



<b>REPORT OF:</b>	HEAD OF PROPERTY
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<b>TO:</b>	EXECUTIVE
<b>DATE:</b>	15 October 2015
<b>EXECUTIVE MEMBER:</b>	Councillor Mrs Natalie Bramhall

<b>KEY DECISION REQUIRED:</b>	YES
<b>WARD (S) AFFECTED:</b>	HORLEY – East and Central

<b>SUBJECT:</b>	<b>USE OF COMPULSORY PURCHASE POWERS TO ENABLE DEVELOPMENT OF LAND TO SOUTH OF HORLEY</b>
<p><b>RECOMMENDATIONS:</b></p> <p>(i) The Executive approves the principle of the Council’s willingness to use compulsory purchase powers under Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) to acquire or appropriate third party land and buildings for planning purposes, shown edged red on the plan in <b>Annex 1</b> of this report and such other incidental and adjoining interests in land which would facilitate and enable viable and deliverable development in connection with the creation of employment opportunities in the South of the Borough in order to improve the Borough’s economic and social wellbeing;</p> <p>(ii) The Head of Property, in consultation with the Executive Members for Finance and Property &amp; Regeneration, be authorised to undertake preparatory work for the making of a compulsory purchase order as detailed in paragraph 13 of this report;</p> <p>(iii) The use of CPO powers are subject to:</p> <ul style="list-style-type: none"> <li>• The Council and its development partners using reasonable endeavours to assemble the development site by agreement/private treaty.</li> <li>• The Council being satisfied that there is a viable business plan and funding strategy, together with where required a full and sufficiently detailed indemnity agreement and appropriate financial bond covering the costs of making and confirming any CPO and/or appropriation; and</li> <li>• In the event the Council and its development partners are unable to assemble the development land by agreement/private treaty, that a further report is presented to the Executive seeking authority to make a full and unconditional Compulsory Purchase Order for the site and to acquire or appropriate the site for Planning purposes.</li> </ul>	

### **REASONS FOR RECOMMENDATIONS:**

Where a development site is in multiple occupation and ownership, a developer may be unable to reach agreement with all of the landowners even where a scheme is viable. In this case an otherwise viable scheme of significant public benefit may be frustrated unless a capable authority, in this case the Borough Council, is able to compulsorily acquire all necessary interests in the site. In the case of key sites this would have adverse implications for the Council's corporate plan objectives and therefore the compulsory purchase powers would be used to enable improvement of the Borough's environmental, economic and social wellbeing.

Both the Council's Corporate Plan and adopted Core Strategy recognise the importance of promoting the Borough as a place to do business and providing commercially attractive premises and business infrastructure to deliver economic benefits for the Borough and its residents, through increased investment and the provision of jobs.

Local experience points to a lack of highly accessible, high quality, large scale business space: work carried out to inform the preparation of the Council's emerging Development Management Plan has identified that the most realistic location for such provision lies to the south of Horley.

Land in this location is currently in multiple ownership.

CPO will only be used where negotiated settlements cannot be reached and means land ownership does not act as a barrier for development of schemes which are in the economic, environmental or social interests of the Borough.

Where necessary suitable indemnities will be sought which provide sufficient financial resources to protect the Council against any financial risk and that any Development Partner has met the conditions to enable the development to proceed with the CPO and or appropriation and to minimise potential risks to the Council.

### **EXECUTIVE SUMMARY:**

This report seeks confirmation of the Council's willingness, in principle, to use compulsory purchase and appropriation powers in order to enable development of the site known as the Employment Land in Horley.

Government guidance in Circular 06/2004 'Compulsory purchase and the Crichel Down Rules' make it clear that CPO powers should only be exercised where there is a compelling case in the public interest.

Knowing the Council is prepared to use compulsory purchase powers may be sufficient to bring parties to the negotiating table. However, the report also seeks specific authority to commence preparatory compulsory purchase procedures in respect of the site so that the Council will be in a position to proceed quickly to make a Compulsory Purchase Order so that it can acquire all necessary interests in the land to enable development.

However, proceedings would only be initiated if that were necessary either to demonstrate intent to encourage meaningful negotiations or where negotiations had irretrievably broken down. The preference is to acquire by way of voluntary agreement wherever practicable. However if the Developer is unable to secure all the land interests within the timescale needed, a Compulsory Purchase Order will be required.

Officers would be required to obtain further Executive authority prior to the making of a

Compulsory Purchase Order.

This report was not included in the 28 Day Notice as required by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. It is considered that this report should be considered at this meeting of the Executive as a delay would impact upon the Council's overall 5 year plan to progress the development which is being brought forward to contribute significantly to the Council's sustainable financial future. A delay in progressing these would impact on the timetable for their delivery. The Chairman of the Overview and Scrutiny Committee, Councillor B.A. Stead has been consulted on the proposal to bring this report to this meeting of the Executive and to publish notices to rectify the position.

Executive has authority to approve the above recommendations

### STATUTORY POWERS

1. The Council has wide ranging powers for the acquisition of sites including Part IX of the Town and Country Planning Act 1990.
2. Section 226(1)(a) of the Town and Country Planning Act 1990 (as amended) gives a local authority the power to compulsorily acquire land in its area if it thinks that the acquisition will facilitate a development, re-development or improvement on or in relation to the land. However, the power must only be exercised if the authority thinks that the development, redevelopment or improvement is likely to contribute towards the economic, social or environmental well being of the Council's area.
3. A Compulsory Purchase Order is not effective until it has been confirmed by the relevant Secretary of State.
4. Section 237 gives authority to override easements and other rights that may exist on the land that has been acquired or appropriated by a local authority for Planning purposes (whether done by the local authority or by a person deriving title under them) and the development is done in accordance with the Planning Permission.

### POLICY FRAMEWORK

5. Reigate & Banstead Borough Council's Five Year Plan (2015-2020) identifies a number of objectives for the Council, including 'to create new jobs for our residents' benefit and to ensure there is a resilient, vibrant economy'. This will be achieved through a number of measures including promoting the Borough as a place to do business, securing resources to maintain and improve business related infrastructure, and working with partners and businesses to ensure that benefits of wider economic growth are enjoyed in the Borough.
6. Policy CS5 of the Council's adopted Core Strategy (2014) confirms the Council will promote and support continued sustainable economic prosperity and regeneration in the Borough. This will include planning for a range of types and sizes of employment premises to cater for the needs of established, growing and start-up businesses; and ensuring sufficient flexibility to meet their changing needs and attract new businesses.
7. The Borough, and particularly the southern part, falls at the heart of the Gatwick Diamond sub-region. However it has been recognised that there are a number of

issues inhibiting the economic growth of the Diamond<sup>1</sup> (and therefore Reigate & Banstead) including a lack of employment land for new development and inward investment, and a poor quality of commercial and industrial stock which is no longer fit for business use. Local experience points to existing business, and new business looking to invest in the Borough, being unable to find units of a scale suitable for their needs, and therefore locating elsewhere, and larger units that are available not being of the quality sought, or in easily accessible locations.

8. The Council is now progressing work on its Development Management Plan. As part of this work, the need and opportunities for new employment provision within the southern part of the Borough is being explored. This highlights an opportunity for a new larger scale (strategic) employment provision, and suggests that the most realistic location for such provision lies directly to the south of Horley, within close proximity of the town centre and offering the potential for direct access to the strategic road network.
9. The current Borough Local Plan includes the identified area of land as being within the Rural Surrounds of Horley, and partially covered by an allocation for public open space and the Gatwick Open Setting designation.

## ISSUES

### Employment Land Horley

10. The extent of the site that has been identified for development of a new employment site is shown edged red on the attached plan (**Annex 1**).
11. The site currently comprises fields, farms, residential and outbuildings and is in multiple ownerships. A list of owners is set out in the Exempt report in part 2 of the agenda.
12. Development envisaged would be a business park within use class order B1 of the Town and Country Planning Act 1990 (as amended). An outline Planning Application will be brought forward and Planning Approval received before a formal report for CPO will be brought forward.

### Compulsory Purchase Process and Timetable

13. In the event that the Council did initiate compulsory purchase proceedings, a specific process has to be followed. Prior to the making of a Compulsory Purchase Order (CPO), there are a number of steps to be followed:

#### (a) Formulation

This is an initial information-gathering exercise to decide that land is required for some particular purpose or scheme, in accordance with the Council's policy framework as set out above, and that the Council is prepared to use compulsory purchase powers to assist in achieving this. This report is effectively the completion of Stage 1, since the site has already been identified and the purpose that the proposed development would fulfil is known.

#### (b) Referencing

This is an exercise to collect and record information on land ownership and occupation so that all legal interests in, or rights to occupy, the land are

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<sup>1</sup> Coast to Capital Strategic Economic Plan March 2014

identified. External consultants will be appointed to undertake this work and prepare a report.

(c) **Preparation of the CPO and Statement of Reasons**

The CPO is the document that contains details of the Act authorising the acquisition, the purpose for which the CPO is being made, the land involved and the names of the owners and all other persons who have an interest in or enjoy rights over the land. External consultants will be appointed to undertake this work. The Statement of Reasons is a document that sets out the authority's reasons for seeking to acquire the land.

(d) **Resolution**

This is the formal Resolution of the Council to use compulsory purchase powers. This Resolution can be obtained prior to steps (a) and (b) above. However, since it is not yet known if it will be necessary to use compulsory purchase powers, this report is seeking an in principle decision only until it is known, or expected, that there is no other option available. A further report will be brought to the Executive should a resolution be required to make a CPO.

14. If negotiations are not successful and the Council were to proceed with compulsory purchase proceedings, the overall time from the Resolution to use CPO powers and obtaining possession of the relevant interest(s) could be between 6 and 18 months from the making of the CPO. The length of time depends upon whether or not an inquiry is required, the length of that enquiry, and the extent of valid objections to the CPO.

## **OPTIONS**

15. There are two options:

- (a) Do nothing and allow market forces alone to determine whether the land is developed in support of our local prosperity aspirations. This option is not recommended due to the possibility that terms will not be agreed between the parties. If terms are not agreed then it is unlikely that this key site will be developed in the foreseeable future.
- (b) To confirm the Council's willingness to use compulsory purchase powers, in principle, to facilitate development of this Employment Site and to further economic development objectives in the Borough. This is the recommended option as it gives a clear message to all parties of the importance to the Council of redeveloping this site to further the economic and social well being of the Borough.

## **LEGAL IMPLICATIONS**

16. The use of the powers in Section 226(1)(a) of the Town and Country Planning Act 1990 would be relevant here because the acquisition of all the various interests in the land shown on the plan would facilitate the redevelopment of the land in accordance with the Council's policy framework. The development of this site and the employment opportunity it would create would be likely to contribute to the environmental, economic and social well being of the Borough.
17. The use of compulsory purchase powers overrides all ownership rights in land, and therefore a local authority has to demonstrate that there is a compelling case in the

public interest for compulsory acquisition of land in order to convince the Secretary of State to confirm a CPO. However, in cases where it is thought that it may be necessary to use the power in order to assemble a redevelopment site if negotiations break down, it is usual to commence the preparatory work for making an order in tandem with the conduct of negotiations for acquisition of the land by agreement. Indeed, negotiation will continue throughout the process. The report seeks confirmation in principle of the Council's willingness to use compulsory purchase powers, and authority to commence preparatory work, in order to be in a good position to progress further if so required.

18. The making and confirmation of a Compulsory Purchase Order means that the acquiring authority can force owners and occupiers of the land to transfer their property interest to the Council and vacate the land. It has the potential therefore for interfering with a person's human rights in respect of the enjoyment of their property, or their home. The extent of the harm must be assessed and weighed against the public interest in achieving the regeneration at the time when a local authority is considering making a CPO. The carrying out of preliminary work as is recommended here is not likely to interfere with the human rights of any person interested in the land.
19. It is considered that the approval of the recommendations in this report is not likely to give rise to the risk of service of blight notices.

## FINANCIAL IMPLICATIONS

20. The costs associated with the CPO are set out in the Exempt report in Part 2 of the agenda.
21. External consultant appointments that would be required if compulsory purchase proceedings were instigated in accordance with the recommendation (ii) are as follows:
  - (a) Consultants to prepare a Land Referencing report;
  - (b) External valuers to advise on the value of the interests identified in the Land Referencing report and to negotiate an acquisition of these interests, together with appropriate costs for disturbance, ahead of any enquiry;
  - (c) External solicitors to prepare the CPO documents.;
22. There would be a requirement for internal officer time from Property Services in managing these external consultants and in preparing a Statement of Reasons.

## RISK MANAGEMENT

23. Outline risks are set out below.
24. The Developer is unable to provide sufficient financial undertaking to indemnify the Council. Details of the Developer are set out in the Exempt report in Part 2 of the agenda (**Annex 4**) of this report. With the appropriate indemnity in place it is thought the risk to be minimal.
25. A risk of legal challenge for example Judicial Review. Legal challenge is unlikely at this stage because there is no legal liability attached to an in principle decision that does not bind the Council to use its CPO powers. At this stage this report is a broad description of policy ambitions. This report does not fetter the discretion of the

Council to make a different decision when it comes to consider all the factors associated with making a full CPO.

### **EQUALITIES IMPLICATIONS**

26. A full Equalities Impact Assessment will be undertaken, as part of the preparatory work, to identify any equalities issues that may be associated with the use and occupation of the site. The Council is aware that the use of CPO can impinge on the rights of individuals under the Human Rights Act. Full regard will be paid to this in the development of any proposals and in negotiations with land owners.

### **OTHER IMPLICATIONS**

27. None

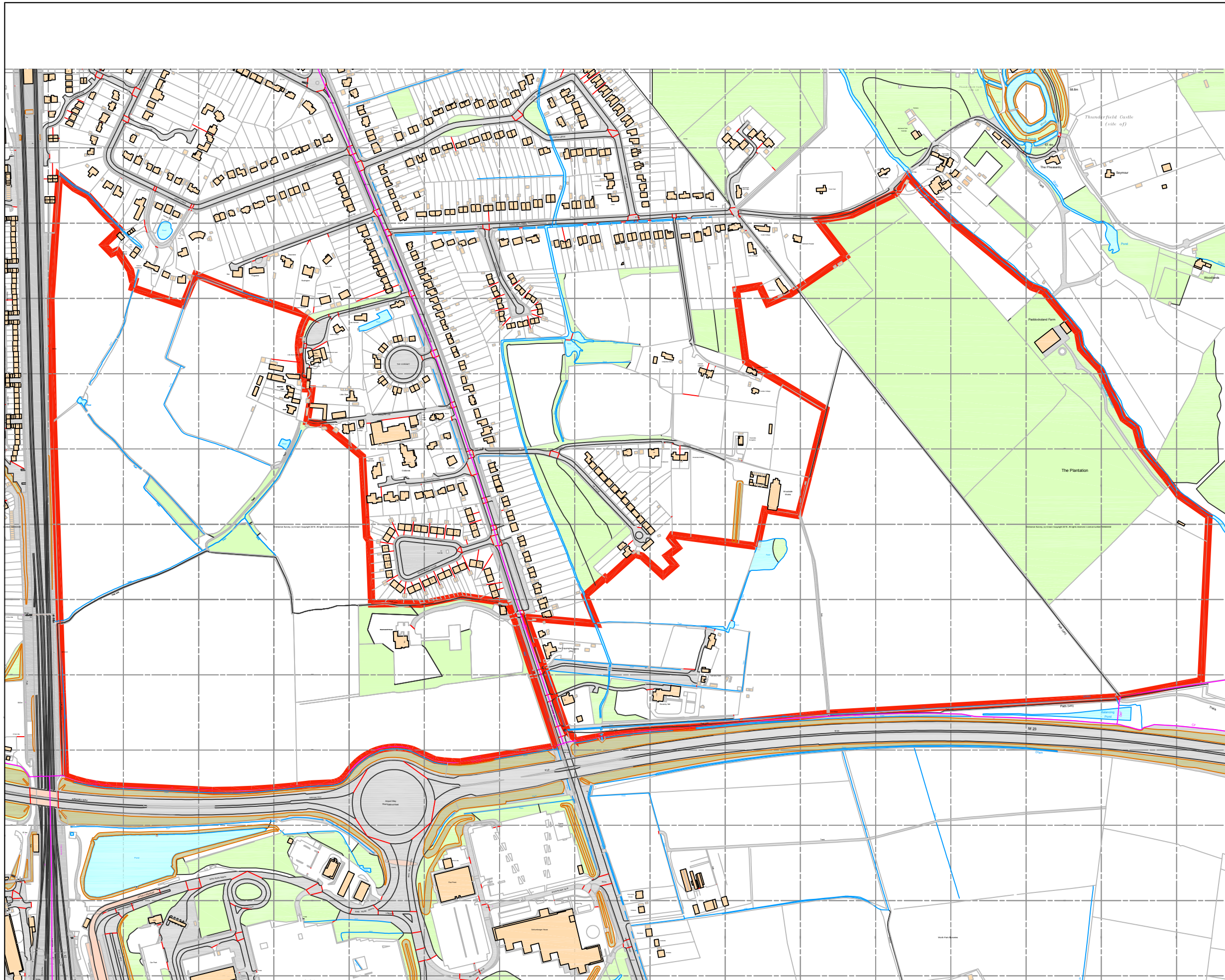
### **CONSULTATION**

28. The Executive Members for Regeneration, Property and Finance, the Horley Ward Members, and officers in Property, Planning, Policy and Regeneration have received verbal or written briefings about this matter from the Head of Property in addition to the whole of Council's Management Team.

**Background Papers:** None

### **Annexes**

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| Annex 1 | Site Plan  |
| Annex 2 | Outline Schedule of interests to be acquired (provided in the Exempt part of the agenda) |
| Annex 3 | Outline schedule of costs (provided in the Exempt part of the agenda)                    |
| Annex 4 | Details of Developer (provided in the Exempt part of the agenda)                         |



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**WORK IN PROGRESS**  
**INFORMATION ONLY**  
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