

CHESHIRE EAST COUNCIL

CABINET

Date of Meeting: 7 January 2013

Report of: Head of Development

Subject/Title: Crewe Railway Exchange (CRE) Site Assembly and Land in Unknown Ownership

Portfolio Holder: Cllr Jamie Macrae - Prosperity and Economic Regeneration and Cllr Rod Menlove - Environment.

1.0 Report Summary

- 1.1 The purpose of this report is to seek authority to pursue a Compulsory Purchase Order (CPO) under the Town and Country Planning Act 1990 in order to acquire land to the south west of Weston Road in Crewe and so facilitate the development of part of the former Royal Mail depot and surrounding highway land as a rail exchange (commonly referred to as Crewe Rail Exchange (CRE)) as described later in this Report and its inclusion in a lease between the Council and Network Rail (NR) and to secure remaining funding from the Department for Transport (DfT) to deliver the planned improvements for rail passengers at Crewe Station.
- 1.2 A report was received by Cabinet on 6 February 2012 and approvals were given to enable the delivery of this key Council initiative following the award of funding by the DfT and NR from the Station Commercial Project Facility (SCPF). The scheme includes a surface grade car park, taxi rank and an improved subway access serving Crewe Station.
- 1.3 A condition was attached to the award of SCPF funding that on completion of the CRE it will be leased to NR on a 99 year term at a peppercorn rate. The majority of the site is owned by the Council and registered in its name at the Land Registry and can therefore be leased to NR. However, the Council cannot satisfy itself or demonstrate to NR that it owns the subsoil under the current highway edged purple on attached plan and the ownership of that subsoil remains unknown, despite extensive research and enquiry. If this highway land (CPO Land) is acquired by the use of compulsory purchase powers (by CPO) and the highway is then stopped up, the Council will be able to register its ownership of the CPO Land at the Land Registry and to lease the CRE site to NR.

2.0 Decision Requested

- 2.1 That, taking into account the human rights and equality factors set out in this report, approval be granted to the use of compulsory purchase powers under section 226(1)(a) of the Town and Country Planning Act 1990 to undertake the acquisition of the current highway land and subsoil under that highway and any rights that may exist in relation to that land as shown edged in purple on the plan attached to this Report and, if approved by the Interim Chief Executive under his delegated authority and NR consent to this, part or the whole of the adjoining NR premises (Weston House) shown edged green on that plan.
- 2.2 That the Interim Chief Executive be authorised;
 - 2.2.1 to take all necessary steps to secure the making and confirmation of the CPO (including delegated authority to make minor changes to the CPO), and to decide to include part or the whole of Weston House in the CPO if NR consent to this, including the publication and service of all relevant notices and the presentation of the Council's case at any public inquiry; and
 - 2.2.2 to approve and enter into agreements for the acquisition of legal interests in the (CPO Land) and undertakings with any objectors to the CPO setting out the terms for the withdrawal of objections to the CPO; and
 - 2.2.3 In the event that the question of compensation be referred to the Upper Tribunal (Lands Chamber) to take all necessary steps in relation thereto including approving any compensation settlement by agreement; and
 - 2.2.4 To take all necessary steps to secure title and possession of the CPO land including payments of compensation into court; and
 - 2.2.5 In consultation with the Portfolio Holders for Prosperity and Economic Regeneration and Environment, to take all necessary steps to implement the confirmed CPO including through the service of notices to treat and notices of entry and/or through the making and serving of a general vesting declaration; and
 - 2.2.6 To appropriate for planning purposes all the land currently in the Council's ownership (shown edged red on the attached plan) pursuant to section 122 of the Local Government Act 1972 and section 237 of the Town and Country Planning Act 1990; and
 - 2.2.7 To explore the potential to insure against the risk of the CPO Land not being capable of being vested in the Council either due to the failure of the CPO process, or due to a third party claiming ownership of the CPO Land or part of it with cover including actual loss of the monies expended in relation to the CRE project and works undertaken and if insurance is necessary and a policy acceptable to the Interim Chief Executive is offered on sound commercial terms to accept such insurance and
 - 2.2.8 To appoint appropriate consultants if necessary to assist and advise in regard to the above.

3.0 Reasons for Recommendations

- 3.1 From our investigations it does not appear possible to leave the CPO Land as highway to permit its use as envisaged by the current design plans for the CRE. As such, stopping up of the highway on the CPO Land and the adjacent highway verge is intended and would happen after the CPO is implemented and the CPO Land vested in the Council. Stopping up of the highway and highway verge was authorised by Cabinet on 6th February 2012. The Council would then be able to register its ownership of the CPO Land at the Land Registry and to lease it to NR.
- 3.2 Delivery of the CRE project will significantly enhance the role of Crewe Station as a major transport interchange on the national rail network and is a key infrastructure priority for the Council. This project will deliver a critical first step towards the Council's ultimate plans for Crewe Station and act as a catalyst for economic regeneration and improved transport in the area – a key driver of the Council's 'All Change for Crewe' programme.

4.0 Wards Affected

- 4.1 The existing Crewe Station lies within Crewe South and the CRE project site lies within the Crewe East. The enhanced facilities will benefit Wards from across large areas of the Borough.

5.0 Local Ward Members

- 5.1 Crewe East: Cllr Margaret Martin, Cllr David Newton, Cllr Chris Thorley
Crewe South: Cllr Dorothy Flude, Cllr Steve Hogben.

6.0 Policy Implications including - Carbon reduction - Health

- 6.1 The completion of CRE will encourage greater use of public transport by providing improved pedestrian access around the station, enhanced taxi and pick up/drop off facilities and increased station parking.
- 6.2 The increased patronage anticipated with the improvements at Crewe Station will contribute towards reduced carbon from transport use benefiting climate change.
- 6.3 The completion of CRE is also a fundamental part of delivering the Council's 'All Change for Crewe' strategy, which aims to increase prosperity in the Crewe area, a component which will help to improve the health of the local population.

7.0 Financial Implications (Authorised by the Borough Treasurer)

- 7.1 The estimated costs of undertaking the CPO process, assuming there are no objectors and therefore no public inquiry, are up to £20,000. If there are objections and a public inquiry, then costs will increase, potentially by a further £10,000 - £20,000 in fees and £15,000 for Counsel (assuming a Manchester based barrister is utilised). The reason for the range of costs is that it is uncertain how many objections there would be, how detailed the objections

may be, or whether the matter could be dealt with by written representations or whether there will be a public inquiry.

- 7.2 These figures do not include the costs of any references to the Lands Tribunal (which would only be necessary in respect of compensation which cannot be agreed with anyone who proves ownership to the land). If the CPO is successful and the lease is granted to NR these costs would be recoverable under the SCPF, however if the lease is not granted the Council will be required to meet these costs as scheme promoter.
- 7.3 As ownership of the CPO Land is unknown the Council may have to pay the applicable statutory CPO compensation into court in order that if anyone proves ownership they can claim from the compensation available. If no one claims the deposited monies they would be repaid to the Council. Property Services will separately advise on an appropriate amount of compensation.
- 7.4 The costs for preparation of the CPO in the 2012/13 financial year can be met through the LTP resources already approved for this scheme. An allocation for professional fees was included in the funding package submitted to the DfT which was approved in principle in November 2011. However, should the Final Funding Release Approval application be unsuccessful the Council would be liable for meeting any sunk costs from its own revenue funding.
- 7.5 The intention is that the risk of the CPO being unsuccessful or the risk of a third party claiming ownership of the CPO Land or part of it will be covered by a policy of title insurance and officers are exploring whether an insurance policy is available on acceptable commercial terms. To date one insurance offer has been made subject to conditions and exclusions which are under consideration and the premium quoted is £50,880. Further quotes will be sought. If the CPO is successful and the lease is granted to NR the premium would be recoverable under the SCPF, however if the lease is not granted the Council will be required to meet this cost.
- 7.6 The actual costs for the CPO and any land acquisition / compensation costs will be included in the overall final funding application for CRE from the DfT.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 In making a CPO, the Council should use the most appropriate and specific power available. In this case that is the power given by section 226(1)(A) of the Town and Country Planning act 1990 as referred to in 10.7 and 10.8.
- 8.2 In deciding whether to approve the making of a CPO the Council:
 - (i) must conclude that there is a compelling case in the public interest in acquiring the Land. It is considered that the significant benefits of the CRE scheme (which the CPO would enable) outweigh the compulsory nature of a CPO and the fact that the unknown owners of the CPO Land (if any) will be deprived of their ownership of it (subject to the payment of compensation).

- (ii) will also need to be satisfied that funding is available, or likely to be available, to carry out the development. It is considered that such funding is or will be available, as reported previously and in this report.
- (iii) will need to be assured that there are no planning, financial, legal, physical or other impediments which might block or delay the scheme. In this case the scheme has planning permission, SCPF monies have been awarded and recent surveys and assessments have been made. There is no longer a concern that the CPO Land could belong to the Duchy and therefore be 'immune' from CPO as Crown land. The Council is not aware of any impediments to the scheme progressing including, after its completion, the lease being granted and the CRE opened for use, other than the requirement for the highway land to be stopped up. It is considered that the case for a stopping up of the highway land is strong (for similar reasons to the CPO, as well as considering the applicable statutory tests for stopping up), and therefore whilst there is a further 'consent' which must be obtained, it is considered that the stopping up is likely to be confirmed. Officers will consider the most appropriate point to seek the stopping up (which may be alongside or after the CPO is made), considering likely timescales for the two orders and for the project overall.

8.3 The CPO will also be subject to the provisions of the Compulsory Purchase Act 1965, the Local Government (Miscellaneous Provisions) Act 1976 and the Acquisition of Land Act 1981. These relate to procedure, acquisition of certain new rights and compensation and the Council will comply with their terms so far as applicable.

8.4 Generally in CPO cases acquisition by negotiation should be attempted – CPO should then only be used as a 'last resort'. Here, however, despite extensive research and enquiries, no person with ownership of the CPO Land is identifiable and therefore negotiation is not possible. It is therefore appropriate for the Council to seek to use CPO. The Council will follow statutory procedures requiring advertisement of the CPO – this is designed to ensure that claimants of ownership of the CPO Land (or those with rights over it) are aware of the CPO and can make representations in relation to it if they wish. As noted above, if no owners come forward then the Council may have to pay the applicable statutory CPO compensation into court. Anyone then proving ownership can claim from the compensation available. If no one claims it within a set period (generally 12 years), it is repaid to the Council.

9.0 Risk Management Including Human Rights and the Equality Act

9.1 In resolving to make a CPO (and the other decisions set out in the recommendation) the Council must consider the Human Rights Act and the European Convention on Human Rights which the Act incorporated. Article 1 of Protocol 1 protects the rights of everyone to the peaceful enjoyment of their possessions and Article 6 provides the right to a fair trial. No person can be deprived of his possessions except in the public interest and subject to the conditions provided for by relevant national and international laws. It is qualified to the effect that it should not in any way impair the right of a state to enforce

such laws as it deems necessary to control the uses of property in accordance with the general interest.

- 9.2 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation payable to affected persons is relevant in assessing whether a fair balance has been struck.
- 9.3 Therefore, in deciding whether to proceed with the recommendations, the Council needs to consider the extent to which the decision may impact upon the Human Rights of the landowners and to balance these against the overall benefits to the community, which the CRE will bring. Members will wish to be satisfied that interference with the rights is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.
- 9.4 In the event that the CPO was to be challenged by way of objection, this would result in a public inquiry taking place, that process (and the ability for the interested parties to potentially challenge through the courts the Secretary of State's confirmation of any CPO) provides a method through which a person's right to a fair trial is protected.
- 9.5 The Council must also consider its duties under the Equality Act in taking the recommended decisions – officers do not consider that the decisions or their implications will have any negative impact on any particular group or groups of people. The CRE (which will result from successfully implementing the decisions which will enable the scheme to proceed) may in fact improve the facilities and access to them, for instance through easier pedestrian and taxi/car access to the station, improving access to important public facilities for all.
- 9.6 Despite optimism that the CPO process can be completed before the programmed CRE opening date there is a risk that there will be objectors to a CPO, resulting in a delayed decision. It is also possible that the Secretary of State will decline to confirm the CPO, although Pinsent Masons consider that risk low. In the event of an unsuccessful CPO the Council will retain the land as adopted highway and not proceed with the order for stopping up of the highway on the CPO Land (but would stop up the highway verge) . Changes to the CRE layout (refer to attached plan ref 47050521- PLAN 2 REV A) are most likely to be required to provide all facilities in this circumstance.
- 9.7 The Council can notify the Secretary of State that it is no longer wishes to use its CPO powers in respect of any interest and request the Secretary of State not to confirm the CPO over those interests at any time if any negotiations are successful or if the Council considers the financial risks to be too great or if an alternative layout would provide greater overall benefit. The Council can also choose not to implement the CPO if confirmed – compensation to owners (or

paid into court) only arises if the CPO is implemented. The recommendation therefore provides for implementation of the CPO to be carried out in consultation with the relevant councillors.

- 9.8 CEC and NR own all frontage land at this location and therefore it is considered to be a low likelihood for any claim of ownership to come forward.

10.0 Background and Options

- 10.1 The CRE scheme will include a surface grade car park, taxi rank and an improved subway access serving Crewe Station and has been developed following the award of funding from the SCPF through the DfT and NR.
- 10.2 One of the conditions attached to the award of SCPF funding is that on completion of the CRE it will be leased to NR. The majority of the site is owned by the Council and registered in its name at the Land Registry and can therefore be leased to NR.
- 10.3 Considerable research and enquiry has been undertaken by the Council to satisfy itself or demonstrate to NR that it owns the subsoil under the current highway edged purple] on the attached plan(the CPO Land) .
- 10.4 Crewe Corporation bought significant land in the vicinity of Crewe railway station from the Duchy of Lancaster in 1938. Included in the conveyance was the highway verge which will form part of the CRE site. When the Council applied this year to register its ownership of the highway verge at the Land Registry it also applied to register title to the road on the basis that the 1938 conveyance could be interpreted as including that road. The Land Registry would not accept that interpretation and declined to register the road in the Council's title. The Land Registry's stance was later shown to be justified as the Duchy of Lancaster has since confirmed that it did not itself ever acquire the road and, so, could not have transferred it to the Corporation.
- 10.5 The Council then tried to persuade the Land Registry to register title to the road on the basis either that the Council has "owned" and maintained the road for many years or that the principle of "ad medium filum" should apply meaning that the frontagers to the road should own the half of it to which they front. The Land Registry has advised that its current practice is to exclude roads from registered titles, except in exceptional circumstances, and that no application will be entertained for registration of this road unless and until it is stopped up. This has been seen elsewhere to be the Land Registry's current standard response.
- 10.6 As a result of the research undertaken it has been concluded that the ownership of the CPO Land is unknown. As the Duchy estate does not have an interest in the CPO Land all, if any, third party interests in the CPO Land are capable of being acquired by the Council under to a CPO.
- 10.7 The Council has the requisite powers to effect this CPO under S226 of the Town and Country Planning Act 1990 (as amended) which allows a local

authority, on being authorised by the Secretary of State, to acquire compulsorily any land in their area:

- a) if the authority think that the acquisition will facilitate the carrying out of development redevelopment or improvement on or in relation to the land,
- b) which is required for a purpose which it is necessary to achieve in the interests of the planning of an area in which the land is situated.

10.8 It is considered that the acquisition of the CPO Land will enable the CRE to be brought forward, which comes within a) above as a redevelopment and improvement to the CPO Land (along with surrounding land). In addition, section 226(1A) requires that a local authority must not exercise a power under a) above unless it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives –

- a) the promotion or improvement of the economic well-being of the area;
- b) the promotion or improvement of the social well-being of the area
- c) the promotion or improvement of the environmental well-being of the area.

10.9 The CRE site at present adds little to the surroundings, and is not used well and does not function efficiently as a space alongside Crewe rail station. Part of the CRE site is old rail / Royal Mail related buildings, which have little architectural merit and are not currently in beneficial use. The benefits that the CRE will bring about, and which are relevant to the Council's considerations of the economic, social and environmental well-being of the area include:

- (a) Accessibility is a key aspect of building sustainable communities and the CRE development seeks to improve access to Crewe station by providing an improved public realm and additional car parking (total of 245 spaces) close to the station thereby encouraging increased use of rail as a journey choice;
- (b) As noted above, the buildings on the site are in a poor state of repair, and are of limited architectural merit. These buildings are to be demolished as part of CRE and replaced by the development proposals, which have been worked up with the aim of improving access to and the attractiveness of travelling to/from the station;
- (c) The accessibility of the station will be improved specifically for:
 - (i) cyclists through the provision of secure cycle facilities and the re-opening of the subway and improvements to it;
 - (ii) pedestrians through the re-opening and improvement of the subway; and

- (iii) people with disabilities will be specifically improved, with assigned parking spaces in appropriate places close to the station entrance;
- (d) The proposals have been designed to ensure that the use, height, massing and scale of the station access and commercial building aspects of it fit with and will improve the local street scene. Whilst some trees are to be removed in order to build the scheme, the planning permission secures an approved landscaping plan which will provide for appropriate landscaping of the site.

10.10 In addition, it is relevant for the Council to consider planning policy support for the CRE project. As noted, planning permission has been granted already (in full for the car park etc, and in outline in respect of the commercial building).

- (a) The National Planning Policy Framework (NPPF) is the current national level planning policy. The CRE is considered to be in accordance with a number of the key planks of the NPPF, including the promotion of sustainable transport (which includes rail) and making the fullest possible use of public transport, and the re-use of previously developed (brownfield) land.
- (b) North West of England Plan - the Government is committed to abolishing all regional plans, but as yet has not implemented the legislation allowing it to do so. The Plan therefore remains in place, albeit with reduced weight attached to it in view of the Government's stance. The Plan includes policies supporting developments which will generate economic growth (such as DP1), the use of previously developed land (DP4) and those in support of public transport and its increased use and accessibility (DP5 and RT2).
- (c) The new Cheshire East Local Plan is not yet in place, and therefore the saved elements of the previous plans are relevant. The Crewe and Nantwich Replacement Local Plan contains a number of policies which support in general terms the CRE project, such as those relating to amenity and design (BE1 and BE2), access (BE3) and public transport (TRAN1).
- (d) The Local Plan also includes a specific policy (TRAN7) which specifically supports a modernisation scheme at Crewe rail station to improve access for a variety of users, as well as supporting other improvements to the station and its surroundings. The supporting text notes the stations' "gateway to the North West" role and that it is a "vital interchange for rail users".
- (e) The CRE project is also supported by a number of other policies such as TRANS3 – 5 which require development proposals to provide for pedestrians, those with disabilities and cyclists respectively.

- (f) Although not part of the development plan, the Crewe Rail Gateway Supplementary Planning Document (SPD) is also relevant. The SPD builds on TRAN7 (and other policies in the Local Plan), guiding development in the SPD area. The CRE, which is part of the Core Station Sub Area in the SPD, will ensure that crucial elements of the SPD's requirements for the Sub Area are brought forward.
- 10.11 CPO processes can be extremely lengthy. However, our retained external legal advisers, Pinsent Masons, advise that if there are no objections to the CPO and the Secretary of State either confirms the CPO quickly (or permits the Council to confirm its own CPO) or if there are only statutory objectors and they consent to the CPO being dealt with by way of written representations rather than a public inquiry, the process could take between four and six months from the making of the CPO. In this regard, the current programme demonstrates that the Council must commence proceedings immediately to enable lease grant and scheme opening in November 2013. If a public inquiry is necessary, then the timescales for a CPO are considerably longer – likely to be over 12 months from when it is made.
- 10.12 It is also important to start the CPO process early to give the SCPF Panel and NR confidence that the SCPF funding conditions can be met and the CRE can be laid out and operated in accordance with the design proposals which have planning approval.
- 10.13 If the Land is acquired by CPO and the highway is then stopped up, the Council will be able to register its ownership of the Land at the Land Registry and to lease it to NR.
- 10.14 Once Network Rail has a lease of the CRE it will grant an under lease to Virgin Trains (VT), the West Coast Line Franchisee.
- 10.15 VT has informed the DfT in its Station Change that part of the NR premises adjoining the Land (Weston House) will be within its underlease. It may be possible for the Station Change plans to be modified so as to exclude the Weston House land. If not, it may be beneficial to include this land in the CPO so that it vests in the Council and can be let to NR and then underlet to VT, not least because there are doubts as to whether NR will be able to produce paper evidence of title to that land.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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