

ITEM

ITEM

Executive – 8 October 2009

LANGAGE ENERGY PARK – RESOLUTION TO MAKE A COMPULSORY PURCHASE ORDER (CPO)

Report of the Strategic Director (Community), Head of Property Services and Head of Corporate Services

Statutory Powers: Planning and Compulsory Purchase Act 2004, Section 226 (1) (a) of the Town and Country Planning Act 1990, Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981.

Financial Implications: The costs of the Council associated with implementing the CPO and any land purchase compensation payments arising from the use of compulsory purchase powers, plus the costs of any public inquiries are to be paid for by the developer under the terms of the s106 planning agreement with the Council.

Purpose

To note the up to date position since the Council resolved to make a Compulsory Purchase Order (7 December 2006, minute E.82/06) and to reaffirm that officers should continue work under delegated powers to conclude the CPO.

RECOMMENDATIONS

That the Executive **RESOLVES:**

- a) To note efforts made by officers to enter into negotiations with the owners of the CPO land for its acquisition by agreement.
- b) To note the contents of the draft 'Statement of Reasons' and to authorise the Strategic Director (Community) to amend them to reflect the up to date position at the point of submission.
- c) To affirm that the delegated authority granted to the Head of Corporate Services, Head of Property Services and the Strategic Director (Community) to conclude the CPO.

Background

1. On 7 December 2006 the Executive (E.82/06) considered the need for and resolved to compulsorily purchase land required for the proposed Langage Energy Park. This decision was supported by a comprehensive report, which set out the justification for compulsory purchase (which Members may wish to refer to). At that meeting Members expressed a clear preference that officers seek a negotiated settlement with the landowner rather than using the formal CPO process. Langage Energy Park Limited ("the Developer") is a wholly owned subsidiary of Carlton Power Limited and entered into a planning agreement with the Council under s106 of the Town and Country Planning Act dated 23 December 1999. That agreement, which has since been up dated to reflect modifications that have arisen as the Energy Centre progressed through the planning process, provided, amongst other things, for the developer of the proposed energy park to seek to acquire by negotiation part of the allocated employment site, known as the phase 2B land (see appendix B, for identification purposes only), from the existing owners. The agreement further provided that, if negotiations failed, then the Council would consider using compulsory purchase powers to acquire the phase 2B land.
2. Officers made contact with the land owners in March 2007 to open a dialogue in respect of acquiring the land. An agent was appointed to represent the land owners in December 2007 but officers have not been able to effectively engage with the agent on the subject of terms for the acquisition of the land despite many attempts to find a way forward. In March 2009 the agent met with the local MP, the leader and key senior officers and indicated that there was little prospect of a negotiated settlement being achieved. Since that meeting officers have facilitated further action to promote positive discussions but progress has not been made. It is concluded that the Council has no option but to now proceed with compulsory purchase.
3. The CPO land is required for the purposes of facilitating the employment park at Langage under the statutes as originally envisaged and set out in the paper to Executive on 7th December 2006. The objectives to support CPO action have not changed since the last report. The pursuit of this CPO is in accordance with the Council's policy on Compulsory Purchase.

Statement of Reasons

4. The compulsory purchase process requires that a 'statement of reasons' be prepared to set out the justification for making a CPO. The 'Statement of Reasons' for the purchase by compulsion of the land at Ley Farm has been drafted and sets out the justification for the land and the appropriate planning policies which provide the context for this action. The draft 'Statement of Reasons' is included at Appendix A and is available in electronic form as an attachment to the agenda on the Council's website. A paper version has not been provided with the agenda as the document is lengthy and provision of an e version reduces the Council's carbon footprint. The document will be finalised by officers upon confirmation from the Executive that the delegated authority to conclude the CPO be continued.

Development Agreement

5. Heads of terms have been prepared and presented to the Langage Energy Park Limited on the proposed development agreement which will ensure that the land acquired under a CPO will be used for the purpose of employment. Parallel discussions regarding a comparable agreement are being held with the Regional Development Agency, which is in discussions with the Council and the developer about possible joint action, to enable the provision of a high quality sustainable development across the wider strategic employment site despite the current economic situation.

Timing of CPO / Market Conditions

6. It had been envisaged that the CPO land would be acquired by 2008. In accordance with delegated powers granted under resolution (minute E82.06) officers have made attempts to enter into negotiation with the landowners via their agent before pursuing the CPO so as to minimise any pressure and strain on the owners. These negotiations have not been successful and have meant that there has been a delay in pursuing the CPO. Additionally, the turn down in the economic climate for employment development over the last two years has contributed to the delay in progress of the overall development. To date key infrastructure to support the first phase of employment development has been achieved as part of the Section 106 relating to the Energy Centre. The site now also contains a range of potential development platforms and strategic planting around key boundaries has taken place. Regular discussions are also taking place among key partners to ensure that this strategic employment opportunity is available for development as the economy recovers.

Risks and Opportunities

7. The following are the significant financial risks and opportunities identified:

Opportunity	Issues/Obstacles	Benefits/Mitigation
<p>The Council can, through the terms of the 'Development Agreement' retain the ownership of land acquired under a Compulsory Purchase Order (CPO) until it has recovered the costs from the developer. As a result, the value would remain in the land and the Council would have the choice at that stage to either dispose of the land to a third party for the purposes of carrying out the development or to undertake it itself or in partnership with a developer.</p>	<p>The Council's financial exposure as a result of making and obtaining confirmation of a Compulsory Purchase Order (CPO).</p>	<p>The risk has been minimised under the terms of the s106 Agreement whereby, following a resolution to use CPO powers, all costs and compulsory purchase compensation incurred are to be paid by the Developer.</p>
<p>The Council can reasonably take the view, for the reasons set out in this and earlier reports, that it considers that any interference with convention rights is justified in order to secure the economic, environmental and social benefits that the development will bring. Appropriate compensation will be available to those entitled to claim it under the relevant statutory provisions. Consequently, if the Order is confirmed, it would strike an</p>	<p>Failure to consider human rights</p>	<p>The rights of owners of interests in the Order land under the Human Rights Act 1998, in particular the rights contained in Article 6, Article 8 and Article 1 of the First Protocol, need to be taken into account by the Council when considering whether to make the Order and when considering the extent of the interests to be comprised in the Order. Any objections to the Order will be considered by an independent inspector at a public inquiry. It is necessary, having</p>

<p>appropriate balance between public and private interests such that there is no breach of any human rights.</p>		<p>regard to the Human Rights Act 1998 and in particular the specific rights referred to in paragraph 8.1, to take into account the interference with private property rights protected by the European Convention on Human Rights and ensure that the interference is proportionate and in the public interest. In this context, the Council must carefully consider the balance to be struck between individual rights and the wider public interest.</p>
<p>The Council may use its statutory powers to pursue its priorities.</p>	<p>Incorrect use of complex procedures and introducing a new area of policy implementation for this Council.</p>	<p>The CPO complies with the Council's adopted CPO policy. External legal advice has been used to ensure appropriate procedures are followed.</p>
<p>The CPO process is a last resort which hopefully acts as a catalyst for negotiation.</p>	<p>Impact on Council's reputation of using CPO to secure land for employment.</p>	<p>The proposals for Langage have been progressed through various planning processes, including policy development and planning applications, which in combination have included consultation with a wide range of stakeholders.</p>

Conclusion

8. Having taken into account all of the considerations set out in this and earlier reports, it is recommended to Members that they make the necessary resolutions as set out above to enable the CPO to continue to be promoted, given that the contents of the draft 'Statement of Reason' reaffirms the compelling case in the public interest to secure the development of the Langage Energy Park. It is also important to note that having resolved to make the CPO at this stage, the Council retains the right not to progress the CPO up to the point of serving the Notice to Treat and/or the Notice of Entry (or the General Vesting Declaration).

James Stubbs
Head of Property Services

Executive
8 October 2009

Delyth Jenkins-Evans
Head of Corporate Services

Alan Robinson
Strategic Director (Community)

Background Documents:

Executive – 7th December 2006 LANGAGE ENERGY PARK – RESOLUTION
TO MAKE A COMPULSORY PURCHASE ORDER (Min E82.06)
Langage Energy Centre and Energy Park Planning Application Files