

To: CHAIRMAN AND MEMBERS OF THE  
PLANNING POLICY COMMITTEE  
(Councillors Weightman (Chairman), Cooley  
(Vice-Chairman) and Councillors Mrs. Black  
Bond, Byrne, Caudle, Harwood, Pannett  
Mrs. Steeds and Sydney)

If calling please ask for:  
Vince Sharp

on 01883 732776

vsharp@tandridge.gov.uk

c.c. All Other Members of the Council

31<sup>st</sup> March 2014

Dear Sir/Madam,

**PLANNING POLICY COMMITTEE**  
**TUESDAY, THE 8<sup>TH</sup> APRIL 2014 AT 6.00 P.M.**

*Please note the day and time of  
this meeting*

The Agenda for this special meeting of the Committee to be held in the Council Chamber, Council Offices, Station Road East, Oxted is set out below. If a Member of the Committee is unable to attend the meeting, please notify the Committee Section accordingly.

Should Members require clarification about any items of business, they are urged to contact Officers before the meeting. In this respect, reports contain authors' names and contact details.

If a Member of the Council, not being a Member of the Committee, proposes to attend the meeting, please let the Committee Section know by no later than noon on the day of the meeting.

Yours faithfully,



Louise Round  
**Chief Executive**

## **AGENDA**

- 1. MINUTES OF THE MEETING HELD ON THE 6<sup>TH</sup> MARCH 2014 (copy herewith)**
- 2. APOLOGIES FOR ABSENCE (if any)**

**3. DECLARATIONS OF INTEREST** – All Members present are required to declare, at this point in the meeting or as soon as possible thereafter:

- (i) any Disclosable Pecuniary Interests (DPIs) and / or
- (ii) other interests arising under the Code of Conduct

in respect of any item(s) of business being considered at the meeting. Anyone with a DPI must, unless a dispensation has been granted, withdraw from the meeting during consideration of the relevant item of business. If in doubt, advice should be sought from the Monitoring Officer or his staff prior to the meeting.

**4. TO DEAL WITH QUESTIONS SUBMITTED UNDER STANDING ORDER NO. 28 (2)**

**5. FORMER ROSE & YOUNG GARAGE SITE, CROYDON ROAD, CATERHAM**  
**(page 3 and Appendix 'A')**

**6. ANY OTHER BUSINESS WHICH THE CHAIRMAN IS OF THE OPINION SHOULD BE CONSIDERED AT THE MEETING AS A MATTER OF URGENCY**

# REPORT TO THE PLANNING POLICY COMMITTEE ON THE 8<sup>TH</sup> APRIL 2014

## *COUNCIL DECISION (Subject to ratification by Council)*

### AGENDA ITEM 5

## FORMER ROSE & YOUNG GARAGE SITE, CROYDON ROAD, CATERHAM

#### 1. Purpose of Report and Background

- 1.1 This is the report of the Rose and Young Task & Finish Working Group. The Group was established, by the Planning Policy Committee on the 12<sup>th</sup> September 2013, as follows:

“a Task and Finish Working Group be set up in respect of the former Rose & Young site comprising the Caterham Valley and Harestone Ward Members and the Vice-Chairman of Planning Policy Committee with the following terms of reference:

1. the terms of reference for the Group be to review progress to date and any other options for the site and associated risks;
2. an opportunity be provided for the Caterham Valley Parish Council, members of the public and other interested parties to address the Group; and
3. at the first meeting of the Group, officers provide a full report on progress to date.”

- 1.2 The Council’s current stated policy position in respect of the site is as follows:

*“Tandridge District Council is willing to use its powers to compulsorily purchase the former Rose and Young garage site in Croydon Road, Caterham provided that a prospective developer:*

- (a) is able to demonstrate that they have a viable worked-up scheme for development of the site;*
- (b) will submit a planning application for the scheme prior to the District Council exercising its Compulsory Purchase Powers and make its best endeavours to obtain a valid planning permission by the date of any Compulsory Purchase hearing, and*
- (c) is prepared to enter into a full indemnity agreement covering all of the District Council’s costs in the CPO process.”*

- 1.3 The site comprises some 0.21ha to the west side of Croydon Road, close to Caterham railway station and the town centre. The site was previously a car showroom with servicing facilities to the rear.

- 1.4 The history of the site has been well documented to this Committee previously, including the service of notices under Section 215 of the Town and Country Planning Act and the successful prosecution thereof. This led to an improvement in the appearance of the building.

- 1.5 It must also be noted that a planning application for the redevelopment of the site has been received from the current owners. The application does not meet the requirements necessary for it to be validated. However, the scheme involves a 6 storey building providing 68 flats (16 x 1 bed and 52 x 2 bed) and 116 parking spaces. If and when it is validated it will follow the normal planning process irrespective of any decisions taken in respect of this report.

## 2. Recommendations of the Task and Finish Group

That:

- A. Up to £50,000 be released from the Economic Development Reserve to allow the necessary level of due diligence site investigations to be carried out and to provide outline details of a viable redevelopment scheme for the site, in accordance with the vision set out in recommendation C. This is to provide a basis for seeking a joint venture partner to redevelop the site and using, if necessary, the Council's Compulsory Purchase powers.
- B. Subject to satisfactory conclusion of A, and once a preferred partner is identified, the Council should, in partnership and in light of funding provided by the partner, seek to purchase the site on a voluntary basis. Should this not prove possible, the Council should pursue a Compulsory Purchase of the site.
- C. Without prejudice to the determination of any planning application on its planning merits, the Council's position regarding redevelopment of the site is that:
- (i) it should provide street level uses that would enhance footfall and activity in the area of the site, most likely in the form of retail, to provide an active frontage within the town centre;
  - (ii) the remainder of the site could provide residential development in the form of flats, including sufficient parking to meet the Council's minimum standards, notwithstanding the location of the site close to public transport links;
  - (iii) all other relevant planning policy requirements are to be met.
- D. Throughout the process described above, the Council continues to consider options and opportunities for the wider redevelopment of Caterham in connection with, or indeed separately from, the Rose and Young site.
- E. The Council continues to support the CR3 Forum Neighbourhood Plan, including supporting the proposal for a Neighbourhood Development Order for the Rose and Young site and other initiatives that would form a catalyst for the improvement of Caterham Town Centre.
- F. The Rose and Young Task & Finish Working Group continues to oversee matters in relation to these recommendations.

## 3. The Work of the Group

- 3.1 The Group has met seven times. The first informal meeting was an inception meeting to organise a programme going forward. The first four substantive meetings of the Group all involved external parties with the final two meetings being to discuss findings and recommendations.

- 3.2 The first formal meeting included an update on the position to date. This set out the history, which has largely been presented to this Committee on previous occasions and also included details of meetings held by officers with potential developers as well as approaches made to other parties that may have been interested in the site. The report also set out the position in respect of the ownership of the site, as far as it can be understood, and any charges on the land. This information has been updated by officers as well as with intelligence from third parties.
- 3.3 The Group also heard from an expert in residential site development giving background to how the residential market works, how site assessment is undertaken by prospective developers, how financial modelling of various development scenarios are carried out and what this can mean for development potential. This gave the Group a good understanding of development viability and the influences on that viability. The Group also discussed with the expert whether they felt there were any advantages or disadvantages in widening the area under consideration to encourage a more complete development of the centre of Caterham.
- 3.4 The second meeting was held at the Soper Hall with an open invitation to the public to attend and an opportunity to address the Group directly. There was a good turnout and the Group received excellent information and ideas from those presenting. There were also questions and ideas from the floor. From that meeting a number of items were put forward for the Group to consider, including:
- The continuing need for demolition and someone experienced in site clearance
  - Investigation of ownership and working with the lender
  - Providing a hotel for the town or a cinema
  - Looking to use the neighbourhood plan as a catalyst for change
  - Having a strategic plan for the town
  - Wishing to have a signature building
  - The option of a Neighbourhood Development Order, following public agreement of the neighbourhood plan to de-risk the site
  - A Local Development Order also to de-risk the site
  - Regarding it as a town opportunity not just a site opportunity
  - Seeking Local Enterprise Partnership support
- 3.5 This is not an exhaustive list but captures the main issues raised.
- 3.6 The third meeting was with property advisors working with Reigate and Banstead Borough Council to discuss their use of compulsory purchase orders, how they operate, what the risks, tactics, timescales and costs can be. The Group also had the opportunity to discuss the differences between redevelopment and regeneration.
- 3.7 The fourth meeting was to talk further to a member of a local Group who had undertaken work to try to get developers interested in the site over the last 6 years or so. The Group also heard further from the CR3 forum to further explore the options available in respect of the neighbourhood plan and related Development Orders.
- 3.8 From the meetings the Group considered that there were 6 main areas for consideration. By considering these areas the Group determined the recommendations set out in this report. The areas for consideration are as follows:
- i. Considering what leverage opportunities there may be with the owner or others with an interest in the land (such as the lender)
  - ii. Looking at the skills and resources available to undertake any course of action
  - iii. Giving consideration to the aspirations expressed at the public meeting
  - iv. Whether a larger site should be considered
  - v. The use of planning powers in the form of a Local Development Order or Neighbourhood Development Order through the neighbourhood plan.

- vi. Regeneration/redevelopment of the site by either purchasing the site or as a joint venture with a development partner using compulsory purchase powers if necessary

3.9 These matters are addressed in sections 4 to 9 below.

4. Considering what leverage opportunities there may be with the owner or others with an interest in the land (such as the lender)

- 4.1 The following information is based on a Land Registry search carried out electronically on 20th March 2014 and a Companies House search in respect of Caterham Properties Ltd carried out on 13th March 2014.
- 4.2 The Title was filled on 8 October 1993. Proprietorship is shown to have been a company called Caterham Properties Ltd from 16 November 2000 to date when the price paid was stated as being £1,385,000. This company is registered in the United Kingdom under reference 04070565. Land Registry searches on 12<sup>th</sup> March showed that there remained a single financial charge on the property in respect of a Debenture dated 3rd November 2000 entered on the Register on 16th November 2000. That Debenture was recorded with The Governor and Company of the Bank of Ireland. This does not appear on the search conducted on 20<sup>th</sup> March indicating that the Debenture has been released as a Charge, presumably by it having been paid off. The last accounts for the company shown on the Companies House search are dated 30th September 2012, with the last return made on 8th September 2013. The next accounts are due 30th June 2014 and the next return is due 6th October 2014.
- 4.3 The accounts show an on paper net liability of £400,538. Assets amount to £1,454,570, the vast majority of which is quoted as being 'stocks'. Creditors amounts to £1,855,108. Whether this will change in the next set of accounts based on the change in circumstance in relation to the Charge on the land remains to be seen.
- 4.4 The Group considered the suggestion that the Council should work with the lender to understand whether they are undertaking any proceedings against the owner and/or to work with the lender to get rid of the current owner and ensure the site is not sold to another similar owner. It was the Group's view that there is no evidence that the lender had acquired a power of sale. It was considered to be outside the Council's remit to pursue a lender, who was operating within their own rules and governing laws, to seek to force the sale of a property away from an owner. It was also considered to be outside of the Council's reasonable influence to seek to dictate to a lender the lending criteria that should be applied in future to an asset. On this basis the Group agreed that the ownership of the property should be kept under review to allow pursuit of objectives but it is not a recommendation to pursue the lender. It now transpires that there is no lender involved with the property registered with the Land Registry and as such there is no ability to prevail upon a lender to exercise their power of sale.

5. Looking at the skills and resources available to undertake any course of action

- 5.1 In hearing from the various external parties the Group is aware that the Council does not currently have the skills internally to take forward some of the solutions under consideration. Whilst the Council has planners that are assisting with neighbourhood planning and could undertake the work in respect of Local/Neighbourhood Development Orders there is not the expertise in property or in compulsory purchase procedures or powers within the Council. There are certainly risks associated with proceeding with intervention options without the proper skill sets and associated access to resources. As such it is the Group's recommendation that the money recommended for allocation to this project should in part be used to secure the appropriate expertise. Currently it is considered that this resource could be provided by the Reigate and Banstead property team, which has experience of a large property portfolio, of facilitating compulsory purchase orders for town centre sites and has a strong private sector commercial background. Initial discussions at Chief Executive level have indicated that this resource can be made available subject to agreed costs.

## 6. Giving consideration to the aspirations expressed at the public meeting

- 6.1 Those items listed as highlights at paragraph 3.8 above that are not dealt with elsewhere in this report reflect, essentially, the ambitions of the town for certain types of built development. The Group has considered all of these carefully in conjunction with other advice received. Whilst there are aspirations for a cinema or a hotel or a car park the Group has had to be aware that looking at the development potential of the site has to be approached from one of two directions; either as a regeneration project or as a redevelopment project.
- 6.2 The differences between regeneration and redevelopment are subtle but very important. In its simplest form, to redevelop, is to develop again, which implies doing it over completely while regeneration most directly means “rebirth or renewal” of something, implying that the entity remains throughout the process. The Royal Town Planning Institute (RTPI) defines *regeneration* as “a holistic process which aims to reverse the economic, social and physical decline of places where market forces alone will not suffice. The planning process provides the opportunity to enhance the role and capacity of communities as well as balancing community, business, environmental and individual needs. Effective *regeneration* requires active and meaningful long-term community engagement and involvement, as well as changes to the physical environment.” Redevelopment focuses on monetary investment and physical changes. Regeneration is considered to be a wider project, based on capital and revenue investment by the Council to attain wider social goals and aspirations. Looking at the site as a redevelopment project provides the least financial risk to the Council and would meet the objectives by relying to a greater degree on external development market expertise.
- 6.3 A regeneration project that would in essence be a ‘loss-leader’ requiring capital investment by the Council and potentially revenue support would involve funds that the Council could not sustain from its own resources at the present time. Other partners may be able to pursue a wider regeneration plan. By contrast a redevelopment project, would seek to ensure that a scheme is entirely viable through a private sector partner. Whilst it means that the Council must treat its approach to the site as a private sector developer would, i.e. ensuring the asset is worked as hard as is possible within the constraints to maximise viability and profitability, this does not mean the Council would be in a position of having to agree to anything put forward by a potential partner. Clearly proposals would need to satisfy planning policy. However, the Group consider it important that potential partners understand what the Council’s requirements are without reducing their flexibility to come up with a viable scheme. For this reason the recommendations include a ‘vision’ for the site which is designed to maximise site viability whilst ensuring that objectives beyond making the site look better are met.
- 6.4 Through recommendation C the site should provide street level uses forming an active frontage with potentially residential above.
- 6.5 It is not the case that the Council should rule out approaches that include less profitable uses but it will be necessary, should a CPO be required, for the Council to demonstrate viability and the best return for the land else a CPO could fail.

## 7. Whether a larger site should be considered

- 7.1 The Group has given significant consideration to views expressed that this should not be regarded as just a site opportunity but as a town opportunity. In particular whether this site is a catalyst for change and/or should be viewed as part of a wider strategic plan for the town. The Group has been very mindful of its terms of reference, which are constrained to the site.
- 7.2 However, the Group has discussed and explored the potential for expanding the site at all stages of the fact finding exercise. There is a balance to be made between the immediate need to deal with the site in question and the opportunities that could arise by increasing the scope of the project.

- 7.3 Whilst there is a fair degree of certainty that as the site size rises so would the complexity and therefore the likely timescales and possibility of under-achievement, it is also considered by the Group that the benefit of a larger site could significantly outweigh the complications. At present it is considered that the Council's actions should focus on the Rose and Young site but not to the exclusion of other realistic opportunities should they come forward. Indeed the Group feels that such opportunities may naturally become apparent as part of the catalyst effect that this project would have, either through wider partnership and/or through supporting of the neighbourhood plan and its town centre actions focus.
8. The use of planning powers in the form of a Local Development Order or Neighbourhood Development Order through the neighbourhood plan.
- 8.1 Local Development Orders (LDOs) and Neighbourhood Development Orders (NDOs) are essentially the same and therefore the only distinction made in this report is that they are delivered either by the Local Planning Authority (LDOs) or by the Neighbourhood Plan (NDOs). They shall be referred to for ease as LDOs.
- 8.2 LDOs grant planning permission for the type of development specified in the Order, and by doing so, remove the need for a planning application to be made. Local planning authorities have powers to make them.
- 8.3 Local Development Orders are very flexible in that they can:
- Apply to a specific site, sites, or wider geographical area;
  - Grant planning permission for a certain type or types of development; and
  - Grant planning permission outright or subject to conditions.
- 8.4 They do not remove the need to obtain consent under any other relevant regimes. The Planning Act 2008 made it easier for Councils to introduce LDOs by removing the requirement that they should achieve policies set out in adopted local development documents. LDOs are regarded as having key benefits, which the Group have taken into account. Those benefits being:
- improve perceptions and give a message that Councils are positive and “open for business”- an LDO is a strong marketing tool;
  - have a positive impact on planning departments and staff - showing that Planning can be proactive and contribute positively to Council strategies;
  - are a front loaded approach which will speed up development;
  - will attract development;
  - will remove uncertainties for developers;
  - will speed up development; and
  - can improve links and partnership working with private land owners and developers.
- 8.5 The Group was also aware of the risks associated with LDOs, namely:
- the impact on staff and financial resources
  - the potential loss of fee income
- 8.6 It was considered by the Group that the advantages substantially outweighed the disadvantages and risks in these circumstances.
- 8.7 The legal framework for making an LDO is set out in Part 6 paragraphs 34 and 37 of the Town and Country Planning (General Development Procedure)(England) Order 2010. There is a requirement to draft an Order and produce a statement of the reasons for making an Order, which must include a description of the development the Order would permit and a plan or statement identifying the land to which the Order would relate. There are then extensive consultation arrangements for the draft Order. On completion of the consultation it is necessary



for the Local Planning Authority (LPA) to consider any modifications to the Order (or indeed whether to proceed) taking account of representations received. Once the LPA is satisfied that it has the Order in a form that it would wish to adopt it is then required to send the Order to the Secretary of State in order for him to consider whether he wishes to exercise powers under section 61B91) of the 1990 Planning Act.

- 8.8 It is not possible to use an LDO to grant permission for works that affect a listed building or works that are Schedule 1 development within the meaning of regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The former does not apply to this site and it is highly unlikely that the latter would either. Research by the Planning Advisory Service (PAS) shows the LDO projects generally fall into one or more areas:
- Vitality
  - Employment
  - Design and local residential character
  - Conservation
  - Renewable energy
  - Masterplanning
  - Innovation and regeneration
  - Community objectives
- 8.9 The provision of an LDO that gives certainty for the development of the site would remove a significant risk for would be developers. It would also meet community objectives through the Neighbourhood Plan led approach by empowering the local community to make decisions in regard to what local people want for the site. This could be most effective at the Neighbourhood Plan level by providing a structure whereby local communities can, with the support of local planning authorities, determine what forms of development should be permitted without the need for planning permission to be sought. Via the Neighbourhood Plan would also provide a community mandate through referendum.
- 8.10 The outcomes for a LDO approach as opposed to a redevelopment led CPO approach could be different depending on what a community led Order stated. The Group therefore sees this approach as not being exclusive from any other approach but rather complementary in that the greater range of alternatives for securing development of the site the better. As such the Group recommend that the Council support the pursuit of an NDO through the neighbourhood planning process as a complement to the Council's direct actions. It is considered that rather than the Council pursue its own LDO it would be more appropriate to manage and engage the community through neighbourhood planning.
9. Regeneration/redevelopment of the site by either purchasing the site or as a joint venture with a development partner using compulsory purchase powers if necessary
- 9.1 As discussed above the Group is of the view that for the Council redevelopment, rather than regeneration, is the appropriate course of action.
- 9.2 The legal framework for CPO is complex but it stems from Section 226(1)(a) of The Town and County Planning Act 1990 (as amended principally by the Planning and Compulsory Purchase Act 2004 but dating back to the Compulsory Purchase Act 1965). It allows a Council to compulsory purchase land to enable it to be improved, developed or redeveloped provided that this will bring social, environmental or economic benefits to the area. In issuing the previous policy statement the Council concluded that a CPO of this site would achieve those three objectives and the Group considers that this remains the case.
- 9.3 The Group, through discussions with external experts, has considered; (1) the prospects of obtaining a confirmed order (see also below comments regarding the efforts of the owner), (2)

the prospects for success and what success looks like, (3) the costs associated with a CPO, (4) the handling of compensation, (5) financing, (6) the need for external skills and (7) the likely timetable.

- (1) *The prospects of obtaining a confirmed order (see also below comments regarding the efforts of the owner*

9.4  
\*\*\*

Advice previously obtained by the Council from NLP Law (copy attached at Appendix 'A') (page 16) placed the prospects of obtaining a confirmed order as good provided the Council could demonstrate that redevelopment would happen. Verbal advice to the Group has also put the chances of success obtaining an order as good given the site history and the site potential. It is considered that the pursuit of a CPO could also bring about a change in attitude by the owner. There is also the prospect that the CPO could be uncontested for example on the basis that there is a possibility that purchase of the site via a CPO would have financial benefits to the owner (for example in terms of tax on gains, although clarification of the operation of section 152 to 159 of the Taxation of Chargeable Gains Act 1992 would be necessary and in any case is not a determining factor in the recommendation) or because the owner foresees the inevitable. The Council has to be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition have been explored. The Council has to demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate. The Group considers that the blight caused to the town over a considerable period of time, the public interest in the site and the intransigence of the owner all lead to a conclusion that the Council should use its powers and that use of those powers is both necessary and proportionate. This reflects the view previously taken by the Planning Policy Committee.

9.5

The Council must have a clear idea of how they intend to use the land which it is proposed to acquire, hence the vision for the site is included in the recommendation. The Council must be able to show that the proposal complies with Section 122 of the Planning Act, in particular section 122(2):

- (i) *the land is required for the development to which the development consent relates*

The Group considers that the Council would be able to demonstrate that the land is needed for a development for which consent is sought and that the land is no more than is reasonably necessary for the purposes of such a development. As such whilst the Group recommends keeping an open mind on a larger site the focus in terms of CPO must be on what is required for the objective.

- (ii) *the land is required to facilitate or is incidental to the proposed development*

It is considered that the Council would not be seeking nor needing incidental land. This usually applies where perhaps development needs landscaping and that can only be done to a satisfactory standard if the land in question was compulsorily acquired.

- (iii) *the land is replacement land which is to be given in exchange under section 131 or 132 of the Planning Act.*

This is not considered relevant in this case. This may arise, for example, where land which forms part of an open space or common is to be lost to the scheme, but the Council does not hold other land in the area which may be suitable to offer in exchange

- 9.6 The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected. In particular, regard must be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights. Before any final decision to make a compulsory purchase order is made, full consideration a full analysis of the Human Rights implications must be carried out. Article 1 states: *“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.”* At present the Group considers that the public interest in this case outweighs the rights of the individual(s) as owner(s) as it is in the public interest. The public interest case is made by the length of time the site has been in a dilapidated state, the impact that appearance has on the town centre and the ability of the town centre to attract growth and the impact the building has on other businesses and traders in the town. Further, such purchase would be implemented in accordance with the law, following due process and subject if necessary to a public inquiry. The recommendations set out in this report do not confirm the CPO, which is the point at which the provisions of the Convention would bite. Human Rights implications would be considered at any and all subsequent decisions in respect of this matter. It will be important to keep this question under review.
- 9.7 The Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. The Group is of the view that this test is met. However, it is always the case in this type of process that the Council would have to review decisions to move forward at each step in light of the information and position at the time.
- (2) *The prospects for success and what success looks like*
- 9.8 There is also the prospect of success without having to pursue a CPO to the final conclusion of obtaining a confirmed Order. The Group is of the view that the process of moving through the CPO procedure could be enough to encourage redevelopment to commence, or for the site to be sold to a partner developer. It could also result in a ‘stayed’ CPO with the Inspector potentially giving a time limit for the owners’ own scheme to be implemented.
- 9.9 It is important to consider what success looks like and with that in mind the risk that money and resources spent at any point may not result in a confirmed CPO. The view of the Group is that success will look like a redeveloped site in whatever manner that is achieved and therefore money spent on moving to a CPO that may be abortive, because for example the owner starts development on his own scheme, would still be a limited financial outlay achieving the overall objective.
- 9.10 It is a matter for separate decisions at a later date to assess the risks involved with parts of the later process (such as the nature of a Development Agreement) and the risks that may pose. Advice received is that an agreement that covers costs is normal. The matter at hand is the policy position and securing a small amount of funding from the economic development reserve to start the process.

(3) *Costs associated with a CPO*

9.11 Advice received is that the initial costs of preparing to gain a partner for development of the site would be between £25,000 and £50,000. This would cover due diligence, preparation of basic plans demonstrating floor space availability together with documentation setting out constraints, the Council's vision etc. It would also purchase external expertise in commissioning and bringing together that 'information pack' to be used in seeking a development partner. There would potentially then be the costs of scoring, short listing and procuring the partner and the legal costs associated with agreeing a Development Agreement although much of this work could be done 'in-house'. Once complete any agreement would include agreed costs being borne by the partner. Subsequently there would be the costs of an Inquiry and compensation but again these can be negotiated with a partner. The property team at Reigate and Banstead has experience of seeking partners and making such agreements. Other costs would be dealt with by a partner through agreement and such an agreement is likely to require a separate committee decision.

(4) *Handling of compensation*

9.12 Compensation following a compulsory acquisition of land is based on the principle of equivalence. This means that the owner should be no worse off in financial terms after the acquisition than they were before. Likewise they should not be any better off. Because the effects of the CPO on the value of a property are ignored when assessing compensation, it is necessary to value the land on the basis of its open market value without any increase or decrease attributable to the scheme of development which underlies the CPO.

9.13 Depending upon the particular circumstances in each case compensation can be claimed under the following categories, which are referred to as "Heads of Claim":

- The Value of the Land Taken
- Severance & Injurious Affection - this means the depreciation in the value of land you retain where part only of your land holding is acquired.
- Disturbance - apart from the limited rights of an investment owner to recover incidental costs in particular circumstances (see paragraph 2.64), this Head of Claim is only available to occupiers of the property. It represents the costs and losses incurred as a result of being disturbed from the occupation of the property.
- Fees - the reasonable surveyors fees incurred in preparing and negotiating a compensation settlement together with solicitors fees for any conveyancing are normally paid by the acquiring authority.

9.14 When dealing with land for which there is a general market or demand, compensation is based on the market value of the land. In exceptional circumstances, such as specialised land for which there is no general market, compensation may be assessed by considering the cost of providing an "equivalent reinstatement" of the property. No addition to or reduction from the value of the land is made to reflect the fact that it is being compulsorily acquired. The acquisition of the land is assumed to be an open market transaction between willing parties. The value of the land is based upon what the land might be expected to realise if sold in the open market by a willing seller. However, it is assumed that the owner would only be willing to sell at the best price which could reasonably be achieved in the open market.

9.15 This open market value may be based on the existing use of the property. However, it may reflect development value, "marriage value" and "ransom value" provided it can be demonstrated that these would have existed in the absence of the scheme which gives rise to the compulsory acquisition. An example of ransom value would be where the

land could unlock the development potential of an adjoining site by providing the only possible access to it.

- 9.16 The advice received by the Group is that this is a normal approach and understood well by likely partners. Partners would understand the need to pay the market rate for the site. On the basis that this is a single site, single redevelopment proposal scheme there is potential for any consent obtained by the owner to affect the value as it may then have to reflect the development value also.
- 9.17 When considering the potential development value of a property it is assumed that permission would be granted for particular uses of the land. Broadly the planning permissions which may be assumed are as follows:
- Any existing permission on the property.
  - Any permitted development which has not yet been implemented.
  - Any development which would be in accordance with an allocation in a development plan.
  - The development which the acquiring authority proposes for the land.
- 9.18 As such the Group is of the view that compensation payable would amount to the development value of the land plus fees involved in the owner establishing the value. The Group considers that in this case there would be no compensation in respect of severance and injurious affection, as there is no other land owned by the owner that would be affected, nor in respect of disturbance as there are no current occupiers of the land.
- 9.19 There are provisions for paying additional compensation if extra development is permitted after the acquisition has taken place. This applies for ten years. The Group is of the view that this is very unlikely and that it can be fixed through a partnership Development Agreement.

(5) *Financing*

- 9.20 The Group considers that financing can be provided through a partnership Development Agreement. Such a Development Agreement would be subject to committee approval and therefore any further financial implications over and above those set out in these recommendations would be the subject of further agreement. Outside of those costs there is likely to be a need for the Council to retain.

(6) *External Skills*

- 9.21 To move the process forward. The degree and expense of these skills would be a matter that can be dealt with when the Council looks to secure a partnership agreement.

(7) *Timetable*

- 9.22 The indicative timetable for moving forward is considered to be as follows:

- 8th April – Consideration of this report by the Planning Policy Committee
- 24th April – Adoption of recommendations by Full Council
- May to July – engage with owner. Secure expert services, develop development proposal and seek development partner
- 22nd July – report to Planning Policy Committee for endorsement of outline development proposal for the purposes of seeking a Joint Venture partner who would then work up a full scheme

- 11th December – report to Planning Policy Committee for consideration of any joint venture partnership agreement

## 10. The current owner and the planning application

- 10.1 It is the recommendation of the Group that the Council should not be in a position of again placing all hope for the future of the site on the private owner. It is considered, as recommended in this report, that the Council undertakes and endorses a number of different approaches simultaneously to maximize the chances of success. It is not for the Group to foresee whether the application would be approved or indeed whether it would be registered as a valid application. These are independent matters for the Local Planning Authority. However, it is the Group's firm view that to rely on planning permission being granted and then implemented to a completed scheme would be a mistake. Such a position would be filled with uncertainty.
- 10.2 Advice received by the Group is that a CPO can still be pursued even with an alternative scheme for planning permission submitted by the owner and it can also continue to be pursued even if the owner has planning permission. There are several reasons for this; first, it is possible that the a scheme with planning permission could be considered unviable and therefore undeliverable; second, whilst the scheme may be viable it could be determined that the owner does not have the means to implement the scheme, and thirdly, given the history of non-development of the site by the current owner it is an entirely plausible to argue that even with permission and the ability to implement a viable scheme the owner may not proceed. In respect of point one and two a CPO could still be granted to the Council. In respect of the third point it is possible that a delayed CPO could be awarded, i.e. the owner is given a period of time in which to make a substantive start on a scheme else the CPO would take effect. It is therefore the Group's view, having listened to advice from various parties, that the arrival of a planning application should not deter the Council from the path of using all available tools to bring about the redevelopment of this site.

## 11. Other Matters

In keeping with the Group's view that all available options for securing or encouraging the development of the site should be pursued Officers have advised that they have made a bid for funding via the Local Enterprise Partnership (LEP) as part of their Strategic Economic Plan (SEP). The site is packaged as part of the 'Caterham Enhancement Package'. If successful this would provide some funding as a proportion of the Council's costs for CPO in the region of £10,000. Success is not guaranteed as this bid is competing for funding across the Coast to Capital LEP area.

## 12. Legal Implications

The legal implications are potentially complex and beyond the scope of this report. The full legal implications would be explored in committing to a partnership arrangement and then before making a formal application for a Compulsory Purchase Order. Depending on how any eventual agreement is structured, there may be procurement law implications and these will need to be carefully considered before any legal commitments are entered into. Regard must also be given to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights. This is dealt with at paragraphs 9.6 and 9.7.

### 13. Finance Implications

The report recommends a financial commitment at this stage of up to £50,000 and it is considered that this can be met from the economic development reserve. Costs moving forward would need to be the subject of further reports based on prospective partners that may come forward and the indemnity arrangements that could be negotiated into a draft Development Agreement. There may be adverse VAT implications if any potential scheme is not structured correctly from a VAT perspective. This would need to be reviewed in detail at a later stage and before commitments are entered into.

### 14. Equality Impact Assessment

An equality impact assessment has not been carried out for this proposal. This is on the basis that the policy decision would not have any significant impact on staff, tenants, residents, voluntary and community Groups, service users, faith organizations, other council departments, other public sector and business partners nor on any equality Groups or those Groups with protected characteristics as defined within the Equality Act 2010. Further consideration of equality impact would need to be given when considering a partnership, any firm redevelopment proposals and the decision to apply for a Compulsory Purchase Order.

### 15. Conclusions

In conclusion the recommendations of the Group are set out in section 2 . This report seeks to reflect on the main issues considered by the Group and it is considered that the diligence and understanding of the Group can be relied on when considering the recommendations. The Group is of the view that there is ample justification to take the previous position statement, which was reactive in nature (although officers did proactively seek meetings with potentially interested parties), and moving it to a very proactive position setting out a number of simultaneous and complementary courses of action.

Contact: Piers Mason, Chief Planning Officer - Tel: 01883 732893 Email: [pmason@tandridge.gov.uk](mailto:pmason@tandridge.gov.uk)

### Background Papers

Town and Country Planning Act 1990

Planning and Compulsory Purchase Act 2008

Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land 2013

Compulsory Purchase and Compensation – compulsory purchase procedures 2004

Compulsory Purchase and Compensation – compensation to business owners and occupiers 2004

Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010

Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009

Circular 06/2004 Compulsory Purchase and the Crichel Down Rules

Acquisition of Land Act 1981

Growth and Infrastructure Act 2013

The award of costs and compulsory purchase and analogous orders – National Planning Practice Guidance Paragraph: 057 Reference ID: 16-057-20140306, Paragraph: 058 Reference ID: 16-058-20140306, Paragraph: 059 Reference ID: 16-059-20140306, Paragraph: 060 Reference ID: 16-060-20140306, Paragraph: 061 Reference ID: 16-061-20140306, Paragraph: 062 Reference ID: 16-062-20140306, Paragraph: 063 Reference ID: 16-063-20140306, Paragraph: 064 Reference ID: 16-064-20140306,

NLP Law advice to the Council

**APPENDIX 'A'****APPENDIX 'A'****Report to Tandridge District Council on Possible Compulsory Purchase of former Rose & Young site, Croydon Road, Caterham, Surrey****1. Powers of Compulsory Purchase:**

1.1 Section 226(1)(a) of The Town and County Planning Act 1990 allows a Council to compulsory purchase land to enable it to be improved, developed or redeveloped provided that this will bring social, environmental or economic benefits to the area. This would be the appropriate power to use in this case. The Council would be seeking to achieve improvement and redevelopment of this site and it would undoubtedly bring about all three of the benefits listed. This power can be used irrespective of the fact that the works to the site would be undertaken by a third party.

**2. Obtaining a Confirmed Order:**

2.2 If there is an objection to the CPO, the Secretary of State would decide, following a public inquiry/written representations, whether to confirm the Order. The Secretary of State will want to be satisfied that there is a reasonable likelihood of the site being improved and redeveloped. He would not want the derelict site just to be in different ownership! The Council will either need to identify a developer who will carry out the redevelopment, or be able to show that there are developers interested in the site. The greater the certainty of the development proceeding, the greater likelihood of the CPO being confirmed.

2.3 Although circular ODPM 06/2004 does not require that planning permission is in place for a CPO project in order for a CPO to be confirmed, the fact is that Inspectors at Inquiries feel much more comfortable if they can see a planning permission. I would therefore recommend that a planning permission is obtained (even an outline one) by the time the Order might be considered at a public inquiry. You do not need to have obtained planning permission at the time the Order is made, but it should be in place in, say, six months' time.

**3. Prospects for Success:**

3.1 I consider that, subject to the points set out in paragraph 2, the Council has a very good prospect of obtaining a confirmed Order in this case. The photographs graphically illustrate the negative impact caused by the derelict building on a prominent site. The length of time it has already been empty will count in the Council's favour.

3.2 The circular does require Councils to generally seek to acquire a property by agreement before making a CPO. Before making an Order you will need to be satisfied that the site owner will not sell the property – either to the Council or a third party – at a reasonable price.



#### **4. Cost of Compulsory Purchase:**

- 4.1 There are costs associated with a CPO that will have to be borne by the Council or any development partner, (i.e. it is cheaper to buy a site which is on the open market, rather than by way of a CPO).
- 4.2 There are legal and administrative costs as follows:-
- Legal costs for making the CPO
  - Newspaper notices
  - Land Registry fees for registering the Council as the owner at the end of the process
- 4.3 If there is a public inquiry or written representations, the Council has to pay the Secretary of State's costs for dealing with the inquiry/representations. There will be legal fees relating to preparing for, and advocating at, the public inquiry.
- 4.4 If following an inquiry/written representations the Order is not confirmed, the Council will have to pay the objector's costs. These can be significant if a barrister and expert are employed by the objector. If the CPO is confirmed, the objector does not have to pay the Council's costs unless he has acted unreasonably.
- 4.5 When land is transferred to a Council following a successful CPO usually the Council has to pay Stamp Duty and Land Tax (SDLT) (as though it were an ordinary purchase). There is an exemption when the land is to be transferred to a third party for development. The exemption would apply in this case. The third party would have to pay SDLT on its acquisition from the Council, though.

#### **5. Compensation:**

- 5.1 When the Council has acquired the land pursuant to the confirmed CPO the ex-owner will be entitled to compensation. Compensation can take a long time to agree and either party can refer the matter to the Lands Tribunal. The ex-owner can apply for an advance payment of compensation. If so, the Council has to pay ninety percent of its estimate of the likely compensation. There will be a subsequent balancing payment when the final amount of compensation is settled.
- 5.2 The main chunk of compensation will be the market value of the property. Potential for redevelopment will be taken into account. There will also be a basic loss payment of 7.5 per cent of market value, capped at £75,000.
- 5.3 The owner may be entitled to a disturbance payment, covering:-
- The cost of moving equipment to a new site (an unlikely requirement in this case).
  - The legal and surveyor's costs and SDLT of purchasing replacement premises. (If there is no intention to acquire replacement premises, then there will be no compensation payable.)
- 5.4 The ex-owner will also be entitled to be paid his reasonable surveyor's fees for negotiating the compensation.

**6. Financing a CPO:**

- 6.1 If you can find a developer who specifically wants this site he may be prepared to enter into a full indemnity agreement covering all the Council's CPO costs. He may decide that the overall profit from a redevelopment scheme outweighs any additional costs that arise from the CPO process. I have dealt with a number of such indemnity agreements over the years.
- 6.2 It may be that the Council will agree to pick up a portion of the costs, such as those relating to the making and confirmation of the CPO.

**7. General Advice:**

- 7.1 Often the making of a CPO gets the property owner to do something with the land, such as selling it. I would not discount that possibility in this case.
- 7.2 Only about forty per cent of CPO's receive objections, and a proportion of the objections are negotiated away. It is not a foregone conclusion that you will require a public inquiry if you CPO the site.
- 7.3 You will want to tell the land owner what you are proposing so that:-
  - (a) he has an opportunity to resolve things himself; and
  - (b) he cannot argue later that the first he knew of the CPO was when he was served with it.