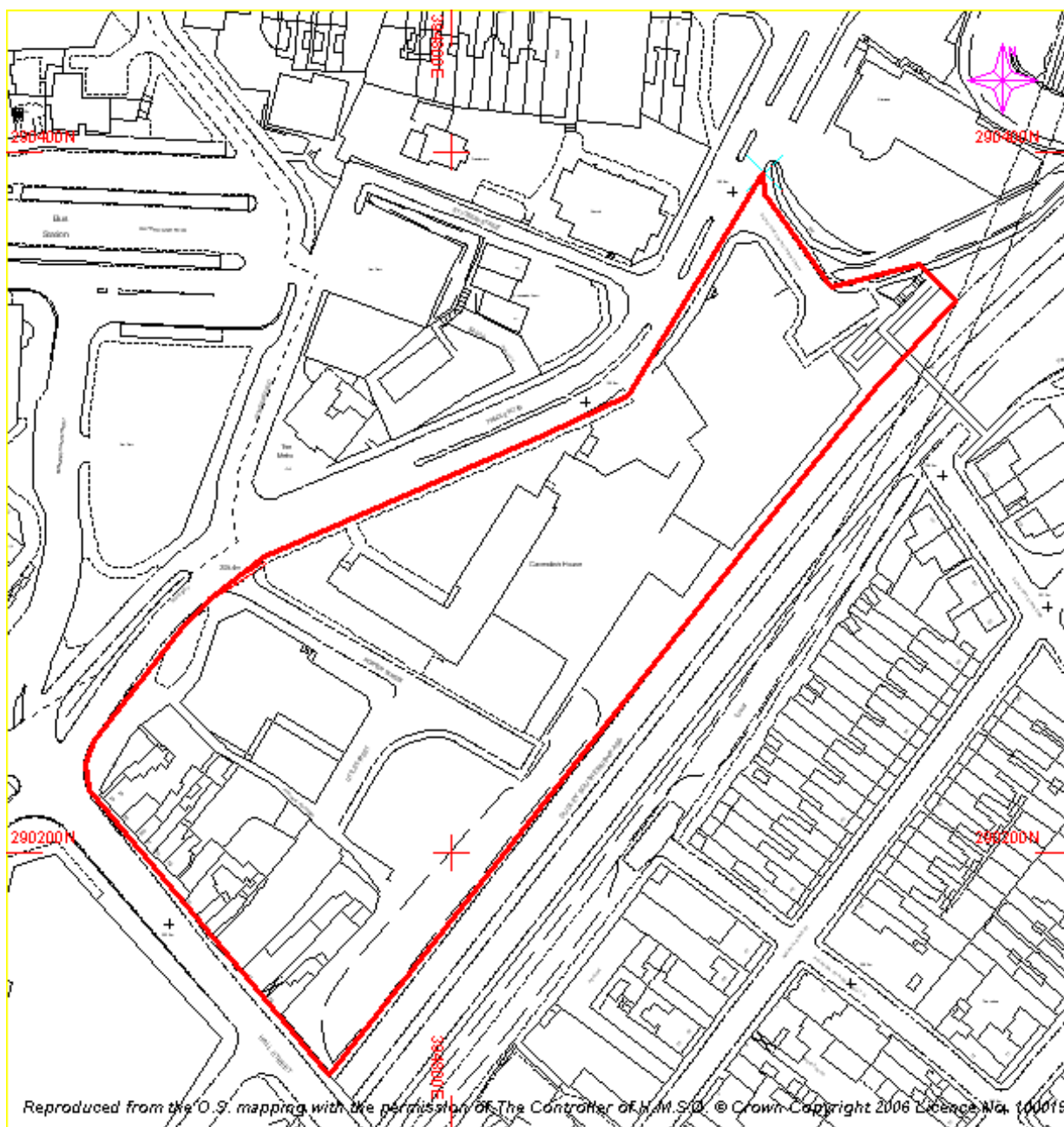



John Polychronakis
Director of Law and Property

List of Background Papers

Dudley Town Centre ADF

Decision of the Cabinet on 8 February 2006



Cavendish Quarter Draft CPO Plan	#	Corporate Estates Services Directorate Of Law and Property
Dudley Town Centre Area Development Framework	Scale: 1:2000	
	Date:	22 November 2006