

Report to the Cabinet

Report reference: C-077-2008/09
Date of meeting: 15 December 2008



**Epping Forest
District Council**

Portfolio: Housing.
Subject: Cross Undertaking with the owner of 8/8a Sun Street, Waltham Abbey.
Responsible Officer: Sally Devine (01992-564149).
Democratic Services Officer: Gary Woodhall (01992-564470).

Recommendations/Decisions Required:

- (1) That the Council enter into a Cross Undertaking with the owners of 8/8a Sun Street, Waltham Abbey, to secure the re-development of the property without the need to enforce the Compulsory Purchase Order (as made under section 226 of The Town and Country Planning Act 1990).**
- (2) That authority be given to officers of the Council to set the terms and conditions of the Cross Undertaking and the contract to be signed by the Director of Corporate Support Services.**
- (3) That in the event the owners fail to meet the terms and conditions of the Cross Undertaking That authority be given to the Director of Housing to undertake a marketing/tendering exercise to find a suitable developer to enable the Compulsory Purchase Order to be enforced and possession obtained of the property and land to facilitate the immediate disposal to the successful developer.**

Executive Summary:

On 25 July 2006, the Cabinet resolved to approve the compulsory purchase of 8/8a Sun Street, Waltham Abbey. Following the making of the Compulsory Purchase Order (CPO) the statutory requirements were undertaken by the Council and the Secretary of State for Communities and Local Government approved the CPO. The CPO was subsequently challenged by an appeal to the High Court by the owner of the property. The Council has managed through negotiations to have the appeal withdrawn. Formal confirmation is awaited from the High Court but the required order is being processed. The date of that order, when issued, will be the date that the CPO becomes effective and the date from which the 3 years to enforce it will commence. Accordingly, the Council are now in a position to enforce the CPO.

However, the owners of the property have obtained planning permission for its redevelopment and have initiated some preparatory works involving significant expenditure. They state that they are committed to carry out the redevelopment and request that the CPO is not enforced. A procedure available to the Council is one of a Cross-Undertaking where the Council enter into a contractual agreement with the owners that the CPO will not be enforced provided the property is renovated within specific time constraints. If the owners renege on the agreement the Council will enforce the CPO forthwith.

Reasons for Proposed Decision:

To ensure that the Cabinet's original desire for the property to be renovated be carried out.

Other Options for Action:

The Council could enforce the CPO without consideration of a Cross Undertaking. However, to make that decision in the knowledge of the stated intentions of the owners to commit to the project and renovate their own property may leave the Council vulnerable to a successful challenge by way of Judicial Review.

Report:

1. Further to a Cabinet report (ref C/018/2006-07) and approval dated 25 July 2006, the Council have taken proceedings to secure the compulsory purchase of 8/8a Sun Street, Waltham Abbey. A Compulsory Purchase Order (CPO) was confirmed on 22 November 2007 but the owner exercised his right to appeal to the High Court. The owners have very recently signed a consent order with the intention that the appeal be withdrawn and we now await, from the High Court, written confirmation of the date from which the CPO is effective.

2. In the meantime the owner's planning application for 8 Sun Street was approved by the Area Planning Sub Committee West on 15 May 2008; to include demolition and extension of the ground floor shop through to the rear of the site with first floor ancillary office and staff facilities; and conversion of the main building to provide two self contained flats. There is a condition to the consent that requires the developer to carry out an archaeological investigation in accordance with Essex County Council wishes. A further condition is that consent is reduced from three to two years.

3. The owners, and their son who acts for them, have put in writing that they are committed to carrying out the redevelopment of the property and have already initiated some works at the property leading to costs in the region of £9,000 The archaeological investigation is completed; a geo report and structural survey have also been carried out. They state that they are committed to redeveloping the property 'in a fair and reasonable time frame' and would like to enter into a cross undertaking with the Council.

4. The effect of a Cross Undertaking is that the Council enters into a written contract with the owner that they will not enforce the CPO provided that the owner agrees to undertake the redevelopment of the site, carry out all works, and let out the residential accommodation within a strict time frame agreed by both parties. If the owner strays from the agreement, the Council implements the CPO forthwith.

The Advantages of a Cross Undertaking

5. If the contract is honoured, the property is redeveloped at no cost to the Council;

6. The property will be redeveloped and brought back into use in a relatively short time period and certainly quicker than if the Council has to go through the legal process of acquiring the property, selling it on and then relying on a developer to bring it back into use;

7. The Council may otherwise be seen to be heavy handed by implementing a CPO and dispossessing an owner when for all intents and purposes the owner is in a position to carry out the works himself and has already carried out some of the preparatory work;

8. There would be considerable financial savings to the Council in not having to enforce the CPO. If the CPO is enforced, the Council must pay the owner market value (which they

may or may not recover, when selling on, in a falling market) and also compensation at 7.5%; the owners legal and administration costs; and - once possession takes place - building insurance, council tax, and costs of security boarding with metal screens. Assuming 2006 estimates and that the Council sells the property on at market value, the cost of CPO to the Council would be in the region of £27,500.

The Risks Associated with a Cross Undertaking

9. There is the risk that after a period of time the owner may, for whatever reasons, fail to meet the contractual agreements of the undertaking and the Council will be back to square one, having wasted considerable time in the process. However this could be managed by setting out very clear timescales in the contract, monitoring them closely and being committed to enforce the CPO if the contract is breached. The upside possibly, is that initially the works being carried to the property by the owner will be of a destructive nature and may devalue the property. If the owner then reneges on the contract and the Council enforce the CPO, the market value and compensation paid to the owner will be reduced;

10. Under current financial rules, provided a property acquired under CPO is resold within 3 years, 100% of the sale proceeds can be returned to the Council's capital programme. The Council must be mindful of this if, for whatever reason, the contractual agreements of the cross undertaking are broken and they have to implement the CPO;

11. The owner has a poor history of compliance and co-operation. It must be made clear that the CPO will be enforced if the cross undertaking is not met.

12. Noting the sensitive nature of this case, it was considered appropriate, in the first instance, to put the proposal of a Cross Undertaking to the Waltham Abbey Town Council. The matter was considered at the Town Council meeting on 23 October 2008 where they agreed to support the proposal for a Cross Undertaking between Epping Forest District Council and the owners of 8/8a Sun Street, 'subject to the implementation of strict timescales and guidelines'.

13. In the event that the owners fail to comply with the terms of the Cross Undertaking it will be necessary for the Council to find a suitable developer to take on the project and comply with the Councils requirements. In that case the Council will have to undertake a tendering process to find the developer. Authority to proceed with the proposed developer will be the subject of a separate report, if necessary, in due course. Authority will also be required at that time for the Council to make a General Vesting Declaration if it is to make an immediate transfer of the property and land.

Resource Implications:

A potential saving of £27,500 due to the cost associated with compulsory purchase.

Legal and Governance Implications:

Town and Country planning Act section 226.

Safer, Cleaner and Greener Implications:

Increasing the amenity value of the area will contribute to a reduction in crime and disorder. Local environment improved through renovation of a derelict property. Local housing provision by the conversion of the property to provide two private lettings.

Consultation Undertaken:

Waltham Abbey Town Council.

Background Papers:

None.

Impact Assessments:

None.