

## LAND AT SHREWSBURY FLAXMILL COMPULSORY PURCHASE ORDER

**Responsible Officer** Mark Barrow

e-mail: mark.barrow@shropshire.gov.uk

Tel: (01743)  
258916

### 1. Summary

- 1.1 Shrewsbury Flaxmill was acquired by English Heritage (Now Historic England) in March 2005 following several failed attempts by the private sector to develop it.
- 1.2 A Masterplan Study (2004) identified the opportunity to greatly improve the presentation and viability of the Flaxmill by acquiring neighbouring sites and re-developing them in a sympathetic manner.
- 1.3 A number of sites adjacent to Spring Gardens have been acquired by Shrewsbury and Atcham Borough Council and then Shropshire Council and the successful acquisition of these properties is key to enabling the Masterplan to be successfully realised.
- 1.4 The present site is approximately 2.7 hectares and contains a complex of former mill buildings dating from the 1790's and a former maltings dating from the 1890's. The buildings have been redundant since the maltings closed in 1986. The existing buildings to be retained offer a total gross internal floor area of approximately 11,000 sqm
- 1.5 Historic England have been successful in obtaining planning permissions and listed building consents to repair and convert the historic buildings and implementing a multi-million pound programme of repair and conversion of the internationally significant listed buildings.
- 1.6 The project is at an advanced stage now with the structural repairs and conversion of the main mill nearing completion. Work to other key buildings is also underway. In order to facilitate the completion of the masterplan and to implement the approved planning permission for the wider site Historic England has requested that the Council use its compulsory purchase powers (please see the letter annexed hereto at Appendix 5) to acquire some interests and rights in respect to a parcel of land to the rear of the Mill buildings which forms an unsurfaced vehicular access to land beyond the site passing under a railway bridge.

- 1.7 This report is seeking approval to use those compulsory purchase powers and make a Compulsory Purchase Order to enable the assembly of land interests that are required to enable the approved scheme to be completed.

## 2. Recommendations

1. To resolve, subject to consideration of the matters set out in this report and the prior completion of the proposed CPO Indemnity Agreement (CPOIA) to make a compulsory purchase order pursuant to powers under sections 226(1)(a) of the Town and Country Planning Act 1990 as amended) and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of the land and new rights for the purposes of creating a car parking area with improved accessibility areas to the site because it is considered that the acquisition will facilitate the carrying out of the development or redevelopment or improvement on or in relation to the land, and the development, redevelopment or improvement is likely to contribute to the promotion or improvement of the economic, social and environmental well-being of Shrewsbury and the surrounding district.
2. Cabinet to authorise the Director of Legal and Democratic Services to carry out the functions set out in (a), (b) (c), (d), (e), (f), (g) and (h) below and to authorise the Executive Director of Place to carry out the functions set out in (b), (c), (d), (e) (f) and (h) below:
  - (a) To negotiate and enter into the CPOIA;
  - (b) Subject to the completion of the CPOIA and subject to the requirements of the CPOIA, to take all steps to secure the making, confirmation and implementation of the Compulsory Purchase Order (“Order”) including the publication and service of all notices and the promotion of the council’s case at any public inquiry;
  - (c) To make any amendments, deletions or additions to the land identified in this report to be subject to the Order (“Order Land”) as to include and describe all interests in land and rights required to facilitate the carrying out of the development;
  - (d) To identify and acquire interests and new rights required to facilitate delivery of the development at the Flax Mill either by agreement or compulsorily pursuant to the Order (including pursuant to any blight notices as appropriate) including conduct of negotiations, making provision for the payment of compensation;
  - (e) To negotiate, agree terms and enter into agreements with interested parties including agreements for the withdrawal of blight notices and/or the withdrawal of objections to the Order and/or undertakings not to enforce the Order on specified terms, including where appropriate removing land or rights from the Order, making provisions for the payment of compensation;
  - (f) In the event the Order is confirmed, to advertise and give notice of confirmation and thereafter to take all steps to implement the Order

including, as applicable in accordance with the CPOIA to execute General Vesting Declarations and/or to serve Notices to treat and Notices of Entry in respect of the acquisition of interests and rights over the Order Land;

- (g) To take all steps in relation to any legal proceedings relating to the Order including defending or settling claims referred to the Lands Tribunal and/or applications to the courts and any appeals; and
- (h) To retain and/or appoint external professional advisers and consultants to assist in facilitating the promotion, confirmation and implementation of the Order, the settlement of compensation and any other claims or disputes.

## **REPORT**

### **3. Risk Assessment and Opportunities Appraisal**

#### **3.1 Risk Management appraisal**

3.1.1 The proposed redevelopment of the Shrewsbury Flaxmill site has been a long held objective for Shropshire Council, the site is important for both its historic interest incorporating a number of Grade I internationally significant buildings including the world's first Iron framed building. The regeneration of this historic site is also key to the Council's wider ambition to deliver sustainable economic growth contributing to the regeneration and economic viability of Shrewsbury.

3.1.2 If the Council is minded to resolve to make a Compulsory Purchase Order (CPO) to assist in the assembly of land interests for the scheme then that Order can be challenged by affected parties and an Inquiry would be held into the making of the Order. Furthermore, any inability to agree compensation could see a reference of specific claims to the Lands Tribunal for specific resolution.

3.1.3 The significant costs involved in the making and implementation of a CPO to include any compensation payments arising will be underwritten and incorporated in an Indemnity Agreement that has will be completed with Historic England

#### **3.2 Human Rights Act Appraisal**

3.2.1 In deciding to make a Compulsory Purchase Order, the Council should be satisfied that there is sufficient justification for interfering with human rights of those with an interest in the land affected. In this respect the Human Rights Act 1998 incorporates certain provisions of the European Convention on Human Rights, namely:

- 3.2.2 Article 1 – the right of everyone to peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international laws.
- 3.2.3 Article 6 provides that in determining their civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
- 3.2.4 Article 8 – private and family life, home and correspondence. No public authority can interfere with these rights except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of a country.
- 3.2.5 Article 14 – the right to enjoy rights and freedoms in the Convention free from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, or national or social origin.
- 3.2.6 The Council consider in making an Order that the CPO would not constitute any unlawful interference with individual property rights as the scheme will provide for the realignment of the existing access with no additional constraints inconvenience or encumbrance to established users of the land subject of the CPO.
- 3.2.7 The CPO process provides the opportunity for representations to be made and the holding of a public inquiry in the case of objections by affected parties.
- 3.2.8 Those parties have an entitlement to compensation proportionate to the loss which they incur as a result of the acquisition of their interest in accordance with the statutory compensation code.

### **3.3 Equalities appraisal**

- 3.3.1 Any redevelopment will take into account the provisions of the Equalities Act, Building Regulations and Codes of Practice to ensure access to the development for all. Account will need to be taken by the Developer as part of the detailed project planning of the access needs during the construction phase and any temporary works that may be undertaken.

### **3.4 Community and other Consultation**

- 3.4.1 The Council has actively consulted with the community and other interested parties over the successive applications for planning permission and listed building consent to redevelop and regenerate the site. Historic England has opened the site periodically and actively engaged with the local community through a formally constituted Friends of the Flaxmill group. Comments received from the community have been taken into account when regulatory decisions have been taken through the planning process. A schedule of applications is attached as Appendix 4 and community comments are discussed further in section 6 below.

#### **4. Financial Implications**

- 4.1 The Council's costs of making the CPO and acquiring interests covered by the Compulsory Purchase Order are indemnified in the CPO indemnity agreement to be completed which would include the costs of any public inquiry or compensation payments arising.

#### **5. Background**

- 5.1 There have been a number of development proposal with associated planning and listed building consent applications for the Flaxmill site, these are referenced in Appendix 4. The regeneration and redevelopment of the site is being undertaken in accordance with a planning permission (Ref 16/02872FUL) and listed building consent (Ref 16/02873/LBC) granted on 3<sup>rd</sup> November 2016. The scheme includes work to the Grade I listed Main Mill and the attached Grade II listed Kiln which is part of the larger Flaxmill complex (a site of National and International significance) situated in Ditherington approximately one mile to the North of Shrewsbury Town Centre and within the Shrewsbury Town Centre Conservation Area.
- 5.2 The Main Mill building is a former textile factory that was later converted to a Maltings. Built in 1797 it is the oldest iron framed building in the world. The iron framed building has local red brick external walls with a Welsh slate roof and was extended in the form of engine houses to its north and south elevations as part of its Maltings conversion.
- 5.3 The Masterplan Vision for the Flax Mill seeks to revitalise an outstanding group of historic buildings and to kick-start the wider regeneration of Ditherington and Shrewsbury. It aims to combine conservation and regeneration solutions of international importance with exemplary design standards.
- 5.4 The Flaxmill buildings are a landmark in themselves, although they have been inaccessible and separated from the life of the community for more than 20 years. The Masterplan Vision is to help secure the preservation of buildings of national significance and to assist the enjoyment and interpretation of the site by everyone, in a safe and secure environment which encourages new social activities.
- 5.5 The Masterplan seeks to deliver on a number of levels, and, most importantly:
- To act as an exemplar heritage-led regeneration scheme of national and international significance
  - To form part of an economic renaissance for the site and support growth of the local economy, offering much wider benefits and confidence
  - A key aspiration of Shrewsbury's vision encapsulated in the Big Town Plan
  - To promote the development of a healthy, sustainable community integrated within the broader social life of Shrewsbury.

## 6.0 Planning Policy and current development

- 6.1 The Local Plan for Shropshire consists of the Shropshire Core Strategy adopted March 2011 and the Site Allocations and Management of Development (SAMDev) Plan adopted in 2015. The most relevant Core Strategy and SAMDev Plan policies with regards to the proposed use (visitor centre and business use) are:

CS2: Shrewsbury Development Strategy

CS13: Economic Development, Enterprise and Employment

CS16: Tourism, Culture and Leisure

MD1: Scale and Distribution of Development

MD4: Managing Employment Development

MD9: Protecting employment areas

MD11: Tourism Facilities and Visitor Accommodation S16: Shrewsbury area settlement policy

- 6.2 Policy CS2 identifies that: 'The Shrewsbury Northern Corridor will be improved in accordance with the aims of the Northern Corridor Regeneration Framework, with the restoration and redevelopment of the Ditherington Flaxmill site and the enhancement of major existing commercial, employment and mixed use areas a priority'

- 6.3 CS16 identifies that development proposals within the Shrewsbury Northern Corridor should have regard to the priorities of (amongst others):

*'the restoration and redevelopment of the Ditherington flax mill site, including associated mixed use development'*.

- 6.4 The wider flax mill site is an allocated housing site (SHREW198) with the following development guidelines:

*'Mixed use development to have regard to the adopted masterplan for the redevelopment of the Flaxmill and adjoining land and buildings, to include approximately 120 dwellings. The redevelopment will comprise of the repair and reuse of historic buildings to create workspace and associated cultural activities, new retail/commercial office and residential development, associated access, landscaping and car parking, with demolition of non-listed buildings'*

- 6.5 The site is also identified and safeguarded for employment use on the Policies Map and protected for employment use under MD9. The proposal is therefore considered to accord with policy CS2 and S16.

- 6.6 With regards to the proposed employment use and visitor facilities it is considered that the proposal accords with the aims and objectives of the relevant policies identified, with the site being within a sustainable location less than a mile from the centre of Shrewsbury. The proposal represents sustainable development of a brown field site and provides the opportunity for the restoration and re-use of an internationally significant grade 1 listed building, bringing social and economic benefits both for the immediate locality

and Shrewsbury. The other policy considerations, key issues and the specific details of the proposal are considered below

- 6.7 The proposal is partially within a conservation area and affects a listed building and has the potential to impact on these heritage assets. The proposal therefore has to be considered against Shropshire Council policies MD2, MD13, CS6 and CS17 and with national policies and guidance including and section 16 of the National Planning Policy Framework (NPPF). Special regard has to be given to the desirability of preserving or enhancing the character or appearance of a Conservation area and preserving a listed building or its setting or any features of special architectural or historic interest which it possesses as required by section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 6.8 A full Heritage Impact assessment was submitted with the 2016 planning application as required by the NPPF to support the applications for planning permission and listed building consent. While the focus of the policy considerations is the sensitive repair and conversion of the historic buildings the masterplan and consented schemes provide for redevelopment of the site. A key component of this is the transport parking and travel arrangements for the site given the quantum of development and use profile proposed. The land the subject of the proposed CPO would provide for the car park to the rear of the site on land described as “The Railway Triangle”.
- 6.9 The 2016 planning applications considered the transport and parking arrangements in full and the policy framework guided the decision, the NPPF states that planning should:
- ‘actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable’.*
- 6.10 The Core Strategy CS6 (Sustainable Design and Development Principles) requires proposals likely to generate significant levels of traffic to be ‘located in accessible locations where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel to be reduced’.
- 6.11 It is considered that the site is located in a sustainable and accessible location where opportunities for walking, cycling and use of public transport can be maximised and the need for car based travel reduced as required by the NPPF and CS6. The requirement for a travel plan and action plan to be reviewed and approved annually will ensure that sustainable transport solutions are promoted and that adequate parking is provided.
- 6.12 In response to consultation on the 2016 planning application to use land that would be the subject of the CPO as a car park some residents raised issues about the impact on residents of overspill car parking in the surrounding streets due to the car park being full or people not using it to avoid paying. However, whether or not the car park is full or whether it is free car drivers will still park their cars in surrounding streets where it is convenient and legal to

do so. Even if a car park could be located elsewhere within the larger site this would not prevent drivers using up all available street parking. Parking in the street in itself would not have a significant impact on residential amenity and street parking is not permitted that would block private drives or accesses.

- 6.13 Some residents were also concerned that the use of the railway triangle for parking would result in a loss of privacy and general noise and disturbance in the land behind their properties and that the planting of trees could result in a loss of light. However, it is considered that the use of this land for parking would have much less impact on residents than a development for housing or offices for example. In addition, as the car park is situated North of the properties it is considered that any tree planting would not result in overshadowing or loss of light.
- 6.14 In 2010 a revised masterplan, which identified car parking as the most suitable use of the Railway Triangle, received outline planning permission. This plan built on the Northern Corridor Regeneration Strategy and was widely discussed at public scrutiny meetings, Flax Mill public open days and at a planning committee meeting. Prior to the submission of this application the proposals had been displayed at the Flaxmill Visitor Centre since the 16th of June 2016 and advertised in the Shropshire Star. It is therefore considered that the applicant had adequately engaged in pre-application public consultation. Historic England reviewed the public comments received and responded to the issues raised within a letter to all residents and an invitation to a further public consultation to answer any questions held at the Flaxmill Maltings from 12.00 on 5th September 2016. Since that meeting only one letter of objection has been received on behalf of residents that raised no new issues.
- 6.15 To address some of the residents' concerns Historic England agreed to revise the drop off point for coaches and to add CCTV to the street lighting in the car park (to help monitor and deter any anti-social behaviour).
- 6.16 It is acknowledged that the provision of a car park to the rear of properties and accessed via Marshall Court will bring some increase in the level of noise and activity in the locality. However as outlined above it is considered that it would not have significant adverse impact on residential amenity that would have justified a refusal of planning permission having regard to the overall benefits of bringing the site back into economic use.
- 6.17 Similarly the Shrewsbury Big Town Plan (2018) establishes a vision to prepare the town for sustainable growth, ensuring Shrewsbury fulfils its role as an important sub regional centre with an excellent quality of life and a growing and balanced economy with an exceptional and widely celebrated natural and historic environment. There is a desire to enhance areas in need of investment and renewal and to expand the town centre beyond the river loop to include edge of centre areas.

## **7.0 Compulsory Purchase Powers**

- 7.1 The Council has the power in section 226 1(a) of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase



Act 2004) to make a compulsory purchase order for any land in their area if the Council thinks that the purchase of the land will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land.

7.2 The Council may not exercise the power unless it considers that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:

- The promotion or improvement of the economic well-being of their area
- The promotion or improvement of the social well-being of their area
- The promotion or improvement of the environmental well-being of their area

It is immaterial that the redevelopment may be carried out by a third party.

7.3 Section 13 of the Local Government (Miscellaneous) Provisions Act 1976 enables the Council to compulsorily acquire new rights where necessary

7.4 Ministry of Housing Communities and Local Government Guidance on Compulsory Purchase process and Critehel Down Rules July 2019. Paragraph 1 states: “Compulsory Purchase powers are an important tool to use as a means of assembling the land needed to help deliver social, environmental and economic change. Used properly they can contribute towards effective and efficient urban and rural regeneration, essential infrastructure, the revitalisation of communities and the promotion of businesses leading to improvements in quality of life. Paragraph 2 of the Guidance states “Acquiring authorities should use Compulsory Purchase powers where it is expedient to do so. However, a Compulsory Purchase Order should only be made where this is a compelling case in the public interest”.

7.5 Further the Guidance at Paragraph 95 in relation to Section 226 1(a) Town and Country Planning Act 1990 states “This power is intended to provide a positive tool to help acquiring authorities with planning powers to assemble land where this is necessary to implement proposals in their Local Plan or where strong planning justifications for the use of the power exist. It is expressed in wide terms and can therefore be used to assemble land for regeneration and other schemes where the range of facilities or purposes proposed mean that no other single specific compulsory purchase power would be appropriate. Paragraph 97 of the Guidance sets out what the power can be used for “Section 2261(a) enables acquiring authorities with planning powers to acquire land if they think that it will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired, and it is not certain they will be able to acquire it by agreement.

7.6 A compulsory purchase order to which there are objections will require confirmation by the Secretary of State to become effective. The Guidance provides that any decision by the Secretary of State about whether to confirm an order under Section 226 1(a) will be made on its own merit, but the factors that the Secretary of State can be expected to consider which are set out at paragraph 106 include:-

- (a) whether the purpose to which the land is being acquired fits in with the adopted planning framework for the area or where no such up to date plan exists with the Draft Local Plan and the National Planning Policy Framework
- (b) the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area;
- (c) the potential financial viability of the scheme for which the land is being acquired;
- (d) whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by other means, for example any alternative proposals put forward by the owners of the land; and

7.7 The Guidance also requires the Council to have regard to the following when considering making a Compulsory Purchase Order;

- (a) that the purposes for which the Order is being made sufficiently justify interfering with human rights of those with any interest in the land affected;
- (b) the degree to which other bodies (including the private sector) have agreed to make financial contributions to underwrite the scheme and on what basis such contributions or underwriting is to be made;
- (c) evidence relating to financial viability; and
- (d) where the scheme is likely to be blocked by other impediments to implementation.

7.8 The Guidance looks to acquiring authorities to seek to acquire land by agreement wherever practicable. However, the Circular recognises that it may be sensible for acquiring authorities to start formal compulsory purchase procedures in parallel with their efforts to acquire by agreement. The Circular notes that this has the advantage of making the seriousness of the acquiring authority's intentions clear from the outset, which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.

## 8.0 **The Case for making the Compulsory Purchase Order**

8.1 The CPO includes an access track that would be included as part of the proposed car park within the scheme currently being implemented with the benefit of planning permission listed building consent as set out above. The CPO includes land within Historic England's ownership to ensure that all existing rights and restrictions are extinguished. The car park is an essential requirement of that scheme in order to implement it in accordance with approved plans and conditions. The car park land will provide 98 spaces and includes a track currently used by pedestrians and highways, the ownership of

which is unknown. The Council has undertaken sufficient investigation to identify the owner of the Access Track. In order to ensure certainty of the Council's ability to assemble the land required in order for Historic England to implement the Scheme in full, within a reasonable timeframe, the Council considers that it must take the necessary steps to make the Order.

- 8.2 Paragraph 15 of the CPO Guidance confirms that, in addition to demonstrating that there are no funding related impediments to the delivery of the scheme underpinning a compulsory purchase order, an acquiring authority will also need to be able to show that the scheme is unlikely to be blocked by any physical or legal impediments to implementation.
- 8.3 In the circumstances, it is considered that there are no resource or funding impediments to the delivery of the Scheme – the requisite funding has been secured and is immediately available such that the compulsory acquisition proposed by the Order can be completed and the Scheme implemented within a reasonable timeframe, and most certainly within the statutory period following the date on which the Order becomes operative.
- 8.4 Any need for planning permission or other consent or licence is amongst the examples given by the CPO Guidance as to what may constitute a legal impediment. As confirmed above, the Council is satisfied that all necessary consents, including planning permission and listed building consent, have been obtained in respect of the scheme and implementation is well advanced.
- 8.5 As regards physical impediments to scheme delivery, there are no programming or accommodation works related issues affecting implementation in this case. It is anticipated that a start on site could be made, assuming the Secretary of State for Housing, Communities and Local Government is minded to confirm the Order, within 3 months (maximum) of the Order becoming operative. This is the minimum period required for acquisition of any remaining third-party land and/or interests in the Order Land following confirmation of the Order.
- 8.6 Paragraph 12 of the CPO Guidance states that a compulsory purchase order should only be made where there is a compelling case in the public interest. Furthermore, the CPO Guidance directs acquiring authorities to give particular consideration to the rights protected under the European Convention on Human Rights ("the Convention") in order that they can be sure that the purposes for which a compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected.
- 8.7 In the absence of the Order, there is no certainty that the Council will be able to assemble the land required for Historic England to implement the Scheme, thereby jeopardising the delivery of the successful delivery of the Flaxmill's redevelopment and of the associated public benefits. Adequate provision is made to retain the vehicular access across the Order land to private land beyond and exiting cycle and footpath provision is enhanced by the provision of a new surfaced path.
- 8.8 Accordingly, the Council considers there is a compelling case in the public

interest for the compulsory acquisition of the Order Land and that, in making the Order, there would be no unlawful interference with the Convention rights set out above.

## Conclusions

The Council’s vision for the regeneration of the Shrewsbury Flaxmill is set out in the Core Strategy and the Shrewsbury Big Town Plan. This development will enable that vision to be realised. The proposals offer an opportunity to develop a high quality mixed use regeneration scheme which will make a significant contribution to the economic vitality of the town and create new jobs and provide an enhanced environment.

Without the use of compulsory purchase powers the Scheme will not be delivered and without the CPO the Council will not be able to secure the wider public benefits that the Scheme will bring. In light of the facts and considerations set out above it is therefore concluded that there is a compelling case in the public interest for the exercise by the Council of its compulsory purchase powers.

### **List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

Shropshire Core Strategy and SAMDev Plan

Shrewsbury Big Town Plan 2018

Reports to Central Area Planning Committee

### **Cabinet Member (Portfolio Holder)**

Gwilym Butler, Portfolio Holder for Communities , Place Planning and Regulatory Services

### **Local Member**

Councillor Alan Moseley

### **Appendices**

Appendix 1 - CPO Boundary Plan

Appendix 2 – Betterment Plan

Appendix 3 – Draft statement of reasons

Appendix 4 – Planning History

Appendix 5 – Letter from Historic England requesting the Council to use its Compulsory Purchase powers

Appendix 6 - Planning Policy Schedule

