

The proposed Compulsory Purchase of 16 Branwhite Close and the Gainsborough Public House, Lockleaze

Appendix A (iii) CPO Statutory Powers and Structure of the Arrangements

Gainsborough Pub

Acquisition by the Compulsory Purchase of the Gainsborough Pub is necessary to “*facilitate the carrying out of development, re-development or improvement on or in relation to the land*” as required under s226(1)(a)(i) as it will (i) enable the development of several new dwellings on the Branwhite Development Site, (ii) facilitate the creation of a new pedestrian through route between the Branwhite Development Site and Gainsborough Square thus improving permeability of the area (iii) create new publicly ‘active’ street frontages to Gainsborough Square and enhanced the public realm.

The Council has to be satisfied that the use of the powers in Section 226 will promote and improve the economic and social well-being of the area. It is considered that this will be achieved since the Branwhite Development Site will be redeveloped to provide additional housing in the area, improve permeability in the area and access to the facilities in Gainsborough Square and improve access to Gainsborough Square from the north.

Semi-detached House, 16 Branwhite Close

Acquisition by the Compulsory Purchase of the 16 Branwhite Close is necessary to “*facilitate the carrying out of development, re-development or improvement on or in relation to the land*” as required under s226(1)(a)(i) as it will enable the optimal development of that part of the Branwhite Development Site.

Planning Permission-Deliverability

It is noted that the proposed development scheme for the Branwhite Development Site does not currently benefit from planning permission but it is anticipated that a planning permission could be obtained to develop the Branwhite Development Site as the site is a former housing site and is included in Draft Policy DS13: Lockleaze of the Bristol Local Plan Review.

Relevant Council Powers and Reliance on Compulsory Acquisition

Section 226(1)(a) of the Town and Country Planning Act 1990 empowers the Council, on being authorised by the Secretary of State, to acquire compulsorily land in its area if it thinks that the acquisition will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land. The Council must not use this power unless it also thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:

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

Where the Council is acquiring land compulsorily under section 226(1), section 226(3)(a) empowers the Council, on being authorised by the Secretary of State, to acquire compulsorily any land adjoining that land which is required for the purpose of executing works for facilitating the development or use of that land.

Section 227 of the Town and Country Planning Act 1990 provides an equivalent power for the Council to acquire land (including rights over land) by agreement (as opposed to compulsorily) for the planning purposes described above.

It is proposed that, if possible, land should be acquired by agreement to facilitate the Scheme. If an Order is made, efforts to acquire by agreement will continue in tandem with pursuing compulsory powers. The CPO Circular makes clear that compulsory purchase is intended as a last resort in the event that efforts to acquire by agreement fail. However, the CPO Circular also acknowledges that local authorities will need to consider when the land to be acquired will be needed and should plan a compulsory purchase timetable at the same time as conducting negotiations. The CPO Circular recognises that, given the amount of time needed to complete the statutory procedures, it may often be sensible to initiate compulsory purchase in parallel with such negotiation (paragraph 24 of the CPO Circular).

Outline of the Compulsory Purchase Process

The procedures for compulsory purchase under planning powers are mainly governed by the Acquisition of Land Act 1981, the Compulsory Purchase (Vesting Declarations) Act 1981 and the Compulsory Purchase Act 1965. Compensation for affected parties is governed by a number of statutes including, in particular, the Land Compensation Acts 1961 and 1973, the Compulsory Purchase Act 1965 and a considerable body of case law.

In outline, if Members resolve to make an Order the main steps which will be taken include:

1. Making the Order
2. Notification of persons affected and publicity for the making of the Order and the Council's intention to submit it to the Secretary of State for confirmation
3. Submission of the Order to the Secretary of State
4. Objections
5. Public local inquiry
6. Inspector's report to the Secretary of State
7. Secretary of State's decision on confirmation
8. Notification and publicity for the Secretary of State's decision Six week challenge period
9. Acquiring /taking possession of the Order Land (if Order confirmed)
10. Compensation (if Order confirmed).

Throughout all these steps, reasonable efforts to acquire land and rights by agreement would continue.

The Order will include a schedule listing all owners, lessees, tenants and occupiers and others who are likely to have a claim for compensation if compulsory purchase takes place. These affected parties are known as "qualifying persons" and they must all receive the statutory notice at step 2 above. In addition they will be provided with a (non-statutory) "Statement of Reasons" for making the Order. The statutory notices will invite them to make representations/objections to the Secretary of State within a specified period of at least 21 days (step 4).

If valid objections to the Order are made to the Secretary of State by qualifying persons and they are not withdrawn he is likely to arrange for a public local inquiry to be held and the Council and all objectors will be notified (objections which relate exclusively to compensation may be disregarded for this purpose). The date of the Secretary of State's notification is known as the "relevant date". The public local inquiry would normally take place within 8 weeks of the conclusion of the pre-inquiry meeting. The Council will be required to provide the Planning Inspectorate and National Planning Casework Unit and all objectors with an outline Statement of Case within 8 weeks after the relevant date, followed by a Statement of Case within 4 weeks after the conclusion of the pre-inquiry meeting.

The Secretary of State may require other parties to prepare outline and full Statements of Case.

After the inquiry the inspector will report to the Secretary of State who will decide whether the Order should be confirmed, modified or rejected (step 7). If the Order is confirmed the Council must publish notice of confirmation and give individual notices to all qualifying persons with a copy of the Order as confirmed (step 8). The date on which notice of confirmation is first published is important as a number of key time limits run from this date, in particular, the 6 week statutory challenge period (step 9) and the three year period within which the powers to acquire land under the Order must be "exercised", either by serving notice to treat or by executing a general vesting declaration (step 10).

So far as possible, all claims for compensation will be settled by agreement. Rights to compensation include not only the value of land taken (and the diminution in value of land adversely affected but not acquired), but claims in respect of disturbance to business, and basic loss and occupier loss (in respect of non-residential properties). Disputes over compensation are determined by the Upper Tribunal (Lands Chamber).

The CPO Circular (at paragraph 28) notes that compulsory purchase proposals inevitably lead to a period of uncertainty and anxiety for owners and occupiers of the affected land. It is essential that, if the Council resolves to make an Order, the Council keeps any delay to a minimum and completes the statutory processes as quickly as possible.

The CPO Circular recommends (at paragraph 27) providing affected parties with full information about what the compulsory purchase process involves and their rights and duties, as well as an indicative timetable of events, all in an accessible format. If the Council resolves to make an Order arrangements will be put in place to ensure that affected parties are kept informed of the progress of the proposals.

Relevant Considerations and Justification for making Compulsory Purchase

Relevant considerations for the decision maker in reaching a decision are set out throughout this report, but this section focuses on factors which arise from case law and Government policy on compulsory purchase as set out in the CPO Circular, to which the Secretary of State will have regard if the Order is made by the Council and submitted to him for confirmation.

The overarching consideration for the Council in deciding whether to make an Order and for the Secretary of State in deciding whether to confirm an Order is set out in paragraph 17 of the CPO Circular. This states: "*A compulsory purchase order should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is*

making a compulsory purchase order sufficiently justify interfering with the human rights of those with an interest in the land affected. Regard should be had, in particular, to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and, in the case of a dwelling, Article 8 of the Convention." Specific consideration is given to Human Rights issues in the legal advice section of this report.

In the context of that overarching consideration , the following issues should be considered:

1. whether the purpose for which the land is being acquired fits in with the adopted planning framework for the area;
2. the extent to which the Scheme would contribute to the achievement of the promotion and/or improvement of the economic, social or environmental well-being of the Council's area;
3. the potential financial viability of the Scheme, general funding intentions and the timing of available funding;
4. impediments to implementation and whether the Scheme has a reasonable prospect of going ahead;
5. whether the purposes for which the proposed Order Land is to be acquired could reasonably be achieved by any other means

Paragraphs 16 – 29 and Appendix A to the CPO Circular, especially paragraph 16 of Appendix A, provide relevant guidance.