



Council	Tuesday, 06 December 2016	Matter for Decision
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Title: **41-43 Canal Street, South Wigston**

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1. Introduction

- 1.1 The property, 41-43 Canal Street has been vacant for at least 15 years and is in a poor state of repair and despite rigorous attempts contact has not been possible with the owners. Therefore Council previously authorised the negotiation of terms with a developer for the refurbishment of 41 - 43 Canal Street, South Wigston. This was on the basis that the developer entered into an agreement with the Council regarding the Council pursuing a Compulsory Purchase Order (CPO) of the property and then the Council transfer ownership to the developer to carry out the works.
- 1.2 The proposed terms included that the developer would underwrite the CPO costs and lodge a sum equivalent to the CPO cost in an escrow account. However terms have not been able to be agreed with the developer so the sale will not be able to proceed.
- 1.3 Various options are explored as to what action to now take. On balance it is proposed to make the CPO and once confirmed to dispose of the property by the most appropriate of the options set out in this report.

2. Recommendations

- 2.1 It is recommended that Council:

- (1)** Makes a Compulsory Purchase Order under section 17 and Part XVII of the Housing Act 1985, and the Acquisition of Land Act 1981, for the acquisition of 41-43 Canal Street, South Wigston.
- (2)** That the Director of Services, in conjunction with the Chair of Policy, Finance and Development Committee and the Chief Financial Officer do anything necessary to give effect to the recommendation (1) above including but not limited to undertaking all procedural steps required to:
 - make advertise and secure confirmation and implementation of the Compulsory Purchase Order;
 - acquire the legal interest in the property the subject of the proposed Compulsory Purchase Order, whether by voluntary agreement or compulsorily using statutory powers set out in the preceding paragraph;
 - take all necessary action to deal with all matters relating to the payment of compensation and statutory interest including approval of agreement with land owners (if they come forward) setting out the terms for withdrawal of objections to the Order and where necessary and/or appropriate the instituting or defending of related proceedings;
 - dispose of the property in accordance with the proposals set out in this report.

3. Information

- 3.1 The property was marketed back in autumn 2014 and a developer was chosen to carry out the refurbishment. The Council would complete the CPO with the developer paying the market value, and that being paid into escrow (escrow being where money is held by a third-party on behalf of two transacting parties) with it being available for the named, but uncontactable owners, for a period of 12 years.
- 3.2 However, officers have been unable to finalise terms with the developer whereby they would pay the CPO price into escrow. The CPO price was based on a valuation undertaken by the Valuation Office Agency in October 2015. Officers offered a contribution from the Council pursuant to the previous Committee decision but the developer still considered it to be unviable.
- 3.3 The Council now has to reconsider its position. Potential options include to:
- invite fresh sealed bids with the highest bid winning;
 - redevelop the property by the Council;
 - sell the property by auction; or
 - do nothing.
- 3.4 In looking at each option the following comments are relevant:
- **Invite fresh sealed bids with the highest bid winning:** The Council would CPO the property, put it on the market and seek to enter into an agreement with the highest bidder who then redevelops the building. This approach has previously failed to bring forward redevelopment and whilst there has been interest in the property from other parties no firm offers have been received.
 - **The Council brings forward its own scheme:** Previous work by officers indicates that this does not appear financially viable. The Council has considered the scheme put forward by the developer which would appear not be a viable proposition.
 - **To auction the property:** The Council would go through the CPO process and then uses an auction to expose the property to the market. This allows all interested parties the opportunity to bid and thereby establishes a valuation at a given date. The risk is that that having had the CPO confirmed the property may not sell at auction (no reserve or a low reserve can mitigate some of this risk). The Council would then be left with the property and no end user. In this case the Council could then look to selling the property on the open market by private treaty.
 - **Do nothing:** This is not considered a viable option as the property has been vacant and unused for over fifteen years.
- 3.5 After considering each of the options, auctioning the property could be an appropriate way forward, although there is also scope to continue to give consideration to the appropriateness of the other options as the process proceeds. Given that establishing the sale price of the property has been the sticking point to date, if the property is placed in an auction any interested party can make a bid thus establishing its value. Provided that the auction is close to the valuation date for the CPO (the valuation date being the date the Council takes ownership of the property under the CPO) an auction would establish the market value at the time of possession and disposal.
- 3.6 In order to sell the property at auction the Council will need to have made the CPO and taken possession so that it has the freehold to sell on at the auction. Therefore the CPO needs to be made and confirmed so that the property is vested

in the Council before the auction date. The outstanding matter would be the level of compensation but that would be assessed as the sale figure from the auction. This compensation involves not just the sale price of the physical building but the other entitlements relating to disturbance, basic loss payment and professional fees

3.7 A disposal of the property by sealed offer/private treaty can be made conditional upon the purchaser agreeing a scheme of refurbishment. However, with a sale at auction this is unlikely to be the most appropriate way forward as such disposals are generally sold 'unfettered'. This means that if it was sold unconditionally then it would be left to the purchaser to carry out the works. In mitigation of this risk the purchaser will of course have paid for the property so is unlikely to not carry out refurbishment. Also, if the property was left to continue to deteriorate the Council would at least have a known owner to pursue for works/costs.

3.8 Procedurally the Council will need to go through the compulsory purchase procedure first which involves:

- the preparation, making and obtaining confirmation of the compulsory purchase order required for 41- 43 Canal Street, including the costs of any public inquiry;
- acquiring 41- 43 Canal Street and any compensation claim arising out of such acquisition; most of this will be covered by the sum realised at auction though potentially additional items falling on the Council relate to disturbance, basic loss payment and fees;
- any reasonable costs incurred in dealing with any compensation claims including any references to the Upper Tribunal (Lands Chamber) for determination of any claim; and
- any reasonable costs of dealing with any legal challenges/proceedings issued in relation to the exercise by the Council of its compulsory powers.

3.9 **Legal Issues**

Where owners cannot be traced or where a response from known owners is non-committal or otherwise unsatisfactory, there is scope for a compelling case in the public interest for enforcement action to be taken by the Council, to ensure that their strategy aims are achieved. In this case there is the length of the vacancy and the previous failed attempts to secure the renovation plus the Council's Corporate Plan in which the vision is to 'create the best quality of life for local people'. The Council's current agreed priorities include:

- Revitalise the town centres through development and by retaining free shoppers car parking
- Improve the health and well being of our residents

3.10 The reuse of this building therefore supports the Council's vision. Additionally, the vision and spatial objectives of the Oadby and Wigston Core Strategy refer to vibrant town centres with a prosperous economy and healthy and empowered communities that are safe, clean and attractive. In particular, spatial objective 4 refers to continuing regeneration initiatives in South Wigston.

3.11 In this particular case the Council has made every effort to secure the improvement of the property to the benefit of the street scene and locality generally, particularly given the continued deteriorating state of the premises.

3.12 The Council has the power under section 17 of the Housing Act 1985 to acquire land by way of compulsory purchase (land in this instance includes houses) for housing purposes. Part XVII of the Housing Act 1985 applies to compulsory purchase. This in turn applies, with modifications, the Acquisition of Land Act 1981

(compulsory purchase procedure), the Compulsory Purchase Act 1965 (post confirmation procedure) and the Land Compensation Act 1961 (amount and assessment of compensation).

3.13 The Compulsory Purchase Order must be advertised locally and copies served on all owners, lessees or reputed lessees, tenants or reputed tenants (other than lessees), and occupiers (except tenants for a month or less). If any statutory objector (a statutory objector can be an owner, lessee or occupier, not a licensee or tenant for one month or less of land within the Order) has objected within the stipulated period and not withdrawn the objection, the Secretary of State can cause a public local inquiry to be held:

- to afford the objector an opportunity of appearing before and being heard by a person appointed by the Secretary of State; or
- with the consent of the objector, to follow a written representations procedure, and then consider his findings before determining whether or not to confirm, quash or modify the Order.

3.14 In the event that there is no objection, the Secretary of State may, in certain circumstances, permit the Council to confirm the Order. The confirmation of the Order may be challenged on a point of law within 6 weeks of the publication of such confirmation. Any dispute as to the amount of compensation to be paid is referred for determination to the Upper Tribunal (Lands Chamber). The Council is obliged to act in a way which is compatible with the European Convention on Human Rights.

The Convention Rights relevant to compulsory acquisition are as follows:

Article 1 (of the First Protocol)

- This protects the right of everyone to the 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.

Article 6 (of the Convention)

- This provides that in determining 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.

Article 8 (of the Convention)

- This protects private and family life, home and correspondence. No public authority can interfere with these interests 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 the country.

Article 14 (of the Convention)

- This protects 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 a social origin.

3.15 These rights are qualified rights and may be interfered with provided such interference is prescribed by law, is pursuant to a legitimate aim, is necessary in a democratic society and is proportionate. In this case, compulsory purchase of land is permitted under the terms of the Housing Act 1985 and is subject to a statutory procedure (giving rights to consultation and to be heard at a Public Inquiry) which is being followed. In addition, compensation is payable making the action fair and proportionate.

- 3.16 The Council will use the General Vesting Declaration procedure under the Compulsory Purchase (Vesting Declarations) Act 1981 to vest the property in the Council. Compulsory Purchase is a drawn out process and can take between 6 and 18 months with the first step being the making of a resolution then a draft order is published and a notice fixed on the property and served on those with an interest in the property.

Background Documents:-

None

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Implications	
Financial (CR)	As the owners cannot be contacted the use of compulsory purchase powers allows the Council to acquire the property. The compensation will be based on the date of disposal. Therefore if the property is sold at auction or otherwise close to the acquisition date that establishes the property value. Additionally, if the owners materialise they will be entitled to a basic loss payment, disturbance and professional fees. The proceeds from the sale would be put in escrow and then if the owners do not claim them the money reverts to the Council. The disturbance, basic loss payment and professional fees would need to be underwritten by the Council. The extent of such costs are dependent on the sale price as the basic loss payment is 7.5% of the freehold sale price. On a sale price of £200,000 the additional costs would be in the region of £35,000. The council previously set aside up to £117,500 in capital to contribute up to 50% of the price as part of the negotiations with the developer. This sum is still shown in the capital budget. A total sum of £350,000 is in the budget for the Compulsory Purchase Order including acquiring the property.
Legal (AC)	See the main report with reference to the Compulsory Purchase Order and transfer to the purchaser.
Risk (AT)	<p>Corporate Risk 5 (effective utilisation of land and buildings) and 9 (economy) Compulsory Purchase Order is not confirmed. <i>This is a low risk and most orders do not need an Inquiry. It can be also be mitigated by continued negotiations with any objectors.</i></p> <p>Corporate Risk 5 (effective utilisation of land and buildings) and 9 (economy) The purchaser cannot obtain planning consent for their scheme. <i>An existing consent is in place that establishes the suitability for residential use.</i></p> <p>Corporate Risk 5 (effective utilisation of land and buildings) The purchaser does not complete the renovation works. <i>If sold by auction then it would likely be sold on an unconditional basis and it would be left to the purchaser to carry out the works. In mitigation of this risk the purchaser will of course have paid for the property. If it was left to continue to deteriorate the Council would then have a known owner to pursue for works/costs.</i></p> <p>Corporate Risk 5 (effective utilisation of land and buildings) The continuing deterioration of the building. <i>By adopting the current approach the purchaser will be able to commence works either on the basis of the existing planning consent or they can seek a fresh consent.</i></p>

	<p>Corporate Risk 5 (effective utilisation of land and buildings) The owner materialises before CPO is confirmed and fails to improve the property. <i>The owners can negotiate directly a purchaser. If the owner wishes to retain the property undertakings are obtained to bring the property into a satisfactory state within a time period during which time the CPO process is not abandoned but the Council gives an undertaking to withdraw if the works are done in time.</i></p> <p>Corporate Risk 5 (effective utilisation of land and buildings) The original owners materialise within 12 years of sale and dispute compensation. <i>A sale at auction or otherwise will establish the market value and money will be paid into an escrow account so will be available should the owners materialise.</i></p> <p>Corporate Risk 6 (regulatory governance) High court challenge to a confirmed CPO. <i>Mitigated by the correct procedures being followed.</i></p>
Equalities (AT)	An Equalities Assessment has been carried out.
	Equality Assessment:-
	<input checked="" type="checkbox"/> Initial Screening <input type="checkbox"/> Full Assessment <input type="checkbox"/> Not Applicable

Appendix 1

