

WIRRAL COUNCIL

CABINET 19TH JUNE 2014

SUBJECT:	THE WIRRAL BOROUGH COUNCIL (GRANGE ROAD, BIRKENHEAD) COMPULSORY PURCHASE ORDER 2008.
WARDS AFFECTED:	BIRKENHEAD AND TRANMERE
REPORT OF:	HEAD OF UNIVERSAL & INFRASTRUCTURE SERVICES
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR ADRIAN JONES
KEY DECISION?	YES

1.0 EXECUTIVE SUMMARY

- 1.1 The Wirral Borough Council (Grange Road, Birkenhead) Compulsory Purchase Order 2008 (CPO) was confirmed with modifications by the Secretary of State on 28th July 2008 and all outstanding legal interests were vested in the Council on 8th December 2009.

2.0 BACKGROUND

- 2.1 The Council had invoked its compulsory purchase powers in support of a private sector redevelopment to facilitate the new Asda supermarket fronting Grange Road, Birkenhead.
- 2.2 There is an outstanding claim following the making of the CPO, which relates to the relocation of B & M Retail Limited from 238 Grange Road to 117-127 Claughton Road. This is a disturbance claim relating to relocation costs and alleged permanent loss of profits as a consequence of the move. This claim is due to be considered by the Upper Tribunal (formerly the Lands Tribunal) following B & M's application to the Tribunal for the matter to be determined at Tribunal
- 2.3 By way of a Development Agreement ("the Development Agreement") dated 9th January 2008 and a bond dated 6th October 2008 the Council has been indemnified by the Developer of the Asda site, Pochin Land & Development Limited (Pochin) for all costs associated with the making of the CPO. The Agreement and bond also secures the Developer's obligations to cover the payment of all compensation arising from the CPO.
- 2.4 Following the terms of the Development Agreement dated 9 January 2008 Pochin have appointed Matthews & Goodman (Chartered Surveyors) to negotiate the claim on its behalf for approval by the Council.
- 2.5 The consideration of the claim requires the forensic analysis of trading accounts and therefore an expert witness will need to be appointed to appear at the Tribunal. Pochin have chosen Pricewaterhouse Cooper (PWC) to undertake this work. The Council as

Acquiring Authority will however need to formally appoint PWC to act as expert witness. The Council may also have to formally appoint Matthews Goodman (Chartered Surveyors) as an expert witness to appear at the Tribunal. In addition, appropriate Counsel will be appointed to appear on behalf of the Council at the Tribunal. It may also be necessary to appoint a mediator to assist both parties in working towards a negotiated agreement. All costs incurred by the Council in connection with these appointments will, as agreed in the Development Agreement, be paid for by Pochin.

2.6 The appointment of Counsel expert witnesses (and a mediator if necessary) approved by Pochin is considered to be in the best interests of the Council, be lawful, and provide value for money, and therefore to be an exception to the Councils Contract Procurement Rules.

2.7 The level of compensation payable to B & M could be settled by way of sealed bids, or negotiation either prior to, or at the Tribunal hearing, or may be determined by the Tribunal. Any compensation payment will be met by Pochin, but, as Acquiring Authority, the Council will be required to negotiate and agree any settlement figure.

3.0 RELEVANT RISKS

3.1 The risk to the Authority are minimal as any compensation payment, and the costs of appointing Counsel and experts witnesses, will be met by the Pochin in accordance with the terms of the Development Agreement.

4.0 OTHER OPTIONS CONSIDERED

4.1 There are no other options available.

5.0 CONSULTATION

5.1 None

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

6.1 None

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

7.1 As the costs of Counsel and any witnesses, including PWC, together with any compensation payments will be met by Pochin there are no financial implications for the Council.

8.0 LEGAL IMPLICATIONS

8.1 As stated above the appointment of expert witnesses is necessary to enable the Council to resist the claim for compensation in the Tribunal.

9.0 EQUALITIES IMPLICATIONS

9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(a) Yes an impact review is attached

<http://www.wirral.gov.uk/my-services/community-and-living/equality-diversity-cohesion/equality-impact-assessments/eias-2010/law-hr-asset-management>

10.0 CARBON REDUCTION IMPLICATIONS

10.1 None

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 None

12.0 RECOMMENDATIONS

12.1 Cabinet is requested to

- Authorise the Director of Universal and Infrastructure Services to appoint appropriate Counsel and an expert witness (or expert witnesses) and a mediator if necessary to represent the Council at the Upper Tribunal as an exception to the Councils Contract Procedure Rules
- Authorise the Director of Universal and Infrastructure Services, or his representative, to negotiate and settle any compensation payment arising from B & M's application to the Upper Tribunal
- Note that any costs associated with the application to the Upper Tribunal on this matter, including any compensation payments payable to the B & M, shall be met by Pochin.

13.0 REASONS FOR RECOMMENDATIONS

13.1 To settle the claim by B & M Retail Limited arising from The Wirral Borough Council (Grange Road, Birkenhead) Compulsory Purchase Order 2008 (CPO).

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APPENDICES

None

REFERENCE MATERIAL

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date