

DECISION-MAKER:	CABINET		
SUBJECT:	AUTHORISATION TO MAKE A COMPULSORY PURCHASE ORDER IN RELATION TO THE REDEVELOPMENT OF BARGATE SHOPPING CENTRE AND ADJOINING LAND		
DATE OF DECISION:	17 OCTOBER 2017		
REPORT OF:	LEADER OF THE COUNCIL		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Alex Russell Wendy Bennett	Tel: 023 8083 3227 023 8083 2507
	E-mail:	Alex.russell@southampton.gov.uk Wendy.bennett@southampton.gov.uk	
Director	Name:	Mike Harris	Tel: 023 8083 2882
	E-mail:	Mike.harris@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

This report outlines proposals by Bargate Property Limited (“BPL”) for the comprehensive redevelopment of the former Bargate Shopping Centre and adjoining land to provide a mixed use scheme and seeks a resolution to (i) make a compulsory purchase order (“CPO”) to assist with the site assembly required to facilitate the implementation of the redevelopment proposals of the former Bargate Shopping Centre and surrounding area (as edged red on the plan at Appendix 1), and (ii) authorisation for officers to make the CPO subject to the prior completion of an indemnity agreement and to carry out all necessary steps in conjunction with the CPO to secure its confirmation and subsequent implementation.

RECOMMENDATIONS:

	(i)	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 and section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of the land and new rights for the purposes of securing the comprehensive redevelopment and improvement of the Bargate Shopping Centre and surrounding land to provide a mixed use development with associated parking and servicing, landscaping and public realm.
	(ii)	To authorise the Service Director: Growth in consultation with the Service Director: Legal and Governance to carry out the functions set out in (a), (d), (e) and (h) below and to authorise the Service Director: Legal and Governance to carry out the functions set out in

		<p>(b), (c), (f) and (g) below:</p> <ul style="list-style-type: none"> 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 redevelopment and regeneration of the Bargate Shopping Centre and surrounding area; d) To identify and acquire interests and new rights required to facilitate delivery of the redevelopment and regeneration of the Bargate Shopping Centre and surrounding area 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 provision for the payment of compensation and/or relocation; f) In the event the Order is confirmed by the Secretary of State, 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 in 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.
REASONS FOR REPORT RECOMMENDATIONS		
1.		<p>The Bargate Shopping Centre and adjoining land is in need of redevelopment. It has been identified as a “Very Important Project” and is allocated for redevelopment in the City Centre Action Plan 2015. Planning Permission was granted for redevelopment of the site in August 2017 and a Compulsory Purchase Order is required to achieve site assembly and enable the development to proceed. The development promotes the social,</p>

	<p>environmental and economic objectives of Southampton which are considered to outweigh the harm caused by interference with the human and other rights of those likely to be affected by compulsory purchase. In officers' view, there is a compelling case in the public interest sufficient to justify the making of the Order and that the requirements of making a CPO as detailed in the Government's CPO Guidance are met.</p>
<p>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</p>	
<p>2.</p>	<p>Although site assembly could be sought by private treaty alone it is unlikely that this could be achieved within a reasonable timescale without CPO powers. It is therefore considered crucial that the site is supported by a CPO in order to achieve certainty of delivery. Officers understand that BPL will continue to seek the purchase of interests by agreement.</p>
<p>DETAIL (Including consultation carried out)</p>	
<p>3.</p>	<p>BACKGROUND</p> <p>The redevelopment of the former Bargate Shopping Centre sits within the "Heart of the City", which is one of the council's "Very Important Projects". The Bargate area is part of Southampton city centre's main retail area. It links the main shopping facilities together. The shopping centre is currently closed, vacant and in need of re-development. The Scheduled Ancient Monuments of the Old Town Walls and Bargate Monument also fall within the redevelopment area.</p> <p>The site was allocated as a redevelopment site in the Southampton City Centre Area Action Plan 2015.</p> <p>The Bargate Shopping Centre was previously owned by Parkridge and the Council was working with them in respect of achieving its redevelopment. Parkridge went into administration on 24 August 2011. A number of developers had discussions with the Council and the administrators over the next few years and Bargate Property Ltd ("BPL") acquired the property in Summer 2015.</p> <p>On 29th July 2016, Bargate Property Limited submitted a planning application (ref: 16/01303/FUL) for "<i>Demolition of existing buildings (Bargate Shopping Centre and multi-storey car park; 77- 101 Queensway; 25 East Street; 30-32 Hanover Buildings; 1-16 East Bargate; and 1-4 High Street, excluding the frontage); refurbishment of basements and mixed use development comprising 152 flats (63 x one bedroom and 89 x two bedroom) (Use Class C3); 185 units of student residential accommodation (451 bedrooms); retail use (Class A1); flexible retail, office or food and drink use (Classes A1-A3); in new buildings ranging in height from 4-storeys to 9-storeys; with associated parking and servicing, landscaping and public realm.</i>" This is referred to as "the Development" in the report.</p> <p>The Council's Planning and Rights of Way Panel considered the application and resolved to grant planning permission on 10 January 2017. This is a</p>

	<p>background paper.</p> <p>Planning permission was granted on 10 August 2017 following the completion of a section 106 agreement.</p> <p>The application site is in multiple ownerships. BPL owns the majority of the freehold land. It has also agreed heads of terms to acquire some freehold land owned by the Council required as part of the redevelopment proposals. BPL is able to secure vacant possession of the Site from the majority of its business occupiers. There remain, however, some leasehold properties, which BPL has not yet been able to acquire through negotiation and it is unable to rely on landlord and tenant powers to achieve vacant possession in the proposed development timescales. It is these properties that will be primarily the subject of the CPO.</p> <p>BPL has also applied to the Secretary of State and will also apply to the Council for stopping up orders in relation to highway which is required for the new development. The ownership of the subsoil to some of the areas to be stopped up is not known and it is considered prudent to include these areas of subsoil with the CPO to ensure that possession of all land needed to deliver the Bargate Centre redevelopment can be secured.</p> <p>Lastly, BPL will require some new rights to be acquired to enable it to carry out construction works required to deliver the Development. It is proposed these new rights will also be secured via the CPO.</p> <p>When exercising CPO Powers, the Council is liable for any compensation payable to the affected third parties. It is therefore important that BPL indemnifies the Council for all costs arising from the use of CPO powers in relation to this development. The proposed CPOIA indemnifies the Council against, and provides for payment by BPL, of all costs and liabilities reasonably incurred by the Council arising out of the use of its CPO powers including acquisition costs, compensation payments, inquiry costs and legal and valuation costs in connection with processing and implementing the CPO (including the costs of the Council's consultants and officers).</p>
<p>4.</p>	<p>THE ORDER LAND</p> <p>The redevelopment site includes the former Bargate Shopping Centre and associated land, including the western frontage to Queensway and the 3 storey (part 4 storey) building fronting the Bargate monument occupied by Mettricks coffee shop, Lush and Maplin amongst others. The partially exposed old Town Walls (also a Scheduled Ancient Monuments) are also located within the development area.</p> <p>As mentioned above, the majority of the land required for the Development to be delivered is in the control of BPL. The council is in discussions with BPL in</p>

respect of the disposal of its interests to BPL within the development site. BPL has sought and is continuing to seek to acquire by negotiation, four leasehold properties where it is the freehold owner. The four properties together with details of the leasehold interests as well as other land interests are set out below:

- i. 77 Queensway. This is a 10 year lease expiring on the 21st June 2020 held by Meridian Logistics Limited (trading as Pack & Send). The lease has the protection of the Landlord and Tenant Act 1954. There is no ability for the landlord to determine the lease earlier than the lease expiry dates.
- ii. 81 -38 Queensway. Two leases are held by individuals for the shop known as Tiffany's Ladies Fashion and Accessories. Both leases are for a 10 year term expiring on the 24th March 2023. The lease has the protection of the Landlord and Tenant Act 1954. BPL has no rights to determine the lease earlier than the lease expiry date.
- iii. 85-87 Queensway, held by individuals for the restaurant known as Casanova Italian Restaurant on a 10 year lease expiring on the 30th August 2027. The lease has been contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954. BPL has no rights to determine the lease earlier than the lease expiry date.
- iv. 99-101 Queensway. The property is held by the British Heart Foundation on a 10 year lease expiring on the 12th March 2019. The lease benefits from the protection of the Landlord and Tenant Act 1954 ('1954 Act') and will need to be brought to an end through the service of a s.25 notice with compensation payable under s.37 of the 1954 Act. If a CPO is required, the likelihood is that by the time the CPO is confirmed, the s.25 notice will have been served and as such there will be no need to acquire the interest via the CPO but, BPL has requested, and officers would recommend, including the interest in the CPO so to ensure that possession can be obtained within a reasonable timeframe.
- v. Electricity Sub-stations – there are two electricity substations which will need to be relocated and/or removed as part of the Development, one at Hanover Buildings and another at York Buildings. The Hanover Buildings sub-station only served the previous shopping centre and therefore is no longer required. The York Buildings sub-station will need to be relocated as it currently serves East Street. Both of these interests fall into the category of special kinds of land for the purposes of CPO, which may require separate Secretary of State approval to the CPO if the statutory undertakers for the substations objects. It is anticipated that BPL will be able to reach an agreed position on this sub-stations.
- vi. Subsoil – BPL has applied for a stopping up order pursuant to Section 247 of the Town and Country Planning Act 1990 and will also apply to

	<p>the Council for a separate stopping up order pursuant to section 257 of the 1990 Act in relation to a small area of footpath at Queensway. On securing a stopping up order, and following its implementation the sub-soil of the highway will revert to the original landowners. Investigations are being undertaken to identify ownership of those sub-soil areas. In the event that ownership does not rest with the Council or BPL it will be necessary to include those areas also within the CPO to ensure that all land needed to facilitate the development is secured.</p> <p>Throughout the CPO process, BPL will continue to negotiate with the leaseholders to seek to acquire their interest by agreement.</p> <p>BPL has identified that for the purposes of constructing the development, it will also need new rights over some adjoining properties and it is proposed that these also be secured via the CPO. It is currently anticipated that rights will be needed for the erection of protective scaffolding in relation to properties at 24 East Street and 5 East Bargate and delegated authority is sought from members to include any such rights in the Order: see recommendation (ii)(c). BPL has also identified that it may need additional rights over an existing substation known as the Haymarket substation. As part of the Development BPL propose to build a new wall around the sub-station for good design purposes. It may be therefore that this right needs to be secured together with such other protective works to the substation as may be needed to facilitate that.</p>
5.	<p>LEGAL BACKGROUND TO COMPULSORY PURCHASE POWERS</p> <p>In respect of the proposed redevelopment proposals for the Bargate Shopping Centre and surrounding area, the most appropriate and specific power available to the council to make a compulsory purchase order is section 226(1)(a) of the Town and Country Planning Act 1990 (as amended). It states that a local authority shall have power to acquire compulsorily any land in their area <i>“if the authority think that the acquisition will facilitate the carrying out of development/re-development or improvement on or in relation to the land.”</i></p> <p>Under section 226(1A), the power must not be exercised unless members think that the development, re development or improvement of land is likely to contribute to the achievement of the promotion of improvement of the social, economic and/or environmental well-being of the area.</p> <p>The Council should also have regard to the CPO Guidance¹ published by Government.</p> <p>Paragraph 1 of the CPO Guidance states <i>“Compulsory purchase powers are</i></p>

¹ **Guidance on Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion - 2015**

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 business – leading to improvements in quality of life.”

Paragraph 2 of the CPO Guidance goes on to state “*Acquiring authorities should use compulsory purchase powers where it is expedient to do so. However, a compulsory purchase order should only be made where there is a compelling case in the public interest”* and that authorities “*should be sure that the purposes for which the compulsory purchase order is made justify interfering with the human rights of those with an interest in the land affected”*.”

Compulsory purchase is intended as a last resort to secure land assembly. However, the CPO Guidance does acknowledge that given the length of time it can take to secure a CPO, it can be sensible to plan for and initiate the formal CPO process alongside the negotiation process. Officers understand that BPL have been in negotiations with the leaseholders of the properties which are proposed to be subject to CPO, over the course of the last 8 months and despite that engagement, BPL has no comfort that settlement terms will be completed within timescales which dovetail with its wider redevelopment timetable.

A CPO requires confirmation from the Secretary of State unless no objections are made or are not withdrawn, in which event the Council can confirm the CPO itself. An outline of the CPO process is set out in the next heading. In the event that the CPO is made and objections are made and not withdrawn, it is likely that a public inquiry will be held and a planning inspector appointed to consider the case and to make a recommendation to the Secretary of State who will decide whether or not to confirm the CPO.

The CPO Guidance sets out the key matters that the Secretary of State will have regard to when considering whether to confirm a CPO and what an acquiring authority will need to demonstrate, in particular:

- whether the purpose for acquisition fits with the planning framework for the area;
- the extent to which the scheme will contribute to the achievement of the economic, social and/or environmental well being of the area;
- whether the necessary resources are available to achieve the purpose of the Order within a reasonable timescale;
- that the scheme is unlikely to be blocked by legal or physical impediments
- whether the purpose for which the Order land is to be acquired could be achieved by any other means.

The Council will need to demonstrate having regard to the above, and having particular consideration to the impact of the proposed CPO on Human Rights, and Section 149 of the Equality Act 2010, that there is a compelling case in

	<p>the public interest for the making and confirmation of the CPO.</p> <p>These matters are addressed in the balance of this report.</p>
<p>6.</p>	<p>OUTLINE OF THE COMPULSORY PURCHASE PROCESS</p> <p>The procedures for compulsory purchase under planning powers are mainly governed by the Acquisition of Land Act 1981, the Compulsory Purchase (Vesting Declarations) Act 1981 and the Compulsory Purchase Act 1965. Compensation for affected parties is governed by a number of statutes including, in particular, the Land Compensation Acts 1961 and 1973, the Compulsory Purchase Act 1965 and a considerable body of case law.</p> <p>In outline, if Cabinet resolves to make an Order the main steps which will be taken include:</p> <ol style="list-style-type: none"> 1. Making the Order 2. Notification of persons affected and publicity for the making of the Order and the Council's intention to submit it to the Secretary of State for confirmation 3. Submission of the Order to the Secretary of State 4. Minimum of 21 days from notification of the order for the public to make representations/objections 5. Public local inquiry (if objections outstanding) 6. Inspector's report to the Secretary of State 7. Secretary of State's decision on confirmation 8. Notification and publicity for the Secretary of State's decision (if confirmed) 9. Six week challenge period 10. Acquiring /taking possession of the Order Land 11. Compensation <p>Alongside these steps, reasonable efforts to acquire land and rights by agreement would be expected to continue.</p> <p>The necessary work in gathering information needed to draw up the Order will need to be completed. The Order will include a schedule listing all owners, lessees, tenants and occupiers and others who are likely to have a claim for compensation if compulsory purchase takes place. These affected parties are known as "qualifying persons" and they must all receive the statutory notices once the Order is made.</p> <p>In addition they will be provided with a (non-statutory) "Statement of Reasons" for making the Order. The statutory notices will invite them to make representations/objections to the Secretary of State within a specified period of at least 21 days (step 4).</p>

	<p>If valid objections to the Order are made to the Secretary of State by qualifying persons and they are not withdrawn he is likely to arrange for a public local inquiry to be held and the Council and all objectors will be notified (objections which relate exclusively to compensation may be disregarded for this purpose). The date of the Secretary of State's notification confirming his intention to hold a public inquiry is known as the "relevant date". The public local inquiry would normally take place within 22 weeks of the relevant date. The Council will be required to provide the Planning Inspectorate and National Planning Casework Unit and all objectors with a Statement of Case within 6 weeks after the relevant date. The Secretary of State may require other parties to prepare outline and full Statements of Case.</p> <p>After the inquiry the inspector will report to the Secretary of State who will decide whether the Order should be confirmed, modified or rejected (step 7). If the Order is confirmed the Council must publish notice of confirmation and give individual notices to all qualifying persons with a copy of the Order as confirmed (step 8). The date on which notice of confirmation is first published is important as a number of key time limits run from this date, in particular, the 6 week statutory challenge period (step 9) and the three year period within which the powers to acquire land under the Order must be "exercised", either by serving notice to treat or by executing a general vesting declaration (step 10).</p> <p>So far as possible, all claims for compensation will be settled by agreement. Rights to compensation include not only the value of land and rights acquired (and the diminution in value of land adversely affected but not acquired), but claims in respect of disturbance to business and occupation and basic loss and occupier loss (in respect of non-residential properties). Disputes over compensation are determined by the Upper Tribunal (Lands Chamber).</p> <p>Once the Order has been submitted to the Secretary of State, properties with a low rateable value may be entitled to submit claims for blight, in effect, seeking early acquisition of their land interest. Under the CPOIA BPL will be obliged to meet the cost and any compensation payment associated with a validly served blight notice.</p>
<p>7.</p>	<p>COMPLIANCE OF THE DEVELOPMENT WITH THE ADOPTED PLANNING FRAMEWORK AND LACK OF PLANNING IMPEDIMENTS</p> <p>The development plan for the city of Southampton comprises the Core Strategy (amended 2015), the Local Plan Review (amended 2015) and the City Centre Action Plan 2015. An extract from the developer's Planning Statement setting out details of the relevant national and local planning policies is included at Appendix 2 to this report to which members are referred. In summary, the Development is:</p> <ul style="list-style-type: none"> • consistent with the National Planning Policy Framework 2012 ("NPPF") which supports the vitality of town centres though the "town centres

	<p>first “ approach and the National Planning Practice Guidance (“NPPG”) which gives guidance on how to interpret the NPPF.</p> <ul style="list-style-type: none"> • compliant with the Council’s development plan. <p>Policy AP28 of the City Centre Action Plan allocates the site for redevelopment and is thus the principal policy directing development on the site.</p> <p>The background to the policy says that redevelopment of the Bargate Centre will provide opportunities for high quality retail led redevelopment and public realm improvements to open up and improve the surroundings of the Town Walls and the Bargate monument itself. It goes on to add that the Bargate is a medieval town gate which forms the principal entrance to the Old Town and is a key local landmark. It is a Grade I Listed Building and Scheduled Ancient Monument. As sections of the Town Wall which were connected to the Bargate were demolished, redevelopment should therefore realign the new building more closely around the Bargate to follow the historic street pattern and mark the entrance to the Old Town. A key objective of the policy is that new development needs to respect the setting of the Bargate and Town Walls as well as further improve it.</p> <p>The Development provides for a mixed-use redevelopment of the site to provide replacement retail, private and student residential, and a public pedestrianised route, above associated basement car parking. The development seeks to physically and visually link the Bargate with Queensway and, in this respect, seeks to use the existing Debenhams as an anchor to the scheme. A key aspiration of the proposal is to open up public access to the Town Walls that currently sit in a backland location hard up against the existing shopping centre.</p> <p>Planning permission for the Development was granted on 10 August 2017 following completion of a section 106 agreement. In granting planning permission, the Council concluded that the Development accorded with the development plan as a whole and that there were no material considerations which indicated that permission should be refused. Accordingly, officers consider that the Development is capable of implementation and that there are no planning impediments that would be likely to prevent the delivery of the Development. Members are asked to pay special attention to the desirability of preserving or enhancing the character or appearance of the setting of the conservation area, the ancient monuments and registered parks in relation to the Development, which was considered in the determination of the planning permission.</p>
<p>8.</p>	<p>CONTRIBUTION TO THE ECONOMIC, SOCIAL AND ENVIRONMENTAL WELL-BEING OF THE AREA</p> <p>The key benefits of the Development are:</p>

- Substantial investment in Southampton City Centre;
- The development of a largely vacant, under-utilised site to form a mixed-use development that will contribute to the economic vitality of the city centre;
- The delivery of employment accommodation in the form of retail and restaurant space which will provide employment opportunities (forecast to provide 280 new jobs);
- The delivery of 152 residential units on a brownfield site in a sustainable location helping to meet the Council's housing targets;
- The creation of 185 purpose-built student accommodation units, helping to accommodate the growth in the student population helping alleviate the reliance of students on houses of multiple occupation which in turn makes these properties available for families, etc.;
- The delivery of a significant amount of new public realm and the opening up of the historic Town Walls to the public so the Grade I listed building and scheduled ancient monuments can be enjoyed and their setting vastly improved this includes a Section 106 obligation to secure the provision of or contribution towards works along the line of the missing Town Walls between Bargate and the First Tower and from Polymond Tower within the site;
- The creation of a new public link connecting the pedestrianised high street with Queensway, better incorporating both the development and the adjacent Debenhams department store as part of the prime retail area;
- The new residential and student units will result in additional economic activity in the city centre, with the occupants of these properties expected to contribute over £5m of additional spending per annum.
- The promotion of a night time economy in keeping with the designation of the area as an Evening Zone through the introduction of suitable food and drink uses either side of the entrance to the High Street and kiosks along the Town Wall.
- The creation of an enhanced retail offer and new modern retail space which is in keeping with the Council's policy requirements to maintain and enhance Southampton's role as a regional shopping destination, focusing on new major retail within its area.
- Measures to enhance arrival and movement to and from the site including the creation of a permitted route for pedestrians and cyclists between Bargate and Queensway;
- Various new highway improvements to improve movement of pedestrians and vehicles around the site;

The Environmental Statement, which accompanied the planning application for the Development set out some of the economic benefits of the Development. These were set out in the officers' report to the council's Planning and Rights of Way Panel and are repeated below:

"6.2.4 The Environmental Statement (ES) suggests that increased levels of

proposed expenditure would be expected to occur as a result of the increased residential population of the development. For example, according to a 2013 report on Family Spending (published by the Office for National Statistics in 2013) the average total weekly household expenditure on basic consumables per week was £147.90. Therefore, it is possible that the 152 flats could generate in the region of £1,100,000 of direct expenditure on goods per annum. It is envisaged that a significant proportion of this would be spent locally and would, therefore, be a benefit to the local economy, as jobs would be supported and maintained.

6.2.5 In addition, Policy CS16 of the Core Strategy confirms that 'in response to concern about the concentration of student accommodation within parts of the city, the Council will work in partnership with universities and developers to assist in the provision of suitable, affordable accommodation for students to relieve the pressure on housing markets'. This policy confirms the Council's dual approach of delivering purpose built student accommodation whilst simultaneously managing the conversion of existing family housing to HMOs to relieve the pressure on local markets. Since the application also proposes purpose-built accommodation for students, it would be consistent with this approach. In addition to this, 'saved' Local Plan Policy H13 supports the delivery of student accommodation in locations accessible to the universities and where there is an identified need. The planning application draws on previous submissions to evidence need. The location of the site, within the city centre and close to the Solent University, with excellent public transport links to the University of Southampton's Highfield campus is appropriate for a significant level of student accommodation as is proposed.

6.2.6 In order to establish the benefits of the student accommodation, in terms of additional local expenditure, the ES provides figures supplied by the National Union of Students (NUS) in September 2013, which stated that across the UK students spend on average £9,204 per annum on items and services such as personal items, household goods, food, travel and leisure. Assuming that the uptake of the 451 student bedrooms is 100% (as predicted) the ES suggests that this could mean an additional £4 million (excluding rents and tuition fees) of spending in Southampton per annum for the life of the project.

6.2.7 The regeneration benefits of this development are considerable especially in the current economic circumstances. A number of employment generating uses are proposed, albeit mainly in the retail sector, although the scheme will also require on-site management and security in addition to the creation of jobs to support the student housing. The applicant predicts that the scheme could generate up to 280 jobs. The inclusion of an Employment and Training Management Plan, as part of the Section 106 agreement, would help to include opportunities for unemployed local people during both the construction and operational phases. Furthermore, the creation of a high quality public realm, and the opening up of the Town Walls thereby creating a unique retail destination, would have wider benefits to the city centre. According to the Council's Local Transport Plan (LTP) Implementation Plan and Streets and Spaces Framework it is anticipated that the city generates £5

of private inward investment for every £1 spent on its public realm. The applicant's high design aspirations for the scheme, and associated public realm and CIL contribution (if allocated), would continue to raise the architectural standard for other future developments in the city."

In respect of environmental benefits alone, it should be noted that the commercial accommodation will be built to a standard that will achieve a BREEAM rating of excellent, the Scheme provides for the installation of a Combined Heat and Power facility on site (if progressed - at present the inclusion of a CHP is provisional), the inclusion of green roofs on some aspects of the development.

9. REASONABLE PROSPECT OF THE DEVELOPMENT PROCEEDING
BPL's Resources

BPL is a special purpose vehicle which holds part of the Bargate Centre. Tellon Capital LLP act as the acquisition and development manager for BPL, and it specialises in investing in UK real estate through partnerships with high net worth individuals, families and institutional investors. The founders of Tellon Capital LLP have a background and established history of delivering mixed use development schemes similar to the Bargate Development proposals.

BPL has indicated that its current intention is to fund the obligations under the CPOIA and the Development through BPL's shareholders private equity, without the need for securing any external funding or investment.

The Development, provides a sufficient level of return for BPL to commit to its delivery. BPL, during the planning process, stated "*We wish to regenerate this part of Southampton and develop an asset which we intend to hold as an investment for many years to come. We propose to develop the site to protect the long term income and potential of the site. As a private development company we will consider working on lower than the appraised initial profit margins as we intend to retain the scheme. This means that we are looking at the revenue stream as well as the capital appreciation over a longer time period than the analysis provides.*"

Lack of impediments

On the issue of scheme deliverability, the Secretary of State will also wish to be satisfied that there are no physical or legal impediments to the Development proceeding.

Investigations undertaken by BPL to date have not found any physical factors which would impede development.

Planning permission for the Development was granted on 10 August 2017.

Following the grant of planning permission, BPL has begun discharging pre-demolition conditions attached to the planning permission and are intending to commence demolition of the Bargate shopping Centre later this year. A contractor to carry out the demolition works is currently being procured.

Officers understand that BPL is also in discussions with the University of Southampton relating to the provision of the proposals for student housing. BPL has stated its intention to have the student housing available by September 2019, this being an arbitrary delivery date given this is the start of the new academic year.

Ancient Monument Consent is required from Historic England as the Development abuts the Bargate; this is required to ensure that the Town Wall and Bargate are adequately protected during the demolition and construction process and for any repair works to be carried out. BPL has already had pre-application discussions with Historic England and has confirmed it will be submitting the first of two applications (the first being to address the demolition stage) imminently, and there is no reason why consent should not be forthcoming.

BPL has also applied for the necessary stopping up in respect of the public highway that runs through the application site. BPL will also apply to the Council to stop up a section of footway on Queensway. This is to stop up those parts of the highway on which the Development will be constructed.

One or more agreements under section 278 of the Highways Act 1980 are to be entered into by BPL with the council as highway authority in respect of works required under the s.106 agreement related to the Development.

Taking into account the above factors, it is considered that there is a reasonable prospect of the Development proceeding if the Order is made.

Whether the purpose for which the land is proposed to be acquired could be achieved by other means including alternative proposals by owners of the land, or any other persons for its reuse and/or the suitability of an alternative location for the purpose for which the land is being acquired.

The purpose for which land and any rights are proposed to be acquired is to enable the comprehensive redevelopment of the application site (in which the Order land falls) in accordance with the adopted planning policy framework. The planning permission which has been granted secures the comprehensive redevelopment in general accordance with those policies.

The nature and number of existing leasehold interests in the proposed Order Land and the negotiation carried out to date indicate that the prospects of

acquisition of all the available interests by agreement to enable comprehensive redevelopment within a reasonable timescale are unlikely. Similarly, waiting for those leases to expire will not lead to redevelopment within a reasonable timescale, with one of the leases not due to expire until 2027.

Officers have considered whether redevelopment in accordance with the planning policy objectives might be achieved with the exclusion of the leasehold interests from the development site. This effectively means leaving the Queensway frontage in its existing state. Demolition of all of the properties is required in order to create the pedestrian link and the public realm which opens up the Town Walls. Whilst 77 and 81 Queensway are included within the footprint of phase 2 of the Development they form part of a larger building structure which needs to be demolished to allow phase 1 to be brought forward (through the creation of the public access and new service road). The need to demolish the Queensway buildings early on in the development programme is also reflected in the planning conditions imposed. Planning condition 25 prevents occupation of buildings (other than Site A) until the new access point into the site from Queensway and the new pedestrian link from East Bargate to Queensway have been substantially completed. Developing other elements of the Development whilst waiting for the leases to expire on the Queensway units is therefore not a viable proposition as the length of unexpired lease terms is too long.

BPL is the freeholder of the majority of the site, with the Council owning a small part. Save for those properties which are identified for compulsory acquisition, all other interests can be readily terminated by BPL when required. Accordingly, it is considered that there are no other owners of the Bargate Centre or those with a sufficient interest which could genuinely promote an alternative scheme nor deliver an alternative scheme; indeed no alternative proposals have been put forward.

Whilst alternative sites exist in the city, this Site is identified in Policy AP 28 of the City Centre Area Action Plan; it forms part of the defined City Centre (comprising both primary and secondary shopping frontage) and an opportunity site for a mix of uses including retail, residential and office development. It is also identified as an Evening Zone and forms part of the wider Town Centre Employment Area allocation. Its particular location offers the unique opportunity to secure the long standing aspiration of the Council to create better access to and views of the Town Wall setting and create better pedestrian connectivity within the site itself and to the surrounding area, in particular the creation of a new route from Bargate to Queensway and the opening up of the link along York Wall to reconnect East Street with the High Street and to the park. The redevelopment of this site therefore will secure particular environmental improvements which will not be achieved by developing any alternative site. Each of the sites allocated in the City Centre Area Action Plan will deliver a series of improvements for the benefit of the town centre tailored to the locality of each site; they are not interchangeable in terms of the type and form of development nor of the planning benefits which each will deliver.

	<p>Overall, it is concluded that there is no credible alternative which is likely to deliver a comprehensive scheme which meets the planning policy objectives within a reasonable timeframe.</p>
<p>10.</p>	<p>HUMAN RIGHTS</p> <p>In reaching their decision, members should take account of the provisions of the Human Rights Act 1998. As a public authority, the Council must not act in a way which is incompatible with a Convention right protected by the Human Rights Act 1998. As outlined above, in officers' view there are strong grounds on which to conclude that the Development there is a compelling public interest sufficient to justify interfering with the human rights of those with an interest in the Order Land, in compulsorily acquiring the third party interests. The proposed Order does not include the acquisition of any residential properties.</p> <p>The key provision of the CPO Guidance is paragraph 2, quoted in section 5 above. This not only summarises the national policy and the need for there to be a "compelling case in the public interest" for compulsory acquisition, but also meets the requirements of the Convention. In relation to Article 1 of the First Protocol of the European Convention, a fair balance is required to be struck between the public interest and private rights and in relation to Article 8, any interference with the right to respect for a person's private and family life and home must be proportionate.</p> <p>Human rights protected by the 1998 Act of particular importance to the decision on compulsory purchase are those under Articles 6 and 8 and Article 1 of the First Protocol of the Convention.</p> <p>Article 6 provides:</p> <p><i>"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."</i></p> <p>The statutory procedures require that all those likely to be affected by the Order are notified and given an opportunity to object. If there are objections the Secretary of State will arrange a public local inquiry so that their objections can be heard (unless all parties agree to the written representations procedure). The legislation provides for statutory review in the event of challenge to the decision of the Secretary of State on confirmation of the Order. Disputes over compensation can be referred for hearing by the Lands Chamber of the Upper Tribunal. Taken together, the availability of these procedures satisfies the requirements of Article 6.</p> <p>Article 1 of the First Protocol provides:</p>

"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."

Article 1 of the First Protocol again indicates that compulsory purchase must strike a fair balance between the public interest and the private rights protected by Article 1, equivalent to proportionality under Article 8. For the reasons set out above, it is considered that there is a compelling case in the public interest for the Order to be made and this satisfies the requirements of proportionality and fair balance.

11. PUBLIC SECTOR EQUALITIES DUTY

The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics namely: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Section 149 of the Equality Act 2010 places the Council, as a public authority, under a legal duty ("the public sector equality duty"), in the exercise of all its functions, to have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
- advance equality of opportunity between persons who share a "relevant protected characteristic" (i.e. the characteristics referred to above other than marriage and civil partnership) and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Section 149 of the Equality Act 2010 and its predecessor provisions have been considered by the courts on a number of occasions. The principles derived from these cases include:

- "due regard" requires more than simply giving consideration to the above factors, councillors should be aware of the special duties the Council owes to those with protected characteristics;
- "due regard" is the regard that is appropriate in all the particular circumstances including, on the one hand, the importance of the areas of life of the members of the protected group that are affected and the extent of the effects; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing;
- no duty is imposed to take specific steps, it is a duty to have regard to the need to achieve the various goals referred to above;
- the duty must be fulfilled before and at the time that a particular policy which might affect protected groups is being considered. It involves a conscious approach and state of mind. It must be exercised in substance, with rigour and with an open mind. It is not a question of ticking boxes;
- the duty must be discharged by the public authority, it cannot be

	<p>delegated;</p> <ul style="list-style-type: none"> • it is a continuing duty; and • it is good practice for those exercising public functions in public authorities to keep an adequate record showing that they have considered the public sector equality duty. <p>It is necessary for the Council to have regard to this duty in determining whether to authorise the making of the Order.</p> <p>An Equality Impact Assessment was first undertaken in relation to the redevelopment and regeneration of the Bargate Shopping Centre and surrounding area when the Council was preparing the submission of its City Centre Action Plan, which has now been adopted. That assessment concluded that there would either be a positive or neutral effect on any protected groups.</p> <p>The owners and occupiers of the four commercial properties within the Order Land are likely to be the most affected by the Order. In respect of two of those, the leases are held by limited companies: British Heart Foundation and Meridian Logistics Limited. The leases in respect of the other two properties are held by individuals who aren't considered or known to have any protected characteristics.</p> <p>An Equality and Safety Impact Assessment ("ESIA") has been undertaken to assess the impact on any protected groups of the making of a compulsory purchase order and implementation of the Development, in line with the Equality Act 2010. The assessment concludes that there would either be a positive or neutral effect on any protected groups.</p> <p>The public sector equalities duty is a continuing duty and the impacts on any protected groups will be kept under review should any new information come to light or circumstances change.</p> <p>In view of the above and in summary, officers consider that the making of the Order would not have a detrimental impact on individuals or a groups of individual with protected characteristics. The Order will facilitate the delivery of the Development and it is considered that once the Development has been completed, all groups would benefit from the improved physical environment in the city centre as well as the wider economic benefits stemming from the proposals. The proposed new public spaces would create quality meeting places and help to reduce crime and the fear of crime and would help to foster good relations between all members of the community.</p>
<p>12.</p>	<p>FINANCIAL RISK</p> <p>To date, all internal officer costs have been paid by BPL. The council's ongoing internal and external costs until such time as the CPOIA is completed</p>

	<p>are protected by an undertaking by BPL’s solicitors.</p> <p>All costs associated with the CPO process and acquisition costs will be borne by BPL under the CPO Indemnity Agreement with Tellon Capital LLP acting as Guarantor.</p> <p>Whilst it is acknowledge that BPL is a special purpose vehicle whose main assets are the properties it owns in the application site, it is backed by Tellon Capital LLP who has agreed to act as Guarantor to BPL in the CPOIA in respect of any liabilities that the council may incur as a result of the CPO. Given the limited number and nature of the interests subject of the CPO, the likely level of compensation is relatively modest in the context of wider scheme costs. The Council can stop incurring costs associated with the CPO process if its costs remain unpaid within 8 weeks of being requested. Whilst it may be more difficult to pause works in the event of a CPO inquiry process, it is anticipated that these can be adequately managed. When acquiring interests following a confirmed CPO, the Council is not obliged to compulsorily acquire any interest until the Developer has first deposited the properly assessed compensation monies with the Council together with an additional contingency. The Council's risk to exposed financial liability is therefore kept to a minimum</p>
<p>13.</p>	<p>COMPELLING CASE IN THE PUBLIC INTEREST AND CONCLUSION</p> <p>The need for comprehensive redevelopment of the application site within which the proposed Order Land is located is acknowledged and supported in the adopted planning policy framework as summarised above. Delivery of the Development would fulfil the key planning policy objectives and transform Southampton’s historic Old Town centre and its retail and residential offer. It would contribute significantly to the improvement of the economic, social and environmental well-being of the area as outlined above. Officers consider that there is a reasonable prospect that the Development will proceed and that there are no likely realistic alternatives to compulsory purchase to achieve the purposes of the proposed Order. The impact on the human rights of those likely to be affected by the proposed Order is considered in section 10 of this report. The impact of the Order in the context of the Equalities Act 2010 is considered in section 11 of this report. In officers' view, there are considerable public benefits resulting in environmental, social and economic improvements to the local area to be derived from implementation of the Development. It is considered that these benefits outweigh the harm caused by interference with the human and other rights of those likely to be affected by compulsory purchase. In officers' view, there is a compelling case in the public interest sufficient to justify the making of the Order.</p>
<p>RESOURCE IMPLICATIONS</p>	

<u>Capital/Revenue</u>	
14.	All costs associated with the CPO and the actions arising from the recommendations will be borne by the developer.
<u>Property/Other</u>	
15.	The Council holds the freehold interest in part of the subject site. Terms have been agreed under delegated powers to transfer these interests to the developer subject to them completing the remaining acquisitions. The agreed deal will provide the Council with replacement income producing property assets together with the delivery of new public toilets within the scheme which will meet an executive commitment to deliver new public toilets in the city centre.
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
16.	The power to make a CPO and the necessary tests to consider is set out in the body of the report. An outline of the CPO process is set out in the body of the report.
<u>Other Legal Implications:</u>	
17.	Human rights and public sector equality duties considerations are set out in the body of the report and a more detailed ESIA contained in the background documents to the report.
18.	The council has the power to enter into the CPO Indemnity Agreement under section 1 of the Localism Act and section 110 of the Local Government Act 1972.
RISK MANAGEMENT IMPLICATIONS	
19.	The financial risks are considered in the body of the report. The decision could be challenged by way of a claim for judicial review. The CPO process is set out in the body of the report and the risks of any such challenge will be reviewed at each relevant stage.
POLICY FRAMEWORK IMPLICATIONS	
20.	The proposals contained in the report are in accordance with the Council's Policy Framework Plans. The planning permission for the proposed Development accords with the Council's Development Plan (referred to in Article 4 of the Constitution as the Council's Local Development Framework). Accordingly, delivery of the Development will contribute to the outcomes set out in the Council's Strategy (2016-2020) by bringing investment into the City and providing new homes and jobs.

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	Bargate ward
<u>SUPPORTING DOCUMENTATION</u>	

Appendices	
1.	Application site plan
2.	Planning policy framework (Section 5 Planning Statement)
Documents In Members' Rooms	
1.	Equality and Safety Impact Assessment
2.	Privacy Impact Assessment
Equality Impact Assessment	
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	Yes
Privacy Impact Assessment	
Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.	Yes
Other Background Documents	
Equality and Safety Impact Assessment (ESIA) Data Privacy Impact Assessment (DPIA)	
Other Background documents available for inspection at: Southampton & Fareham Legal Services Partnership, Southampton City Council, Civic Centre, Southampton, SO14 7LY	
Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	Report Planning and Rights of Way Panel 10 January 2017
2.	