

 Executive 23rd July 2008		Agenda Item No.
Title: Retail Development in Leamington – Developer Selection Process – Chandos Street Site – Part A		
For further information about this report please contact	John Archer	
Service Area	Planning	
Wards of the District directly affected		
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	NO	
Date and meeting when issue was last considered and relevant minute number	Exec Papers July 08 - num. 280	
Background Papers		

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	Yes
Included within the Forward Plan? (If yes include reference number)	Yes no. 31

Officer/Councillor Approval		
With regard to officer approval all reports <u>must</u> be approved by the report authors relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Relevant Director	n/a	
Chief Executive	26 June 08	Chris Elliott
CMT	26 June 08	Chris Elliott
Section 151 Officer	26 June 08	Hary Mawkins
Legal	26 June 08	Simon Best
Finance	26 June 08	Mike Snow
Portfolio Holder(s)	30 July 07	Cllr John Hammon
Consultation Undertaken		
Please insert details of any consultation undertaken with regard to this report.		
Internal consultation with Finance and Legal		
Final Decision?		No
Suggested next steps (if not final decision please set out below)		
Continued negotiations on legal agreements and preparatory progress on CPO. Further reports to be made to Executive.		

1. **SUMMARY**

The report recommends that Executive agrees in principle to the scheme proposed by the Council's preferred development partner, Wilson Bowden, for the retail led redevelopment of the Chandos Street site in Leamington Town centre which accords with the Council's Local Plan Policy.

The report recommends that Executive resolves that The Council undertake the preparatory work necessary for a compulsory purchase order to be made to assist the implementation of the retail led scheme for the Chandos Street site proposed by Wilson Bowden ("the CPO")

The report describes the planning policy background, Wilson Bowden's proposal for a retail led redevelopment of the Chandos Street site, the land to be compulsorily acquired and the present position with progress towards a planning application and the Development Agreement. It explains the Council's compulsory purchase powers under the Town and Country Planning Act 1990 and advice from the ODPM (now the DCLG).

The report explains the work carried out by CBRE for the Council in relation to the suitability of the scheme in retail terms together with funding issues and the prospects for its implementation if the CPO is confirmed. The report also covers the financial consequences for the Council of making the CPO and reference is made to the separate report on the agenda dealing with viability issues.

2. **RECOMMENDATIONS**

- 2.1 That the selection of Wilson Bowden as the Council's development partner for the retail led redevelopment of the Chandos Street site be confirmed
- 2.2 that in principle the scheme proposed by Wilson Bowden, in its submission of April 2008 for the retail led redevelopment of the Chandos Street site meets the Council's Local Plan requirement to achieve development to secure the future of Leamington town centre as a vital, vibrant and economically successful retailing centre, subject to it securing planning permission and all other necessary consents
- 2.3 That the Head of Legal Services be authorized to settle and complete the Council's Development Agreement with Wilson Bowden, as soon as practicable
- 2.4 That the Head of Planning and Head of Legal Services be authorized to confirm the joint appointment with Wilson Bowden of Wragge & Co LLP solicitors in connection with the all matters relating to the CPO
- 2.5 That the Head of Legal Services be authorized to undertake all preparatory work including land referencing and serving all appropriate requisition notices necessary for the making of the CPO

3. REASONS FOR THE RECOMMENDATION

3.1 Background and Format of Report

The report is presented in two main parts. The Part A report incorporates all of the information that it is appropriate to place in the public domain to inform the decision of Members in relation to the above recommendations.

The Part B report includes those elements which it is necessary to deal with on a confidential basis in order to maintain commercial confidentiality. Information contained in the Part B report is the minimum necessary to meet such requirements. In considering the report it will be necessary for Members to have regard to information contained in both the public domain and private and confidential elements of the report in order to arrive at their conclusions.

The recommendations set out above are a single set of recommendations and no separate ones are incorporated in the part B report. This provides factual information and advice on commercial information only.

3.2 Background to development proposal - summary

The Council is now at a stage where it is appropriate to formalise its partnership with Wilson Bowden by completion of a Development Agreement to secure a retail led development scheme on the site of the existing Chandos Street car park.

The approach to securing additional retail development within Leamington Town centre is set within a framework of National, Regional and Local Planning policy and guidance. Following extensive retail studies commissioned by the Council to address potential retail capacity issues within the District it was apparent that for the future of Leamington town centre to remain secure, further retail development was necessary.

Further advice from specialist commercial advisers (CBRE) indicated that the prospect for securing such development in a comprehensive manner on the Chandos street site was realistic and potentially viable. This led to a decision to progress the Chandos Street site as a potential retail development site and to undertake a developer selection process. This process was undertaken in conjunction with progress on the Local Plan (now adopted), with continued advice from CBRE and was undertaken in accordance with the relevant procurement rules. The process has been the subject of a series of reports to Executive since 2004. The full history of the development of the planning policy framework, the need for additional retail development, the choice of Chandos Street as a prospective site, the developer selection process that led to the Council's resolution in July 2007 to select Wilson Bowden as the Council's preferred development partner and the reporting of progress to Executive is set out in detail in Appendices 1 and 2.

Scheme details

3.3 Plans and elevations are attached as Appendix 3. In summary, the Scheme aims to:

- Enhance existing retail provision in Leamington and help to secure its future as an important shopping centre for both national and specialist retailers for the longer term
- Create arcade shopping on two levels
- Provide large, flexible shop units for modern retailers
- Provide a car park for approximately 500 cars
- Sit well within the urban character of the town centre
- Minimize massing and impact through restricting height to 4 stories
- Create a new link to Parade
- Add residential units to Chandos Street
- Create underground servicing for new and existing shops
- Provide service and car park access from Chandos Street

3.4 The most recent report to Executive was made in July 2007. At that meeting, Members reviewed the progress so far towards achieving a satisfactory development for the Site and viewed a provisional draft design indicating how it may be possible to develop the Site.

The Executive resolved that:

- i) Wilson Bowden be selected as the Council's prospective development partner for the development of a retail scheme on the Chandos Street site
- ii) the Council enters into a Collaboration Agreement with Wilson Bowden to enable the detailed work of a scheme to proceed and for negotiations to be undertaken on an appropriate development agreement
- iii) a comprehensive public consultation process be undertaken to ensure that community interests have the full opportunity to contribute to the scheme design process;
- iv) use of compulsory purchase powers where necessary be approved to achieve the site assembly necessary for a scheme to proceed;
- iv) the current risk of the committed £36,500 in excess of the originally agreed budget subject to entering into a collaboration agreement be noted;
- vi) the additional financial risk of approximately £101,500 in the event of a subsequent development agreement not being concluded be noted; and
- vii) further reports be submitted to the Executive as progress continues.

3.5 **Progress since Executive**

Since that time the following matters have been addressed:-

a) **Collaboration agreement**

The Collaboration Agreement with Wilson Bowden was entered into in October 2007, following advice from the Council's external legal and commercial advisers. This Collaboration Agreement sets out the parameters by which the Council will secure a Development Agreement in due course. With the signing of the Collaboration Agreement the sum of £75,000 was released from Wilson Bowden for payment to cover, in part, the Council's committed and forthcoming expenditure on commercial and legal costs.

b) **Development Agreement and costs indemnity**

In order for the development to proceed, it will be necessary to enter into a Development Agreement with Wilson Bowden. Such an agreement will cover all aspect of the Council's partnership with the developer, including the financial arrangements that will be put in place to ensure that the Council is fully indemnified in respect of its costs in promoting the CPO. The Heads of Terms of the Development Agreement have been under discussion for some time between the Council, as advised by CBRE and Wilson Bowden and their advisers. Heads of Terms have now been finalised, so that should the Council agree in principle with the scheme, the Development Agreement could be negotiated and completed. The grant of planning permission, a successful outcome to the CPO (i.e. confirmation by the Secretary of State), appropriate stopping up orders for the existing public highway and securing a successful funding position for the scheme are pre conditions to be satisfied before the development can take place

c) **Public Consultation**

A scheme was presented to members in July 2007. Wilson Bowden then undertook extensive public consultation on the draft scheme that was presented to members in July 2007. A report on the consultation and its outcome can be seen in Appendix 4. In summary, the consultation consisted of:

- public consultation exercise at Royal Priors – exhibition both manned and unmanned for a period of a week in September
- meetings with relevant local organizations; the Town Council, Town Centre Management Initiative, Leamington Society, CLARA, Chamber of Trade,
- meetings with individuals including present occupiers of properties immediately around the site and owners/agents
- meetings with groups of residents and other specific interest groups e.g. Clarendon Avenue residents and Baptist Church representatives
- discussions with English Heritage
- discussions with MADE – the local Midland representatives of the Commission for Architecture and the Built Environment,

Consultation on the scheme raised a number of concerns as well as some expressions of support. Consequently the scheme that was presented to members in July 2007 has now been subject to a significant number of changes to take account of the outcome of the consultation process together with further site assessments and scheme development.

d) **Design Evolution**

The scheme placed before Members in July 2007, was of course, only a draft scheme developed at an early stage in the scheme evolution process from which development and improvement was always anticipated.

As described above, consultation responses, discussions with interested parties and scheme development requirements led to significant changes being made to the scheme since it was placed before Member in July 2007.

The scheme as currently proposed is illustrated in plans, elevations and floor plan arrangements, which are attached at Appendix 3. The main changes and current scheme situation can be summarized as follows:-

(i) General layout

The disposition of shopping within the scheme has remained broadly as before with the main anchor store at the north east corner of the site and a central mall running northwards from Warwick Street. The line of this Mall has been shifted slightly to the West to align better with Royal Priors and the access point through Parade adjacent to the former Post Office is in the same place but reconfigured to accommodate the former Post Office listed building more effectively.

The main changes have taken place in relation to access whereby the service access from Clarendon Avenue to the north and car park ramp access immediately to the rear of the Clarendon Avenue properties has been replaced by new vehicular and service accesses from within Chandos Street reflecting the access arrangements currently in place at the Royal Priors scheme to the south. This has resulted in removal of significant external ramp elevations from the rear of residential properties, provided more workable arrangements for service and car park access and the opportunity to develop a higher quality north entrance to the scheme.

All vehicular circulation ramps are now incorporated within the scheme which consists of two levels of shopping as before plus an enlarged basement retail area.

The car parking deck layout has been reconfigured which has resulted in the loss of a complete floor from the scheme. This has significantly reduced the scale of the scheme in overall terms while still enabling the provision of the 500 plus car parking spaces required.

The extent of the scheme in terms of its impact on adjoining land and property has been examined closely. The scheme extends over the minimum area of land necessary to achieve a successful development in commercial and practical retail terms. Its proximity to and impact on all

adjoining property will require further examination in order to reduce as far as possible any potential for adverse impact on residential amenity.

(ii) Massing

As a result of the reduction in scheme levels, the cutting back of high level elevations from Clarendon Avenue properties, reconfiguring of the ramp accesses and the re-modelling of scheme peripheries the massing of the scheme has been significantly reduced. This will be seen from the accompanying plans. The elevation to Chandos Street will reflect the height and massing of the sheltered housing scheme opposite. On its Warwick Street and Parade flanks the scheme relates well in scale to existing adjoining property. To the Clarendon Avenue residential properties to the north the impact of the scheme has been considerably reduced. There will still be development of a scale in excess of that which presently exists to the rear of Clarendon Avenue, but it is now configured in a manner that is not unreasonable for a town centre urban residential environment.

(iii) Elevational Treatments

The elevation to the entrance from Warwick Street has been designed broadly to reflect the approach taken in the Royal Priors entrance opposite, with curving flanks leading to a main entrance point. Along Chandos Street, where the main new additional elevation is created, a design ethos reflecting characteristics of traditional Leamington development have been incorporated creating a satisfactory approach to the street elevation at this location. These elevations are likely to evolve in detailed design configuration as the detailed design of the scheme is further refined.

The massing of the car park to the rear (reduced in height) is treated as a secondary elevation behind a primarily residential frontage. Other elements, such as the creation of an additional entrance to assist occupiers of premises on Chandos Street have been introduced as a result of the consultation process.

To the north a new elevation is created in the truncated element of Guy Street which provides a contemporary and appropriate feature at this point. A traditional portico approach has been taken with the new entrance on Parade reflecting the approach undertaken with the new entrances created for the Royal Priors scheme.

(iv) Sustainability/Conservation Measures

The Developers are charged with creating a scheme of high credentials in terms of sustainability and energy efficiency. At present, developmental work is being undertaken on combined heating and power systems, solar collectors and small scale wind turbines together with high performance construction materials and close attention to air tightness and ventilation systems in order to achieve high credentials in this area.

This will continue to be a high priority for the Council which will wish to see the highest standards achieved in terms of energy conservation throughout the construction process in terms of materials and methodologies and

throughout its operational life where it will need to demonstrate maximization in energy efficiency.

(v) Access and car parking

Discussions have taken place between the developers, their transportation consultants and the Highways Authority on car parking provision and service access. The provision of approximately 500 car parking spaces will meet Local Plan Policy, Car Parking Strategy and wider transportation policy requirements for a balance of car parking provision throughout the town whilst securing the commercial requirements of a major anchor store user. Vehicular access has been designed to accommodate appropriate articulated and rigid lorries which would use access routings used successfully for the Royal Priors scheme. The Highway Authority has informally indicated that it considers that the car parking and servicing access arrangement would operate satisfactorily.

3.6 Current position on Scheme

The key elements of the scheme design have now been “frozen.” This means that the main configuration, massing, access and content of the scheme have now been established. It does not mean the scheme cannot be subject to further variation, for example in relation to detailed elevational design, where it will no doubt evolve further, but in terms of the form of development that is now proposed to the Council, the scheme is now effectively fixed in its overall configuration. There are now 5 key questions for the Council to address:

- a) Will the scheme have the potential to provide the retail package necessary to maintain Leamington as a successful and vibrant shopping centre?
- b) Will the scheme meet the necessary standards of design compatible with preserving and enhancing the Conservation Area, maintaining the character of the urban fabric, securing a satisfactory relationship with adjoining properties, with the Council’s broad aspirations for this site and its planning policy framework?
- c) Is it likely that the Council will need to use its compulsory purchase powers in order to assemble the land needed for the scheme?
- d) Will the scheme as proposed be viable as well as meeting the Council’s required financial framework?
- e) Will the risk to the Council be within acceptable limits?

- 3.7 These questions are linked to the extent that the design of the scheme needs to create a centre that will not only meet all appropriate design criteria and sustainability requirements but also create a package that will provide for the retail needs of Leamington, complement and support the existing retail environment and provide a physical/commercial environment that will attract appropriate retailers. Each of the above questions can be considered in turn.

3.8 Suitability of Retail Package

This element of the scheme has been examined in detail by CBRE, the Council's commercial/retail advisers. They have considered carefully the layout in terms of its attraction to appropriate anchor tenants and major retailer needs and looked at its internal configuration and linkages to assess whether it would provide a successful and attractive retail environment. Their conclusion is that the scheme would meet the requirements of major anchor tenants well and provides an opportunity for many other major current retailers who require floor areas not currently available in Leamington to come into the town. They advise that it is likely that such occupiers would be readily attracted to the scheme as it is now configured and it has significant potential to attract appropriate retailers.

3.9 Standard of Design – suitability for Leamington Town Centre

In terms of detailed design the scheme is not wholly finalised. Whilst as set out above the general extent and disposition of this scheme in terms of overall retail provision, the number of floors/access points upper level car parking will remain, there is likely to be design evolution as the scheme moves forward. However, the scheme has evolved to a position where the massing of the scheme sits well with the existing urban framework of the town, the elevational treatments create a development in harmony with its architectural character, the relationship with adjoining retained property is satisfactory (and has the potential to be subject to further detailed reconfiguration) and servicing and car parking arrangements can be accommodated within the existing highway framework.

The scheme would result in the development of a site that is currently an open site within the town centre. However, historically, the site was developed, consisting of 19th Century housing that was the subject of housing clearance during the 1960s. For the greater part of the period since the development of this part of the historic town, the site has been built upon. It was never an open area as part of the historical development of the town. The site was laid out as a surface car park following the housing clearance and was upgraded and landscaped in the early 1980s. Some trees have been lost since the landscaping was originally introduced, but though there are a number of trees around the site and a good tree specimen remaining within the site, their loss, from a site with no long term history of undeveloped use, would not be an unacceptable consequence of the scheme.

It is also the case that though enhancements to properties around the site have taken place, the site is largely one of exposed rear elevations, which do not enhance the quality of the town. The main exceptions to this are the new church, sheltered housing and bar on Chandos Street, whose quality is recognized by the creation of a flank of residential development to a scale and design appropriate to this location.

The scheme as it stands at present is one that, subject to further detailed consideration through the planning system, can be regarded as appropriate and suitable in design and massing terms for the particular character of Leamington.

3.10 Compulsory Purchase order requirements and Order Lands

The Site Plan attached at Appendix 5 shows the extent of what is currently anticipated will be required in terms of land take for the site. Though the scheme is fixed there may be minor variations on this as the scheme moves through its later

planning stages. However, at present this gives a general indication of the potential land acquisition required.

The scheme has been designed to minimise land take necessary to secure a viable and functional scheme for the town. As advised by CBRE, any reduction in the anticipated land take for the scheme would prevent the development of a configuration necessary to ensure provision of the retail package necessary for scheme success.

The Council only holds the freehold interest in that portion of the site occupied by the car park. Additional land around this core needs to be acquired in order to secure the necessary site for scheme development.

Every effort will be made to acquire land by agreement. However, if it is not possible for Wilson Bowden to acquire land by agreement then achievement of the necessary land purchases would be through the exercise of compulsory purchase powers. The site plan attached at Appendix 5 shows the extent of what is currently anticipated will be required in terms of land take for the site.

It is important to be clear that it is highly likely that it will be necessary for the Council to exercise its compulsory purchase powers in order to obtain the appropriate area of land to secure the scheme. Therefore in due course the Council will need to resolve formally to utilise the CPO powers available to it in order to secure the necessary land.

Meanwhile, it will be necessary for the Council to undertake the preparatory work for making the CPO. This will involve investigating and examining land interests in the land that would be the subject of the CPO.

The occupiers/owners will have the right to object to the CPO and objections from any of those who receive notice of the CPO will lead to a public inquiry.

3.11 The Council's power of compulsory purchase

The Council has the power under Section 226 of the Town and Country Planning Act 1990, (as amended by the Planning and Compulsory Purchase Act 2004) to make a compulsory purchase order for any land in its area if the Council think that the purchase will facilitate the carrying out of development, redevelopment or improvement on or in relation to that land. This power is the most appropriate one available to the Council in the context of the Chandos Street scheme, and it is not certain that it will be able to acquire the land by agreement.

Under Section 226 the Council may not exercise the power unless they think that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objectives:-

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

It is considered that the use of this Section is most appropriate having regard to the aims sought to be achieved by the development.

It is immaterial that the development, re-development or improvement may be carried out by a third party. Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 enables the Council to acquire any new rights. New rights will be required to enable the proposed works to be completed and the scheme to be completed.

- 3.12 Circular 06/2004 (Compulsory Purchase and the Criche Down Rules) by the ODPM (now the DCLG) provides updated guidance to acquiring authorities in England on the use of compulsory purchase powers. Paragraph 1 states:

“Ministers believe that Compulsory Purchase Powers are an important tool for local authorities and other public bodies to use as a means of assembling the land needed. Used properly, they can contribute towards effective and efficient urban and rural regeneration, the revitalisation of communities, and the promotion of business – leading to improvements in quality of life. Bodies possessing Compulsory Purchase Powers – whether at local, regional or national level – are therefore encouraged to consider using them proactively wherever appropriate to ensure real gains are brought to residents and the business community without delay”.

Further guidance on orders made by local authorities under Section 226 of the Town and Country Planning Act 1990 is set out in Appendix A of the Circular. This sets out the circumstances in which the power above may be relied on by a local authority for the purposes of compulsorily acquiring land. A key element of the guidance at paragraph 2 of Appendix A is that:

“The powers in Section 226 as amended by Section 99 of the Planning and Compulsory Purchase Act 2004 are intended to provide a positive tool to help acquiring authorities with their planning powers to assemble land where this is necessary to implement the proposals in their community strategies and Local Development Documents. These powers are expressed in wide terms and can, therefore, be used by such authorities to assemble land for regeneration and other schemes where the range of activities or purposes proposed means that no other single specific compulsory purchase power would be appropriate”.

- 3.13 It is no longer the case that a planning permission needs to have been granted before a CPO can be made under this Section. Paragraph 15 of the Circular states:-

“It is also recognised that it may not always be feasible or sensible to wait until the full details of the scheme have been worked up and planning permission obtained before proceeding with the Order.”

The Circular requires that a CPO should only be made where there is “a compelling case in the public interest”. The section of this report below sets out the Council’s reasons for making the proposed CPO.

It is necessary for the Council to resolve formally to use compulsory purchase powers before it can make a CPO. In resolving to use compulsory purchase powers, the Council must be satisfied that it is necessary to acquire the land in order to secure the delivery of the scheme of development. The justification for the Council’s use of the compulsory purchase powers will form a key part of the ‘Statement of Reasons’ which will set out the need for the CPO and set the context of the powers and process. The Statement of Reasons will be submitted in support of the CPO.

- 3.14 Once the Council has made the CPO it will be lodged with the Secretary of State for Communities and Local Government for confirmation. The Secretary of State's confirmation is required for the CPO to become effective. Notices will be served on all parties with an interest in land and notice of the CPO will be advertised for two consecutive weeks in a local newspaper and by notice affixed on the Site. Any objection to the CPO must be made within 21 days of the date of notification of the CPO. In the event that objections are made and not negotiated away, the Secretary of State shall hold a public inquiry unless the objectors and the Council agree that the matter can be dealt with under the "written representations" procedure whereby an Inspector will make his recommendation to the Secretary of State whether or not to confirm the CPO based on the case for and against the CPO set out by the Council and the objectors in writing.
- 3.15 The Circular provides that any decision by the Secretary of State about whether to confirm a CPO made under Section 226 will be made on its own merit but the factors which the Secretary of State can be expected to consider include:-
- whether the purchase to which the land being acquired fits in with the adopted planning framework for the area
 - the extent to which the proposed purpose will contribute to the achievement of the promotion or improvement of the economic, social or environmental well-being of the area
 - the potential financial viability of the scheme for which the land is being acquired
 - whether the purpose for which the acquiring authority is proposing to acquire the land could be achieved by other means eg alternative proposals put forward by the owners of the land.
- 3.16 The Circular also requires the Council to have regard to the following when considering making a compulsory purchase order:-
- that the purposes for which the CPO is made sufficiently justify interfering with the human rights of those with an interest in the land affected
 - the degree to which other bodies (including the private sector) have agreed to make financial contributions or to underwrite the scheme and on what basis such contributions or underwriting is to be made
 - evidence relating to financial viability
 - that the scheme is unlikely to be blocked by other impediments to implementation. For example if planning permission has not been granted, there should be no obvious reason for it not being granted. It is not necessary however for planning permission to be granted at the time the CPO is made.
 - Acquiring authorities should try to acquire land by agreement wherever practicable. However the Circular recognises that it may be sensible for acquiring authorities to start formal compulsory purchase order procedures in parallel with their efforts to acquire by agreement. The Circular notes that this has the advantage of making the seriousness of the acquiring authority's intentions clear from the outset which in turn might encourage those whose land is affected to enter more readily into meaningful negotiations.
- 3.17 The Circular also advises that there is no general presumption that an acquiring authority must be able to show that the land is required immediately to secure the purpose for which it is to be acquired. However the Circular states that it will only be *"in exceptional (and fully justified) circumstances that it might be reasonable to*

acquire land where there is little prospect of implementing the scheme for a number of years”.

Acquiring authorities are encouraged to offer those concerned about a CPO, access to alternative dispute resolution procedures where appropriate.

Notice of the making of the CPO is made on categories of “qualifying persons” namely owners, lessees and occupiers (other than monthly or shorter tenants) and publicised in the local newspaper. Objections from any of those who receive notice will lead to a public inquiry.

- 3.18 The Human Rights Act 1998 prohibits public authorities from acting in a way which is incompatible with the European Convention on Human Rights. The Council is therefore required to consider whether its actions would infringe the human rights of anyone affected by the making of the CPO. While certain Convention rights may be relevant to the CPO (such as the ‘right to peaceful enjoyment of possessions’), interference with such rights by public authorities will be justified where the public interest outweighs the interests of the private individual. It is considered that any interference with Convention rights caused by the CPO will be justified and proportionate in the wider public interest in order to secure the economic, social, physical and environmental redevelopment of Leamington Town Centre.

3.19 **Legal advice on the CPO**

As part of the process of making the CPO, it will be important to have specialist advice. In similar partnership schemes, it is accepted practice for a joint appointment of specialist solicitors to be made by both the Council and the developer specifically to deal with matters relating to a future CPO. Both developer and Council have a common interest in effective CPO progress and joint working can assist in this.

However, it has to be recognized that making the CPO is a Council responsibility and any appointment must ensure that it protects the interests of the Council as a priority. Terms of a joint appointment with Wilson Bowden of Wragge & Co LLP, a Birmingham-based practice with a major London office, which has extensive expertise in CPO work, have been put to the Council. The terms of the joint appointment have been examined and are such that the interests of the Council in connection with the CPO would be fully protected. At the same time, the advice of CBRE will include guidance on the overall approach to CPO work so that the Council can be satisfied that the detailed legal work undertaken by Wragges is appropriate. All the Council’s costs in employing Wragges as CPO advisers will be covered by an indemnity agreement with Wilson Bowden as set out above.

3.20 **Viability of Scheme**

The detailed assessment of issues of viability undertaken on the Council’s behalf by CBRE is contained within the Part B report because of its commercial confidentiality. In arriving at a way forward it will be necessary to weigh the issues raised in that section of the report with the broader and more general issues set out above.

CBRE report that in the light of their viability assessment, that whilst market fluctuations are presently adversely affecting the current financial profile of the scheme, they would recommend that the Council agrees to proceed with the

development, subject to appropriate cost recovery arrangements in respect of Council funds within the Development Agreement.

It will be necessary for there to be further examination and assessment of the viability case for the scheme as work progresses. The outcome of the assessments will be submitted to Executive when reporting on a formal Compulsory Purchase Order resolution

3.21 Financial considerations

Under the agreed Heads of Terms of the Development Agreement, the costs of making the CPO, acquiring the land, any other compensation determined by the Lands Tribunal, and the construction costs of the development are to be the responsibility of Wilson Bowden pursuant to the Development Agreement. This includes the costs of successful objectors if the CPO fails.

The costs to the Council relate only to the provision of in-house staff already associated with delivering this regeneration scheme. A successful CPO will result in a retail led development which will optimize the regeneration potential of the site and contribute to the wider economic regeneration of Leamington town centre

3.22 Risks to the Council

If the Development Agreement is not exchanged, then the funding to be provided by Wilson Bowden to cover the Council's own consultancy fees would not be forthcoming. The Council would therefore be risking a significant sum depending on the level of expenditure at the time of cessation of progress. This concern has been raised with Wilson Bowden, who have agreed to put in place a staged approach to covering the cost of the Council's fees which will involve payment in tranches to cover the Council's financial exposure. This significantly reduces the element of risk to the Council.

This willingness to undertake this protection of the Council's expenditure is also indicative of the commitment of Wilson Bowden to the scheme. It is clear that this scheme is a high priority for the company and would only be at risk as a result of wider commercial/economic circumstance affecting the wider economy over which neither Wilson Bowden, nor any other individual developer has any direct control.

Nevertheless, whilst the risks to the Council have been significantly reduced, it does remain a factor that Members will need to take into account in taking a decision on the scheme. It is open for Members to conclude that it does not wish to continue with the scheme in the light of these elements of risk. However, all Councils have to engage with an element of risk in seeking to secure major retail development. In the current circumstances, all has been done to minimise this risk and it is your officers' view that it is within acceptable limits. If any circumstances change to amend this view, Members will be informed in order for an appropriate decision to be taken

3.23 Options

No alternatives to the Wilson Bowden scheme have been put forward by other owners of land at the site

3.24 Savings/benefits

A retail led development at the Chandos Street site will provide a planning gain and an economic boost to Leamington town centre.

3.25 The Way Forward

The issue for Executive is whether the scheme as now configured is one in which the Council can have confidence that it meets its objectives to secure additional retailing in a manner that complements the town centre and manages risk satisfactorily.

If Executive is satisfied with the approach in terms of scheme design, retail package and financial viability and risk, the scheme and all relevant planning issues will subsequently need to be considered independently and in more detail through the planning process. Wilson Bowden would need to submit a planning application for the scheme which would be assessed against all relevant national and local planning policy, taking into account all relevant consultation responses as any other application. A decision to support the scheme in principle and to make the CPO at this stage does not prejudice the planning process.

If Members are satisfied in relation to financial, viability and risk issues (as set out in summary above and in more detail in Report B) then it would be appropriate to resolve to enter into a Development Agreement with Wilson Bowden to secure the retail development of the Chandos Street site as set out broadly in the attached plans, subject to planning permission being achieved.

Your officers' view is that the scheme does meet the tests relating to retail impact and design. There remains an issue over viability which is largely a reflection of current market circumstances. The Development Agreement will require further viability tests to be undertaken before unconditional agreement is achieved so this issue will be addressed further as the scheme progresses. The commercial risk is borne by Wilson Bowden, who are prepared to invest significant sums to move the scheme forward. Future predictions over market conditions are extremely difficult to make. The Scheme needs to be seen in a longer term perspective, with completion not anticipated until 2012, by which time market conditions are likely to be significantly different. Certainly, from the Council's point of view, current market fluctuations are no reason for the Council to abandon planning properly for the future of the town centre. At this stage, therefore, there is no overriding argument for curtailing progress for wider scheme viability reasons.

In relation to the risk to Council expenditure, this has now been minimised by the staged payment approach. A risk does remain, however, though your officers' view is that it is within the limits that would be reasonable for any Council to undertake in order to secure a major town centre scheme.

3.26 Development Agreement

The achievement of an agreement with a development partner is generally a two stage process. Stage 1 consists of the establishment of a Collaboration Agreement between the parties. This is effectively an exclusivity agreement, setting the framework for moving towards the main development agreement itself. As set out above, the Collaboration Agreement was entered into in October 2007 in respect of

this site, thus releasing funds to meet the Council's costs in moving forward on this project.

The next stage is to move to negotiations on the Development Agreement. This is a more complex document setting out the detailed framework for the relationship between the Council and the developer in securing the scheme and dealing with the financial and legal framework that needs to be put in place. The process commences with negotiation of Heads of Terms of the Agreement and initial discussion on these has been undertaken on a "without prejudice" basis. Indeed, as set out earlier, Heads of Terms have now been agreed for the Development Agreement between the Council and Wilson Bowden.

3.27 **Next Stages**

Should Executive be satisfied that it would wish to see development of the scheme currently proposed by Wilson Bowden the following main stages would then ensue.

- i) **Progress on Development Agreement** – discussions will continue on the detailed terms of the agreement. In undertaking such discussions the Council is advised by specialist external commercial consultants and specialist external legal advisors, both of whom have extensive experience of advising Councils on Town Centre development issues.
- ii) **Detailed survey work** – the scheme has been designed on the basis of initial survey work and available OS background information. Further detailed survey of the site is required in order to work up the scheme from its design concept stage to a planning application level of detail.
- iii) **Planning application stage** – not only will it be necessary to undertake significant work up of design details for the scheme for planning purposes but it will also be necessary to ensure that all the relevant environmental issues are considered through an appropriate Environmental Impact Assessment which will need to be submitted as part of the planning application in due course.

This will need to assess all relevant environmental impact issues including matters such as planning policy and land use framework, built heritage and archaeology, ecology, nature conservation, transport and access, townscape and visual impact, air quality impact, ground conditions, pollution and all other relevant environmental factors. This information will be in the public domain and will need to be fully taken into account in considering the planning application, which will be subject to all the appropriate consultation with relevant bodies and individuals. Should the Council consider it appropriate to agree to progress with the scheme at this stage then it is likely that a planning application would be submitted to the Council by the end of 2008.

- iv) **Compulsory Purchase** – preparatory work, including land referencing to be undertaken by specialist agents, will need to progress in order to ensure that any necessary CPO can be undertaken in parallel to progress on the planning application.

4. ALTERNATIVE OPTION CONSIDERED

The alternative to progressing with actively promoting and developing retail provision within Leamington would require an acceptance that the town centre may become less able to compete with other centres in the sub-region that have invested considerably in their shopping provision. Many town centres that are direct competitors to Leamington have seen significant investment over recent years and whilst Leamington is presently successful, attractive and buoyant it is necessary to plan for the future. Lack of major fresh retail investment may create a risk of decline and have a negative impact on the future of many of the traders in the town centre, both national retailers and the independent specialist shops which form much of Leamington's particular retail character

There is significant potential demand for retailing within the District and its catchment area and in accordance with Government policy, the first priority must be to look to secure provision to meet that demand within the major town centre of the District. Leamington is categorized as a Strategic Town Centre within the current Regional Spatial Policy, one of only three within Warwickshire and it is important to act to retain it at that level. Without the opportunity to develop retail provision within the centre itself; given the demand that exists, there remains the threat of significant new out of town retailing to meet the need.

The sequential approach set out in government advice requires that in the first instance, sites for meeting retailing need should be within existing shopping centres; if none are available, then edge of centre locations may be utilised, and if there are no opportunities here, then out of centre sites may be considered.

There are no alternative sites within the town centre that have the potential at this stage to secure a significant retail development within the timescale envisaged for the Chandos Street site. The Chandos Street site has the benefit of a large core of Council owned land that enables the Council to be proactive in moving forward with a potential scheme.

There are no other schemes for the development of the Chandos street site that have been put forward as an alternative to the Wilson Bowden proposal

The opportunity to extend the Town Centre and identify edge of town centre sites is limited, certainly in the area of the primary retail core and therefore without commitment to progressing the current scheme, the Council may find itself more vulnerable to arguments that capacity needs to be found for retail development in out of town locations.

The Council does have the option not to proceed with the scheme if it considers that there is too high a risk associated with the costs associated with continuing consultancy support. As set out above, every effort has been taken to minimise this risk, including a staged payment agreement with Wilson Bowden. Nevertheless, it does remain an alternative option for the Council.

5. BUDGETARY FRAMEWORK

The selection process has been undertaken with the assistance of extensive professional advice from CBRE together with independent legal advice from Reed

Smith Richards Butler Solicitors whose appointment was agreed by the Executive of July 07.

The funding for the work undertaken so far has been met by the original revenue allocation by the Council and the first tranche payment from Wilson Bowden made available to the Council upon signing of the Collaboration Agreement last year.

In order to move forward with the scheme there is the need to continue with the assistance of specialist commercial retail advisors in order to deal with the complexities of retail development and partnership arrangements. It would be appropriate for this to continue to be provided by CBRE who have the detailed knowledge of the circumstances of the project to ensure an effective support service.

It will also be necessary to continue with specialist legal advice to assist the Council in securing a satisfactory Development Agreement. This advice can continue to be provided by Reed Smith.

In respect of both appointments, the Executive has already agreed their engagement in connection with drafting the Development Agreement. No further authority is required to continue with the appointments, though it is relevant to report that your officers have been satisfied with the contribution of both appointees to the process so far and have no reason to consider other than that they will continue to provide essential assistance and support to the process.

Further details of financial risk issues are contained within the Part B report.

6. POLICY FRAMEWORK

Local Policy

The adopted Local Plan allows for the selection of a site for future retail development in Leamington in recognition of the outcome of the DTZ reports. Policy TCP 3 specifically provides for the development of large scale shopping proposals in accordance with a range of criteria. The policy defines an “Area of Search”, illustrated on the Inset Plan within which large scale retail development may be permitted. The area incorporates all of the central car park and properties on the periphery. Almost all the scheme as proposed is set within this defined area. However, a small portion of the scheme, to the north of the existing car park, is not within the “Area of Search” and is situated within an area of the Town Centre covered by Policy TCP 10. This policy states that changes of use from residential to non residential uses will not be permitted unless the proposed use retains a residential element.

The area affected by the scheme within this policy area consists primarily of a small number of residential properties and a Vets Practice. Careful examination of the scheme in the context of this policy has shown that it is not possible to achieve a scheme of the retail quality and quantity necessary to provide a successful retail environment without developing on the site of these properties. The achievement of the Council’s objectives as set out in TCP3 has to be weighed against the conflict with TCP 10 in this instance. Given that the scheme has a limited impact numerically on existing residential provision and that the residential properties, though within the TCP10 policy area, are, on the periphery of an established

residential area, the balance of advantage overall in policy terms lies with incorporating these properties within the scheme. The net effect of the scheme will be to increase the number of residential properties within this part of the Town Centre.

Securing of an active Town Centre and progress on the Chandos Street scheme is included within the Council's own corporate priorities.

6.2 National Policy

Current advice in Planning Policy Statement 6 on town centres urges local authorities to take a proactive stance in securing the future for town centres. Action to secure a major town centre retail development is in accordance with this advice.

Regional Policy

- 6.3 The submitted Preferred Option of the Regional Spatial Strategy establishes Leamington as a third tier strategic town centre. Such centres are the preferred location for major retail developments exceeding 10,000 sq m (policy PA11). The RSS also proposes that Leamington makes provision for 35,000 sq m of comparison retail floorspace between 2006 and 2021 and a further 25,000 sq m floorspace for the period 2021 – 2026 (policy PA12A)

7. BACKGROUND

Further details of the background and the policy framework are set out in Appendices 1 and 2